

**A USER'S GUIDE TO  
THE 2004 IDEA REAUTHORIZATION  
(P.L. 108-446 AND THE CONFERENCE  
REPORT)**

**CONSORTIUM FOR CITIZENS WITH DISABILITIES  
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JANUARY 2005

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# **A USER'S GUIDE TO THE 2004 IDEA REAUTHORIZATION (P.L. 108-446 AND CONFERENCE REPORT)**

## **PURPOSE OF THE GUIDE**

On December 3, 2004, President Bush signed into law the Individuals with Disabilities Education Improvement Act of 2004 (P.L. 108-446). The purpose of this User's Guide is to provide a tool for understanding the major new policies included in Part A (General Provisions), Part B (Assistance for Education of All Children with Disabilities), and Part C ((Infants and Toddlers with Disabilities) of the Individuals with Disabilities Education Act (IDEA), as amended in 2004. Thus, the Guide generally identifies additions, deletions, and modifications to IDEA, as amended in 1997; the Guide does not reference provisions in the statute that were not changed by the 2004 IDEA Amendments or changes that are only technical or minor in nature. In addition, the Guide includes relevant language from the Conference Report articulating congressional intent.

This Guide was funded in part, by the Education Task Force of the Consortium for Citizens with Disabilities (CCD).

## **LEGISLATIVE HISTORY**

Set out below is a brief summary of the legislative history of P.L. 108-446:

- **House of Representatives**—On April 30, 2003, The House passed H.R. 1350 by a vote of 251 to 171.
- **Senate**—On May 13, 2004, the Senate passed S.1248 by a vote of 95 to 3.
- **Conference**: On November 17, 2004, the Conference Report (H. Rept. 108-779) was filed. On November 19, 2004 the House agreed to the Conference Report by a vote of 397 to 3 and the Senate agreed to the Conference Report by unanimous consent.
- **Presidential signing**: On December 3, 2004, President Bush signed the bill into law.

**Note: Except as set out in the next sentence, the amendments to Part A (General Provisions), Part B (Assistance for Education of All Children with Disabilities), and Part C (Infants and Toddlers with Disabilities) go into effect on July 1, 2005. The amendments related to the definition of “highly qualified” special education teacher take effect on December 3, 2005 (the date of enactment) for purposes of No Child Left Behind.**

## **PART A: GENERAL PROVISIONS**

### **FINDINGS AND STATEMENT OF PURPOSES (Section 601(c) and (d))**

The changes to the **findings** section include:

- Deleted findings that before enactment of P.L. 94-142 more than one-half of the children in the country did not receive FAPE and 1 million were totally excluded and inserted new findings that before enactment the educational needs of millions of children with disabilities were not being fully met because the children did not receive appropriate educational services and undiagnosed disabilities prevented the children from having a successful educational experience.
- Modified the finding regarding high expectations by deleting access to the “general curriculum” and inserted access to the “general education curriculum in the regular classroom, to the maximum extent possible, in order to meet developmental goals, to the maximum extent possible, and challenging expectations that have been established for all children; and be prepared to lead productive and independent adult lives, to the maximum extent possible.”
- Modified the finding regarding the “role” of parents by inserting “and the responsibilities” of parents.
- Modified the finding regarding coordination with other school improvement efforts by inserting a reference to the Elementary and Secondary Education Act.
- Modified the finding regarding personnel by inserting reference to “preservice preparation” necessary to “improve the academic achievement and functional performance of children with disabilities, including the use of scientifically based instructional practices,” provide incentives for “scientifically based early reading programs, positive behavioral interventions and supports and early intervening services” to address the learning and “behavioral” needs of such children; and “supporting the development and use of technology, including assistive technology devices and assistive technology services to maximize accessibility for children with disabilities.”
- Added a finding that “parents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways.”
- Added a finding that “teachers, schools, local educational agencies and states should be relieved of irrelevant and unnecessary paperwork burdens that do not lead to improved educational outcomes.”
- Updated the findings regarding diversity.
- Added a finding that “as graduation rates for children with disabilities continue to climb, providing effective transition services to promote

successful post-school employment or education is an important measure of accountability for children with disabilities.”

Modified the **purpose** section to clarify that the purpose of IDEA includes not only preparing children with disabilities for employment and independent living but also preparation for “further education.”

## **DEFINITIONS (Section 602)**

### **A. ASSISTIVE TECHNOLOGY DEVICE (Section 602(1))**

Retained the definition of assistive technology device but inserted the following exception “The term does not include a medical device that is surgically implanted, or the replacement of such device.”

### **B. CHILD WITH A DISABILITY, CHILD AGED 3 THROUGH 9 (Section 602(3))**

Retained the definition of child with a disability for a child aged 3 through 9 but clarified that the discretion available to the state and local educational agency applies to “any subset of that age range, including ages 3 through 5.”

### **C. CORE ACADEMIC SUBJECTS (Section 602(4))**

Included the term “core academic subjects” and explained that the term has the meaning given the term in section 9101 of the Elementary and Secondary Education Act, as amended by the No Children Left Behind Act (ESEA). Under Section 9101, the term ‘core academic subjects’ means “English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history and geography.”

### **D. HIGHLY QUALIFIED (Section 602(10))**

Included the term “highly qualified” and specified that in general the term for any special education teacher has the meaning given the term in section 9101 in ESEA, except that the term also includes specific requirements described in IDEA and includes the option for teachers to meet the requirements of section 9101 of ESEA by meeting specific alternative achievement standards specified in IDEA.

The term “requirements for special education teachers” when used with respect to any public elementary or secondary school special education teacher teaching in a state means that:

- The teacher has obtained full state certification as a special

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

- The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
- The teacher holds at least a bachelor's degree.

The term "special education teachers teaching to alternative achievement standards" when used with respect to special education teacher who teaches core academic subjects exclusively to children who are assessed against alternative achievement standards established under ESEA, such term means the teacher, whether new or not new to the profession, may either meet the applicable requirements of section 9101 of ESEA for any elementary, middle, or secondary school teacher who is new or not new to the profession OR meet special requirements set out in ESEA (See section 9101(23)(B) and (C)) or, in the case of instruction above the elementary level, has a subject matter knowledge appropriate to the level of instruction being provided, as determined by the state, needed to effectively teach to those standards.

The term "special education teachers teaching multiple subjects" when used with respect to a special education teacher who teaches 2 or more core academic subjects exclusively to children with disabilities, such term means that--

- The teacher may either meet the applicable requirements of section 9101 of ESEA for any elementary, middle, or secondary school teacher who is new or not new to the profession;
- In the case of a teacher who is not new to the profession, demonstrates competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under specific provisions of ESEA (section 9101(23)(C) (ii)), which may include a single, high objective uniform state standard of evaluation covering multiple subjects; or
- In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in math, language arts, or science, demonstrates competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary

school teacher under specific provisions of ESEA (section 9101(23)(C)(li)), which may include a single, high objective uniform state standard of evaluation covering multiple subjects, not later than 2 years after the date of employment.

The following “rule of construction” is included: “...nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular state educational agency or local educational agency employee to be highly qualified.”

The following clarification concerning the use of the phrase “highly qualified” is included: “A teacher who is highly qualified under [IDEA] shall be considered highly qualified for purposes of ESEA.”

The following report language was included in the conference report:

“The Conference Committee intends to clarify that, for the purposes of the Elementary and Secondary Education Act of 1965 and the Individuals with Disabilities Education Act, a special education teacher who provides only consultative services to a highly qualified teacher (as such term is defined in section 9101 (23) of the Elementary and Secondary Education Act of 1965) should be considered a highly qualified special education teacher if such teacher meets the requirements of section 602(10)(A) of this legislation. Such consultative services do not include instruction in core academic subjects, but may include adjustments to the learning environment, modifications of instructional methods, adaptation of curricula, the use of positive behavioral supports and interventions, or the use of appropriate accommodations to meet the needs of individual children.”

“Under the Elementary and Secondary Education Act of 1965, each state was charged with developing a ‘high, objective, uniform state standard of evaluation’ (HOUSSE) to provide teachers with another avenue through which to demonstrate the subject mastery requirements of the “highly qualified” definition. Some states have developed HOUSSE standards for special education teachers. With the passage of this legislation, the Conference committee intends to clarify that under the Elementary and Secondary Education Act of 1965, states may allow special education teachers to utilize a HOUSSE to accommodate special education teachers, including a HOUSSE that consists of a single evaluation to cover multiple subjects. Such adaptations or accommodations must not, however, establish a lesser standard for the content knowledge requirements of special education teachers compared to the standards for general education teachers. The Conference committee encourages all states to explore these options.”

“It is the conferees’ intent that any new special education teacher teaching one core academic subject shall demonstrate competency by passing a rigorous State academic subject test in that subject, or successful completion in that subject of an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing. Any special education teacher who is not new to the profession and who teaches one core academic subject must, by the end of the 2005-2006 school year, pass a rigorous State academic subject test in that subject, complete in that subject an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing, or complete a high objective uniform State standard of evaluation.”

“The bill requires special education teachers to have obtained full State certification as special education teachers, but it does not prevent general education and other teachers who are highly qualified in particular subjects from providing instruction in core academic subjects to children with disabilities in those subjects. For example, a reading specialist who is highly qualified in reading instruction, but who is not certified as a special education teacher, would not be prohibited by this provision from providing reading instruction to children with disabilities.”

“In special cases where such children also receive instruction in one or more core academic subjects at an instructional level above the basic elementary school curriculum, the Conferees fully intend for such instruction to be provided by a highly qualified teacher demonstrating a high level of competency in each of the core academic subjects taught. Such instruction could be provided by a highly qualified teacher in the general education classroom or by such teacher providing instruction in a self-contained classroom. Such competency shall be demonstrated consistent with the requirements of this section and with those of section 9101 of the Elementary and Secondary Education Act of 1965.”

#### **E. HOMELESS CHILDREN (Section 602(11))**

The term “homeless children” is added by reference to Section 725 of the McKinney-Vento Homeless Assistance Act.

#### **F. PARENT (Section 602(23))**

The statutory definition of the term “parent” includes several modifications.

- A natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by state law from serving as a parent),
- A guardian (but not the state if the child is a ward of the state),
- An individual acting in the place of a natural or adoptive parent

(including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare.

#### **G. RELATED SERVICES (Section 602(26))**

The statutory definition of the term "related services" includes the following additions: "interpreting services" and "school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the IEP of the child."

The following exception is included: "The term does not include a medical device that is surgically implanted, or the replacement of such device."

The conference report clarified that the conferees intend that related services include "travel training instructions."

#### **H. TRANSITION SERVICES (Section 602(34))**

The following changes were made to the definition of the term "transition services":

- Deleted "student" and inserted "child".
- Deleted "outcome oriented" and inserted "results-oriented".
- Clarified that the result-oriented process is "focused on improving the academic and functional achievement of the child with a disability to facilitate the child's" movement from school to post-school activities, including vocational education (instead of training).
- Recognized the need to take into consideration the child's "strengths".

#### **I. UNIVERSAL DESIGN (Section 602(35))**

A definition of the term "universal design" was added and the term is given the meaning given the term in Section 3 of the Assistive Technology Act of 1998. The term "universal design" means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly usable (without requiring assistive technologies) and products and services that are made usable with assistive technologies."

#### **J. WARD OF THE STATE (Section 602(36))**

A definition of the term "ward of the state" is added to the statute.

## **REQUIREMENTS FOR PRESCRIBING REGULATIONS (Section 607)**

The following changes to the provisions related to prescribing regulations are included:

- Prohibited the implementation or publication of a regulation that “violates or contradicts any provision” of IDEA.
- Revised the comment period from at least 90 days to not less than 75 days.
- Prohibited the issuance of policy letters and statements that violate or contradict any provision of IDEA or establish a rule that is required for compliance with and eligibility under IDEA without following the requirements of section 553 of the Administrative Procedures Act (relating to rulemaking).
- Deleted the section related to “issues of national significance, where appropriate”.
- Added that when required such response included in a letter is issued in compliance with the requirements of section 553 of the Administrative Procedures Act (relating to rulemaking).

## **STATE ADMINISTRATION (Section 608)**

The following section regarding state administration was added:

- Prescribes rules regarding the issuance of state rules, regulations, and policies including the requirement that these state issuances conform to the IDEA purposes, identify in writing state-imposed requirements not required by the IDEA statute or regulations, and minimize the number of issuances to which the local educational agencies and schools are subject under IDEA.
- State rules, regulations, and policies must support and facilitate local educational agency and school-level system improvement designed to enable children with disabilities to meet the challenging state student academic achievement standards.

## **PAPERWORK REDUCTION (Section 609)**

The following section regarding paperwork reduction was added:

- Provides for an opportunity for state to identify ways to reduce paperwork burdens and other administrative duties that are directly associated with the IDEA requirements in order to increase the time and resources available for instruction and other activities aimed at improving educational and functional results for children with disabilities.

- Authorizes the Secretary to grant waivers of statutory and regulatory requirements relating to part B of IDEA for a period of time not to exceed 4 years for not more than 15 states.
- The Secretary shall not waive any statutory or regulatory requirements relating to applicable civil rights requirements.
- A rule of construction was included making it clear that the paperwork reduction authority shall not be construed to affect the right of a child with a disability to receive FAPE nor permit a state or local educational agency to waive procedural safeguards under Section 615.
- The state must submit a proposal listing requirements proposed to be waived.
- The Secretary must terminate the state's waiver if the Secretary makes certain determinations regarding the state's failure to be in compliance with IDEA.
- Beginning two years after the date of enactment, the Secretary must include in its annual report information related to the effectiveness of the waivers, including any specific recommendations for broader implementation of such waivers in--
  - Reducing the paperwork burden on teachers, principals, administrators, and related service providers and noninstructional time spent by teachers in complying with Part B;
  - Enhancing longer-term educational planning;
  - Improving positive outcomes for children with disabilities;
  - Promoting collaboration between IEP Team members; and
  - Ensuring satisfaction of family members.

## **PART B: ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES**

### **STATE LEVEL ACTIVITIES (Section 611(e))**

The following changes were made to the provisions in IDEA relating to authorizations, allotments, use of funds and authorization of appropriations”

- Modified the maximum amount of the grant a state may receive for 2005-2006 and for 2007 and subsequent years.
- Modified the maximum amount of grants for state administration.
- Prescribed state-level mandatory activities as including activities for “monitoring, enforcement, and complaint investigation” and to “establish and implement the mediation process.”
- Listed state-level authorized activities, such as providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities and to improve the use of technology in the classroom by children with disabilities to enhance learning.

## **LOCAL EDUCATIONAL AGENCY RISK POOLS (Section 611(e)(3))**

The following provision relating to local educational risk pools was added to the IDEA:

- Authorizes a state to reserve for each fiscal year, 10% of the amount of funds the state reserves for other state-level activities (or 1 or 1.05% of the overall state grant) to establish and make disbursements from the high cost fund to local educational agencies and to support innovative and effective ways of cost sharing by the state and local educational agencies.
- A state may not use more than 5% of the reserved funds to support innovative and effective ways of cost sharing among consortia of local educational agencies.
- The state must develop a state plan for the high cost fund.
- The fund shall not support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child with a disability to ensure FAPE.
- The fund may not limit or condition the right of a child with a disability to FAPE.
- Disbursement under the Fund shall not be used to pay costs that otherwise would be reimbursed as medical assistance under the state Medicaid program.

## **FLEXIBILITY IN USING FUNDS FOR PART C (Section 611(e)(7)); Section 643(e)**

The following flexibility in using funds for Part C was added: any state eligible to receive a preschool grant under Section 619 may use funds made available for state administration, reallocations to local educational agencies or Section 619(f)(5) (statewide coordinated service system) to develop and implement a state policy jointly with the lead agency under part C and the state educational agency to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with part C to children with disabilities who are eligible for services under Section 619 and who previously received services under Part C until such children enter, or are eligible under state law to enter, kindergarten, or elementary school, as appropriate.

It should be noted that for any fiscal year for which appropriations for Part C exceeds \$460,000,000, the Secretary of Education must reserve 15% of such appropriation to provide grants to States that are carrying the policy related to “flexibility to serve children 3 years of age until entrance into elementary school” under Section 635(c) of Part C of IDEA.

## **AUTHORIZATION OF APPROPRIATIONS (Section 611(i))**

Specific authorization levels were added for fiscal years 2005 to 2011 ranging from \$12,358,376,571 for FY 2005 to \$26,100,000,000 for FY 2011 and authorization of “such sums” was retained for “out years.”

## **STATE ELIGIBILITY (Section 612)**

### **A. STATE ELIGIBILITY, IN GENERAL (Section 612(a))**

The following changes were made to the provisions relating to state eligibility, in general: the requirement for a state to demonstrate to the satisfaction of the Secretary that it has in effect necessary policies and procedures has been deleted and in lieu thereof the state must now “submit a plan that provides assurances...”.

### **B. FREE APPROPRIATE PUBLIC EDUCATION (FAPE), STATE FLEXIBILITY (Section 612(a)(1))**

The following provision was moved (with minor modifications) from Section 619(h) to Section 612(a)(1): “a state that provides early intervention services in accordance with Part C to a child who is eligible for services under section 619 (preschool) is not required to provide such child with [FAPE].”

### **C. CHILD FIND (Section 612(a)(3))**

The child find provision was clarified to include responsibilities of states with respect to homeless children and children who are wards of the state.

### **D. LEAST RESTRICTIVE ENVIRONMENT (Section 612(a)(5))**

The provision relating to least restrictive environment was modified and further enhanced by including the following language: “a state shall not use a funding mechanism by which the state distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability a free appropriate public education according to the unique needs of the child as described in the child’s IEP.” Prior to the 2004 IDEA Amendments, the provision read, as follows: “If the state uses a funding mechanism by which the state distributes state funds on the basis of the type of setting in which a child is served, the funding mechanism does not result in placements that violate the requirements” [pertaining to least restrictive environment, in general].

The following language was included in the conference report:  
“The conferees are concerned that some States continue to use funding mechanisms that provide financial incentives for, and disincentives against, certain placements. It is the intent of the changes to Section 612(a)(5)(B) to prevent State funding mechanisms from affecting appropriate placement decisions for students with disabilities.”

“The law requires that each public agency shall ensure that a continuum of alternative placements (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions) is available to meet the needs of children with disabilities for special education and related services. State funding mechanisms are in place to ensure funding is available to support the requirements of this provision, not to provide an incentive or disincentive for placement. Part B’s LRE principle is intended to ensure that a child with a disability is served in a setting where the child can be educated successfully in the least restrictive environment. Through the Individual Education Plan (IEP) process the Team shall make placement decisions that are individually determined on the basis of each child’s abilities and needs. The new provisions in this section were added to prohibit states from maintaining funding mechanisms that violate appropriate placement decisions, not to require States to change funding mechanisms that support appropriate placements decisions.”

#### **E. CHILDREN IN PRIVATE SCHOOLS (Section 612(a)(10))**

Numerous clarifications were made to the provisions regarding the responsibility of local educational agencies to provide a fair share of IDEA funds to support children with disabilities attending parochial and other private schools.

#### **F. LIMITATIONS ON REIMBURSEMENT, EXCEPTION (Section 612(a)(10)(C))**

The provisions related to the enrollment of children with disabilities by their parents without the consent of the school system have been retained, but the exception regarding limitations of the system’s responsibility to pay for FAPE has been modified as follows:

- Reimbursements shall not be reduced or denied for failure to provide notice of the parents concerns and demands if the school prevented the parent from providing such notice, the parents had not received notice of the notice requirement, or compliance would likely result in physical harm to the child.
- Reimbursements may, at the discretion of a court or a hearing officer, not be reduced or denied for failure to provide such notice if

the parent is illiterate or cannot write in English or compliance with the notice requirement would likely result in serious emotional harm to the child.

## **G. COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT; PERSONNEL QUALIFICATIONS (Section 612(a)(14))**

The provisions regarding comprehensive system of personnel development were deleted.

### **1. Personnel Qualifications, In General**

The provisions regarding highest standards and steps requiring retraining or hiring professionals that meet appropriate professional requirements have been deleted. Instead, the following provisions were included: The state educational agency must establish and maintain qualifications to ensure personnel are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

### **2. Related Services Personnel and Paraprofessionals**

The qualifications include qualifications for related services personnel and paraprofessionals that, are consistent with any state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services [current law] and “ensure that related services personnel who deliver services in their discipline or profession meet the [above] requirements and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis...”

The following language was included in the conference report:

“Conferees are cognizant of the difficulties that some local educational agencies have experienced in recruiting and retaining qualified related services providers and have provided greater flexibility to State educational agencies to establish appropriate personnel standards.”

“Conferees are concerned that language in current law regarding the qualifications of related services providers has established an unreasonable standard for State educational agencies to meet, and

as a result, has led to a shortage of the availability of related services for students with disabilities.”

“Conferees intend for State educational agencies to establish rigorous qualifications for related services providers to ensure that students with disabilities receive the appropriated quality and quantity of care. State educational agencies are encouraged to consult with local educational agencies, other State agencies, the disability community, and professional organizations to determine the appropriate qualifications for related service providers, including the use of consultative, supervisory, and collaborative models to ensure that students with disabilities receive the services described in their individual IEP’s.”

### **3. Qualifications for Special Education Teachers**

The qualifications adopted by the state “shall ensure that each person employed as a special education teacher who teaches elementary school, middle school, or secondary school is highly qualified by the deadline established in section 1119(a) (2) of [ESEA].” Section 1119(a)(2) provides that the state plan must ensure that all teachers teaching in core academic subjects are highly qualified not later than the end of 2005-2006 school year. The state plan must include annual measurable objectives for each local educational agency and school that, at a minimum, increases the percentage of highly qualified teachers and annually increases the percentage of teachers who are receiving high quality professional development to become highly qualified and such other measures appropriate to increase teacher qualifications.

### **4. Efforts to Hire, Train, and Retain Highly Qualified Personnel**

A state must adopt a policy that includes a requirement that local educational agencies “take measurable steps to recruit, hire, train, and retain highly qualified” personnel. Provisions related to good faith efforts and shortages were deleted.

### **5. Rule of Construction**

A rule of construction was added which makes it clear that the provisions concerning personnel qualifications should not be construed to create a right of action on behalf of an individual student for the failure of a particular state educational agency or local educational agency staff person to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the state educational agency.

## **H. PERFORMANCE GOALS AND INDICATORS (Section 612(a)(15))**

The following changes were made to the provisions relating to performance goals and indicators:

- Goals for the performance of children with disabilities must be the same as the state's definition of adequate yearly progress, including the state's objectives for the progress by children with disabilities under Section 1111(b)(2)(C) of ESEA.
- The state has established performance indicators, including measurable annual objectives for progress under Section 1111(b)(2)(C)(v)(II)(cc) of ESEA.
- The state annually report to the Secretary and the public on progress, which may include elements of the reports required under Section 1111(h) of ESEA.

## **I. PARTICIPATION IN ASSESSMENTS (Section 612(a)(16))**

### **1. In General**

The following changes were made to the provisions related to participation in assessments, in general: clarifies that "all" children with disabilities are included in "all general state and district-wide assessment programs, "including assessments described under Section 1111 of ESEA, with appropriate accommodations and alternate assessments, where necessary and as indicated in their respective IEPs."

### **2. Accommodation Guidelines**

The following clarification was included regarding accommodation guidelines: "The state (or, in the case of a district wide assessment) the local educational agency has developed guidelines for the provision of appropriate accommodations."

### **3. Requirements for Alternate Assessments**

The following clarifications were included regarding alternate assessments:

- "The state or local education agency (in the case of district wide assessment) must develop and implement guidelines for alternate assessments for those children who cannot participate in regular assessments, with accommodations as indicated in the respective [IEPs]."

- The guidelines must be “aligned with the state’s challenging student academic achievement standards and if the state has adopted alternate academic achievement standards permitted under the [ESEA] regulations, measure the achievement of children with disabilities against those standards.”

#### **4. Reports**

The following clarifications were made regarding the preparation of reports by state educational agencies and local educational agencies: reports made available by the state educational agency and local educational agencies to the public must include, among other things, data on:

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

#### **5. Universal Design**

The following addition related to universal design was included: “The state educational agency (or in the case of a districtwide assessment) the local educational agencies shall, to the extent feasible, use universal design principles in developing and administering any assessments.

#### **J. RULE OF CONSTRUCTION REGARDING SUPPLANTING AND MAINTENANCE OF EFFORT (Section 612(a)(17) and (18))**

The following construction clause is included regarding the supplanting and maintenance of effort provisions: In complying with the supplanting and maintenance of effort provisions, “a state may not use IDEA funds to satisfy state-law mandated funding obligations to local educational agencies, including funding based on student attendance or enrollment, or

inflation.”

#### **K. SUSPENSION AND EXPULSION RATES (Section 612(a)(22))**

The following clarification is included in the provision relating to suspension and expulsion rates: the data must include data disaggregated by race and ethnicity.

#### **L. STATE LEVEL MAINTENANCE OF EFFORT AND STATE FLEXIBILITY (Section 613(j))**

New provisions were included relating to state agency flexibility and adjustments to state maintenance of fiscal effort:

- For any fiscal year for which the allotment received by a state exceeds the amount it received in the previous fiscal year and if the state in school year 2003-2004 or any subsequent school year pays or reimburses all local educational agencies within the state from state revenue 100% of the non-federal share of the costs of special education and related services, the state educational agency (notwithstanding the provisions related to supplanting and maintenance of effort) may reduce the level of expenditures from state sources for the education of children with disabilities by no more than 50% of the amount of such excess.
- If the Secretary determines that a state educational agency is unable to establish, maintain, or oversee programs of FAPE that meet the requirements of part B of IDEA or that the state needs assistance, intervention, or substantial intervention under Section 616, the Secretary shall prohibit the state educational agency from exercising the authority to reduce the level of expenditures.
- If a state educational agency exercises the authority to reduce the level of expenditures, the agency shall use funds from state sources, in an amount equal to the amount of the reduction to support activities authorized under ESEA, or to support need-based student or teacher higher education programs.
- The state educational agency shall report to the Secretary the amount of expenditures reduced and the activities that were funded.
- The state educational agency may not reduce the level of expenditures if any local educational agency in the state would, as a result of such reduction, receive less than 100% of the amount necessary to ensure that all children with disabilities serviced by the local educational agency receive FAPE from the combination of IDEA funds and state funds received from the state educational agency.

### **M. ACCESS TO INSTRUCTIONAL MATERIALS (Section 612(a)(23))**

The following additions were included related to access to instructional materials:

- In general, the state adopts the National Instructional Materials Accessibility Standards for the purpose of providing instructional materials to blind persons or other persons with print disabilities in a timely manner aft their publication in the Federal Register.
- Rights of state educational agency regarding the Standards are specified i.e., the state educational agency is not required to coordinate with the National Instructional Materials Access Center and if a state educational agency chooses not to coordinate with the Center, such agency must provide an assurance to the Secretary that the agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.
- If a state educational agency chooses to coordinate with the Center, not later than 2 years after the enactment of the IDEA 2004 Amendments, the agency shall enter into a written contract with the publisher of the print instructional materials to require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the Center electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard or purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized form.
- In carrying out the policy concerning access to instructional materials, the state educational agency, to the maximum extent possible, shall work collaboratively with the state agency responsible for assistive technology programs.

### **N. OVERIDENTIFICATION AND DISPROPORTIONALITY (Section 612(a)(24))**

The following additions were included regarding overidentification and disproportionality: the state must have in effect policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment.

### **O. PROHIBITION ON MANDATORY MEDICATION (Section 612(a)(25))**

The following provision related to prohibition on mandatory medication

was added: “The state educational agency shall prohibit state and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act as a condition of attending school, receiving an evaluation... or receiving services...” This new prohibition should not be construed to “create a federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student’s academic and functional performance or behavior in the classroom or school or regarding the need for evaluation for special education and related services...”

## **LOCAL EDUCATIONAL AGENCY ELIGIBILITY (Section 613)**

### **A. ELIGIBILITY, IN GENERAL (Section 613(a))**

The following changes were made to the provisions relating to local educational eligibility, in general: the requirement for a local educational agency to demonstrate to the satisfaction of the State educational agency that it has in effect necessary policies and procedures has been deleted and in lieu thereof the local educational agency must now “submit a plan that provides assurances...”.

### **B. ADJUSTMENTS TO LOCAL FISCAL EFFORT 613(a)(2)(C))**

The provisions regarding “treatment of federal funds” were deleted and the following additions were included:

- Notwithstanding the supplanting and maintenance of efforts provisions, for any fiscal year in which the allocation received by a local educational agency exceeds its allocation for the previous fiscal year, the local educational agency may reduce the required level of expenditures by not more than 50% of the amount of such excess.
- If a local educational agency exercises the authority described above, the agency must use an amount of local funds equal to the reduction in expenditures to carry out activities authorized under ESEA.
- If a state educational agency determines that a local educational agency is unable to establish and maintain programs of FAPE that meet the requirements of part B of IDEA or the state educational agency has taken action against the local educational agency under Section 616, the state educational agency shall prohibit the local educational agency from reducing the level of expenditures that fiscal year.
- The amount of funds expended by a local educational agency for early intervening services shall count toward the maximum amount

of expenditures such local educational agency may reduce expenditures.

The following language was included in the conference report:

“The Conferees intend for school districts to have meaningful flexibility to use local funds that are generated from their reduction in the maintenance of effort. The Conferees do not intend that school districts have to use these local funds for programs exclusively authorized under the Elementary and Secondary Act of 1965. The conferees recognize that most state and local education programs are consistent with the broad flexibility that is provided in Sec 5131 of the Elementary and Secondary Education Act of 1965.”

“The Conferees intend that in any fiscal year in which the local educational agency or State educational agency reduces expenditures pursuant to section 613(j), the reduced level of effort shall be considered the new base for purposes of determining the required level of fiscal effort for the succeeding year.”

#### **C. PERSONNEL DEVELOPMENT (Section 613(a)(3))**

The following clarifications were made to the provisions related to personnel development: the local educational agency must ensure that all personnel are appropriately and adequately prepared subject to the requirements of personnel qualifications set out in the state eligibility section (section 612) and Section 2122 of ESEA (local applications and needs assessment).

#### **D. ADMINISTRATIVE CASE MANAGEMENT (Section 613(a)(4)(B))**

The following addition was made regarding administrative case management: “a local educational agency may use [IDEA] funds to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing IEP services that are needed for the implementation of case management activities.”

#### **E. TREATMENT OF CHARTER SCHOOLS AND THEIR STUDENTS (Section 613(a)(5))**

The following clarifications are included related to the treatment of charter schools and their students: the local educational agency must serve

children with disabilities attending public charter schools in the same manner it serves children in other schools, including providing supplementary and related services on site at the charter school to the same extent to which the local educational agency has a policy or practice of providing such service on the site to its other public schools and provides funds under IDEA to those charter schools on the same basis as the local educational agency provides funds to its other public schools, including proportional distribution based on relative enrollment of children with disabilities and at the same time as the agency distributes other federal funds to the agency's other public schools, consistent with the state's charter school law.

#### **F. PURCHASE OF INSTRUCTIONAL MATERIALS (Section 613(a)(6))**

The following addition related to the purchase of instructional materials was included:

- Not later than two years after the date of the enactment of the IDEA 2004 Amendments, a local educational agency that chooses to coordinate with the National Instructional Materials Access Center, when purchasing print instructional materials, shall acquire the print instructional materials in the same manner and subject to the same conditions as a state educational agency.
- As in the case of the state educational agency, nothing in the previous sentence should be construed to require a local educational agency to coordinate with the Center.
- If a local educational agency chooses not to coordinate with the Center, it must provide an assurance to the State educational agency that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

#### **G. RECORDS REGARDING MIGRATORY CHILDREN WITH DISABILITIES (Section 613(a)(9))**

The following addition was included related to records regarding migratory children with disabilities: the local educational agency must cooperate in the Secretary's effort under section 1308 of ESEA (coordination of migrant education activities) to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging, among the states, health and educational information regarding such children.

#### **H. EARLY INTERVENING SERVICES (Section 613(f))**

The provision related to school based improvement plans was deleted in its entirety. The following new provision was added related to early

intervening services:

- A local educational agency may not use more than 15 percent of the amount of IDEA funds it receives, less any amount reduced by the agency (adjustments to local fiscal effort) in combination with other amounts to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.
- Authorized activities include professional development and providing educational and behavioral evaluations, services and supports, including scientifically-based literacy instruction.
- Nothing related to the establishment of an early intervening program shall be construed to limit or create a right to FAPE.
- Each local educational agency that develops and maintains coordinated early intervening services must annually report to the state educational agency.
- Funds made available to carry out the provisions related to coordinated early intervening services may be used to carry out these service aligned with activities funded by and carried out under ESEA.

The following language was included in the conference report:

“The Conferees want to ensure that information is provided on the impact that the early intervening services have on children to determine if these activities have reduced the numbers of referrals to special education. Local educational agencies are required to report on the number of students who are served under this activity for two years to determine if the provision of services under this activity reduces the number of overall referrals to special education and related services. The Conferees intend that the two-year period apply to the two years after the child has received services under this activity.”

“The Conferees believe that early intervening services should make use of supplemental instructional materials, where appropriate, to support student learning. Children targeted for early intervening services under IDEA are the very students who are most likely to need additional reinforcement to the core curriculum used in the regular classroom. These are in fact the additional instructional materials that have been developed to supplement and therefore strengthen the efficacy of comprehensive core curriculum. Per the

requirements of NCLB, core curriculum must meet standards of scientific rigor. As supplementary materials to these core programs, they are aligned with and designed to reinforce the skills taught in these comprehensive research-based texts.”

## **EVALUATIONS, ELIGIBILITY DETERMINATIONS**

### **A. INITIAL EVALUATIONS AND PARENTAL CONSENT (Section 614(a)(1))**

The following clarifications and additions related to initial evaluations were included:

- Either a parent of a child or a state or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.
- The determination whether a child is a child with a disability shall be made within 60 days of receiving parental consent for the evaluation, or, if the state establishes a timeframe within which the evaluation must be conducted, within such timeframe.
- The 60 day timeframe shall not apply to a local educational agency under specified conditions where the child transferred from one school district to another district.
- The agency responsible for making FAPE available must seek to obtain informed consent from the parent before providing special education and related services.
- If the parent does not provide consent for the initial evaluation or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the child by utilizing due process procedures except to the extent inconsistent with state law relating to such parental consent.
- If the parent refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent—
  - The local educational agency shall not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide such child with the special education and related services for which the local educational agency requests such consent.
  - The local educational agency shall not be required to convene an IEP meeting or develop an IEP for the child for the special education and related services for which the local educational agency requests such consent.
- Rules governing consent for wards of the state are specified.
- The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

## **B. REEVALUATIONS (Section 614(b)(2))**

The following changes and additions were made to the provisions related to reevaluations:

- Reevaluations shall be conducted if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation OR if the child's parents or teacher requests a reevaluation.
- A reevaluation shall occur not more frequently than once a year, unless the parent and the local educational agency agree otherwise and at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.

## **C. DETERMINATION OF ELIGIBILITY AND EDUCATIONAL NEED (Section 614(b)(3))**

The following clarifications related to determination of eligibility and educational need were included:

- Assessments are provided and administered in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally unless it is not feasible to so provide or administer.
- Assessments of children with disabilities who transfer from 1 school district to another school district in the same academic school year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.
- Upon completion of the assessments and other evaluation measures, the determination of whether the child is a child with a disability "and the educational needs of the child" shall be made by a team of qualified personnel and the parent.

The following language was included in the conference report:

"Conferees intend the evaluation process for determining eligibility of a child under this Act to be a comprehensive process that determines whether the child has a disability, and as a result of that disability, whether the child has a need for special education and related services. As part of the evaluation process, conferees expect the multi-disciplinary evaluation team to address the educational needs of the child in order to fully inform the decisions made by the IEP Team when developing the educational components of the child's IEP. Conferees expect the IEP Team to

independently review any determinations made by the evaluation team, and that the IEP Team will utilize the information gathered during the evaluation to appropriately inform the development of the IEP for the child.”

#### **D. SPECIAL RULES FOR ELIGIBILITY DETERMINATIONS (Section 614(b)(5))**

The following clarification was made regarding rules for making eligibility determinations: in making an eligibility determination, a child shall not be determined to be a child with a disability if the determinant factor for such determination is “lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of ESEA), lack of instruction in math, or limited English proficiency.

#### **E. SPECIFIC LEARNING DISABILITIES (Section 614(b)(6))**

The following changes and clarifications were made regarding the determination of whether a child has specific learning disabilities:

- When determining whether a child has a specific learning disability, a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual disability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.
- In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures.

#### **F. EVALUATIONS BEFORE CHANGE IN ELIGIBILITY (Section 614(c))**

A number of minor changes were made to the provisions related to review of existing data (e.g., delete “present levels of performance and educational need” and insert “present levels of academic achievement and related developmental needs”).

The following provision related to evaluations before change in eligibility was not modified: a local educational agency must evaluate a child with a disability before determining that the child is no longer a child with a disability. The following exception to this general rule was added:

- The evaluation shall not be required before the termination of a child’s eligibility due to graduation from secondary school with a

regular diploma, or due to exceeding the age eligibility for FAPE under state law.

- For such a child, a local educational agency must provide the child with a summary of the child's academic achievement and functional performance, which must include recommendations on how to assist the child in meeting the child's postsecondary goals.

## **INDIVIDUALIZED EDUCATION PROGRAMS (IEPs) (Section 614(d))**

### **A. INDIVIDUALIZED EDUCATION PROGRAM, DEFINED (Section 614(d)(1)(A))**

The following changes were made to the provisions related to the individualized education program:

- The term levels of "educational performance" was changed to "academic and functional" performance.
- References to "general curriculum" were changed to "general education curriculum".
- Benchmarks and short term objectives were deleted for many categories of children with disabilities; however, there were retained for "children with disabilities who take alternate assessments aligned to alternate achievement standards".
- A statement is required of measurable annual goals, "including academic and functional goals."
- A description is required of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided. (Note: the following language explaining the use of the reports was deleted: "the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.")
- A statement is required of the special education and related services and supplementary aids and services "based on peer-reviewed research to the extent practicable."
- A statement is required of any individual "appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child".
- If the IEP Team determines that the child "shall take an alternate assessment" a statement is required of why "the child cannot participate in the regular assessment and the particular alternate assessment selected."
- Beginning "not later than the first IEP in effect when the child is 16" and updated annually thereafter include "appropriate measurable

postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; the transition services (including courses of study needed to assist the child in reaching those goals; and beginning not later than 1 year before the child reaches the age of majority under state law, a statement that the child has been informed of the child's rights, if any, that will transfer to the child on reaching the age of majority.

- A rule of construction that the IEP provisions should not be construed to require additional information is included in a child's IEP beyond what is explicitly required by this section of the law.

#### **B. IEP TEAM ATTENDANCE (Section 614(d)(1)(B) and (C))**

The following additions were made to the provisions related to the individualized education program team:

- A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the local educational agency agrees that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.
- A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if the parent and the local educational agency consent to the excusal and the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.
- A parent's agreement (attendance not necessary) and consent (excusal) must be in writing.

#### **C. IEP TEAM TRANSITION (Section 614(d)(2))**

The following clarification was made regarding transition between part C and part B: "in the case of a child who was previously served under part C, an invitation to the initial IEP meeting shall, at the request of the parent, be sent to the part C service coordinator or other representatives of the part C system to assist with the smooth transition of services."

#### **D. IEP IN EFFECT, INCLUDING CHILDREN 3-5 AND STUDENT TRANSFERS (Section 614(d)(2))**

The following modifications were made relating to programs for children aged 3-5: the "IEP Team shall consider" the IFSP...and the "IFSP" may

serve as the IEP of the child if using that plan as the IEP is consistent with state policy and agreed to by the agency and the “child’s parents.”

The following language was included in the conference report:

“The Conferees recognize that ensuring that a smooth transition from the Part C system to the Preschool Program or to school is vital for a child’s educational success. It is the Conferees’ intent that during the initial IEP meeting for a child transferring from the Part C program the types of services the child received as part of the IFSP are discussed. The Conferees understand that services provided through the Part B program may differ in frequency, duration, and environment; however, the IEP Team should explain the changes in services in the initial IEP meeting. The Conferees do not intend that a State or district reduce any service a child would be otherwise eligible for under Part B.”

Specific provisions related to children who transfer school districts, including transfers within the same state, transfers outside state, and transmittal of records were added to the law.

#### **E. DEVELOPMENT OF IEP, INCLUDING SPECIAL FACTORS (Section 614(d)(3))**

The following change was made related to the development of the IEP, in general: In developing the IEP, the IEP shall consider, among other things, the “academic, developmental, and functional” needs of the child. The following language was included in the conference report:

“The Conferees understand that the development of a child’s IEP involves many considerations and decisions on how best to create an education program that serves the needs of the individual child. The Conferees intend that the uniqueness of each child help guide these decisions, including the child’s strengths, characteristics, and background when developing the IEP.”

The following modifications were made to the special factors provisions:

- Included minor changes to the provision dealing with behavior to read as follows: “in the case of a child whose behavior impedes the child’s learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.” Note, prior to the 2004 IDEA Amendments this section read as follows: “in the case of a child whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior.”

- Revises the provision relating to assistive technology to read as follows: “consider whether the child needs [delete “requires”] assistive technology devices and services.”

#### **F. MISCELLANEOUS PROVISIONS PROVIDING ADDITIONAL FLEXIBILITY (Section 614(d)(3))**

Several additional provisions were added to provide greater flexibility to parents and local educational agencies:

- In making changes to a child’s IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the local educational agency may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the child’s current IEP.
- To the extent possible, the local educational agency shall encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.
- Changes to the IEP may be made either by the entire IEP Team or by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.

#### **G. MULTI-YEAR IEP DEMONSTRATION (Section 614(d)(5))**

The following multi-year IEP demonstration authority was added:

- States are provided the opportunity to allow parents and local educational agencies the opportunity for long-term planning by offering the option of developing comprehensive multi-year IEP, not to exceed 3 years, that are designed to coincide with the natural transition points for the children.
- The Secretary is authorized to approve not more than 15 proposals.
- The proposal must include, among other things, assurances that the development of a multi-year IEP is optional for parents, informed consent, and a list of required elements, the process for the review and revision of each multi-year IEP.
- Beginning 2 years after the date of enactment of the 2004 IDEA Amendments, the Secretary must submit an annual report regarding the effectiveness of the program and any specific recommendations for broader implementation of the program including reducing paperwork burden and noninstructional time spent by teachers in complying with part B of IDEA, enhancing longer-term educational planning, improving positive outcomes, promoting collaboration and ensuring satisfaction of family members.

- A definition of the phrase “natural transition points” is included: “the term ‘natural transition points’ means those periods that are close in time to the transition of a child with a disability from preschool to elementary grades, from elementary grades to middle or junior high school grades, from middle or junior high school grades to secondary school grades, and from secondary school grades to post-secondary activities, but in no case a period longer than 3 years.”

#### **H. ALTERNATIVE MEANS OF MEETING PARTICIPATION (Section 614(f))**

The following additional authority was included regarding alternative means of meeting participation: When conducting IEP Team meetings and placement meetings, mediation, and resolution session, and carrying out administrative matters related to due process hearings, “the parent of a child with a disability and a local educational agency may agree to use alternative means of meeting participation such as video conferences and conference calls. “

### **PROCEDURAL SAFEGUARDS (Section 615)**

#### **A. SURROGATES AND WARDS (Section 615(b))**

Specific procedures were added regarding surrogates and wards of the state.

#### **B. COMPLAINT AND TIME LIMITATIONS FOR PRESENTING COMPLAINT (Section 615(b)(6))**

The following clarification and addition was included regarding the complaint:

- A clarification that either party can file a due process complaint.
- The due process complaint must set forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint or, if the state has an explicit time limitation for presenting such a complaint, in such time as the state law allows, except that the exceptions to the timeline related to due process hearings shall apply to this timeline.

#### **C. DUE PROCESS COMPLAINT NOTICE (Section 615(b)(7);(c)(2))**

The following additions were made to the provision related to due process complaint notice:

- Either party, or the attorney representing a party, must provide due process complaint notice to the other party and forward a copy of such notice to the state educational agency.
- The notice must specify particular information if the child is homeless.
- The notice must include, among other things, a requirement that a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the specified requirements.
- The state educational agency must develop a model form to assist parents filing a due process complaint notice.
- The due process complaint notice shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the applicable requirements.
- If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, such agency must, within 10 days of receiving the complaint, send to the parent a response that includes--
  - An explanation of why the agency proposed or refused to take the action raised by the complaint,
  - A description of other options that the IEP Team considered and the reasons why those options were rejected,
  - A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action, and
  - A description of the factors that are relevant to the agency's proposal or refusal.

**D. RESPONSE TO COMPLAINT (Section 615(c)(2)(B))**

The following additions were included regarding the filing of a response:

- A response filed by a local educational agency shall not be construed to preclude such agency from asserting that the parent's due process complaint notice was insufficient, where appropriate.
- Except as provided above, the noncomplaining party shall, within 10 days of receiving the complaint, send to the complainant a response that specifically addresses the issues raised in the complaint.

**E. TIMING (Section 615(c)(2)(C))**

The following additions were included regarding timing: the party providing

a hearing officer notification that the due process complaint notice has not met applicable requirements must provide the notification within 15 days of receiving the complaint.

#### **F. DETERMINATION (Section 615(c)(2)(D))**

The following addition was included regarding a determination by the hearing officer regarding the adequacy of the due process complaint notice: within 5 days of receipt of the notification that the complaint notice is inadequate, the hearing officer shall make a determination on the face of the notice of whether the notification meets the applicable requirements and shall immediately notify the parties of such determination.

#### **G. AMENDED COMPLAINT NOTICE (Section 615(c)(2)(E))**

The following additions were included regarding the ability to amend a due process complaint notice:

- A party may amend its due process complaint notice only if the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through an opportunity for a resolution session OR the hearing officer grants permission, except that the hearing officer may only grant such permission at anytime not later than 5 days before a due process hearing occurs.
- The applicable timeline for a due process hearing shall recommence at the time the party files an amended notice, including the timeline for a resolution session.

#### **H. PROCEDURAL SAFEGUARDS NOTICE (Section 615(d))**

Several changes were made to the requirement regarding the procedural safeguards notice:

- The procedural safeguards notice shall be given to parents only 1 time a year except a copy shall be given to the parents upon initial referral or parental request for evaluation, upon the first occurrence of the filing of a complaint and upon request by a parent. (Note: the Notice will no longer be distributed automatically with each notification of the IEP meeting or upon reevaluation.)
- A local educational agency may place a current copy of the procedural safeguards notice on its Internet website if such website exists.
- The notice must include, among other things, the opportunity to present and resolve complaints, including the time period in which to make a complaint, the opportunity for the agency to resolve the complaint, mediation, due process hearing, state level appeals, and

civil actions, including the time period in which to file such actions, and attorneys fees.

## **I. MEDIATION (Section 615(e))**

The following additions and clarifications were made relating to mediation:

- Mediation should involve matters arising before as well as after the filing of a complaint.
- Educational agencies may (but are not required to) offer parents and schools that choose not to use the mediation process an opportunity to meet with a disinterested party.
- In case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that
  - States that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding,
  - Is signed by both the parent and a representative of the agency who has the authority to bind such agency, and
  - Is enforceable in any state court of competent jurisdiction or in a district court of the United States.

The following language was included in the conference report:

“The Conferees intend that the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process to ensure that all discussions that occur during the mediation process remain confidential irrespective of whether the mediation results in a resolution.”

## **J. IMPARTIAL DUE PROCESS HEARING, IN GENERAL (Section 615(f))**

The provisions relating to due process hearings, in general, were modified to clarify that the parents “or the local educational agency” involved in the complaint shall have an opportunity for an impartial due process hearing.

## **K. RESOLUTION SESSION (Section 615(f)(1)(B))**

A new provision was added to the law requiring the convening of a resolution session. The specific components are described below:

- Prior to the opportunity for an impartial due process hearing, the

local educational agency must convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint:

- Within 15 days of receiving notice of the parents' complaint;
  - Which shall include a representative of the agency who has decision-making authority on behalf of the agency;
  - Which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and
  - Where parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint, unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process.
- If the local educational agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all the applicable timelines for a due process hearing shall commence.
  - In the case that a resolution is reached to resolve the complaint at the meeting, the parties must execute a legally binding agreement signed by both the parent and a representative of the agency who has the authority to bind the agency and enforceable in any state court of competent jurisdiction or in a district court of the United States.
  - If the parties execute an agreement, a party may void the agreement within 3 business days of the agreement's execution.

#### **L. PERSONS CONDUCTING HEARING (Section 615(f)(3)(A))**

The following modifications were made to the provision related to persons conducting the hearing:

- The hearing officer may not be a person having a personal or professional interest that conflicts with the person's objectivity in the hearing.
- The person conducting the hearing must possess:
  - Knowledge of, and the ability to understand, the provisions of IDEA, federal and state regulations, and legal interpretations by federal and state courts,
  - The knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice, and
  - The knowledge and ability to render and write decisions in accordance with appropriate standard legal practice.

#### **M. SUBJECT MATTER OF HEARING (Section 615(f)(3)(B))**

The following additions were made to the provisions relating to the subject matter of the hearing: the party requesting the hearing shall not be allowed to raise issues at the due process hearing that were not raised in the due process complaint notice, unless the other party agrees otherwise.

#### **N. TIMELINE FOR REQUESTING HEARING (Section 615(f)(3)(C), (D))**

The following policy was added regarding the timeline for requesting a hearing:

- A parent or agency must request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint or, if the state has an explicit time limitation for requesting such a hearing, in such time as the state law allows.
- The timeline shall not apply if the parent was prevented from requesting the hearing due to specific misrepresentations by the agency that it had resolved the problem forming the basis of the complaint or the agency's withholding of information from the parent that was required to be provided to the parent.

#### **O. DECISION OF HEARING OFFICER (Section 615(f)(3)(E))**

The following policy was added regarding the decision by the hearing officer:

- A decision by a hearing officer must be made on substantive grounds based on a determination of whether the child received FAPE.
- In matters alleging a procedural violation, a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies:
  - Impeded the child's right to FAPE,
  - Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE, and
  - Caused a deprivation of educational benefits.
- The above provisions should not be construed to preclude a hearing officer from ordering a local educational agency to comply with the procedural requirements under the due process section.
- The above provisions also should not be construed to affect the right of a parent to file a complaint with the state educational agency.

#### **P. LIMITATION ON RIGHT TO BRING CIVIL ACTION (Section**

## **615(i)(2))**

The following limitation on the right to bring a civil action was included: the party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the state has an explicit time limitation for bringing such an action, in such time as the state law allows.

## **Q. AWARD OF ATTORNEYS FEES (Section 615(h)(3)(B))**

The following modifications were made to the provisions regarding the awarding of attorneys fees:

- The court, in its discretion, may award reasonable attorneys fees as part of the costs to a prevailing party who is a state educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation.
- The court, in its discretion, may award reasonable attorneys fees as part of the costs to a prevailing party who is a state educational agency or local educational agency against the attorney of a parent or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.
- Nothing should be construed to affect the provisions in the District of Columbia Appropriations Act relating to attorneys fees.
- A "resolution session" meeting (see "K" above) shall not be considered a meeting convened as a result of an administrative hearing or judicial action or an administrative hearing or judicial action [in other words, if the parent's complaint is resolved at the resolution session meeting, the parent is not entitled to attorneys fees].

The following language was included in the conference report:

"In Sections 615(i)(3)(B)(I)(II) and III), the conferees intend to codify the standards set forth in *Christiansburg Garment Co. v. EEOC*. 434 U.S. 412 (1978). According to *Christiansburg*, attorney's fees may only be awarded to defendants in civil rights cases where the plaintiffs' claims are frivolous, without foundation or brought in bad faith."

## **R. ELECTRONIC MAIL (Section 615(n))**

The following provision was added regarding electronic mail: A parent of a child with a disability may elect to receive notices required under the due process provisions by electronic mail (e-mail), if the agency makes such option available.

#### **S. SEPARATE COMPLAINT (Section 615(o))**

The following clarification was included regarding the filing of a separate complaint: nothing in Section 615 pertaining to due process shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

The following language was included in the conference report:

“The Conferees intend to encourage the consolidation of multiple issues into a single complaint where such issues are known at the time of the filing of the initial complaint.”

#### **STAY PUT (Section 615(j))**

The following change was made to the stay put provision: “except as provided in the provision related to ‘placement during appeals,’ ” the stay put provision applies. For a discussion of the provision related to “placement during appeals” see below.

### **PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING (DISCIPLINE PROVISIONS) (Section 615(k))**

#### **A. AUTHORITY OF SCHOOL PERSONNEL (Section 615(k)(1)(A),(B))**

The following changes were made to the provisions related to the authority of school personnel:

- School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.
- School personnel may “remove” a child with a disability [instead of order a change in placement] “who violates a code of student conduct from their current placement” for not more than 10 school days to the extent such alternatives are applied to children without disabilities.

#### **B. ADDITIONAL AUTHORITY (Section 615(k)(1)(C))**

The following modifications were made regarding additional authority of school personnel: If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner "and for the same duration" in which "the procedures" would be applied to children without disabilities, except as provided in the section relating to FAPE, "although it may be provided in an interim alternative educational setting."

### **C. SERVICES (Section 615(k)(1)(D))**

The following clarifications were made related to the provision of services: a child with a disability who is removed from the child's current placement (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or the provisions described above under "additional authority" shall "continue to receive educational services (as provided in the section related to FAPE) so as to enable the child" to continue to participate in the general "education" curriculum, although in another setting "to progress toward meeting" the goals set out in the child's IEP..." (Note the following phrases were deleted: "to continue to receive these services and modifications, including those described in the child's current IEP, that will enable the child to meet" the goals set out in that IEP.

### **D. MANIFESTATION DETERMINATION (Section 615(k)(1)(E))**

The following changes were made to the provisions related to manifestation determinations:

- "Except as provided [in the case of the 10-day rule, see above], within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—
  - If the conduct in question was caused by or had a direct and substantial relationship to, the child's disability; or
  - If the conduct in question was the direct result of the local educational agency's failure to implement the IEP."
- "If the local educational agency, the parent, and relevant members

of the IEP Team determine that either determination is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability."

- NOTE: The following language relating to manifestation determination was deleted: In carrying out a manifestation determination review, "the IEP Team may determine that the behavior of the child was not a manifestation of such child's disability only if the IEP Team first considers, in terms of the behavior subject to disciplinary action, all relevant information, including evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the child; observations of the child; and the child's IEP and placement; and then determines that in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement; the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action."

The following language was included in the conference report:

"The Conferees intend to assure that the manifestation determination is done carefully and thoroughly with consideration of any rare or extraordinary circumstances presented. Additionally, it is the intention of the Conferees that when a student has violated a code of conduct school personnel may consider any unique circumstances on a case-by-case basis to determine whether a change of placement for discipline purposes is appropriate. The Conferees intend that if a change in placement is proposed, the manifestation determination will analyze the child's behavior as demonstrated across settings and across time when determining whether the conduct in question is a direct result of the disability. The Conferees intend that in situations where the local educational agency, the parent and the relevant members of the IEP team determine that the conduct was the direct result of the child's disability, a child with a disability should not be subject to discipline in the same manner as a non-disabled child.

"The Conferees intend that in order to determine that the conduct in question was a manifestation of the child's disability, the local educational agency, the parent and the relevant members of the IEP team must determine the conduct in question be the direct result of the child's disability. It is intention of the Conferees that

the conduct in question was caused by, or has a direct and substantial relationship to, the child's disability, and is not an attenuated association, such as low self-esteem, to the child's disability."

#### **E. DETERMINATION THAT BEHAVIOR WAS A MANIFESTATION (Section 615(k)(1)(F))**

The following changes were made to the provisions related to making a determination that the behavior was a manifestation:

If the local educational agency, the parent, and the relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall—

- Conduct a functional behavioral assessment and implement a behavioral intervention plan for such child (provided that a previous assessment has not been conducted)
- In the situation where a behavioral intervention plan has been developed, review the plan and modify it, as necessary, to address the behavior, and
- Except under special circumstances (see below), return the child from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

#### **F. SPECIAL CIRCUMSTANCES (Section 615(k)(1)(G))**

The following changes were made to the provisions related to special circumstances:

School personnel "may remove a student" to an appropriate interim alternative educational setting for not more than 45 "school" days (Note: "school" days replaces calendar days) "without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases here a child—

- Carries "or possess" a weapon to "or at" school, "on school premises" to "or at" a school function,
- Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, "on school premises" or "at" a school function, OR
- "Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function."

#### **G. NOTIFICATION (Section 615(k)(1)(H))**

The following clarification is included regarding notification: Not later than

the date on which the decision to take “disciplinary” action is made, the “the local educational agency shall notify the parents” of that decision, and of all procedural safeguards.

#### **H. DETERMINATION OF SETTING. (Section 615(k)(2))**

The following clarification is included regarding the determination of interim alternative educational setting: The “interim” alternative educational setting in the provisions related to “additional authority” (see above) and “special circumstances” (see above), shall be determined by the IEP Team.

#### **I. APPEAL, AUTHORITY OF HEARING OFFICER (Section 615(k)(3))**

The following changes were made regarding appeals:

- The local educational agency’s right to request a hearing was added; the new provision now reads as follows: “The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to other may request a hearing.”
- “A hearing officer shall hear, and make a determination regarding an appeal.”
- “In making a determination, the hearing officer may order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.”
- Note: the language set out above replaces the following language relating to the authority of a hearing officer to order a change in placement to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer “determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others; considers the appropriateness of the child’s current placement; considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child’s current placement, including the use of

supplementary aids and services; and determines that the interim alternative educational setting meets [specified] requirements...”

#### **J. PLACEMENT DURING APPEALS (Section 615(k)(4))**

The following changes were made to the provisions regarding placement during appeals:

- “When an appeal has been requested, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided under the “additional authority” section [i.e., same duration of removal for nondisabled children], whichever occurs first, unless the parent and the state or local educational agency agree otherwise.”
- “The state or local educational agency shall arrange for an expedited hearing which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

#### **K. PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES. (Section 615(k)(5))**

The following changes were made to the provisions relating to protections for children not yet eligible for special education and related services:

- A local educational agency shall be deemed to have knowledge that a child is a child with a disability “if, before the behavior that precipitated the disciplinary action occurred”:
  - The parent of the child has expressed concern in writing [delete “unless the parent is illiterate or has a disability that prevents compliance] to “supervisory or administrative” personnel of the appropriate education agency “or a teacher of the child” that the child is in need of special education and related services.
  - [delete the fact that the behavior or performance of the child demonstrates the need for such services]
  - The teacher of the child or other personnel of the local educational agency has expressed “specific” concerns about “a pattern” of behavior “demonstrated by” the child “directly” to the special education director or to other “supervisory” personnel of the agency.
- A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child or has refused services or the

child has been evaluated and it was determined that the child was not a child with a disability.

#### **L. DEFINITIONS (Section 615(k)(7))**

The following additional definition was included: “serious bodily injury” has the meaning given the term in the U.S. Criminal Code. The term means “bodily injury which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.”

### **MONITORING, TECHNICAL ASSISTANCE, AND ENFORCEMENT**

#### **A. FEDERAL AND STATE MONITORING (Section 616(a))**

The following additions were included regarding federal and state monitoring:

IN GENERAL. The Secretary must:

- Monitor implementation through oversight of the exercise of the general supervision by the states (under Section 612 state eligibility) and the State performance plans (described below);
- Enforce Part B of IDEA (see below under enforcement) and
- Require states to monitor implementation by local educational agencies and enforce Part B in accordance with monitoring priorities (see below) and provisions related to enforcement (see below).

FOCUSED MONITORING.--The primary focus of Federal and State monitoring activities shall be on--

- Improving educational results and functional outcomes for all children with disabilities; and
- Ensuring that States meet the program requirements under this part, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

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

- Provision of a free appropriate public education in the least restrictive environment;

- State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, [sic: voluntary binding arbitration], and a system of transition services;
- Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

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

The following language was included in the conference report:

“The Conferees believe that accurate decision making with regard to enforcement of the IDEA is required in order to: (1) ensure that federal dollars are being spent productively on education, and, (2) to ensure that monitoring and enforcement is administered fairly. It is our expectation that state performance plans, indicators, and targets will be developed with broad stakeholder input and public dissemination.

“The Secretary is directed to monitor states using rigorous targets and to request such information from states and stakeholders as is necessary to implement the purposes of IDEA, including the use of onsite monitoring visits and student file reviews, and to enforce the requirements of the IDEA.

“Conferees strongly encourage the Secretary to review all relevant and publicly available data, including the data gathered under Section 618, related to the targets and priority areas established for reviewing the efforts of States and local educational agencies to implement the requirements and purposes of IDEA. The Secretary is also authorized to use qualitative measures to inform his decision-making process in determining the efforts of the State or LEA in implementing IDEA.

## **B. STATE PERFORMANCE PLANS (Section 616(b))**

The following additions were made regarding state performance plans:

- Not later than 1 year after the date of enactment of the 2004 IDEA Amendments, each State shall have in place a performance plan that evaluates that State's efforts to implement the requirements and purposes of Part B and describes how the State will improve such implementation.
- SUBMISSION FOR APPROVAL--Each State shall submit the

State's performance plan to the Secretary for approval in accordance with the approval process described below.

- REVIEW--Each State shall review its State performance plan at least once every 6 years and submit any amendments to the Secretary.
- TARGETS--As a part of the State performance plan, each State shall establish measurable and rigorous targets for the indicators established under the priority areas.
- DATA COLLECTION--Each State shall collect valid and reliable information as needed to report annually to the Secretary on the priority areas. Nothing in this title shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part B.
- PUBLIC REPORTING AND PRIVACY-- The State shall use the targets established in the plan and priority areas to analyze the performance of each local educational agency in the State in implementing Part B.
- REPORT--The State shall report annually to the public on the performance of each local educational agency located in the State on the targets in the State's performance plan. The State shall make the State's performance plan available through public means, including by posting on the website of the State educational agency, distribution to the media, and distribution through public agencies.
- STATE PERFORMANCE REPORT.--The State shall report annually to the Secretary on the performance of the State under the State's performance plan.
- PRIVACY.--The State shall not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children or where the available data is insufficient to yield statistically reliable information.

### **C. APPROVAL PROCESS (Section 616(c))**

The following provisions related to the approval process were added:

- DEEMED APPROVAL.--The Secretary shall review each performance plan submitted by a State and the plan shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120-day period beginning on the date on which the Secretary received the plan, that the plan does not meet the requirements of Section 616.
- DISAPPROVAL.--The Secretary shall not finally disapprove a performance plan, except after giving the State notice and an

- opportunity for a hearing.
- **NOTIFICATION.**--If the Secretary finds that the plan does not meet the requirements, in whole or in part, of Section 616, the Secretary shall give the State notice and an opportunity for a hearing; and notify the State of the finding, and in such notification shall-- cite the specific provisions in the plan that do not meet the requirements; and request additional information, only as to the provisions not meeting the requirements, needed for the plan to meet the requirements of Section 616.
  - **RESPONSE.**--If the State responds to the Secretary's notification during the 30-day period beginning on the date on which the State received the notification, and resubmits the plan with the requested information, the Secretary shall approve or disapprove such plan prior to the later of--the expiration of the 30-day period beginning on the date on which the plan is resubmitted; or the expiration of the 120-day period.
  - **FAILURE TO RESPOND.**--If the State does not respond to the Secretary's notification during the 30-day period beginning on the date on which the State received the notification, such plan shall be deemed to be disapproved.

#### **D. SECRETARY’S REVIEW AND DETERMINATION (Section 616(d))**

The following additions were included regarding the Secretary’s review and determination:

- REVIEW--The Secretary shall annually review the State performance report.
- DETERMINATION--Based on the information provided by the State in the State performance report, information obtained through monitoring visits, and any other public information made available, the Secretary shall determine if the State—
  - meets the requirements and purposes of Part B;
  - needs assistance in implementing the requirements of Part B;
  - needs intervention in implementing the requirements of Part B; or
  - needs substantial intervention in implementing the requirements of Part B.
- NOTICE AND OPPORTUNITY FOR A HEARING.--For determinations made, the Secretary shall provide reasonable notice and an opportunity for a hearing on such determination.

#### **E. ENFORCEMENT (Section 616(e))**

The following provisions were added regarding enforcement:

- NEEDS ASSISTANCE.--If the Secretary determines, for 2 consecutive years, that a State “needs assistance” in implementing the requirements of Part B, the Secretary shall take 1 or more of the following actions:
  - Advise the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and require the State to work with appropriate entities. Such technical assistance may include:
    - The provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time;
    - Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on

- scientifically based research;
      - Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and
      - Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under part D, and private providers of scientifically based technical assistance.
    - Direct the use of State-level funds under section 611(e) on the area or areas in which the State needs assistance.
    - Identify the State as a high-risk grantee and impose special conditions on the State's grant under Part B.
  - NEEDS INTERVENTION.--If the Secretary determines, for 3 or more consecutive years, that a State “needs intervention” in implementing the requirements of this part, the following shall apply:
    - The Secretary may take any of the actions described above under “needs assistance.”
    - The Secretary shall take 1 or more of the following actions:
      - Require the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within 1 year.
      - Require the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, if the Secretary has reason to believe that the State cannot correct the problem within 1 year.
      - For each year of the determination, withhold not less than 20 percent and not more than 50 percent of the State's funds under section 611(e), until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.
      - Seek to recover funds under section 452 of the General Education Provisions Act.
      - Withhold, in whole or in part, any further payments to the State.
      - Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.
- NEEDS SUBSTANTIAL INTERVENTION.--Notwithstanding the provisions related to “needs assistance” and “needs intervention, at

any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of Part B or that there is a substantial failure to comply with any condition of a State educational agency's or local educational agency's eligibility under Part B, the Secretary shall take 1 or more of the following actions:

- Recover funds under section 452 of the General Education Provisions Act.
  - Withhold, in whole or in part, any further payments to the State under Part B.
  - Refer the case to the Office of the Inspector General at the Department of Education.
  - Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.
- **OPPORTUNITY FOR HEARING.—**
    - **WITHHOLDING FUNDS OF PAYMENTS.--**Prior to withholding any funds under Section 616, the Secretary shall provide after reasonable notice and an opportunity for a hearing to the State educational agency involved.
    - **SUSPENSION.--**Pending the outcome of any hearing to withhold payments, the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under Part B, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under Part B should not be suspended.

The following language was included in the conference report:

“Conferees recommend that the Secretary diligently investigate any root causes prior to selecting enforcement options, so that enforcement options are appropriately selected and have the greatest likelihood in yielding improvement in that state. However, investigations must not unduly delay the enforcement action.”

#### **F. REPORTS TO CONGRESS (Section 616(e)(5))**

The following provisions relating to reports to Congress were added: The Secretary shall report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action under “needs assistance,” “needs intervention,” and “needs substantial assistance” on the specific action taken and the reasons why enforcement action was taken.

## **G. NATURE OF WITHHOLDING (Section 616(e)(6))**

The following changes were made regarding withholding:

- **NATURE OF WITHHOLDING.**--If the Secretary withholds further payments under “needs intervention” or “needs substantial intervention” the Secretary may determine—
  - That such withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary's determination;
  - That the State educational agency shall not make further payments under this part to specified State agencies or local educational agencies that caused or were involved in the Secretary's determination.
- **WITHHOLDING UNTIL RECTIFIED.**--Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified—
  - Payments to the State under this part shall be withheld in whole or in part; and
  - Payments by the State educational agency under this part shall be limited to State agencies and local educational agencies whose actions did not cause or were not involved in the Secretary's determination as the case may be.

## **H. PUBLIC ATTENTION (Section 616(e)(7))**

The following modifications were made to the provisions related to bringing enforcement actions to the attention of the public: Any “State” [delete reference to state or local educational agency] that has received notice of a determination by the Secretary shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action to the attention of the public within the State.

## **I. STATE ENFORCEMENT (Section 616(f))**

The following changes were made regarding state enforcement: If a State educational agency determines that a local educational agency is not meeting the requirements of Part B, including the targets in the State's performance plan, the State educational agency shall prohibit the local educational agency from reducing the local educational agency's maintenance of effort for any fiscal year.

## **J. RULE OF CONSTRUCTION (Section 616(g))**

The following rule of construction was included: nothing in this section shall be construed to restrict the Secretary from utilizing any authority under the General Education Provisions Act to monitor and enforce the requirements of IDEA.

## **PROHIBITION AGAINST FEDERAL MANDATES, DIRECTION, OR CONTROL (Section 617(a))**

The following provision was added regarding the prohibition against federal mandates, direction, or control: “Nothing shall be construed to authorize an officer or employee of the Federal government to mandate, direct, or control a state, local educational agency, or school’s specific instructional content, academic achievement standards and assessments, curriculum, or program of instruction.”

## **MODEL FORMS (Section 617(e))**

The following provision was added regarding model forms: Not later than the date the Secretary publishes final regulations, to implement the 2004 IDEA Amendments, the Secretary must publish and disseminate widely to states, local educational agencies, and parent and community training and information centers:

- A model IEP form,
- A model IFSP form,
- A model form of the notice of procedural safeguards, and
- A model form of the prior written notice that is consistent with the requirements of part B and is sufficient to meet such requirements.

## **PROGRAM INFORMATION (Section 618)**

The following changes were made to the provisions related to program information:

- Each state that receives assistance under part B must provide data each year to the Secretary of Education “and the public.”
- The “number and percentage” [instead of just the number] of children with disabilities by “limited English proficiency status,” “gender” in addition to race, ethnicity and disability category.
- For each year of age from age 14 through 21, the number and percentage of children with disabilities that stopped receiving special education and related services because of program completion “(including graduation with regular secondary school diploma)” or other reasons and the reasons why those children stopped receiving special education and related

services.

- “removal to an interim alternative educational setting, the acts or items precipitating such removals, and the number of children with disabilities who are subject to long-term suspensions or expulsions.”
- The “incidence and duration of disciplinary actions by race, ethnicity, limited English proficiency status, gender, and disability status of children with disabilities, including suspensions of 1 day or more”.
- “The number and percentage” of children with disabilities “removed to alternative educational settings or expelled as compared to children without disabilities who are removed to alternative educational settings or expelled.”
- “The number of hearings requested and the number of changes in placements ordered as a result of those hearings.”
- “The number of mediations held and the number of settlement agreements reached through such mediations.”
- The data must be publicly reported by each state in a manner that does not result in the disclosure of data identifiable to individual children.
- The Secretary may provide technical assistance to states to ensure compliance with the data collection and reporting requirements.
- With respect to disproportionality--
  - Determine ethnicity [as well as by race]
  - Determine the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.
  - Require any local educational agency where significant disproportionality was found to reserve the maximum amount of funds to provide comprehensive, coordinated early intervening services to serve children in the local educational area, particularly children in those groups that were significantly overidentified and require the local educational agency to public report on the revision of policies, practices, and procedures.

## **PART C: INFANTS AND TODDLERS WITH DISABILITIES**

### **FINDINGS (Section 631)**

The following changes were made to the findings section:

- Added to finding (a)(1) “recognize the significant brain development that occurs during the first three years of life.”
- Deleted “the likelihood of institutionalization” from finding (a)(3).
- Modified finding (a)(5) regarding children from historically under-represented groups to include “all children, particularly minority, low-income, inner city and rural children and infants and toddlers in foster care.”

## **DEFINITIONS (Section 632)**

The following changes were made to the applicable definitions used for purposes of Part C:

- The definition of the term “early intervention services” is modified to:
  - Include “sign language and cued speech services.”
  - Substitute the term “registered dieticians” for the term “nutritionists.”
- The list of qualified personnel providing early intervention services is expanded to include “vision specialists, including ophthalmologists and optometrists.”
- The definition of the term “infant and toddler with a disability” is modified to provide the state with discretion to include in the Part C program children with disabilities who are eligible for section 619 and who previously received services under Part C.

## **ELIGIBILITY (Section 634)**

The policy to provide early intervention services to all eligible children is modified to include infants and toddlers with disabilities who are homeless or wards of the state.

## **REQUIREMENTS FOR STATEWIDE SYSTEM (Section 635)**

Under Part C prior to the 2004 Amendments, states set their own definitions of “developmental delay”. The following changes were made:

- States must include “a rigorous definition” to ensure that all eligible children are covered and
- States must have in effect policies to ensure that early intervention services are “based on scientifically-based research, to the extent practicable.”

The public awareness requirement is modified to emphasize the need to inform parents with “premature infants, or infants with other physical risk factors associated with learning or developmental complications” on the availability of early intervention and special education preschool services.

The comprehensive system of personnel development (CSPD) is modified to require certain activities (implementing innovative strategies for the recruitment and retention of early education services providers, promoting the preparation of qualified early intervention providers, and training personnel to coordinate transition services for infants and toddlers served under Part C and Part B to a preschool program). CSPD may include “training personnel in the emotional and social development of young children.” The policy regarding “highest requirements” is deleted.

The policy on justifying services in settings other than the natural environment is modified as follows: the provision of early intervention services for any infant or toddler occurs in a setting other than a natural environment “that is most appropriate, as determined by the parent and the individualized family service plan team” only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.

The policy regarding good faith efforts to hire qualified individuals is modified by eliminating the policy that the use of such individuals must be “consistent with State law” and limited to “within three years.”

A new policy is added to permit state Part C and 619 agencies the flexibility to jointly develop a policy that would allow children previously enrolled in Part C to continue to receive Part C services after the age of 3 and until they start kindergarten. A State must meet certain requirements, including parental notice and consent and reporting requirements. States can apply for incentive grants when the Part C appropriation exceeds \$460 million. The Fiscal 2005 appropriation is \$444 million.

### **INDIVIDUALIZED FAMILY SERVICES PLAN (Section 636)**

The IFSP is modified to include a description of transition services.

The content of the IFSP is modified as follows:

- A statement of the “measurable results” (instead of “major outcomes”) or outcomes expected to be achieved for the infant or toddler and the family, replaces “major outcomes” and
- The measurable results and outcomes expected to be achieved includes “preliteracy and language skills, as developmentally appropriate for the child” and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving “the results or” outcomes is being made and whether modifications or revisions of “the results or” outcomes of services are necessary; and
- A statement of specific early intervention services must be “based on peer-reviewed research, to the extent practicable,” necessary to meet the unique needs of the infant and toddler and the family, including the frequency, intensity and method of delivering services.

### **STATE APPLICATION AND ASSURANCES (Section 637)**

The state application must contain a description of the state policies and procedures requiring referral to Part C services for children who are involved in substantiated cases of abuse and neglect or affected by illegal substance abuse, or withdrawal systems resulting from prenatal drug exposure.

### **USES OF FUNDS (Section 638)**

With the written consent of the parents, states may use Part C funds to continue Part C services to particular children over the age of 3 and until they reach kindergarten.

### **PAYOR OF LAST RESORT (Section 640)**

A new section is added to ensure interagency agreements for coordination of services are in place and that such agreements are consistent with those in place for Part B services.

### **STATE INTERAGENCY COORDINATING COUNCIL (Section 641)**

Representatives from the Coordinator of Education of Homeless Children and Youth, Foster Care, and Mental Health agencies are added to the state interagency coordinating council.

### **FEDERAL INTERAGENCY COORDINATING COUNCIL (Section 642)**

The FICC is deleted from the law.