

1 **“SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS,**
2 **INDIVIDUALIZED EDUCATION PROGRAMS,**
3 **AND EDUCATIONAL PLACEMENTS.**

4 “(a) EVALUATIONS AND REEVALUATIONS.—

5 “(1) INITIAL EVALUATIONS.—

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

13 “(B) REQUEST FOR INITIAL EVALUA-
14 TION.—Consistent with subparagraph (D), ei-
15 ther a parent of a child, or a State educational
16 agency, other State agency, or local educational
17 agency may initiate a request for an initial eval-
18 uation to determine if the child is a child with
19 a disability.

20 “(C) PROCEDURES.—Such initial evalua-
21 tion shall consist of procedures—

22 “(i) to determine whether a child is a
23 child with a disability (as defined in sec-
24 tion 602(3)) within 60 days of receiving
25 parental consent for the evaluation, or, if
26 the State has established a timeframe

1 within which the evaluation must be con-
2 ducted, within such timeframe; and

3 “(ii) to determine the educational
4 needs of such child.

5 “(D) PARENTAL CONSENT.—

6 “(i) IN GENERAL.—The agency pro-
7 posing to conduct an initial evaluation to
8 determine if the child qualifies as a child
9 with a disability as defined in section
10 602(3) (A) or (B) shall obtain an informed
11 consent from the parent of such child be-
12 fore the evaluation is conducted. Parental
13 consent for evaluation shall not be con-
14 strued as consent for placement for receipt
15 of special education and related services.

16 “(ii) REFUSAL.—If the parents of
17 such child refuse consent for the evalua-
18 tion, the agency may continue to pursue an
19 evaluation by utilizing the mediation and
20 due process procedures under section 615,
21 except to the extent inconsistent with State
22 law relating to parental consent.

23 “(iii) REFUSAL OR FAILURE TO CON-
24 SENT.—If the parent of a child does not
25 provide informed consent to the receipt of

1 special education and related services, or
2 the parent fails to respond to a request to
3 provide the consent, the local educational
4 agency shall not be considered to be in vio-
5 lation of the requirement to make available
6 a free appropriate public education to the
7 child for the failure to provide the special
8 education and related services for which
9 the local educational agency request such
10 informed consent.

11 “(2) REEVALUATIONS.—

12 “(A) IN GENERAL.—A local educational
13 agency shall ensure that a reevaluation of each
14 child with a disability is conducted in accord-
15 ance with subsections (b) and (c)—

16 “(i) if the local educational agency de-
17 termines that the educational or related
18 services needs, including improved aca-
19 demic achievement and functional perform-
20 ance, of the child warrant a reevaluation;
21 or

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

24 “(B) LIMITATION.—A reevaluation con-
25 ducted under subparagraph (A) shall occur—

1 “(i) not more than once a year, unless
2 the parent and the local educational agen-
3 cy agree otherwise; and

4 “(ii) at least once every 3 years, un-
5 less the parent and the local educational
6 agency agree that a reevaluation is unnec-
7 essary.

8 “(b) EVALUATION PROCEDURES.—

9 “(1) NOTICE.—The local educational agency
10 shall provide notice to the parents of a child with a
11 disability, in accordance with subsections (b)(3),
12 (b)(4), and (c) of section 615, that describes any
13 evaluation procedures such agency proposes to con-
14 duct.

15 “(2) CONDUCT OF EVALUATION.—In con-
16 ducting the evaluation, the local educational agency
17 shall—

18 “(A) use a variety of assessment tools and
19 strategies to gather relevant functional, develop-
20 mental, and academic information, including in-
21 formation provided by the parent, that may as-
22 sist in determining—

23 “(i) whether the child is a child with
24 a disability; and

1 “(ii) the content of the child’s individ-
2 ualized education program, including infor-
3 mation related to enabling the child to be
4 involved in and progress in the general
5 curriculum, or for preschool children, to
6 participate in appropriate activities;

7 “(B) not use any single procedure, meas-
8 sure, or assessment as the sole criterion for de-
9 termining whether a child is a child with a dis-
10 ability or determining an appropriate edu-
11 cational program for the child; and

12 “(C) use technically sound instruments
13 that may assess the relative contribution of cog-
14 nitive and behavioral factors, in addition to
15 physical or developmental factors.

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

18 “(A) tests and other evaluation materials
19 used to assess a child under this section—

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

23 “(ii) are provided and administered,
24 to the extent practicable, in the language
25 and form most likely to yield accurate in-

1 formation on what the child knows and can
2 do academically, developmentally, and
3 functionally;

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

7 “(iv) are administered by trained and
8 knowledgeable personnel; and

9 “(v) are administered in accordance
10 with any instructions provided by the pro-
11 ducer of such tests;

12 “(B) the child is assessed in all areas of
13 suspected disability; and

14 “(C) assessment tools and strategies that
15 provide relevant information that directly as-
16 sists persons in determining the educational
17 needs of the child are provided.

18 “(4) DETERMINATION OF ELIGIBILITY.—Upon
19 completion of administration of tests and other eval-
20 uation materials—

21 “(A) the determination of whether the
22 child is a child with a disability as defined in
23 section 602(3) shall be made by a team of
24 qualified professionals and the parent of the
25 child in accordance with paragraph (5); and

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

4 “(5) SPECIAL RULE FOR ELIGIBILITY DETER-
5 MINATION.—In making a determination of eligibility
6 under paragraph (4)(A), a child shall not be deter-
7 mined to be a child with a disability if the deter-
8 minant factor for such determination is—

9 “(A) lack of scientifically based instruction
10 in reading;

11 “(B) lack of instruction in mathematics; or

12 “(C) limited English proficiency.

13 “(6) SPECIFIC LEARNING DISABILITIES.—

14 “(A) IN GENERAL.—Notwithstanding sec-
15 tion 607(b), when determining whether a child
16 has a specific learning disability as defined in
17 section 602(29), a local educational agency
18 shall not be required to take into consideration
19 whether a child has a severe discrepancy be-
20 tween achievement and intellectual ability in
21 oral expression, listening comprehension, writ-
22 ten expression, basic reading skill, reading com-
23 prehension, mathematical calculation, or mathe-
24 matical reasoning.

1 “(B) ADDITIONAL AUTHORITY.—In deter-
2 mining whether a child has a specific learning
3 disability, a local educational agency may use a
4 process that determines if the child responds to
5 scientific, research-based intervention.

6 “(c) ADDITIONAL REQUIREMENTS FOR EVALUATION
7 AND REEVALUATIONS.—

8 “(1) REVIEW OF EXISTING EVALUATION
9 DATA.—As part of an initial evaluation (if appro-
10 priate) and as part of any reevaluation under this
11 section, the IEP Team described in subsection
12 (d)(1)(B) and other qualified professionals, as ap-
13 propriate, shall—

14 “(A) review existing evaluation data on the
15 child, including evaluations and information
16 provided by the parents of the child, current
17 classroom-based assessments, and observations,
18 and teacher and related services providers ob-
19 servations; and

20 “(B) on the basis of that review, and input
21 from the child’s parents, identify what addi-
22 tional data, if any, are needed to determine—

23 “(i) whether the child has a particular
24 category of disability, as described in sec-
25 tion 602(3), or, in case of a reevaluation of

1 a child, whether the child continues to have
2 such a disability;

3 “(ii) the present levels of performance
4 and educational needs of the child;

5 “(iii) whether the child needs special
6 education and related services, or in the
7 case of a reevaluation of a child, whether
8 the child continues to need special edu-
9 cation and related services; and

10 “(iv) whether any additions or modi-
11 fications to the special education and re-
12 lated services are needed to enable the
13 child to meet the measurable annual goals
14 set out in the individualized education pro-
15 gram of the child and to participate, as ap-
16 propriate, in the general curriculum.

17 “(2) SOURCE OF DATA.—The local educational
18 agency shall administer such tests and other evalua-
19 tion materials and procedures as may be needed to
20 produce the data identified by the IEP Team under
21 paragraph (1)(B).

22 “(3) PARENTAL CONSENT.—Each local edu-
23 cational agency shall obtain informed parental con-
24 sent, in accordance with subsection (a)(1)(D), prior
25 to conducting any reevaluation of a child with a dis-

1 ability, except that such informed parental consent
2 need not be obtained if the local educational agency
3 can demonstrate that the local educational agency
4 had taken reasonable measures to obtain such con-
5 sent and the child's parent has failed to respond.

6 “(4) REQUIREMENTS IF ADDITIONAL DATA ARE
7 NOT NEEDED.—If the IEP Team and other qualified
8 professionals, as appropriate, determine that no ad-
9 ditional data are needed to determine whether the
10 child is or continues to be a child with a disability,
11 the local educational agency—

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

13 “(i) that determination and the rea-
14 sons for the determination; and

15 “(ii) the right of such parents to re-
16 quest an assessment to determine whether
17 the child is or continues to be a child with
18 a disability; and

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

22 “(5) EVALUATIONS BEFORE CHANGE IN ELIGI-
23 BILITY.—

24 “(A) IN GENERAL.—Except as provided in
25 subparagraph (B), a local educational agency

1 shall evaluate a child with a disability in ac-
2 cordance with this section before determining
3 that the child is no longer a child with a dis-
4 ability.

5 “(B) EXCEPTION.—

6 “(i) IN GENERAL.—The evaluation de-
7 scribed in subparagraph (A) shall not be
8 required before the termination of a child’s
9 eligibility under this part due to gradua-
10 tion from secondary school with a regular
11 diploma, or to exceeding the age eligibility
12 for a free appropriate public education
13 under State law.

14 “(ii) SUMMARY OF PERFORMANCE.—
15 For a child whose eligibility under this
16 part terminates under circumstances de-
17 scribed in clause (i), a local educational
18 agency shall provide the child with a sum-
19 mary of the child’s academic achievement
20 and functional performance, which shall in-
21 clude any further recommendations on how
22 to assist the child in meeting the child’s
23 postsecondary goals.

24 “(d) INDIVIDUALIZED EDUCATION PROGRAMS.—

25 “(1) DEFINITIONS.—As used in this title:

1 “(A) INDIVIDUALIZED EDUCATION PRO-
2 GRAM.—

3 “(i) IN GENERAL.—The term ‘individ-
4 ualized education program’ or ‘IEP’ means
5 a written statement for each child with a
6 disability that is developed, reviewed, and
7 revised in accordance with this section and
8 that includes—

9 “(I) a statement of the child’s
10 present levels of academic achieve-
11 ment and functional performance,
12 including—

13 “(aa) how the child’s dis-
14 ability affects the child’s involve-
15 ment and progress in the general
16 curriculum; or

17 “(bb) for preschool children,
18 as appropriate, how the disability
19 affects the child’s participation in
20 appropriate activities;

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

24 “(aa) meet the child’s needs
25 that result from the child’s dis-

1 ability to enable the child to be
2 involved in and make progress in
3 the general curriculum; and

4 “(bb) meet each of the
5 child’s other educational needs
6 that result from the child’s dis-
7 ability;

8 “(III) a statement of the
9 progress the child is making toward
10 meeting the annual goals described in
11 subclause (II) and a description how
12 that progress is being measured, in-
13 cluding through the use of quarterly
14 or other periodic reports, concurrent
15 with the issuance of report cards;

16 “(IV) a statement of the special
17 education and related services, and
18 supplementary aids and services, to be
19 provided to the child, or on behalf of
20 the child, and a statement of the pro-
21 gram modifications or supports for
22 school personnel that will be provided
23 for the child—

1 “(aa) to advance appro-
2 priately toward attaining the an-
3 nual goals;

4 “(bb) to be involved in and
5 make progress in the general cur-
6 riculum in accordance with sub-
7 clause (I) and to participate in
8 extracurricular and other nonaca-
9 demic activities; and

10 “(cc) to be educated and
11 participate with other children
12 with disabilities and nondisabled
13 children in the activities de-
14 scribed in this paragraph;

15 “(V) an explanation of the ex-
16 tent, if any, to which the child will not
17 participate with nondisabled children
18 in the regular class and in the activi-
19 ties described in subclause (IV)(cc);

20 “(VI)(aa) a statement of any in-
21 dividual appropriate accommodations
22 that are necessary to measure the
23 academic achievement and functional
24 performance of the child on State and

1 districtwide assessments consistent
2 with section 612(a)(16)(A); and

3 “(bb) if the IEP Team deter-
4 mines that the child shall take an al-
5 ternate assessment on a particular
6 State or districtwide assessment of
7 student achievement, a statement of
8 why—

9 “(AA) the child cannot par-
10 ticipate in the regular assess-
11 ment; and

12 “(BB) the particular alter-
13 nate assessment selected is ap-
14 propriate for the child;

15 “(VII) the projected date for the
16 beginning of the services and modi-
17 fications described in subclause (IV),
18 and the anticipated frequency, loca-
19 tion, and duration of those services
20 and modifications; and

21 “(VIII) beginning not later than
22 the first IEP to be in effect when the
23 child is 14, and updated annually
24 thereafter—

1 “(aa) appropriate measur-
2 able postsecondary goals based
3 upon age appropriate transition
4 assessments related to training,
5 education, employment, and,
6 where appropriate, independent
7 living skills;

8 “(bb) the transition services
9 (including courses of study) need-
10 ed by the child to reach those
11 goals, including services to be
12 provided by other agencies when
13 needed; and

14 “(cc) beginning at least 1
15 year before the child reaches the
16 age of majority under State law,
17 a statement that the child has
18 been informed of the child’s
19 rights under this title, if any,
20 that will transfer to the child on
21 reaching the age of majority
22 under section 615(m).

23 “(ii) RULE OF CONSTRUCTION.—
24 Nothing in this section shall be construed
25 to require—

1 “(I) that additional information
2 be included in a child’s IEP beyond
3 what is explicitly required in this sec-
4 tion; and

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

10 “(B) INDIVIDUALIZED EDUCATION PRO-
11 GRAM TEAM.—The term ‘individualized edu-
12 cation program team’ or ‘IEP Team’ means a
13 group of individuals composed of—

14 “(i) the parents of a child with a dis-
15 ability;

16 “(ii) at least 1 regular education
17 teacher of such child (if the child is, or
18 may be, participating in the regular edu-
19 cation environment);

20 “(iii) at least 1 special education
21 teacher, or where appropriate, at least 1
22 special education provider of such child;

23 “(iv) a representative of the local edu-
24 cational agency who—

1 “(I) is qualified to provide, or su-
2 pervise the provision of, specially de-
3 signed instruction to meet the unique
4 needs of children with disabilities;

5 “(II) is knowledgeable about the
6 general curriculum; and

7 “(III) is knowledgeable about the
8 availability of resources of the local
9 educational agency;

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

14 “(vi) at the discretion of the parent or
15 the agency, other individuals who have
16 knowledge or special expertise regarding
17 the child, including related services per-
18 sonnel as appropriate; and

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

21 “(C) IEP TEAM ATTENDANCE.—

22 “(i) ATTENDANCE NOT NECESSARY.—
23 A member of the IEP Team shall not be
24 required to attend an IEP meeting, in
25 whole or in part, if that member, the par-

1 ent of a child with a disability, and the
2 local educational agency agree that the at-
3 tendance of such member is not necessary
4 because no modification to the member's
5 area of the curriculum or related services
6 is being modified or discussed in the meet-
7 ing.

8 “(ii) EXCUSAL.—A member of the
9 IEP Team may be excused from attending
10 an IEP meeting, in whole or in part, when
11 the meeting involves a modification to or
12 discussion of the member's area of the cur-
13 riculum or related services, if—

14 “(I) that member, the parent,
15 and the local educational agency con-
16 sent to the excusal; and

17 “(II) the member submits input
18 into the development of the IEP prior
19 to the meeting.

20 “(2) REQUIREMENT THAT PROGRAM BE IN EF-
21 FECT.—

22 “(A) IN GENERAL.—At the beginning of
23 each school year, each local educational agency,
24 State educational agency, or other State agen-
25 cy, as the case may be, shall have in effect, for

1 each child with a disability in its jurisdiction,
2 an individualized education program, as defined
3 in paragraph (1)(A).

4 “(B) PROGRAM FOR CHILD AGED 3
5 THROUGH 5.—In the case of a child with a dis-
6 ability aged 3 through 5 (or, at the discretion
7 of the State educational agency, a 2-year-old
8 child with a disability who will turn age 3 dur-
9 ing the school year), an individualized family
10 service plan that contains the material de-
11 scribed in section 636, and that is developed in
12 accordance with this section, may serve as the
13 IEP of the child if using that plan as the IEP
14 is—

15 “(i) consistent with State policy; and
16 “(ii) agreed to by the agency and the
17 child’s parents.

18 “(3) DEVELOPMENT OF IEP.—

19 “(A) IN GENERAL.—In developing each
20 child’s IEP, the IEP Team, subject to subpara-
21 graph (C), shall consider—

22 “(i) the strengths of the child;

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

1 needs for instruction in Braille or the
2 use of Braille), that instruction in
3 Braille or the use of Braille is not ap-
4 propriate for the child; and

5 “(II) consider, when appropriate,
6 instructional services related to func-
7 tional performance skills, orientation
8 and mobility, and skills in the use of
9 assistive technology devices, including
10 low vision devices;

11 “(iv) consider the communication
12 needs of the child, and in the case of a
13 child who is deaf or hard of hearing, con-
14 sider the child’s language and communica-
15 tion needs, opportunities for direct commu-
16 nications with peers and professional per-
17 sonnel in the child’s language and commu-
18 nication mode, academic level, and full
19 range of needs, including opportunities for
20 direct instruction in the child’s language
21 and communication mode; and

22 “(v) consider whether the child re-
23 quires assistive technology devices and
24 services.

1 “(C) REQUIREMENT WITH RESPECT TO
2 REGULAR EDUCATION TEACHER.—A regular
3 education teacher of the child, as a member of
4 the IEP Team shall, to the extent appropriate,
5 participate in the development of the IEP of
6 the child, including the determination of appro-
7 priate positive behavioral interventions and sup-
8 ports, and other strategies, and the determina-
9 tion of supplementary aids and services, pro-
10 gram modifications, and support for school per-
11 sonnel consistent with paragraph (1)(A)(i)(IV).

12 “(D) AGREEMENT.—In making changes to
13 a child’s IEP after the annual IEP meeting for
14 a school year, the parent of a child with a dis-
15 ability and the local educational agency may
16 agree not to convene an IEP meeting for the
17 purposes of making such changes, and instead
18 may develop a written document to amend or
19 modify the child’s current IEP.

20 “(E) CONSOLIDATION OF IEP TEAM MEET-
21 INGS.—To the extent possible, the local edu-
22 cational agency shall encourage the consolida-
23 tion of reevaluations of a child with IEP Team
24 meetings for the child.

25 “(4) REVIEW AND REVISION OF IEP.—

1 “(A) IN GENERAL.—The local educational
2 agency shall ensure that, subject to subpara-
3 graph (B), the IEP Team—

4 “(i) reviews the child’s IEP periodi-
5 cally, but not less than annually, to deter-
6 mine whether the annual goals for the
7 child are being achieved; and

8 “(ii) revise the IEP as appropriate to
9 address—

10 “(I) any lack of expected
11 progress toward the annual goals and
12 in the general curriculum, where ap-
13 propriate;

14 “(II) the results of any reevalua-
15 tion conducted under this section;

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

19 “(IV) the child’s anticipated
20 needs; or

21 “(V) other matters.

22 “(B) REQUIREMENT WITH RESPECT TO
23 REGULAR EDUCATION TEACHER.—A regular
24 education teacher of the child, as a member of
25 the IEP Team, shall, consistent with paragraph

1 (1)(C), participate in the review and revision of
2 the IEP of the child.

3 “(5) THREE-YEAR IEP.—

4 “(A) DEVELOPMENT OF 3-YEAR IEP.—The
5 local educational agency may offer a child with
6 a disability who has reached the age of 18, the
7 option of developing a comprehensive 3-year
8 IEP. With the consent of the parent, when ap-
9 propriate, the IEP Team shall develop an IEP,
10 as described in paragraphs (1) and (3), that is
11 designed to serve the child for the final 3-year
12 transition period, which includes a statement
13 of—

14 “(i) measurable goals that will enable
15 the child to be involved in and make
16 progress in the general education cur-
17 riculum and that will meet the child’s tran-
18 sitional and postsecondary needs that re-
19 sult from the child’s disability; and

20 “(ii) measurable annual goals for
21 measuring progress toward meeting the
22 postsecondary goals described in clause (i).

23 “(B) REVIEW AND REVISION OF 3-YEAR
24 IEP.—

1 “(i) REQUIREMENT.—Each year the
2 local educational agency shall ensure that
3 the IEP Team—

4 “(I) provides an annual review of
5 the child’s IEP to determine the
6 child’s current levels of progress and
7 determine whether the annual goals
8 for the child are being achieved; and

9 “(II) revises the IEP, as appro-
10 priate, to enable the child to continue
11 to meet the measurable transition
12 goals set out in the IEP.

13 “(ii) COMPREHENSIVE REVIEW.—If
14 the review under clause (i) determines that
15 the child is not making sufficient progress
16 toward the goals described in subpara-
17 graph (A), the local educational agency
18 shall ensure that the IEP Team provides a
19 review, within 30 calendar days, of the
20 IEP under paragraph (4).

21 “(iii) PREFERENCE.—At the request
22 of the child, or when appropriate, the par-
23 ent, the IEP Team shall conduct a review
24 of the child’s 3-year IEP under paragraph

1 (4) rather than an annual review under
2 subparagraph (B)(i).

3 “(6) FAILURE TO MEET TRANSITION OBJEC-
4 TIVES.—If a participating agency, other than the
5 local educational agency, fails to provide the transi-
6 tion services described in the IEP in accordance with
7 paragraph (1)(A)(i)(VIII), the local educational
8 agency shall reconvene the IEP Team to identify al-
9 ternative strategies to meet the transition objectives
10 for the child set out in that program.

11 “(7) CHILDREN WITH DISABILITIES IN ADULT
12 PRISONS.—

13 “(A) IN GENERAL.—The following require-
14 ments shall not apply to children with disabili-
15 ties who are convicted as adults under State
16 law and incarcerated in adult prisons:

17 “(i) The requirements contained in
18 section 612(a)(16) and paragraph
19 (1)(A)(i)(V) (relating to participation of
20 children with disabilities in general assess-
21 ments).

22 “(ii) The requirements of items (aa)
23 and (bb) of paragraph (1)(A)(i)(VIII) (re-
24 lating to transition planning and transition
25 services), do not apply with respect to such

1 children whose eligibility under this part
2 will end, because of their age, before they
3 will be released from prison.

4 “(B) ADDITIONAL REQUIREMENT.—If a
5 child with a disability is convicted as an adult
6 under State law and incarcerated in an adult
7 prison, the child’s IEP Team may modify the
8 child’s IEP or placement notwithstanding the
9 requirements of sections 612(a)(5)(A) and
10 614(d)(1)(A) if the State has demonstrated a
11 bona fide security or compelling penological in-
12 terest that cannot otherwise be accommodated.

13 “(e) EDUCATIONAL PLACEMENTS.—Each local edu-
14 cational agency or State educational agency shall ensure
15 that the parents of each child with a disability are mem-
16 bers of any group that makes decisions on the educational
17 placement of their child.

18 “(f) ALTERNATIVE MEANS OF MEETING PARTICIPA-
19 TION.—When conducting IEP Team meetings and place-
20 ment meetings pursuant to this section, the parent of a
21 child with a disability and a local educational agency may
22 agree to use alternative means of meeting participation,
23 such as video conferences and conference calls.

1 **“SEC. 615. PROCEDURAL SAFEGUARDS.**

2 “(a) ESTABLISHMENT OF PROCEDURES.—Any State
3 educational agency, State agency, or local educational
4 agency that receives assistance under this part shall estab-
5 lish and maintain procedures in accordance with this sec-
6 tion to ensure that children with disabilities and their par-
7 ents are guaranteed procedural safeguards with respect to
8 the provision of free appropriate public education by such
9 agencies.

10 “(b) TYPES OF PROCEDURES.—The procedures re-
11 quired by this section shall include—

12 “(1) an opportunity for the parents of a child
13 with a disability to examine all records relating to
14 such child and to participate in meetings with re-
15 spect to the identification, evaluation, and edu-
16 cational placement of the child, and the provision of
17 a free appropriate public education to such child,
18 and to obtain an independent educational evaluation
19 of the child;

20 “(2) procedures to protect the rights of the
21 child whenever the parents of the child are not
22 known, the agency cannot, after reasonable efforts,
23 locate the parents, or the child is a ward of the
24 State, including the assignment of an individual
25 (who shall not be an employee of the State edu-
26 cational agency, the local educational agency, or any

1 other agency that is involved in the education or
2 care of the child) to act as a surrogate for the par-
3 ents;

4 “(3) written prior notice to the parents of the
5 child, in accordance with subsection (c)(1), whenever
6 the local educational agency—

7 “(A) proposes to initiate or change; or

8 “(B) refuses to initiate or change,
9 the identification, evaluation, or educational place-
10 ment of the child, or the provision of a free appro-
11 priate public education to the child;

12 “(4) procedures designed to ensure that the no-
13 tice required by paragraph (3) is in the native lan-
14 guage of the parents, unless it clearly is not feasible
15 to do so;

16 “(5) an opportunity for mediation in accordance
17 with subsection (e);

18 “(6) an opportunity for either party to present
19 complaints with respect to any matter relating to the
20 identification, evaluation, or educational placement
21 of the child, or the provision of a free appropriate
22 public education to such child;

23 “(7)(A) procedures that require either party, or
24 the attorney representing a party, to provide due

1 process complaint notice in accordance with sub-
2 section (c)(2) (which shall remain confidential)—

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

7 “(ii) that shall include—

8 “(I) the name of the child, the ad-
9 dress of the residence of the child, and the
10 name of the school the child is attending;

11 “(II) in the case of a homeless child
12 or youth (within the meaning of section
13 725(2) of the McKinney-Vento Homeless
14 Assistance Act (42 U.S.C. 11434a(2)),
15 available contact information for the child
16 and the name of the school the child is at-
17 tending;

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

22 “(IV) a proposed resolution of the
23 problem to the extent known and available
24 to the party at the time; and

1 “(B) a requirement that a party may not have
2 a due process hearing until the party, or the attor-
3 ney representing the party, files a notice that meets
4 the requirements of subparagraph (A)(ii);

5 “(8) a requirement that the local educational
6 agency shall send a prior written notice pursuant to
7 subsection (c)(1) in response to a parent’s due proc-
8 ess complaint notice under paragraph (7) if the local
9 educational agency has not sent such a prior written
10 notice to the parent regarding the subject matter
11 contained in the parent’s due process complaint no-
12 tice; and

13 “(9) procedures that require the State edu-
14 cational agency to develop a model form to assist
15 parents in filing a complaint and due process com-
16 plaint notice in accordance with paragraphs (6) and
17 (7), respectively.

18 “(c) NOTIFICATION REQUIREMENTS.—

19 “(1) CONTENT OF PRIOR WRITTEN NOTICE.—
20 The prior written notice of the local educational
21 agency required by subsection (b)(3) shall include—

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

24 “(B) an explanation of why the agency
25 proposes or refuses to take the action;

1 “(C) a description of any other options
2 that the agency considered and the reasons why
3 those options were rejected;

4 “(D) a description of each evaluation pro-
5 cedure, test, record, or report the agency used
6 as a basis for the proposed or refused action;

7 “(E) a description of any other factors
8 that are relevant to the agency’s proposal or re-
9 fusal;

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

16 “(G) sources for parents to contact to ob-
17 tain assistance in understanding the provisions
18 of this part.

19 “(2) DUE PROCESS COMPLAINT NOTICE.—

20 “(A) IN GENERAL.—The due process com-
21 plaint notice required under subsection
22 (b)(7)(A) shall be deemed to be sufficient un-
23 less the party receiving the notice notifies the
24 hearing officer in writing that the party believes

1 the notice has not met the requirements of that
2 subsection.

3 “(B) TIMING.—The party sending a hear-
4 ing officer notification under subparagraph (A)
5 shall send the notification within 20 days of re-
6 ceiving the complaint.

7 “(C) DETERMINATION.—Within 5 days of
8 receipt of the notification provided under sub-
9 paragraph (B), the hearing officer shall make a
10 determination on the face of the notice of
11 whether the notification meets the requirements
12 of subsection (b)(7)(A).

13 “(d) PROCEDURAL SAFEGUARDS NOTICE.—

14 “(1) IN GENERAL.—A copy of the procedural
15 safeguards available to the parents of a child with
16 a disability shall be given to the parents only 1 time
17 a year, except that a copy also shall be given to the
18 parents—

19 “(A) upon initial referral or parental re-
20 quest for evaluation;

21 “(B) upon registration of a complaint
22 under subsection (b)(6); and

23 “(C) upon request by a parent.

24 “(2) CONTENTS.—The procedural safeguards
25 notice shall include a full explanation of the proce-

1 dural safeguards, written in the native language of
2 the parents, unless it clearly is not feasible to do so,
3 and written in an easily understandable manner,
4 available under this section and under regulations
5 promulgated by the Secretary relating to—

6 “(A) independent educational evaluation;

7 “(B) prior written notice;

8 “(C) parental consent;

9 “(D) access to educational records;

10 “(E) opportunity to present complaints, in-
11 cluding the time period in which to make those
12 complaints;

13 “(F) the child’s placement during pend-
14 ency of due process proceedings;

15 “(G) procedures for students who are sub-
16 ject to placement in an interim alternative edu-
17 cational setting;

18 “(H) requirements for unilateral placement
19 by parents of children in private schools at pub-
20 lic expense;

21 “(I) mediation;

22 “(J) due process hearings, including re-
23 quirements for disclosure of evaluation results
24 and recommendations;

1 “(iii) is conducted by a qualified and
2 impartial mediator who is trained in effec-
3 tive mediation techniques.

4 “(B) OPPORTUNITY TO MEET WITH A DIS-
5 INTERESTED PARTY.—A local educational agen-
6 cy or a State agency may establish procedures
7 to offer to parents and schools who choose not
8 to use the mediation process, an opportunity to
9 meet, at a time and location convenient to the
10 parents, with a disinterested party who is under
11 contract with—

12 “(i) a parent training and information
13 center or community parent resource cen-
14 ter in the State established under section
15 671 or 672; or

16 “(ii) an appropriate alternative dis-
17 pute resolution entity,
18 to encourage the use, and explain the benefits,
19 of the mediation process to the parents.

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

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

5 “(E) SCHEDULING AND LOCATION.—Each
6 session in the mediation process shall be sched-
7 uled in a timely manner and shall be held in a
8 location that is convenient to the parties to the
9 dispute.

10 “(F) WRITTEN MEDIATION AGREEMENT.—
11 An agreement reached by the parties to the dis-
12 pute in the mediation process shall be set forth
13 in a written mediation agreement that is en-
14 forceable in any State court of competent juris-
15 diction or in a district court of the United
16 States.

17 “(G) MEDIATION DISCUSSIONS.—Discus-
18 sions that occur during the mediation process
19 shall be confidential and may not be used as
20 evidence in any subsequent due process hear-
21 ings or civil proceedings, and the parties to the
22 mediation process may be required to sign a
23 confidentiality pledge prior to the commence-
24 ment of such process.

25 “(f) IMPARTIAL DUE PROCESS HEARING.—

1 “(1) IN GENERAL.—

2 “(A) HEARING.—Whenever a complaint
3 has been received under subsection (b)(6) or
4 (k), the parents or the local educational agency
5 involved in such complaint shall have an oppor-
6 tunity for an impartial due process hearing,
7 which shall be conducted by the State edu-
8 cational agency or by the local educational
9 agency, as determined by State law or by the
10 State educational agency.

11 “(B) OPPORTUNITY TO RESOLVE COM-
12 PLAINT.—

13 “(i) PRELIMINARY MEETING.—Prior
14 to the opportunity for an impartial due
15 process hearing under subparagraph (A),
16 the local educational agency shall convene
17 a meeting with the parents and the IEP
18 Team—

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

21 “(II) which shall include a rep-
22 resentative of the public agency who
23 has decisionmaking authority on be-
24 half of such agency;

1 meeting, the agreement shall be set forth
2 in a written settlement agreement that
3 is—

4 “(I) signed by both the parent
5 and a representative of the public
6 agency who has decisionmaking au-
7 thority on behalf of such agency; and

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

11 “(2) DISCLOSURE OF EVALUATIONS AND REC-
12 OMMENDATIONS.—

13 “(A) IN GENERAL.—Not less than 5 busi-
14 ness days prior to a hearing conducted pursu-
15 ant to paragraph (1), each party shall disclose
16 to all other parties all evaluations completed by
17 that date, and recommendations based on the
18 offering party’s evaluations, that the party in-
19 tends to use at the hearing.

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

25 “(3) LIMITATIONS ON HEARING.—

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

4 “(i) not be—

5 “(I) an employee of the State
6 educational agency or the local edu-
7 cational agency involved in the edu-
8 cation or care of the child; or

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

13 “(ii) possess a fundamental under-
14 standing of this Act, Federal and State
15 regulations pertaining to this Act, and in-
16 terpretations of this Act by State and Fed-
17 eral courts;

18 “(iii) possess the knowledge and abil-
19 ity to conduct hearings in accordance with
20 appropriate, standard legal practice; and

21 “(iv) possess the knowledge and abil-
22 ity to render and write decisions in accord-
23 ance with appropriate, standard legal prac-
24 tice.

1 “(B) SUBJECT MATTER OF HEARING.—
2 The party requesting the due process hearing
3 shall not be allowed to raise issues at the due
4 process hearing that were not raised in the no-
5 tice filed under subsection (b)(7), unless the
6 other party agrees otherwise.

7 “(C) RULE OF CONSTRUCTION.—Nothing
8 in this section shall be construed to preclude a
9 parent from filing a separate due process com-
10 plaint on an issue separate from a due process
11 complaint already filed.

12 “(D) STATUTE OF LIMITATIONS.—A par-
13 ent or public agency shall request an impartial
14 due process hearing within 2 years of the date
15 the parent or public agency knew or should
16 have known about the alleged action that forms
17 the basis of the complaint, or, if the State has
18 an explicit time limitation for requesting such a
19 hearing under this part, in such time as the
20 State law allows.

21 “(E) EXCEPTION TO THE STATUTE OF
22 LIMITATIONS.—The statute of limitations de-
23 scribed in subparagraph (D) shall not apply if
24 the parent was prevented from requesting the
25 hearing due to—

1 “(i) failure of the local educational
2 agency to provide prior written or proce-
3 dural safeguards notices;

4 “(ii) false representations that the
5 local educational agency was attempting to
6 resolve the problem forming the basis of
7 the complaint; or

8 “(iii) the local educational agency’s
9 withholding of information from parents.

10 “(F) DECISION OF HEARING OFFICER.—

11 “(i) IN GENERAL.—Subject to clause
12 (ii), a decision made by a hearing officer
13 shall be made on substantive grounds
14 based on a determination of whether the
15 child received a free appropriate public
16 education.

17 “(ii) PROCEDURAL ISSUES.—In mat-
18 ters alleging a procedural violation, a hear-
19 ing officer may find that a child did not re-
20 ceive a free appropriate public education
21 only if the procedural inadequacies—

22 “(I) compromised the child’s
23 right to an appropriate public edu-
24 cation;

1 “(II) seriously hampered the par-
2 ents’ opportunity to participate in the
3 process; or

4 “(III) caused a deprivation of
5 educational benefits.

6 “(iii) RULE OF CONSTRUCTION.—
7 Nothing in this paragraph shall be con-
8 strued to preclude a hearing officer from
9 ordering a local educational agency to com-
10 ply with procedural requirements under
11 this section.

12 “(G) RULE OF CONSTRUCTION.—Nothing
13 in this section shall be construed to affect the
14 right of a parent to file a complaint with the
15 State educational agency.

16 “(g) APPEAL.—If the hearing required by subsection
17 (f) is conducted by a local educational agency, any party
18 aggrieved by the findings and decision rendered in such
19 a hearing may appeal such findings and decision to the
20 State educational agency. Such State educational agency
21 shall conduct an impartial review of such decision. The
22 officer conducting such review shall make an independent
23 decision upon completion of such review.

1 “(h) SAFEGUARDS.—Any party to a hearing con-
2 ducted pursuant to subsection (f) or (k), or an appeal con-
3 ducted pursuant to subsection (g), shall be accorded—

4 “(1) the right to be accompanied and advised
5 by counsel and by individuals with special knowledge
6 or training with respect to the problems of children
7 with disabilities;

8 “(2) the right to present evidence and confront,
9 cross-examine, and compel the attendance of wit-
10 nesses;

11 “(3) the right to a written, or, at the option of
12 the parents, electronic verbatim record of such hear-
13 ing; and

14 “(4) the right to a written, or, at the option of
15 the parents, electronic findings of fact and decisions,
16 which findings and decisions—

17 “(A) shall be made available to the public
18 consistent with the requirements of section
19 617(b) (relating to the confidentiality of data,
20 information, and records); and

21 “(B) shall be transmitted to the advisory
22 panel established pursuant to section
23 612(a)(20).

24 “(i) ADMINISTRATIVE PROCEDURES.—

25 “(1) IN GENERAL.—

1 “(A) DECISION MADE IN HEARING.—A de-
2 cision made in a hearing conducted pursuant to
3 subsection (f) or (k) shall be final, except that
4 any party involved in such hearing may appeal
5 such decision under the provisions of subsection
6 (g) and paragraph (2).

7 “(B) DECISION MADE AT APPEAL.—A de-
8 cision made under subsection (g) shall be final,
9 except that any party may bring an action
10 under paragraph (2).

11 “(2) RIGHT TO BRING CIVIL ACTION.—

12 “(A) IN GENERAL.—Any party aggrieved
13 by the findings and decision made under sub-
14 section (f) or (k) who does not have the right
15 to an appeal under subsection (g), and any
16 party aggrieved by the findings and decision
17 under this subsection, shall have the right to
18 bring a civil action with respect to the com-
19 plaint presented pursuant to this section, which
20 action may be brought in any State court of
21 competent jurisdiction or in a district court of
22 the United States, without regard to the
23 amount in controversy.

24 “(B) LIMITATION.—The party bringing the
25 action shall have 90 days from the date of the

1 decision of the hearing officer to bring such an
2 action, or, if the State has an explicit time limi-
3 tation for bringing such action under this part,
4 in such time as the State law allows.

5 “(C) ADDITIONAL REQUIREMENTS.—In
6 any action brought under this paragraph, the
7 court—

8 “(i) shall receive the records of the
9 administrative proceedings;

10 “(ii) shall hear additional evidence at
11 the request of a party; and

12 “(iii) basing its decision on the pre-
13 ponderance of the evidence, shall grant
14 such relief as the court determines is ap-
15 propriate.

16 “(3) JURISDICTION OF DISTRICT COURTS; AT-
17 TORNEYS’ FEES.—

18 “(A) IN GENERAL.—The district courts of
19 the United States shall have jurisdiction of ac-
20 tions brought under this section without regard
21 to the amount in controversy.

22 “(B) AWARD OF ATTORNEYS’ FEES.—In
23 any action or proceeding brought under this
24 section, the court, in its discretion, may award
25 reasonable attorneys’ fees as part of the costs

1 to the parents of a child with a disability who
2 is the prevailing party.

3 “(C) DETERMINATION OF AMOUNT OF AT-
4 TORNEYS’ FEES.—Fees awarded under this
5 paragraph shall be based on rates prevailing in
6 the community in which the action or pro-
7 ceeding arose for the kind and quality of serv-
8 ices furnished. No bonus or multiplier may be
9 used in calculating the fees awarded under this
10 subsection.

11 “(D) PROHIBITION OF ATTORNEYS’ FEES
12 AND RELATED COSTS FOR CERTAIN SERV-
13 ICES.—

14 “(i) IN GENERAL.—Attorneys’ fees
15 may not be awarded and related costs may
16 not be reimbursed in any action or pro-
17 ceeding under this section for services per-
18 formed subsequent to the time of a written
19 offer of settlement to a parent if—

20 “(I) the offer is made within the
21 time prescribed by Rule 68 of the
22 Federal Rules of Civil Procedure or,
23 in the case of an administrative pro-
24 ceeding, at any time more than 10
25 days before the proceeding begins;

1 “(II) the offer is not accepted
2 within 10 days; and

3 “(III) the court or administrative
4 hearing officer finds that the relief fi-
5 nally obtained by the parents is not
6 more favorable to the parents than
7 the offer of settlement.

8 “(ii) IEP TEAM MEETINGS.—Attor-
9 neys’ fees may not be awarded relating to
10 any meeting of the IEP Team unless such
11 meeting is convened as a result of an ad-
12 ministrative proceeding or judicial action,
13 or, at the discretion of the State, for a me-
14 diation described in subsection (e).

15 “(iii) OPPORTUNITY TO RESOLVE
16 COMPLAINTS.—A meeting conducted pur-
17 suant to subsection (f)(1)(B)(i) shall not
18 be considered—

19 “(I) a meeting convened as a re-
20 sult of an administrative hearing or
21 judicial action; or

22 “(II) an administrative hearing
23 or judicial action for purposes of this
24 paragraph.

1 “(E) EXCEPTION TO PROHIBITION ON AT-
2 TORNEYS’ FEES AND RELATED COSTS.—Not-
3 withstanding subparagraph (D), an award of
4 attorneys’ fees and related costs may be made
5 to a parent who is the prevailing party and who
6 was substantially justified in rejecting the set-
7 tlement offer.

8 “(F) REDUCTION IN AMOUNT OF ATTOR-
9 NEYS’ FEES.—Except as provided in subpara-
10 graph (G), whenever the court finds that—

11 “(i) the parent, or the parent’s attor-
12 ney, during the course of the action or pro-
13 ceeding, unreasonably protracted the final
14 resolution of the controversy;

15 “(ii) the amount of the attorneys’ fees
16 otherwise authorized to be awarded unrea-
17 sonably exceeds the hourly rate prevailing
18 in the community for similar services by
19 attorneys of reasonably comparable skill,
20 reputation, and experience;

21 “(iii) the time spent and legal services
22 furnished were excessive considering the
23 nature of the action or proceeding; or

24 “(iv) the attorney representing the
25 parent did not provide to the local edu-

1 cational agency the appropriate informa-
2 tion in the notice of the complaint de-
3 scribed in subsection (b)(7)(A),
4 the court shall reduce, accordingly, the amount
5 of the attorneys' fees awarded under this sec-
6 tion.

7 “(G) EXCEPTION TO REDUCTION IN
8 AMOUNT OF ATTORNEYS' FEES.—The provi-
9 sions of subparagraph (F) shall not apply in
10 any action or proceeding if the court finds that
11 the State or local educational agency unreason-
12 ably protracted the final resolution of the action
13 or proceeding or there was a violation of this
14 section.

15 “(j) MAINTENANCE OF CURRENT EDUCATIONAL
16 PLACEMENT.—Except as provided in subsection (k)(4),
17 during the pendency of any proceedings conducted pursu-
18 ant to this section, unless the State or local educational
19 agency and the parents otherwise agree, the child shall
20 remain in the then-current educational placement of such
21 child, or, if applying for initial admission to a public
22 school, shall, with the consent of the parents, be placed
23 in the public school program until all such proceedings
24 have been completed.

1 “(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL
2 SETTING.—

3 “(1) AUTHORITY OF SCHOOL PERSONNEL.—

4 “(A) IN GENERAL.—School personnel
5 under this section may order a change in the
6 placement of a child with a disability who vio-
7 lates a code of student conduct to an appro-
8 priate interim alternative educational setting,
9 another setting, or suspension, for not more
10 than 10 school days (to the extent such alter-
11 natives are applied to children without disabili-
12 ties).

13 “(B) ADDITIONAL AUTHORITY.—If school
14 personnel seek to order a change in placement
15 that would exceed 10 school days and the be-
16 havior that gave rise to the violation of the
17 school code is determined not to be a manifesta-
18 tion of the child’s disability pursuant to sub-
19 paragraph (C), the relevant disciplinary proce-
20 dures applicable to children without disabilities
21 may be applied to the child in the same manner
22 in which the procedures would be applied to
23 children without disabilities, except as provided
24 in section 612(a)(1).

25 “(C) MANIFESTATION DETERMINATION.—

1 “(i) IN GENERAL.—Except as pro-
2 vided in subparagraphs (A) and (D), with-
3 in 10 school days of any decision to change
4 the placement of a child with a disability
5 because of a violation of a code of student
6 conduct, the IEP Team shall review all rel-
7 evant information in the student’s file, any
8 information provided by the parents, and
9 teacher observations, to determine—

10 “(I) if the conduct in question
11 was the result of the child’s disability;
12 or

13 “(II) if the conduct in question
14 resulted from the failure to implement
15 the IEP or to implement behavioral
16 interventions as required by section
17 614(d)(3)(B)(i).

18 “(ii) MANIFESTATION.—If the IEP
19 Team determines that either subclause (I)
20 or (II) of clause (i) is applicable for the
21 child, the conduct shall be determined to
22 be a manifestation of the child’s disability.

23 “(D) SPECIAL CIRCUMSTANCES.—In cases
24 where a child—

1 “(i) carries or possesses a weapon to
2 or at school, on school premises, or to or
3 at a school function under the jurisdiction
4 of a State or local educational agency; or

5 “(ii) knowingly possesses or uses ille-
6 gal drugs, or sells or solicits the sale of a
7 controlled substance, while at school or a
8 school function under the jurisdiction of a
9 State or local educational agency; or

10 “(iii) has committed serious bodily in-
11 jury upon another person while at school
12 or at a school function under the jurisdic-
13 tion of a State or local educational agency,
14 school personnel may remove a student to an
15 interim alternative educational setting for not
16 more than 45 school days, without regard to
17 whether the behavior is determined to be a
18 manifestation of the child’s disability.

19 “(E) NOTIFICATION.—Not later than the
20 date on which the decision to take disciplinary
21 action is made, the local educational agency
22 shall notify the parents of that decision, and of
23 all procedural safeguards accorded under this
24 section.

1 “(F) SERVICES.—A child with a disability
2 who is removed from the child’s current place-
3 ment under subparagraph (B) or (D) shall—

4 “(i) continue to receive educational
5 services pursuant to section 612(a)(1), so
6 as to enable the child to continue to par-
7 ticipate in the general education cur-
8 riculum, although in another setting, and
9 to progress toward meeting the goals set
10 out in the child’s IEP; and

11 “(ii) receive behavioral intervention
12 services as described in section
13 614(d)(3)(B)(i), and a behavioral assess-
14 ment (but only if the local educational
15 agency did not conduct such an assessment
16 before the violation occurred), designed to
17 address the behavior violation so that the
18 violation does not recur.

19 “(2) DETERMINATION OF SETTING.—The alter-
20 native educational setting shall be determined by the
21 IEP Team.

22 “(3) APPEAL.—

23 “(A) IN GENERAL.—The parent of a child
24 with a disability who disagrees with any deci-
25 sion regarding disciplinary action, placement, or

1 the manifestation determination under this sub-
2 section, or a local educational agency that be-
3 lieves that maintaining the current placement of
4 the child is substantially likely to result in in-
5 jury to the child or to others, may request a
6 hearing.

7 “(B) AUTHORITY OF HEARING OFFICER.—

8 “(i) IN GENERAL.—If a parent of a
9 child with a disability disagrees with a de-
10 cision as described in subparagraph (A),
11 the hearing officer may determine whether
12 the decision regarding such action was ap-
13 propriate.

14 “(ii) CHANGE OF PLACEMENT
15 ORDER.—A hearing officer under this sec-
16 tion may order a change in placement of a
17 child with a disability to an appropriate in-
18 terim alternative educational setting for
19 not more than 45 school days if the hear-
20 ing officer determines that maintaining the
21 current placement of such child is substan-
22 tially likely to result in injury to the child
23 or to others.

24 “(4) PLACEMENT DURING APPEALS.—When a
25 parent requests a hearing regarding a disciplinary

1 procedure described in paragraph (1)(B) or chal-
2 lenges the interim alternative educational setting or
3 manifestation determination—

4 “(A) the child shall remain in the interim
5 alternative educational setting pending the deci-
6 sion of the hearing officer or until the expira-
7 tion of the time period provided for in para-
8 graph (1)(B), whichever occurs first, unless the
9 parent and the State or local educational agen-
10 cy agree otherwise; and

11 “(B) the State or local educational agency
12 shall arrange for an expedited hearing, which
13 shall occur within 20 school days of the date
14 the hearing is requested.

15 “(5) PROTECTIONS FOR CHILDREN NOT YET
16 ELIGIBLE FOR SPECIAL EDUCATION AND RELATED
17 SERVICES.—

18 “(A) IN GENERAL.—A child who has not
19 been determined to be eligible for special edu-
20 cation and related services under this part and
21 who has engaged in behavior that violates a
22 code of student conduct, may assert any of the
23 protections provided for in this part if the local
24 educational agency had knowledge (as deter-
25 mined in accordance with this paragraph) that

1 the child was a child with a disability before the
2 behavior that precipitated the disciplinary ac-
3 tion occurred.

4 “(B) BASIS OF KNOWLEDGE.—A local edu-
5 cational agency shall be deemed to have knowl-
6 edge that a child is a child with a disability if,
7 before the behavior that precipitated the dis-
8 ciplinary action occurred—

9 “(i) the parent of the child has ex-
10 pressed concern in writing (unless the par-
11 ent is illiterate or has a disability that pre-
12 vents compliance with the requirements
13 contained in this clause) to personnel of
14 the appropriate educational agency that
15 the child is in need of special education
16 and related services;

17 “(ii) the parent of the child has re-
18 quested an evaluation of the child pursuant
19 to section 614;

20 “(iii) the teacher of the child, or other
21 personnel of the local educational agency,
22 has expressed concern about a pattern of
23 behavior demonstrated by the child, to the
24 director of special education of such agen-

1 cy or to other administrative personnel of
2 the agency; or

3 “(iv) the child has engaged in a pat-
4 tern of behavior that should have alerted
5 personnel of the local educational agency
6 that the child may be in need of special
7 education and related services.

8 “(C) EXCEPTION.—A local educational
9 agency shall not be deemed to have knowledge
10 that the child has a disability if the parent of
11 the child has not agreed to allow an evaluation
12 of the child pursuant to section 614.

13 “(D) CONDITIONS THAT APPLY IF NO
14 BASIS OF KNOWLEDGE.—

15 “(i) IN GENERAL.—If a local edu-
16 cational agency does not have knowledge
17 that a child is a child with a disability (in
18 accordance with subparagraph (B) or (C))
19 prior to taking disciplinary measures
20 against the child, the child may be sub-
21 jected to disciplinary measures applied to
22 children without disabilities who engaged
23 in comparable behaviors consistent with
24 clause (ii).

1 “(ii) LIMITATIONS.—If a request is
2 made for an evaluation of a child during
3 the time period in which the child is sub-
4 jected to disciplinary measures under para-
5 graph (1), the evaluation shall be con-
6 ducted in an expedited manner. If the child
7 is determined to be a child with a dis-
8 ability, taking into consideration informa-
9 tion from the evaluation conducted by the
10 agency and information provided by the
11 parents, the agency shall provide special
12 education and related services in accord-
13 ance with this part, except that, pending
14 the results of the evaluation, the child shall
15 remain in the educational placement deter-
16 mined by school authorities.

17 “(6) REFERRAL TO AND ACTION BY LAW EN-
18 FORCEMENT AND JUDICIAL AUTHORITIES.—

19 “(A) CONSTRUCTION.—Nothing in this
20 part shall be construed to prohibit an agency
21 from reporting a crime committed by a child
22 with a disability to appropriate authorities or to
23 prevent State law enforcement and judicial au-
24 thorities from exercising their responsibilities
25 with regard to the application of Federal and

1 State law to crimes committed by a child with
2 a disability.

3 “(B) TRANSMITTAL OF RECORDS.—An
4 agency reporting a crime committed by a child
5 with a disability shall ensure that copies of the
6 special education and disciplinary records of the
7 child are transmitted for consideration by the
8 appropriate authorities to whom the agency re-
9 ports the crime.

10 “(7) DEFINITIONS.—For purposes of this sub-
11 section, the following definitions apply:

12 “(A) CONTROLLED SUBSTANCE.—The
13 term ‘controlled substance’ means a drug or
14 other substance identified under schedules I, II,
15 III, IV, or V in section 202(c) of the Controlled
16 Substances Act (21 U.S.C. 812(c)).

17 “(B) ILLEGAL DRUG.—The term ‘illegal
18 drug’ means a controlled substance but does
19 not include a controlled substance that is legally
20 possessed or used under the supervision of a li-
21 censed health-care professional or that is legally
22 possessed or used under any other authority
23 under that Act or under any other provision of
24 Federal law.

1 “(C) WEAPON.—The term ‘weapon’ has
2 the meaning given the term ‘dangerous weapon’
3 under section 930(g)(2) of title 18, United
4 States Code.

5 “(D) SERIOUS BODILY INJURY.—The term
6 ‘serious bodily injury’ has the meaning given
7 the term ‘serious bodily injury’ under para-
8 graph (3) of subsection (h) of section 1365 of
9 title 18, United States Code.

10 “(l) RULE OF CONSTRUCTION.—Nothing in this title
11 shall be construed to restrict or limit the rights, proce-
12 dures, and remedies available under the Constitution, the
13 Americans with Disabilities Act of 1990, title V of the Re-
14 habilitation Act of 1973, or other Federal laws protecting
15 the rights of children with disabilities, except that before
16 the filing of a civil action under such laws seeking relief
17 that is also available under this part, the procedures under
18 subsections (f) and (g) shall be exhausted to the same ex-
19 tent as would be required had the action been brought
20 under this part.

21 “(m) TRANSFER OF PARENTAL RIGHTS AT AGE OF
22 MAJORITY.—

23 “(1) IN GENERAL.—A State that receives
24 amounts from a grant under this part may provide
25 that, when a child with a disability reaches the age

1 of majority under State law (except for a child with
2 a disability who has been determined to be incom-
3 petent under State law)—

4 “(A) the public agency shall provide any
5 notice required by this section to both the indi-
6 vidual and the parents;

7 “(B) all other rights accorded to parents
8 under this part transfer to the child;

9 “(C) the agency shall notify the individual
10 and the parents of the transfer of rights; and

11 “(D) all rights accorded to parents under
12 this part transfer to children who are incarcer-
13 ated in an adult or juvenile Federal, State, or
14 local correctional institution.

15 “(2) SPECIAL RULE.—If, under State law, a
16 child with a disability who has reached the age of
17 majority under State law, who has not been deter-
18 mined to be incompetent, but who is determined not
19 to have the ability to provide informed consent with
20 respect to the educational program of the child, the
21 State shall establish procedures for appointing the
22 parent of the child, or if the parent is not available,
23 another appropriate individual, to represent the edu-
24 cational interests of the child throughout the period
25 of eligibility of the child under this part.

1 “(n) E-MAIL.—A parent of a child with a disability
2 may elect to receive notices required under this section by
3 e-mail communication, if the public agency makes such op-
4 tion available.

5 **“SEC. 616. MONITORING, TECHNICAL ASSISTANCE, AND EN-**
6 **FORCEMENT.**

7 “(a) FEDERAL AND STATE MONITORING.—

8 “(1) IN GENERAL.—The Secretary shall—

9 “(A) monitor implementation of this Act
10 through—

11 “(i) oversight of the States’ exercise
12 of general supervision, as required in sec-
13 tion 612(a)(11); and

14 “(ii) the system of indicators, de-
15 scribed in subsection (b)(2); and

16 “(B) enforce this Act in accordance with
17 subsection (c); and

18 “(C) require States to monitor implemen-
19 tation of this Act by local educational agencies
20 and enforce this Act in accordance with para-
21 graph (3) of this subsection and subsection (c).

22 “(2) FOCUSED MONITORING.—The primary
23 focus of Federal and State monitoring activities de-
24 scribed in paragraph (1) shall be on improving edu-
25 cational results and functional outcomes for all chil-

1 dren with disabilities, while ensuring compliance
2 with program requirements, with a particular em-
3 phasis on those requirements that are most closely
4 related to improving educational results for children
5 with disabilities.

6 “(3) MONITORING PRIORITIES.—The Secretary
7 shall monitor, and shall require States to monitor,
8 the following priority areas:

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

11 “(B) Provision of transition services, as
12 defined in section 602(33).

13 “(C) State exercise of general supervisory
14 authority, including the effective use of com-
15 plaint resolution and mediation.

16 “(D) Overrepresentation of racial and eth-
17 nic groups in special education and related serv-
18 ices, to the extent the overrepresentation is the
19 result of inappropriate policies, procedures, and
20 practices.

21 “(4) PERMISSIVE AREAS OF REVIEW.—The Sec-
22 retary may examine other relevant information and
23 data, including data provided by States under sec-
24 tion 618, and data from the State’s compliance plan
25 under subsection (b)(2)(C).

1 “(b) INDICATORS.—

2 “(1) SYSTEM.—The Secretary shall implement
3 and administer a system of required indicators as
4 described in paragraph (2) that measures the
5 progress of States in improving their performance
6 under this Act.

7 “(2) INDICATORS.—

8 “(A) IN GENERAL.—Using the perform-
9 ance indicators established by States under sec-
10 tion 612(a)(15), the Secretary shall review—

11 “(i) the performance of children with
12 disabilities in the State on assessments, in-
13 cluding alternate assessments, dropout
14 rates, and graduation rates, which for pur-
15 poses of this paragraph means the number
16 and percentage of students with disabilities
17 who graduate with a regular diploma with-
18 in the number of years specified in a stu-
19 dent’s IEP; and

20 “(ii) the performance of children with
21 disabilities in the State on assessments, in-
22 cluding alternate assessments, dropout
23 rates, and graduation rates, as compared
24 to the performance and rates for all chil-
25 dren.

1 “(B) SECRETARY’S ASSESSMENT.—Based
2 on that review and a review of the State’s com-
3 pliance plan under subparagraph (C), the Sec-
4 retary shall assess the State’s progress in im-
5 proving educational results for children with
6 disabilities.

7 “(C) STATE COMPLIANCE PLAN.—Not
8 later than 1 year after the date of the enact-
9 ment of the Individuals with Disabilities Edu-
10 cation Improvement Act of 2003, each State
11 shall have in place a compliance plan developed
12 in collaboration with the Secretary. Each
13 State’s compliance plan shall—

14 “(i) include benchmarks to measure
15 continuous progress on the priority areas
16 described in subsection (a)(3);

17 “(ii) describe strategies the State will
18 use to achieve the benchmarks; and

19 “(iii) be approved by the Secretary.

20 “(3) DATA COLLECTION AND ANALYSIS.—The
21 Secretary shall—

22 “(A) review the data collection and anal-
23 ysis capacity of States to ensure that data and
24 information determined necessary for implemen-

1 tation of this subsection is collected, analyzed,
2 and accurately reported to the Secretary; and

3 “(B) provide technical assistance to im-
4 prove the capacity of States to meet these data
5 collection requirements.

6 “(c) COMPLIANCE AND ENFORCEMENT.—

7 “(1) IN GENERAL.—The Secretary shall exam-
8 ine relevant State information and data annually, to
9 determine whether the State is making satisfactory
10 progress toward improving educational results for
11 children with disabilities using the indicators de-
12 scribed in subsection (b)(2)(A) and the benchmarks
13 established in the State compliance plan under sub-
14 section (b)(2)(C), and is in compliance with the pro-
15 visions of this Act.

16 “(2) LACK OF SATISFACTORY PROGRESS BY A
17 STATE.—

18 “(A) IN GENERAL.—If after examining
19 data, as provided in subsection (b)(2) (A) and
20 (C), the Secretary determines that a State
21 failed to make satisfactory progress in meeting
22 the indicators described in subsection (b)(2)(A)
23 or has failed to meet the benchmarks described
24 in subsection (b)(2)(C) for 2 consecutive years
25 after the State has developed its compliance

1 plan, the Secretary shall notify the State that
2 the State has failed to make satisfactory
3 progress, and shall take 1 or more of the fol-
4 lowing actions:

5 “(i) Direct the use of State level
6 funds for technical assistance, services, or
7 other expenditures to ensure that the State
8 resolves the area or areas of unsatisfactory
9 progress.

10 “(ii) Withhold not less than 20, but
11 not more than 50, percent of the State’s
12 funds for State administration and activi-
13 ties for the fiscal year under section
14 611(e), after providing the State the op-
15 portunity to show cause why the with-
16 holding should not occur, until the Sec-
17 retary determines that sufficient progress
18 has been made in improving educational
19 results for children with disabilities.

20 “(B) ADDITIONAL SECRETARIAL AC-
21 TION.—If, at the end of the 5th year after the
22 Secretary has approved the compliance plan
23 that the State has developed under subsection
24 (b)(2)(C), the Secretary determines that a
25 State failed to meet the benchmarks in the

1 State compliance plan and make satisfactory
2 progress in improving educational results for
3 children with disabilities pursuant to the indica-
4 tors described in subsection (b)(2)(A), the Sec-
5 retary shall take 1 or more of the following ac-
6 tions:

7 “(i) Seek to recover funds under sec-
8 tion 452 of the General Education Provi-
9 sions Act.

10 “(ii) After providing reasonable notice
11 and an opportunity for a hearing to the
12 State educational agency involved, with-
13 hold, in whole or in part, any further pay-
14 ments to the State under this part pursu-
15 ant to subsection (c)(5).

16 “(iii) After providing reasonable no-
17 tice and an opportunity for a hearing to
18 the State educational agency involved,
19 refer the matter for appropriate enforce-
20 ment action, which may include referral to
21 the Department of Justice.

22 “(iv) Pending the outcome of any
23 hearing to withhold payments under clause
24 (ii), the Secretary may suspend payments
25 to a recipient, suspend the authority of the

1 recipient to obligate Federal funds, or
2 both, after such recipient has been given
3 reasonable notice and an opportunity to
4 show cause why future payments or au-
5 thority to obligate Federal funds should
6 not be suspended.

7 “(C) SUBSTANTIAL NONCOMPLIANCE.—
8 Notwithstanding subparagraph (B), at any time
9 that the Secretary determines that a State is
10 not in substantial compliance with any provision
11 of this part or that there is a substantial failure
12 to comply with any condition of a local agency’s
13 or State agency’s eligibility under this part, the
14 Secretary shall take 1 or more of the following
15 actions:

16 “(i) Request that the State prepare a
17 corrective action plan or improvement plan
18 if the Secretary determines that the State
19 should be able to correct the problem with-
20 in 1 year.

21 “(ii) Identify the State as a high-risk
22 grantee and impose special conditions on
23 the State’s grant under this part.

24 “(iii) Require the State to enter into
25 a compliance agreement under section 457

1 of the General Education Provisions Act, if
2 the Secretary has reason to believe that
3 the State cannot correct the problem with-
4 in 1 year.

5 “(iv) Recovery of funds under section
6 452 of the General Education Provisions
7 Act.

8 “(v) After providing reasonable notice
9 and an opportunity for a hearing to the
10 State educational agency involved, with-
11 hold, in whole or in part, any further pay-
12 ments to the State under this part.

13 “(vi) After providing reasonable notice
14 and an opportunity for a hearing to the
15 State educational agency involved, refer
16 the matter for appropriate enforcement ac-
17 tion, which may include referral to the De-
18 partment of Justice.

19 “(vii) Pending the outcome of any
20 hearing to withhold payments under clause
21 (v), the Secretary may suspend payments
22 to a recipient, suspend the authority of the
23 recipient to obligate Federal funds, or
24 both, after such recipient has been given
25 reasonable notice and an opportunity to

1 show cause why future payments or au-
2 thority to obligate Federal funds should
3 not be suspended.

4 “(3) EGREGIOUS NONCOMPLIANCE.—At any
5 time that the Secretary determines that a State is
6 in egregious noncompliance or is willfully dis-
7 regarding the provisions of this Act, the Secretary
8 shall take such additional enforcement actions as the
9 Secretary determines to be appropriate from among
10 those actions specified in paragraph (2)(C), and, ad-
11 ditionally, may impose 1 or more of the following
12 sanctions upon that State:

13 “(A) Institute a cease and desist action
14 under section 456 of the General Education
15 Provisions Act.

16 “(B) Refer the case to the Office of the In-
17 spector General.

18 “(4) REPORT TO CONGRESS.—The Secretary
19 shall report to Congress within 30 days of taking en-
20 forcement action pursuant to paragraph (2) (B) or
21 (C), or (3), on the specific action taken and the rea-
22 sons why enforcement action was taken.

23 “(5) NATURE OF WITHHOLDING.—If the Sec-
24 retary withholds further payments under paragraphs
25 (2)(B)(ii) and (2)(C)(v), the Secretary may deter-

1 mine that such withholding will be limited to pro-
2 grams or projects, or portions thereof, affected by
3 the failure, or that the State educational agency
4 shall not make further payments under this part to
5 specified local educational agencies or State agencies
6 affected by the failure. Until the Secretary is satis-
7 fied that there is no longer any failure to make sat-
8 isfactory progress as specified in paragraph (2)(B),
9 or to comply with the provisions of this part, as
10 specified in paragraph (2)(C), payments to the State
11 under this part shall be withheld in whole or in part,
12 or payments by the State educational agency under
13 this part shall be limited to local educational agen-
14 cies and State agencies whose actions did not cause
15 or were not involved in the failure, as the case may
16 be. Any State educational agency, State agency, or
17 local educational agency that has received notice
18 under paragraph (2)(B) or (2)(C) shall, by means of
19 a public notice, take such measures as may be nec-
20 essary to bring the pendency of an action pursuant
21 to this subsection to the attention of the public with-
22 in the jurisdiction of such agency.

23 “(6) JUDICIAL REVIEW.—

24 “(A) IN GENERAL.—If any State is dissat-
25 isfied with the Secretary’s final action with re-

1 spect to the eligibility of the State under section
2 612, such State may, not later than 60 days
3 after notice of such action, file with the United
4 States court of appeals for the circuit in which
5 such State is located a petition for review of
6 that action. A copy of the petition shall be
7 forthwith transmitted by the clerk of the court
8 to the Secretary. The Secretary thereupon shall
9 file in the court the record of the proceedings
10 upon which the Secretary's action was based, as
11 provided in section 2112 of title 28, United
12 States Code.

13 “(B) JURISDICTION; REVIEW BY UNITED
14 STATES SUPREME COURT.—Upon the filing of
15 such petition, the court shall have jurisdiction
16 to affirm the action of the Secretary or to set
17 it aside, in whole or in part. The judgment of
18 the court shall be subject to review by the Su-
19 preme Court of the United States upon certio-
20 rari or certification as provided in section 1254
21 of title 28, United States Code.

22 “(C) STANDARD OF REVIEW.—The find-
23 ings of fact by the Secretary, if supported by
24 substantial evidence, shall be conclusive, but the
25 court, for good cause shown, may remand the

1 case to the Secretary to take further evidence,
2 and the Secretary may thereupon make new or
3 modified findings of fact and may modify the
4 Secretary's previous action, and shall file in the
5 court the record of the further proceedings.
6 Such new or modified findings of fact shall like-
7 wise be conclusive if supported by substantial
8 evidence.

9 “(d) DIVIDED STATE AGENCY RESPONSIBILITY.—
10 For purposes of this section, where responsibility for en-
11 suring that the requirements of this part are met with re-
12 spect to children with disabilities who are convicted as
13 adults under State law and incarcerated in adult prisons
14 is assigned to a public agency other than the State edu-
15 cational agency pursuant to section 612(a)(11)(C), the
16 Secretary, in instances where the Secretary finds that the
17 failure to comply substantially with the provisions of this
18 part are related to a failure by the public agency, shall
19 take appropriate corrective action to ensure compliance
20 with this part, except that—

21 “(1) any reduction or withholding of payments
22 to the State shall be proportionate to the total funds
23 allotted under section 611 to the State as the num-
24 ber of eligible children with disabilities in adult pris-
25 ons under the supervision of the other public agency

1 is proportionate to the number of eligible individuals
2 with disabilities in the State under the supervision
3 of the State educational agency; and

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

7 “(e) STATE AND LOCAL MONITORING.—

8 “(1) IN GENERAL.—The State educational
9 agency shall monitor and enforce implementation of
10 this Act, implement a system of monitoring the
11 benchmarks in the State’s compliance plan under
12 subsection (b)(2)(C), and require local educational
13 agencies to monitor and enforce implementation of
14 this Act.

15 “(2) ADDITIONAL ENFORCEMENT OPTIONS.—If
16 a State educational agency determines that a local
17 educational agency is not meeting the requirements
18 of this part, including the benchmarks in the State’s
19 compliance plan, the State educational agency shall
20 prohibit the local educational agency from treating
21 funds received under this part as local funds under
22 section 613(a)(2)(C) for any fiscal year.

23 **“SEC. 617. ADMINISTRATION.**

24 “(a) RESPONSIBILITIES OF SECRETARY.—The Sec-
25 retary shall—

1 “(1) cooperate with, and (directly or by grant
2 or contract) furnish technical assistance necessary
3 to, a State in matters relating to—

4 “(A) the education of children with disabil-
5 ities; and

6 “(B) carrying out this part; and

7 “(2) provide short-term training programs and
8 institutes.

9 “(b) CONFIDENTIALITY.—The Secretary shall take
10 appropriate action, in accordance with section 444 of the
11 General Education Provisions Act (20 U.S.C. 1232g), to
12 assure the protection of the confidentiality of any person-
13 ally identifiable data, information, and records collected
14 or maintained by the Secretary and by State and local
15 educational agencies pursuant to this part.

16 “(c) PERSONNEL.—The Secretary is authorized to
17 hire qualified personnel necessary to carry out the Sec-
18 retary’s duties under subsection (a) and under sections
19 618, 661, and 664, without regard to the provisions of
20 title 5, United States Code, relating to appointments in
21 the competitive service and without regard to chapter 51
22 and subchapter III of chapter 53 of such title relating to
23 classification and general schedule pay rates, except that
24 not more than 20 such personnel shall be employed at any
25 1 time.

1 “(d) MODEL FORMS.—Not later than the date that
2 the Secretary publishes final regulations under this Act,
3 to implement amendments made by the Individuals with
4 Disabilities Education Improvement Act of 2003, the Sec-
5 retary shall publish and disseminate widely to States, local
6 educational agencies, and parent and community training
7 and information centers—

8 “(1) a model IEP form;

9 “(2) a model form of the notice of procedural
10 safeguards described in section 615(d); and

11 “(3) a model form of the prior written notice
12 described in section 615 (b)(3) and (c)(1) that is
13 consistent with the requirements of this part and is
14 sufficient to meet such requirements.

15 **“SEC. 618. PROGRAM INFORMATION.**

16 “(a) IN GENERAL.—Each State that receives assist-
17 ance under this part, and the Secretary of the Interior,
18 shall provide data each year to the Secretary of Education
19 and the public on—

20 “(1)(A)—the number and percentage of chil-
21 dren with disabilities, by race, ethnicity, limited
22 English proficiency status, and disability category,
23 who are receiving a free appropriate public edu-
24 cation;

1 “(B) the number and percentage of children
2 with disabilities, by race and ethnicity, who are re-
3 ceiving early intervention services;

4 “(C) the number and percentage of children
5 with disabilities, by race, ethnicity, limited English
6 proficiency status, and disability category, who are
7 participating in regular education;

8 “(D) the number and percentage of children
9 with disabilities, by race, ethnicity, limited English
10 proficiency status, and disability category, who are
11 in separate classes, separate schools or facilities, or
12 public or private residential facilities;

13 “(E) the number and percentage of children
14 with disabilities, by race, ethnicity, limited English
15 proficiency status, and disability category, who, for
16 each year of age from age 14 through 21, stopped
17 receiving special education and related services be-
18 cause of program completion or other reasons, and
19 the reasons why those children stopped receiving
20 special education and related services;

21 “(F) the number and percentage of children
22 with disabilities, by race, and ethnicity, who, from
23 birth through age 2, stopped receiving early inter-
24 vention services because of program completion or
25 for other reasons;

1 “(G)(i) the number and percentage of children
2 with disabilities, by race, ethnicity, limited English
3 proficiency status, and disability category, who are
4 removed to an interim alternative educational setting
5 under section 615(k)(1);

6 “(ii) the acts or items precipitating those re-
7 movals; and

8 “(iii) the number of children with disabilities
9 who are subject to long-term suspensions or expul-
10 sions;

11 “(H) the incidence and duration of disciplinary
12 actions by race, ethnicity, limited English proficiency
13 status, and disability category, of children with dis-
14 abilities, including suspensions of 1 day or more;

15 “(I) the number and percentage of children
16 with disabilities who are removed to alternative edu-
17 cational settings or expelled as compared to children
18 without disabilities who are removed to alternative
19 educational settings or expelled;

20 “(J) the number of due process complaints filed
21 under section 615 and the number of hearings con-
22 ducted;

23 “(K) the number of hearings requested under
24 section 615(k) and the number of changes in place-
25 ments ordered as a result of those hearings;

1 “(L) the number of hearings requested under
2 section 615(k)(3)(B)(ii) and the number of changes
3 in placements ordered as a result of those hearings;
4 and

5 “(M) the number of mediations held and the
6 number of settlement agreements reached through
7 such mediations;

8 “(2) the number and percentage of infants and
9 toddlers, by race, and ethnicity, who are at risk of
10 having substantial developmental delays (as defined
11 in section 632), and who are receiving early inter-
12 vention services under part C; and

13 “(3) any other information that may be re-
14 quired by the Secretary.

15 “(b) TECHNICAL ASSISTANCE.—The Secretary may
16 provide technical assistance to States to ensure compliance
17 with the data collection and reporting requirements under
18 this Act.

19 “(c) DISPROPORTIONALITY.—

20 “(1) IN GENERAL.—Each State that receives
21 assistance under this part, and the Secretary of the
22 Interior, shall provide for the collection and exam-
23 ination of data to determine if significant
24 disproportionality based on race is occurring in the
25 State with respect to—

1 “(A) the identification of children as chil-
2 dren with disabilities, including the identifica-
3 tion of children as children with disabilities in
4 accordance with a particular impairment de-
5 scribed in section 602(3);

6 “(B) the placement in particular edu-
7 cational settings of such children; and

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

11 “(2) REVIEW AND REVISION OF POLICIES,
12 PRACTICES, AND PROCEDURES.—In the case of a de-
13 termination of significant disproportionality with re-
14 spect to the identification of children as children
15 with disabilities, or the placement in particular edu-
16 cational settings of such children, in accordance with
17 paragraph (1), the State or the Secretary of the In-
18 terior, as the case may be, shall provide for the re-
19 view and, if appropriate, revision of the policies, pro-
20 cedures, and practices used in such identification or
21 placement to ensure that such policies, procedures,
22 and practices comply with the requirements of this
23 Act.

1 **“SEC. 619. PRESCHOOL GRANTS.**

2 “(a) IN GENERAL.—The Secretary shall provide
3 grants under this section to assist States to provide special
4 education and related services, in accordance with this
5 part—

6 “(1) to children with disabilities aged 3 through
7 5, inclusive; and

8 “(2) at the State’s discretion, to 2-year-old chil-
9 dren with disabilities who will turn 3 during the
10 school year.

11 “(b) ELIGIBILITY.—A State shall be eligible for a
12 grant under this section if such State—

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

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

18 “(c) ALLOCATIONS TO STATES.—

19 “(1) IN GENERAL.—The Secretary shall allo-
20 cate the amount made available to carry out this
21 section for a fiscal year among the States in accord-
22 ance with paragraph (2) or (3), as the case may be.

23 “(2) INCREASE IN FUNDS.—If the amount
24 available for allocations to States under paragraph
25 (1) is equal to or greater than the amount allocated
26 to the States under this section for the preceding

1 fiscal year, those allocations shall be calculated as
2 follows:

3 “(A) ALLOCATION.—

4 “(i) IN GENERAL.—Except as pro-
5 vided in subparagraph (B), the Secretary
6 shall—

7 “(I) allocate to each State the
8 amount the State received under this
9 section for fiscal year 1997;

10 “(II) allocate 85 percent of any
11 remaining funds to States on the
12 basis of the States’ relative popu-
13 lations of children aged 3 through 5;
14 and

15 “(III) allocate 15 percent of
16 those remaining funds to States on
17 the basis of the States’ relative popu-
18 lations of all children aged 3 through
19 5 who are living in poverty.

20 “(ii) DATA.—For the purpose of mak-
21 ing grants under this paragraph, the Sec-
22 retary shall use the most recent population
23 data, including data on children living in
24 poverty, that are available and satisfactory
25 to the Secretary.

1 “(B) LIMITATIONS.—Notwithstanding sub-
2 paragraph (A), allocations under this paragraph
3 shall be subject to the following:

4 “(i) PRECEDING YEARS.—No State’s
5 allocation shall be less than its allocation
6 under this section for the preceding fiscal
7 year.

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

10 “(I) the sum of—

11 “(aa) the amount the State
12 received under this section for
13 fiscal year 1997; and

14 “(bb) $\frac{1}{3}$ of 1 percent of the
15 amount by which the amount ap-
16 propriated under subsection (j)
17 for the fiscal year exceeds the
18 amount appropriated for this sec-
19 tion for fiscal year 1997;

20 “(II) the sum of—

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

24 “(bb) that amount multi-
25 plied by the percentage by which

1 the increase in the funds appro-
2 priated under this section from
3 the preceding fiscal year exceeds
4 1.5 percent; or

5 “(III) the sum of—

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

9 “(bb) that amount multi-
10 plied by 90 percent of the per-
11 centage increase in the amount
12 appropriated under this section
13 from the preceding fiscal year.

14 “(iii) MAXIMUM.—Notwithstanding
15 clause (ii), no State’s allocation under this
16 paragraph shall exceed the sum of—

17 “(I) the amount the State re-
18 ceived under this section for the pre-
19 ceeding fiscal year; and

20 “(II) that amount multiplied by
21 the sum of 1.5 percent and the per-
22 centage increase in the amount appro-
23 priated under this section from the
24 preceding fiscal year.

1 “(C) RATABLE REDUCTIONS.—If the
2 amount available for allocations under this
3 paragraph is insufficient to pay those alloca-
4 tions in full, those allocations shall be ratably
5 reduced, subject to subparagraph (B)(i).

6 “(3) DECREASE IN FUNDS.—If the amount
7 available for allocations to States under paragraph
8 (1) is less than the amount allocated to the States
9 under this section for the preceding fiscal year, those
10 allocations shall be calculated as follows:

11 “(A) ALLOCATIONS.—If the amount avail-
12 able for allocations is greater than the amount
13 allocated to the States for fiscal year 1997,
14 each State shall be allocated the sum of—

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

17 “(ii) an amount that bears the same
18 relation to any remaining funds as the in-
19 crease the State received under this section
20 for the preceding fiscal year over fiscal
21 year 1997 bears to the total of all such in-
22 creases for all States.

23 “(B) If the amount available for alloca-
24 tions under this paragraph is equal to or less
25 than the amount allocated under this section to

1 the States for fiscal year 1997, each State shall
2 be allocated the amount the State received for
3 that year, ratably reduced, if necessary.

4 “(d) RESERVATION FOR STATE ACTIVITIES.—

5 “(1) IN GENERAL.—Each State may reserve
6 not more than the amount described in paragraph
7 (2) for administration and other State-level activities
8 in accordance with subsections (e) and (f).

9 “(2) AMOUNT DESCRIBED.—For each fiscal
10 year, the Secretary shall determine and report to the
11 State educational agency an amount that is 25 per-
12 cent of the amount the State received under this sec-
13 tion for fiscal year 1997, cumulatively adjusted by
14 the Secretary for each succeeding fiscal year by the
15 lesser of—

16 “(A) the percentage increase, if any, from
17 the preceding fiscal year in the State’s alloca-
18 tion under this section; or

19 “(B) the percentage increase, if any, from
20 the preceding fiscal year in the Consumer Price
21 Index For All Urban Consumers published by
22 the Bureau of Labor Statistics of the Depart-
23 ment of Labor.

24 “(e) STATE ADMINISTRATION.—

1 “(1) IN GENERAL.—For the purpose of admin-
2 istering this section (including the coordination of
3 activities under this part with, and providing tech-
4 nical assistance to, other programs that provide
5 services to children with disabilities) a State may
6 use not more than 20 percent of the maximum
7 amount the State may reserve under subsection (d)
8 for any fiscal year.

9 “(2) ADMINISTRATION OF PART C.—Funds de-
10 scribed in paragraph (1) may also be used for the
11 administration of part C of this Act, if the State
12 educational agency is the lead agency for the State
13 under that part.

14 “(f) OTHER STATE-LEVEL ACTIVITIES.—Each State
15 shall use any funds the State reserves under subsection
16 (d) and does not use for administration under subsection
17 (e)—

18 “(1) for support services (including establishing
19 and implementing the mediation process required by
20 section 615(e)), which may benefit children with dis-
21 abilities younger than 3 or older than 5 as long as
22 those services also benefit children with disabilities
23 aged 3 through 5;

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

1 “(3) for activities at the State and local levels
2 to meet the performance goals established by the
3 State under section 612(a)(15) and to support im-
4 plementation of the State plan under subpart 1 of
5 part D if the State receives funds under that sub-
6 part;

7 “(4) to supplement other funds used to develop
8 and implement a statewide coordinated services sys-
9 tem designed to improve results for children and
10 families, including children with disabilities and their
11 families, but not more than 1 percent of the amount
12 received by the State under this section for a fiscal
13 year; or

14 “(5) to provide early intervention services
15 (which shall include an educational component that
16 promotes school readiness and incorporates pre-lit-
17 eracy, language, and numeracy skills) in accordance
18 with part C to children with disabilities who are eli-
19 gible for services under this section and who pre-
20 viously received services under part C until such
21 children enter, or are eligible under State law to
22 enter, kindergarten.

23 “(g) SUBGRANTS TO LOCAL EDUCATIONAL AGEN-
24 CIES.—

1 “(1) SUBGRANTS REQUIRED.—Each State that
2 receives a grant under this section for any fiscal
3 year shall distribute all of the grant funds that the
4 State does not reserve under subsection (d) to local
5 educational agencies in the State that have estab-
6 lished their eligibility under section 613, as follows:

7 “(A) BASE PAYMENTS.—The State shall
8 first award each local educational agency de-
9 scribed in paragraph (1) the amount that agen-
10 cy would have received under this section for
11 fiscal year 1997 if the State had distributed 75
12 percent of its grant for that year under section
13 619(c)(3), as such section was then in effect.

14 “(B) ALLOCATION OF REMAINING
15 FUNDS.—After making allocations under sub-
16 paragraph (A), the State shall—

17 “(i) allocate 85 percent of any re-
18 maining funds to those local educational
19 agencies on the basis of the relative num-
20 bers of children enrolled in public and pri-
21 vate elementary schools and secondary
22 schools within the local educational agen-
23 cy’s jurisdiction; and

24 “(ii) allocate 15 percent of those re-
25 maining funds to those local educational

1 agencies in accordance with their relative
2 numbers of children living in poverty, as
3 determined by the State educational agen-
4 cy.

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

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

1 “(i) DEFINITION.—For the purpose of this section,
2 the term ‘State’ means each of the 50 States, the District
3 of Columbia, and the Commonwealth of Puerto Rico.

4 “(j) AUTHORIZATION OF APPROPRIATIONS.—For the
5 purpose of carrying out this section, there are authorized
6 to be appropriated such sums as may be necessary.