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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable SAM BROWNBACK, a Senator from the State of Kansas.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray:

Wise Creator, the One who made heaven and Earth and all that is in them, thank You for the honor of being made in Your image, personally formed by You for Your glory. Deliver us from pride or false modesty, as we give You credit for our abilities and live for Your glory.

Thank You, Lord, for our weaknesses and inadequacies and even our pain and distresses. You have allowed these in our lives that they may contribute to Your higher purposes. Please don't remove the mountains in our lives, but give us the strength to climb them.

Shower Your grace upon our Senators today and make them more than sufficient for these grand and awful times. Help them to walk humbly with You, as You bless and strengthen them. Lord, tend to the sick, give rest to the weary, and soothe the suffering. We pray this in Your wonderful name.

Amen.

PLEDGE OF ALLEGIANCE

The Honorable SAM BROWNBACK led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 12, 2004.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable SAM BROWNBACK, a Senator from the State of Kansas, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. BROWNBACK thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, I will take a couple of minutes to lay out the schedule for today. This morning, the Senate will have a period of morning business for up to 60 minutes. Last night's orders provided that the first 30 minutes will be controlled by the majority and the final 30 minutes will be controlled by the minority.

Following morning business, the Senate will begin consideration of IDEA, the Individuals with Disabilities Education reauthorization bill, S. 1248. We will consider that bill under a previously agreed to order, which provides for a limited number of amendments per side. Chairman GREGG will be here to manage the bill on this side.

I expect there will be votes throughout the course of the day in relation to those amendments. We should be able to complete our work on this bill either late today or early tomorrow.

This morning, I wanted to again comment on the Executive Calendar and the mounting number of nominations. It is an important issue and important to our Nation and to the way we are viewed around the world. So I want to review the process again. I mentioned yesterday morning some of the specific pending ambassadorial nominations awaiting our action, in addition to the 32 judicial nominations. I know the distinguished assistant Democratic leader mentioned these ambassador nominations later in the day yesterday. Again, I want to restate what I mentioned yesterday morning. There are eight nominations for ambassadorships that are pending on the calendar. These nominations have been presented, have gone through committee, and are simply awaiting action on the floor of the Senate. It is not one, two, three, four, or five—it is eight. That includes ambassadorships to Sweden, Brazil, Finland, Romania, South Africa, Nepal, Poland, and Northern Ireland.

I know of a concern at this time by a Member on our side of the aisle with respect to one of these eight nominees; however, I don't believe there are concerns on either side of the aisle with respect to the remaining seven nominations. So we are prepared to confirm these other nominations and allow them to begin their important work for the United States of America, the work that awaits them at their posts in the countries I mentioned. Each one of these is important and significant. We are ready to move with them.

I do want to restate the intention of bringing it to the Senate floor yesterday, and that was that we need to work together on the nominations. It is really as simple as that. Eight nominations have gone through the entire vetting process up to this point, and they are simply awaiting action here on the floor of the Senate. We are prepared to confirm seven of those eight today.

I will also mention that this is true with respect to a number of judges. We

have 32 pending judicial nominations as well. Ultimately, once we figure out some way to allow these nominations to be considered, I am confident that most, or many, are going to receive unanimous votes if this body is just given the opportunity to vote.

I guess my point is, as I look at the 8 nominations and the 32 nominations, I urge my colleagues not to take this sort of blanket or scorched earth policy of not letting anybody through at all. We need to be reasonable and we need to work together on these nominations. If there is a concern, and if there are certain nominations that are not being considered, there are a lot of different ways we can get attention to those individuals. But this sort of blanket holding things back is something we need to address.

I hope the nominations, many of which are probably cleared on both sides, are not held hostage by a few. On this side of the aisle, we are prepared to consider the ambassadors, we are prepared to consider the judges, and we are prepared to vote on the chairmen of a whole range of committees, such as the Consumer Products Safety Commission, HUD nominations, and the list goes on. It is time for good faith and it is time to do our constitutional duty. These nominations are sent to us to be voted upon.

ABUSE OF IRAQI PRISONERS

Mr. FRIST. Mr. President, I want to also mention that yesterday the Senate Armed Services Committee held a day-long hearing to learn more about the abuse of the Iraqi prisoners at the Abu Ghraib prison. Many of us did not see all of the testimony, but we were able to review it over the course of the day. The committee received detailed testimony from Major General Antonio Taguba, the senior officer who investigated and reported on the Abu Ghraib prison abuses, and from a range of other Defense Department officials.

Today, the Intelligence Committee will be holding a closed hearing to explore matters under their jurisdiction related to these incidents. As we know, both committees met last week in a similar fashion. This afternoon, from 2 to approximately 5 o'clock, in S. 407, there will be an opportunity for all Senators to review photographs and evidence related to the prisoner abuse scandal. We will have the opportunity to view them. They will be there from 2 p.m. to 5 p.m. in S–407, after which they will be returned.

As I stated yesterday, it is our expectation that the Senate will be apprised of the ongoing investigations being conducted by the Department of Defense and of all the actions being taken to ensure these incidents never occur again.

To that end, I simply wish to reflect my perspective that the Defense Department has been very responsive to our requests. Secretary Rumsfeld, General Myers, and their senior aides have updated us as events have unfolded, and they have been attentive to the Senate's requests and to their needs.

As the President said the other day, Secretary Rumsfeld—I agree with the President—has done a superb job as Secretary of Defense in very trying and challenging times. I am confident he is taking action to address these deplorable acts in a deliberate manner, in a transparent manner, and is taking all measures to ensure that these acts will never occur again.

EXTENDING CONDOLENCES TO THE FAMILY OF NICHOLAS BERG

Mr. FRIST. Mr. President, I wish to extend my condolences to the family of Nicholas Berg who, as we all know, was murdered yesterday in Iraq by kidnappers. We grieve for him, and we grieve for his family.

At the same time, the actions of his murderers are a reminder to us of what all our soldiers on a daily basis are undergoing. We must endeavor to bring these terrorists to justice as we work to bring democracy, peace, and the rule of law to Iraq.

Let us keep in mind all of this in the days and weeks ahead, which will be very challenging times for us all.

PASSAGE OF FSC/ETI

Mr. FRIST. Mr. President, I wish to comment, because I did not have the opportunity last night, on the FSC/ETI JOBS bill that was passed last night after a long time on the floor and after a number of amendments, an approximately equal number considered from the Republican and Democratic side. It is a real achievement for this body. It was passed, and it is critical to accelerating jobs and production of jobs in this country.

The bill we passed will bring our trade and tax laws into compliance with our trade agreements finally. As many of my colleagues know, the Europeans are already imposing tariffs on our exports. That Euro tax started in March at 5 percent, and until we act—we have acted in the Senate, and now the House must act, but we must act as a Congress—these will increase 1 percent each month if we do not act.

I do want to mention the energy provisions that are part of this bill that were added on the Senate floor—too many for me to refer to now but provisions such as tax credits for the production of electricity from renewable sources, such as wind and solar. It contains tax incentives to promote the production and use of alternative fuels motor vehicles using natural gas. It includes added incentives to promote the use of clean coal and advanced clean coal technology. There are important incentives to increase the supply of natural gas, and the list goes on.

The Senate has acted, and I look forward to the House passing its version of this legislation so that the House and Senate can go to conference and we can produce a conference bill without much delay and bring it back to the Senate.

There is a lot going on in the Senate both on and off the floor. I appreciate the cooperation of my colleagues as we move America forward.

The ACTING PRESIDENT pro tempore. The Democratic leader is recognized.

AMBASSADORIAL NOMINATIONS

Mr. DASCHLE. Mr. President, this morning the distinguished majority leader made some comments regarding ambassadorial nominations. This is an important issue, and I thought I would take a minute to talk about it and respond to some of the concerns we heard expressed on the floor over the last several days.

Last Thursday, I was pleased the Senate confirmed 20 ambassadors, including Ambassador Negroponte for the tough assignment in Iraq after June 30. I note Ambassador Negroponte's nomination was completed with near record speed, given that he was confirmed 1 week after he was nominated by the President. The other 19 ambassadors were confirmed less than a week after they were reported out of the Foreign Relations Committee.

By confirming those 19, the Senate filled three vacant U.S. Embassies. We had hoped to confirm other career Foreign Service officers for the vacancies that exist, including the Embassy in Nepal, which has been the site of some considerable violence over the last several months. Unfortunately, I am told there is still an objection to his confirmation from the Republican side, meaning the Embassy will continue to be vacant for the foreseeable future.

At the moment, I am told the State Department has nearly 170 Embassies around the world. Eight are currently vacant, meaning they have no confirmed ambassador. Of those eight, the President has chosen not to fill two of them, and two are currently too dangerous to fill. One is awaiting action in the Foreign Relations Committee, and the Republicans are objecting to another. The last two, in Sweden and Finland, are vacant because the political appointees who previously served in those posts did not serve out the terms they were committed to serve.

Last week, several of our Republican friends noted that the vacancies send a negative signal to these countries. I hope the President will move with dispatch to fill these vacancies as soon as possible. I also hope the President will work with us to address another problem: Ambassadors pulled out of the duties for which they were confirmed so that they can assume assignments in or related to Iraq.

Here are three examples. Our Ambassador to the Philippines has not been in Manila for the last several months, even though that country, which is hosting American forces that are training Filipino forces, just went through a

tight national election. Our Ambassador to Kuwait is resident in Baghdad. And our Ambassador to the Bahrain has been in Iraq since February.

That is not to say these jobs they are performing in Iraq are not important; they are. But if we are going to come to the floor and call attention to problems filling vacancies in the diplomatic corps, we ought to be sure we are considering the whole picture.

MEDICARE PRESCRIPTION DRUG DISCOUNT CARD

Mr. DASCHLE. Mr. President, this morning in the New York Times, there was yet another reminder of the great difficulty seniors are having in dealing with the Medicare prescription drug discount card, so-called. I noticed with some amusement a number of our colleagues on the other side of the aisle came to the floor highly critical of those of us who have expressed skepticism and concern about the drug card. Some have even expressed the belief that our motivation in coming to the floor to talk about these shortcomings in the drug card and the prescription drug benefit were politically motivated.

The New York Times has an article this morning quoting people who have nothing to do with politics. The title of the article is ''73 Options for Medicare Plan Fuel Chaos, Not Prescriptions.''

I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, May 12, 2004]

73 OPTIONS FOR MEDICARE PLAN FUEL CHAOS, NOT PRESCRIPTION

(By John Leland)

When Mildred Fruhling and her husband lost their prescription drug coverage in 2001, they suddenly faced drug bills of $7,000 a year. Mrs. Fruhling, now 76, began scrambling to find discounts on the Internet, by mail order, from Canada and through free samples from her doctors.

''It's the only way I can continue to have some ease in my retirement,'' she said.

Last week, when the federal government rolled out a new discount drug program, Mrs. Fruhling studied her options with the same thoroughness. What she found, she said, was confusion: 73 competing drug discount cards, each providing different savings on different medications, and all subject to change.

''I personally feel I can do better on my own,'' she said. But she added, ''At this point, I don't think anyone can make an evaluation.''

Even before they go into effect on June 1, the cards—which are approved by Medicare but offered by various companies and organizations—have been the subject of heated political debate, an AARP advertising campaign about how confusing they are and anxious speculation from those they are supposed to help. Among retirees of different income groups interviewed last week, the initial reaction was incomprehension.

''Even the person who came to explain it to us didn't understand it,'' said Mary Shen, 77, at the Whittaker Senior Center on Manhattan's Lower East side. ''It's not fair to expect seniors, who have enough difficulties already, to have to figure this out.''

Shirley Brauner, 75, pushed a metal walker through the center's lunchroom. ''All I've got to say is they confuse the elderly, including me,'' she said. ''I'm furious. They're taking advantage of the seniors. How can the seniors understand it?''

The prescription drug discount cards are a prelude to the Medicare Prescription Drug, Improvement and Modernization Act, which will provide broad drug coverage starting in 2006. The federal government projects that 7.3 million of Medicare's 41 million participants will sign up for the cards.

Those who wish to do so, however, face the daunting task of choosing the right card.

''What it's like is a bunch of confusion,'' said Katharine Roberts, 77, who said she had not been to a movie in six years, in part because of her drug expenses. ''You might find you really need three cards, and you can only choose one.''

The cards are a 19-month stopgap measure to provide discounts of 10 percent to 25 percent for Medicare participants who have no other prescription drug coverage. In addition, low-income participants are eligible for subsidies of $600 a year.

The Department of Health and Human Services approved 28 companies or organization to issue cards; among them are AARP, insurance companies and health maintenance organizations. Cards cost up to $30 a year. Each card provides different discounts on different drugs, and is accepted by different pharmacies. Participants can choose only one.

To help people sort through the options, Medicare and a company called DestinationRx set up a database on its Web site, medicare.gov, that lists the prices charged under various plans for whatever medications a user types in. People can get similar help by telephone at 1–800–MEDICAR. But some providers complained that the prices on the site were inaccurate, and some cards are not listed at all.

For many retirees, it is too much.

''I'm 85, do I have to go through this nonsense?'' asked Florence Daniels, a retired engineer who said she received less than $1,000 a month from Social Security, of which she paid $179 a month for supplemental medical insurance. She gets drugs through a New York State program, which provides any prescription for $20 or less. To make ends meet and afford her drugs, she said she bought used clothing and put off buying new glasses. Some of her friends travel by bus to Canada to buy drugs; others do without, she said.

Ms. Daniels did not use the government Web site to compare drug cards, in part because she cannot afford a computer. ''I'm trying to absorb all the information, but it's ridiculous,'' she said. ''Not just ridiculous, it's scary. If there was a single card and it was administered by Medicare, and it got the cost of drugs down—wonderful, marvelous. But with these cards, the only thing we know is that we'll have to pay money to other people to administer what we can get and can't get.''

The discount program, which is financed largely by the cards' sponsors, reflects the Bush administration's desire to open Medicare to market principles without allowing participants to import drugs from other countries, which many Democrats favored.

Mark B. McClellan, an administrator at the Center for Medicare and Medicaid Services, said the complexity of the plan encouraged competition. ''We're seeing more plans offering better benefits,'' he said, estimating that people will be able to save 15 percent or more using the cards.

But the complexity of choices will keep many people away from the program, said Marilyn Moon, director of health at the American Institutes for Research, a nonprofit research organization in Washington.

Often, the discount provided by the cards is not as good as what people can get from exiting state programs, union plans or consumer groups, said Robert M. Hayes, president of the Medicare Rights Center, a nonprofit organization that helps individuals with Medicare problems.

Sydney Bild, 81, a retired doctor in Chicago, compared the discount cards with the prices he paid ordering his drugs by mail from Canada. Dr. Bild pays $4,000 to $5,000 for year for five medications. When he checked the government Web site, he said the best plans were about 50 percent to 60 percent higher than what he was paying.

But Dr. Bild said his main objection to the new plans was that companies could change prices on drugs, or change the drugs covered. Medicare requires plans to cover only one drug in each of 209 common categories. Consumers can change cards only once a year. Committing to a card is ''like love—it's a sometime thing,'' Dr. Bild said ''What if I chose one? They could drop my drugs two weeks later.''

Companies began soliciting customers for their discount drug cards last week. When the first pamphlets arrived at Beverly Lowy's home in New York City, Ms. Lowy said, she looked at them carefully. She does not have drug coverage and last year spent about $3,000 on prescription drugs. but the more brochures she read, Ms. Lowy said, the less clear things became.

''You really have to be a rocket scientist,'' Ms. Lowy, 71, said. ''It takes time, energy, and you don't even save money. I thought, 'This one is offering this, this one is offering that.' Finally I decided this isn't for me.''

At the Leonard Covello Senior Center in East Harlem, the new cards seemed opaque. Ramon Velez, 72, a retired taxi driver, said he had watched AARP advertisements in which people read the dense language of the federal Medicare bill.

''I was laughing at the people in the ads, but it's true,'' Mr. Velez said ''Everyone's confused.''

Mr. Velez receives $763 a month from Social Security, and often skips his psoriasis medication because he cannot afford the $45 co-payment under his Blue Cross/Blue Shield plan. He wondered if the new drug cards could save him money.

''But it's very confusing,'' he said ''I'd go to the Social Security office to ask about the cards, but I don't think they'd know.''

Alejandro Sierra, 67 a retired barber, paced around the center's pool table. Mr Sierra takes six medications for diabetes and complications from cataracts and colon cancer, and sometimes skips a medication because he cannot afford it.

''I'm interested in the cards,'' he said. ''But I can't figure it out on the computer, because I can't see.''

Carlos Lopez, the director of the center, said the cards had so far produced little but anxiety. Mr. Lopez asked participants to bring any applications to him before signing them, and warned them about people selling phony cards.

''They're not nervous, but concerned,'' he said. ''They feel, why now? Why do I suddenly need a card for medications?''

Mr. DASCHLE. Mr. President, to excerpt from this article, it talks about:

Last week, when the federal government rolled out a new discount drug program, Mrs. Fruhling—

Mildred Fruhling studied her options with the same thoroughness with which she has been reviewing all of this now for some time. ''What she found,'' according to the article, ''was confusion: 73 competing drug discount cards,

each providing different savings on different medications, and all subject to change.''

Quoting Mrs. Fruhling:

''I personally feel I can do better on my own,'' she said. But she added, ''At this point, I don't think anyone can make an evaluation.''

The article goes on to say:

Even before they go into effect on June 1, the cards—which are approved by Medicare but offered by various companies and organizations—have been the subject of heated political debate, an AARP advertising campaign about how confusing they are and anxious speculation from those they are supposed to help.

Among retirees of different income groups interviewed last week, the initial reaction was incomprehensible.

It goes on to quote Mrs. Florence Daniels, a retired engineer who gets less than $1,000 a month from Social Security. She did not use the Government Web site that is currently available to compare drug cards, in part because she cannot afford a computer. She states:

I'm trying to absorb all the information, but it's ridiculous. Not just ridiculous, it's scary. If there was a single card and it was administered by Medicare, and it got the cost of drugs down, wonderful, marvelous. But with these cards, the only thing we know is that we'll have to pay money to other people to administer what we can get and what we can't get.

Sidney Bild is another retiree quoted in the article, a retired doctor in Chicago. He compared the drug discount cards with prices he paid ordering his drugs by mail from Canada. Dr. Bild pays $4,000 to $5,000 a year for five medications. When he checked the Government Web site, he said the best plans were about 50 to 60 percent higher than he was paying.

At the Leonard Covello Senior Center in East Harlem, the article quotes another senior, Ramon Velez, a 72-year-old taxi driver who is retired. He said:

I was laughing at the people in the ads [that I have seen on television] but it's true. Everyone's confused.

That summarizes what many of us have expressed now for some time. People are confused. They are terribly frustrated. They are anxious. They do not want to have to deal with 73 different options and there is chaos as a result. Unfortunately, the Congress had an opportunity to side with seniors or side with the drug companies, and clearly this is a drug company benefit, this is a drug company program. It has nothing to do with helping seniors.

COVER THE UNINSURED

Mr. DASCHLE. Mr. President, this week is ''Cover the Uninsured Week.'' Today, and for the rest of this week, in all 50 States and the District of Columbia, Americans will take part in nearly 1,500 public events to call attention to the growing number of Americans without health insurance and the growing price they, and all of us, pay for the gaping holes in America's health care safety net.

The nonpartisan campaign is co-chaired by former Presidents Gerald Ford and Jimmy Carter and supported by a diverse coalition of organizations representing business owners, union members, educators, health consumers, hospitals, health insurers, physicians, nurses, religious leaders and others. It is also endorsed by several former Surgeons General and Health and Human Services Secretaries from both Republican and Democratic administrations.

This is the second ''Cover the Uninsured Week.'' Unfortunately, the problem has only gotten worse in the last year. Last year, nearly 44 million Americans, including 8.5 million children, had no health insurance. That is more than 15 percent of all Americans. Tens of millions more Americans were uninsured for at least part of the year. In my State, South Dakota, 12 percent of the people have no health insurance.

Most uninsured Americans go to work every day. In fact, many work two or three jobs. But their employers do not offer health coverage, or they cannot afford the premiums and other costs. And they cannot afford to buy private coverage on their own. So they, and their families, live with the daily dread that one serious illness or accident would wipe them out financially.

Last summer, I received an e-mail from a father who lives every day with that fear. He lives in South Dakota. He and his wife asked me not to use their names or the name of her employer because they do not want to risk losing her job and the very meager health benefits it provides.

This couple has two children, both in high school. When the father e-mailed me last summer, he had just spent hours in a hospital emergency room. He went to the hospital because he thought he might be having a heart attack. He ended up leaving without seeing a doctor because he was afraid he might end up with a medical bill he could not pay.

He said that his chest pains started around midnight on a Saturday night. He asked his son, the only other person at home at the time, to take him to the hospital. Before he left home, the father grabbed a file folder containing his last 5 years' worth of tax returns. Why did he do this?

Two years earlier, his son had been hit by a car, and the family ended up with $34,000 in medical bills. The father did not want anyone at the hospital to think he was trying to take advantage of them when he warned them that he would not be able to pay another huge medical bill. After they arrived at the hospital, the father sat in the waiting room for 3 hours waiting to talk to someone in the hospital's business department. Before he accepted any treatment, he wanted to be sure it was not going to bankrupt his family.

But there was no one in the business office in the middle of the night on a weekend. So he sat there for 3 hours, clutching his tax returns, and praying that he was not having a heart attack. Finally, a nurse came out, spoke to him for a few minutes, and told him he was probably just having a panic attack. So he went home. To this day, he does not know if what he suffered was a panic attack or a mild heart attack. He still has not seen a doctor.

This man and his family are not even counted among the nearly 44 million Americans without health insurance. They used to have family health coverage through his employer, but 3 years ago, that company moved out of State. He has been self-employed ever since. Now, they get their health insurance through his wife's job.

I hear, as I heard on the floor yesterday, from some of our colleagues that in this country, thank goodness, we never have to ration health insurance. If this is not rationing health care, health insurance, I do not know what is. What does one call it when a person sits at midnight on a Saturday night with 5 years of tax records to prove they do not have the ability to pay and then walk out not knowing if they had a heart attack. Tell someone today that is not rationing health care. A family income for this particular family is about $13,000.

Two years ago, this family paid $2,800 in premiums for family coverage and another $5,800 out of pocket for medical costs that weren't covered—$8,600 in all. Their family income that year was about $13,000.

This is what that father wrote to me in his e-mail last summer:

Our family hasn't seen a dentist for over 3 years. I haven't seen a dentist in nearly 10 years. Simply cannot pay the cost. My son needs glasses. My wife has a broken tooth. I haven't seen a doctor in 15 years.

We all work hard and play by the rules and cannot make ends meet. The last three years have been devastating to us. We will probably lose our house because we cannot afford to keep it up. We are a sad case and getting more depressed every day. I am embarrassed and ashamed to even talk about it. I just wanted you to know about the suffering many of us are enduring.

Recently, a woman wrote a long letter to a paper in my State, the Eagle Butte News, about her sister. As a Native American, her sister was theoretically guaranteed free health care from the United States Government, through the Indian Health Service.

Last June, the sister went to see an IHS doctor because of severe stomach pains. The doctor told her she had a bacterial infection and sent her home with an antibiotic. A month later, the pain was so intense she could no longer eat. When she went to IHS clinics, she was given a shot for pain and some antacids and told there was no money to send her to a specialist. By October, she had lost 70 pounds. Last November, she finally saw a different doctor and got an accurate diagnosis. By then, her stomach cancer was inoperable. She died on April 7.

In her letter to the editor, her sister wrote:

She was prepared to accept her fate, which she did bravely and with courage. But I am

not going to accept her death quietly because her life was cut short and I don't want to see others suffer the same fate that she did.

As terrible as these stories are, these people are technically among the lucky ones. The father who sent me that e-mail has what amounts to catastrophic health coverage through his wife's job. American Indians are promised health care by the Federal Government, even though that promise is routinely broken.

The nearly 44 million uninsured Americans have even less than that. None of us should accept this quietly.

The lack of health insurance has devastating consequences for uninsured individuals, for families, and for our Nation as a whole. According to the National Institute of Medicine:

Children and adults without health insurance are less likely to receive preventive care and early diagnosis of illness. They live sicker and die younger than those with insurance.

Eighteen thousand Americans a year die prematurely because of lack of health insurance.

Families suffer emotionally and financially when even one member is uninsured.

Communities suffer as the cost of uncompensated care is shifted onto doctors, hospitals and taxpayers.

The Nation suffers economically. The Institute of Medicine estimates that lack of health insurance costs America between $65 billion and $130 billion a year in lost productivity and other costs.

The National Institute of Medicine has called for universal health coverage for all Americans by 2010. Democrats have been leading the fight for universal health coverage in America for decades. We created Medicare.

We welcome Republicans' concern about the rising number of Americans without health insurance, and we want to work with them to find solutions. But the proposals offered by the President and congressional Republicans will not work.

A recent study concluded that the President's proposals would only reduce the number of uninsured Americans by between 2.1 and 2.4 million people out of the 44 million who have no health insurance. That is not even as many people as have lost their health coverage during his administration. We have to think bigger, for if we ''cover the uninsured'' at that rate, we will continue to lose ground.

Moreover, some of the President's ideas would actually make matters worse. According to CBO, the President's plan to create ''association health plans'' would decrease the number of uninsured Americans by only about 600,000 people—600,000 out of nearly 44 million. But it would increase premiums for 80 percent of employees of small businesses. It would also exempt ''association health plans'' from important State regulations, including solvency requirements and other protections.

The administration's proposed health care tax credit is far too low to help most people who need help. It also ignores two fundamental problems: Premiums for individual health care coverage are far too high for most Americans, and, if you are not young and in good health, you may not be able to purchase an individual health insurance policy at any price.

Health savings accounts are no solution, either. They are a tax shelter that primarily benefit the healthy and the wealthy—those who are least likely to be uninsured. A new study by an M.I.T. expert released just this week concludes that the President's health savings account proposal would actually increase the number of uninsured Americans by 350,000—and cost taxpayers $25 billion. There are better ideas.

After that father sent me that e-mail, we told him about the CHIP program. Today, his two children have health insurance through that program.

In the words of that South Dakota father;

The CHIP program is a tremendous safety net for families. At least now, when my children are sick, I can take them to the doctor. It takes some of the fear away. And, when you walk in to the doctor's office or the hospital and show them that card, they treat you like a human being.

The CHIP program is working. We should continue it—and our other successful Federal health care programs—and ensure they are adequately funded.

We recently introduced a bill that could significantly reduce the number of uninsured Americans and help small business owners create new jobs at the same time. The Small Business Health Tax Credit—S. 2245—would provide small businesses with tax credits to cover up to 50 percent of the cost of their employees' health insurance. Businesses with 36 to 50 workers would get a tax credit worth 30 percent of their employee health care costs. Companies with 26 to 35 workers would get a 40-percent tax credit. And companies with 25 or fewer employees would get the full 50-percent tax credit. This is a far more generous tax credit than what small businesses can claim now.

Business owners and entrepreneurs are working hard to make a profit—but their profits are being eaten up by out-of-control health care costs.

Finally, later this morning, my colleagues and I are going to announce a bold new commitment that will enable the Federal Government to offer every American access to quality health care at an affordable price within 2 years. We look forward to working with our Republican colleagues to make that commitment a reality.

I recently received another letter from a woman in South Dakota. She wrote:

I have noticed that gas stations continue to place spare-change jars on counters for fundraisers, and small towns often hold pancake breakfasts for the same reason. However, rather than raising money for band trips and sports, they are increasingly for a local uninsured person's health care.

There are better ways. Working together, we can tap the spirit of community and compassion those spare-change jars represent, and we can find ways to ensure that every American is able to see a doctor when he or she is sick.

We do not have to be the only major industrialized nation in the world that fails to guarantee health care for all its citizens. We can do better, and none of us should rest until we do.

I yield the floor.

MORNING BUSINESS

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina.) Under the previous order, there will be a period for the transaction of morning business for up to 60 minutes, the first half of the time under the control of the majority leader or his designee, the second half of the time under the control of the Democratic leader or his designee.

The Senator from Wyoming.

HEALTH INSURANCE

Mr. THOMAS. Mr. President, I would like to take the first 10 minutes of our 30 minutes and talk a little bit about the uninsured and talk a little bit about insurance, of course. I am pleased this is uninsured week, that we are focusing on that problem of uninsured folks. I think it is a great thing that we ought to be doing. There are some alternatives that we can pursue.

I have been particularly involved in the rural health care aspect, being from Wyoming where, of course, almost all of our health care is rural health care. We have had good results in our Medicare bill that was passed last year. We have equity pay for the providers in that bill. We have assistance for those serving underserved areas. We have a number of things that are very necessary. I am pleased they are there.

We have been focusing on Medicare, of course, because that is the Government's responsibility directly. We have made some good progress on that. Among other things, we seek to help seniors with pharmaceutical costs. We have a program out there. I am a little disappointed the minority leader is nothing but critical of it. It is out there and we ought to be trying to make it work now rather than trying to oppose it for political reasons. I think that is a mistake.

There are opportunities out there for the elderly to enjoy a considerable amount of assistance, particularly low-income people, with the $600 assistance in addition to a 20-percent reduction. The fact that there are 70 cards out there—all you have to do is call 1–800–Medicare and get the advice that is necessary to do it. I wish we could support something instead of totally always being critical.

In any event, we have worked on those, and I think it is time that we

look, now, at the broader aspects of health care. That includes many other things. We have a great system. We have probably the best health care system in the world. However, if that system gets in the position where access is limited by the costs, then of course we are not making it possible for everyone to participate. That is really where we are.

The costs of health care have increased substantially. There are lots of reasons for that. One of them is the new equipment that is being used, which everybody wants to take advantage of, of course, because it is the high-tech stuff.

Another reason, obviously, is the liability problem we have tried to address on the floor a number of times, and we have not been able to move past the obstructionism on the other side. The liability problem not only results in the cost of the liability insurance going up, but it also results in having more testing, more specialists, more costly health care simply to avoid the opportunities that people might have to sue. So there are a lot of things.

I had the opportunity not long ago to talk to the management of one of the largest hospitals we have in Wyoming. It was interesting when the financial officer broke down the situation with regard to the funding. First, he talked about the billing level, which, of course, is quite above the cost level because they need to bill some more than it costs to make up for those who do not pay. But the point was, they broke down the number of people who were there, the number there in Medicare, the number there on Medicaid, the number that had their own insurance, the number that were uninsured, and the emergency ones. Part of the problem is Medicare is not paying the full cost, Medicaid does not pay much of the cost at all, so then you get to the uninsured and, of course, many of them do not pay, are not able to pay at all, and you have the emergencies, so what happens? It goes to those of us who have insurance.

As I go about my State talking to people, I hear more about the cost of health insurance than anything else that you talk about in a town meeting. It is largely because of some of those shifts there.

As has been pointed out, we have over 40 million Americans who do not have health insurance, and that is unacceptable. We need to do something about that. The cost of health care—of course we ought not to forget that continues to grow almost unchecked. It has grown to $1.6 trillion in 2002, a 9.3-percent increase over the previous year. You cannot keep having a 10-percent increase in these costs and yet be able to deal with them. The health care cost portion of the gross national product in 2002 was nearly 15 percent, up from 14 percent the year before.

This is part of it that we ought not forget—the cost of health care. We ought to look at the costs as well as who is going to pay. Unfortunately, that is about all we ever talk about—who is going to pay. There is more to it than that. These rates cannot continue to grow at that rate.

We have had a considerable amount of planning in our State with respect to the uninsured. We had a group—I am glad there has been a task force here, and we have about 14 percent of our people in Wyoming who are uninsured.

It is largely because of the cost. We have a number of things, however, that have been suggested which I think we ought to take a look at. There are some important special recommendations.

We could expand public programs such as Medicaid and CHIP. The minority leader was just talking about the CHIP program and why it should be such a surprise since it has been there for a good long time. It is one that the States participate in funding. We need to do that. It needs to be funded at the full level by the States.

We need to provide a buy-in option for public programs so people have an opportunity to buy into these programs that now exist. We need to increase the reimbursement for public programs. They are not paying their share. Therefore, private insurance goes up, and those people who can't afford it or even come close to affording it are even less likely because it has gone up more.

We need to target tax credits and Federal subsidies. I think tax credits are valuable. That would allow people to take a higher crisis sort of a policy.

Community health centers that deal with people who aren't able to have insurance and need help is an excellent way to deal with this.

Of course, we need to do something to help participation of employer-sponsored programs. That is not the only answer because a lot of people are self-employed.

Of course, we also need to push for personal responsibility for health. An interesting program has been talked about in Wyoming. It is a group called the ''Be Well Program.'' They would deal with employer groups that cover their employees. The employees would sign an agreement to keep up their own health, to exercise, and do some of the things that we all talk about and which not everyone does. That would be a condition of being insured. It is already in a couple of contracts.

There are a lot of things to do, and the task force has a number of ideas. I think we need to move forward to try to do some things. Most of us I don't believe favor a socialist program where the Government runs all of the health care programs. That is evidently not the kind of thing we want to have because all of the Canadians would come here.

But, nevertheless, there needs to be a program that gives an opportunity for people to fully participate. I am delighted that we are moving forward with it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. TALENT. Mr. President, thank you for recognizing me. I came out on the floor to talk for a few minutes about the health care task force, and particularly about association health plans or small business health plans.

I am very pleased that we are talking about the health care task force report. I want to talk a little bit about the drug discount card in part because I think it is important that we talk about it. I want my senior citizens to be aware of this benefit and to use it. I think it is something everyone ought to consider. For many of them, it is going to be the relief they have been looking for many years.

I want to say that it is hard for me to understand these attacks which are occurring on a fundamental level against the discount card. Without question, this card is going to provide relief to tens and tens of thousands of people who have been choosing between the other necessities of life and their prescription drugs.

There are 200,000 senior citizens in the State of Missouri today who are buying prescription drugs entirely out of pocket. It is not very good for them for two reasons: In the first place, they are buying entirely out of pocket. They are paying for it entirely on their own. In the second place, they are paying the highest price entirely on their own. When they walk into the pharmacy to get prescription drugs, they are facing the prescription drug companies alone. They are not part of a broader pool that has purchasing power and is able to negotiate a discount over the sticker price of the drugs. So they are paying the highest price, and they are paying it entirely out of pocket. Many of them are the poorest senior citizens. As a result, they do not get the prescription drugs. They get sick, or they take every other pill.

I have talked personally to scores of people like that over the years. I had a hearing of the Aging Committee that Senator GREGG was kind enough to let me hold in Missouri. I had senior citizens come and testify.

Everybody in the Senate is familiar with this. This discount card is going to provide relief. Seniors are going to have access to a variety of cards that will give them discounts off the prescription drugs. For lower income senior citizens, those receiving retirement of less than $1,000 a month, they will get $600 from the Government toward the price of the discounted drugs. The average price, which it is for prescription drugs, for senior citizens is about $1,400 a year for prescription drugs. That person in Missouri right now is paying the entire $1,400 out of pocket, and probably more than that since they are paying the highest price. With a card, they will go into the pharmacy, the pharmacist will swipe the card through the machine and say: For your Lipitor, which was costing you $80 a

month, under this card it costs you $65 a month. The first $600 of that this year the Government is paying for it. Instead of paying $1,400, which you couldn't pay—they get nothing, is what it comes down to—they end up getting a $200 or a $300 discount, and the Government pays $600 off of that, and they can afford not to get sick anymore.

I think that is pretty important.

I understand the concerns on the other side of the aisle that this bill isn't Government-dominated enough. I recognize that. They are saying basically this is federally subsidized, but they are buying the prescription drugs from private organizations. That is not a good thing. It is true. This is federally subsidized, but we are buying the prescription drugs from private companies.

There is a word for a Federal health care plan that pays for health care costs of senior citizens so that they can go to private companies and get health care services or goods. Do you know what the word for that is? Medicare. That is what Medicare is. When Medicare was set up in 1965, the Government could have gone on and done what it has done with the VA health care system—buy or build new hospitals, hire physicians, and run the whole thing as a Government organization. We didn't do that. What we did instead was set up a system where we would pay for the cost of Federal health care, but seniors would have a choice of private providers if they wanted. That is what this prescription drug plan is about, what it is modeled after.

It is going to help tens of thousands of people in my State of Missouri at a minimum.

I hope we can get behind it and make it work as well as we can possibly make it work.

Let me switch now to talk a little bit about the health care task force which addresses another huge problem; that is, the rising cost of health insurance premiums.

There are a number of things in this health care task force report. I recommend it to every Member of the Senate.

One of the key things about it is that it is designed to attack the trends in the system which are driving those costs up. I really like this. It is time for us to stop concentrating on how we can keep feeding this beast and start getting the beast on a leash, if you will.

It is fine to subsidize the cost of health care for people who can't afford it. I certainly support it. I just talked about prescription drug costs. But we also need to bring down the costs of health care. There are a lot of things in this report that are designed to do that.

Liability reform is one of them. Another is the emphasis in the report on the use of information technology, which is very important. Health care is behind in information technology. If we can get the same kind of architecture of technology in health care that we have in other parts of the economy, we have the potential to save tens of billions of dollars.

There is important regulatory reform in the bill that will lower cost.

I met with a bunch of nurses and nursing students at Southeastern Missouri University and asked them what their big concerns were about health care. I was really surprised. The thing that bothers them the most is the amount of time they have to spend in filling out forms to comply with the oversight of one group or another. It is very demoralizing, and it raises costs.

The task force also includes associated health plans, which I want to talk about briefly.

Of the people who are uninsured—there are about 43 million—two-thirds either own a small business, work for a small business, or are a dependent of someone who owns or works for a small business. We can ask ourselves, why is that? Is it because small businesspeople are more chintzy than big businesspeople? Small businesspeople and farmers do not care about their employees as much as the larger businesses? They do not want to buy health care? That is one possibility. But I don't think it is true.

The reason many of these people, working people who work for small businesses, are not getting health insurance is that costs for buying health insurance are higher for small businesses than they are for bigger businesses because the administrative costs cannot be spread across as big a pool. The costs of getting health insurance for someone who runs a small business are about three times per employee what they are for someone who runs a big business.

Small business health plans allow small businesspeople to pool together through a national trade association and get health insurance as part of a big national pool.

My brother owns a Little Tavern restaurant. It is a great place. I have talked about it before in the Senate. If anyone is ever in the St. Louis area and wants a good hamburger, give me a call and I will give a recommendation. My brother has a little restaurant. He could join the National Restaurant Association and become like a little division of a big company. He would get health insurance then as part of a 10,000, 20,000 or 30,000-person pool, the same as the employees of Anheuser-Busch, which is located in St. Louis, or the employees of Hallmark, which is located in Kansas City. It will lower his costs 10 to 20 percent by reducing the administrative costs. It would not cost the taxpayers anything because we are not feeding that beast with tax dollars. We are empowering people to put the beast on a leash to reduce costs that are driving up health insurance premiums without adding anything to quality or accessibility.

There is no reason we should not do this. I am pleased it was included in the task force report. We worked on it. I hope we can get it, along with the other things in this report.

We have to remember that as the Democratic leader was saying, if Americans are working and do not have health insurance, or they have health insurance and these costs continue to go up, this is the No. 1 thing employees worry about as far as their job is concerned. I have had a lot of folks in the last recession—and I am pleased we are coming out of this now—who lost jobs and said to me, We have families; we have to get our health insurance back. It is very difficult to provide it when premiums go up and up and up all the time.

We can do something about it. There are a number of different ideas out there. Many of them are in this task force report. I commend it to the Senate. It is time to get these things done. We can all come down here and talk about stories back home of people who are suffering because of this situation. We need to get something done. It would be a huge step forward if we all said we are going to sit down as a group, we will work something out, we will agree beforehand we will not filibuster everything because we do not like this particular aspect of the package or that particular aspect of the package. We are not going to take small things we disagree with in a bill and treat them as if there is some enormous attempt by people—whom we disagree with honestly—to do something that is venal or wrong. These problems are big enough to solve if we try to stick together and agree where we can agree and disagree reasonably where we do disagree. They will be impossible to solve if everything becomes a subject of some kind of a political attack.

I appreciate the time of the Senate and I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I commend the Senator from Missouri for his advocacy on the part of his constituents and, indeed, all the American people, to make sure more have access to good quality health care.

I will talk about the work of the task force created by Majority Leader FRIST, which was chaired by Senator JUDD GREGG of New Hampshire. This work, over the last number of months, promised a lot in terms of new ideas and new approaches. It will help make sure health care is accessible to more Americans.

It is amazing, but we spend in this country somewhere between $1.4 trillion and $1.7 trillion on health care. That is a lot of money, even in Washington. Most people cannot even get their minds around what $1 trillion is. I promise you, I cannot. But I do know that is an enormous amount of money.

If we ask people who should know about it, they will say there is enough money in the health care delivery system in the United States of America to make sure everyone has access to

health care. The problem is what we call sometimes a ''health care system'' is not a system but a patchwork of different delivery methods. It is a local taxing jurisdiction, hospital districts, using property taxes in some States, of course supplemented by other taxes, and of course there is Federal Government-provided health care available, partially, at least, through the CHIPS Program, through Medicaid and through Medicare.

We do know there is a tremendous challenge to make sure everyone in this country has access to good quality health care. Those who do not have health insurance represent one of the biggest challenges. One of the things we have learned is this is not so much a challenge of getting everyone insurance. The real question is, How do we make sure everyone has access? Even for those who do not have health care insurance, we need to make sure they have access to health care.

Right now the irony is the Federal Government has already gotten into this area and mandated if you have nowhere else to turn for health care, you know you can always show up at the local emergency room at your hospital and get that health care provided. If you cannot pay for it, it is provided without charge to the patient. The problem is, in many major metropolitan areas on any given Friday or Saturday night, when the demands on the emergency room are great, many emergency rooms are on divert status, which means they cannot take anymore patients because they are full.

However, 80 percent of those people being treated in emergency rooms could be and should be more humanely, more efficiently, and less expensively provided health care in some other setting—in a clinic, for example.

One of the most amazing things about our health care delivery system in our country, while we do compensate—although some argue it is not as generous as it should be—we do compensate health care providers for providing health care to people after they are sick, we do a pretty lousy job of trying to give people access to what they need in order to prevent their getting sick.

We have made good strides forward with the Medicare bill we passed last year to provide prescription drugs to many seniors who did not have that. Of course, this Medicare discount drug card Senator TALENT talked about is an interim step that leads to the full implementation of that program in a couple of years when the vast infrastructure can be created to deliver that system.

For example, for someone who has not previously had access to a drug like Lipitor, one of the statin drugs—and there are a number of them; that is just one trade name—that perhaps can prevent someone from having to have more expensive, invasive, and dangerous surgery, either bypass surgery or angioplasty or perhaps placement of a stent, or something that costs a lot of money to treat if the basic cause that could be prevented is left untreated through the use of prescription drugs.

We have made a great step forward to broaden the number of people, to increase the number of people preventive measures are available to. That is smart. We ought to continue along that trend.

Mr. President, I ask to be reminded when I have 1 minute remaining of my time.

One of the things I believe is a great safety net in this country, that I have come to learn about and see used so well in my State, is federally qualified community health centers. The great thing about community health centers is they provide clinical—that is, nonemergency room—access to health care in your neighborhood, where you pay based on a sliding scale, based upon your ability to pay. These are actually designated health centers by the Federal Government. They have access to a number of important programs, for example, the Federal 340B Discount Pricing Program. This task force recommends that program be expanded to more people, so we can bring down the price of prescription drugs.

But these community health centers provide, on a sliding scale, access to care in one's local community, which I think is very important. I was told by the head of Parkland Hospital, one of the largest public hospitals in Dallas, TX, for example, that people show up in the emergency room to have a baby, where they have no health insurance. Because they have no health insurance, and may never have seen a doctor before they show up in the emergency room, the risk of injury to that baby—either it being born prematurely or some other health risk—goes up exponentially.

Even though they do not receive any income for it, Parkland Hospital routinely provides prenatal care for mothers, on a free basis, even though they do not get a penny paid by that pregnant mom. One reason is because they know the cost of 1 day in the neonatal intensive care unit at the Parkland Hospital costs about $10,000. Now, of course, I would like to say we would do that from our sheer desire to see healthy babies, but, unfortunately, money drives access.

My point is, in this instance what Parkland Hospital, in Dallas County, has decided to do in a way to help control costs is to ensure more healthy babies are born who do not need access to the neonatal intensive care unit, as they provide free prenatal care to these pregnant moms. But community health centers can make sure this pregnant mom has access to somewhere other than the emergency room of the hospital in which to get that important prenatal care.

We also would increase, as part of this task force report, the number of medical volunteers by extending critical Federal tort claims act liability coverage. This is an area that I think is very important.

The PRESIDING OFFICER. The Senator has 1 minute.

Mr. CORNYN. That is very important because the medical liability crisis in this country does not only hurt doctors and hospitals, but it hurts patients who are denied access to health care. One of the issues we have to deal with—I know the leader has brought it up several times, and we have been unable to get 60 votes to get an up-or-down vote on the merits of the legislation—is medical liability reform.

Whether it is increasing access to specialty care, increasing the number of federally qualified community health clinics, increasing access to prescription drugs by extending the Federal 340B Program, or creating an exemption so religiously sponsored health systems can create community health systems, integrated health systems, we have to do something about this crisis in this country. It is a crisis of access, not only of insurance. But I think we are well on our way to a good start.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

ORDER OF PROCEDURE

Mr. REID. Mr. President, how much time is remaining on the side of the Democrats?

The PRESIDING OFFICER. There is 20 minutes.

Mr. REID. Mr. President, I yield 5 minutes to the Senator from Oregon, Mr. WYDEN, and 15 minutes to Senator STABENOW.

The PRESIDING OFFICER. The Senator from Oregon is recognized for 5 minutes.

HEALTH CARE

Mr. WYDEN. Mr. President, I have always believed health care policy needs to be bipartisan, and needs to be ideas driven. So as we talk about health care, I come to the floor to mention an idea our colleague Senator KERRY has talked about which I think is especially promising for small business.

The reality is, a very high percentage of the uninsured work in small businesses. These small businesses are dying to cover their people. The owners of those small businesses do not get up in the morning and say: We want to be rotten to our workers in not giving coverage. They are dying to figure out ways to help their small businesses.

Senator KERRY has come up with an idea that I think is really innovative. He has said, given the fact resources are scarce, that dollars for trying to address the uninsured, the needs of our small businesses, are restricted, we ought to target those dollars where they are needed the most. He has proposed the Federal Government, with

respect to small business, concentrate on instances where there are very large bills, bills above $50,000. He would have the Federal Government step in and pick up about 75 percent of those costs. The premiums that would be charged employers and their workers could be trimmed about 10 percent in this fashion.

We know it has been documented that those who are particularly in need of assistance when they face these very high bills are a very large proportion of the health care costs in America. These health care costs are particularly punitive for the small businesses. Small businesses are always walking on economic tightropes. If one employee at a small business gets sick, this can devastate the entire budget of the company for not just health care coverage but the entire coverage of the business.

I am very pleased Senator KERRY has brought forward this idea. I think it is one that can be supported in a bipartisan way. The Congress, over the years, has tried to look at ways to strengthen the employer-based system of coverage. I think we all understand if you are talking about starting scores of new programs, that would be very difficult at this time. I also do not think it is warranted at a time when we are spending $1.7 trillion on health care. If you divide that up by 270 million Americans, it comes to more than $17,000 for a family of 4. So we are spending a lot of money.

The challenge now is to really zero in on areas where the Government can be best utilized. I think Senator KERRY's proposal with respect to trying to deal with the costs of individuals who work at small businesses with very high bills is particularly appropriate at this time. It is something I think could be built in a bipartisan way.

I will have more to say about this and other proposals in the days ahead. But as we come to the floor and talk—Democrats and Republicans—about health care, I think we ought to make our policies bipartisan. We ought to make them ideas driven. The kind of idea that has been outlined by Senator KERRY with respect to the needs of individuals who work at small businesses with very large bills is the kind of thinking that would make a difference now. It is cost effective. I think it warrants support on a bipartisan basis.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. WYDEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. STABENOW. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. STABENOW. Mr. President, I rise to lament the fact that we have made no progress in reducing the uninsured since 2001. This is an issue we all need to be working together on because it affects everyone we represent, every family, every business. In fact, nearly 4 million more people are uninsured today than the day this administration took office.

We need to light a fire. We need to have a sense of urgency about getting this done for people. We can do much better than we are doing. We live in the United States of America. We are the greatest, the richest country on the face of the Earth. When we have the will, we can make great things happen. That is what we need to do here.

We enacted Social Security in 1935. This program now serves as our universal retirement, life insurance, and disability insurance system for millions of people. A generation later we passed Medicare, our Nation's universal health plan for seniors and the disabled. Even though I am very concerned about the recent law that we passed and whether it is a step backward—and I believe it is—the fact is, we put in place in 1965 a policy based on a set of values that said, if you are 65 or older, if you are disabled, you are going to receive health care.

Interestingly, at that time, if we go back and read the record, this was viewed as a compromise, a first step. Originally in 1960, what was being debated was health care for everyone. Then when there was not the support to pass that, the compromise was to start with older Americans and with the disabled, to provide health care first to them and then to open it up to all of our citizens. Yet today we are not seeing that happening. It is now time to go the last mile. We need to make sure all Americans have the same access to health insurance that we do in the Senate.

As most colleagues know, approximately 80 percent of the people who don't have health insurance are working—one job, two jobs, three jobs, working very hard to care for their families. They have jobs. They go to work. They play by the rules. Unfortunately, health insurance is so expensive, they can't afford it or the business they work for can't afford it. We need to value the hard work these people are doing. We need to recognize and ensure that if they work for a living, they have the health insurance they need for themselves and their families.

Regrettably, this administration has been basically silent on the uninsured. When members of the administration do speak, they are negative and pessimistic about providing access to affordable health care for all Americans. For example, in January of this year, the National Academy of Sciences said that the President and Congress should work to achieve health insurance coverage for all Americans by 2010. That is a worthy goal, although I would argue too far into the future.

What was the response? The administration's top health official, Health and Human Services Secretary Tommy Thompson said universal health coverage is ''not realistic . . . I don't think, administratively or legislatively, it's feasible.''

Then 2 months later Secretary Thompson went on to minimize the Nation's uninsured problem by saying:

> Even if you don't have health insurance in America, you get taken care of. That could be defined as universal health care.

In other words, just go to the emergency room to get your health care coverage.

In fact, too many people are doing that now. Sometimes you can just get taken care of, but by the time an uninsured patient reaches the emergency room, it is often too late to provide lifesaving health care. Many of the uninsured forgo less costly preventative care and early treatments, getting sicker as what money they have goes for the rent, the car, the kids, and food.

Hospitals in Michigan indicate they have provided over $1 billion in health care for the uninsured, uncompensated care this last year. Think what we could do if we could capture that $1 billion and put it into a system that worked on the front end, that kept people healthy, that provided preventive care, that made sure they could see the doctor in his office or her office rather than having to wait for the emergency room.

We can do better than this in the greatest country in the world. I do not think we should throw in the towel. We should not say we can't do it, it is not feasible. It is time to create the will. The fact is, we can do it, if we pick the right priorities. We can do the same thing we did when we passed Social Security and Medicare—two great American success stories that have provided economic security for people as they grow older and retire and health care for older Americans and the disabled. In my book, that was all about values, about what is important. This certainly is equally important. We should be optimistic. We should join all other modern countries and make sure all Americans have access to affordable health insurance.

One of the reasons more and more families can't get health care is because the costs are spiraling out of control. In fact, from 2000 to 2003, the average annual cost of premiums doubled, making health insurance out of reach for more and more middle-income families and small businesses. In 3 years, the costs have doubled. Medical problems, in fact, were a factor in nearly half of all nonbusiness bankruptcy filings. Overall, health care costs have gone up nearly 14 percent last year. Meanwhile, workers' earnings increased by only 3 percent. You can see the hole people find themselves in.

This is the fifth year in a row premiums outpaced earnings. We all know that one of the reasons health care costs have escalated so fast is the spiraling price of prescription drugs. I

have talked frequently about this. I speak about it and focus on it because it is such a driver for the costs of health care and health insurance.

What has Congress done to fix this problem? Unfortunately, absolutely nothing. In fact, the new Medicare law failed to do anything to lower prescription drug prices. At the same time approximately 3 million retirees will actually lose their prescription drug coverage under this new law. This bill actually takes us backward instead of forward.

The only major health care coverage initiative this administration has proposed is actually for the Iraqi people. Our country has made a commitment to moving forward with universal health coverage for all Iraqi citizens. We have provided $950 million to build hospitals and clinics in Iraq.

Please do not misunderstand what I am saying. I certainly want to be supportive of efforts to provide health care in Iraq.

What about us? What about Americans? I also want to help American families who are working hard every day, playing by the rules in this great country, and struggling to pay their bills and care for their families. I think we can help both the people of Iraq and Americans at the same time. It is our moral obligation, I believe, to make sure we are helping American families as well as others.

Mr. President, working families deserve access to affordable care for themselves and for their families. It is going to take leadership to accomplish this. The administration has had almost 4 years to take action, and it has not.

I believe it is time for bold change. I believe that when we are looking at the price of prescription drugs, we need to take out that provision in the new Medicare law that says Medicare cannot negotiate for group discounts. That is pretty basic. We know that one of the main ways you are able to lower prescription drug prices, or the price of any product, is to be able to get a group discount. Everybody knows that. Yet, in this new Medicare law, Medicare is specifically prohibited from doing that. Who benefits from that? Certainly not the taxpayers, certainly not American seniors or the disabled, and American families certainly don't benefit from that. The prescription drug industry benefits from that. What we have seen under the new Medicare law, rather than providing lower prices for people, we have 40 million seniors who are being locked into paying top dollar, and that makes absolutely no sense.

We can do something about that. We can make changes in the Medicare law so it works for people. We can also lower prices immediately by simply allowing the local pharmacists at the local drugstores in America to be able to do business with pharmacists in Canada or other countries, where they can provide FDA-approved drugs and processes and bring the prescription drugs—actually made in America—back to America so we can get the same deal everybody else gets around the world.

We have a wonderful, bipartisan bill that has been put together. I am hopeful that we will bring it to the Senate floor as soon as possible and that we are able to pass what is called reimportation of prescription drugs and lower prices. I am very hopeful and I am proud to be a cosponsor of Senator DASCHLE's effort and vision to say that, by 2006, we are going to make a commitment that every American has access at least to the same level of health care that we receive. This is one of the few instances where employees—elected officials—have better health care and benefits than the employers. It is time to turn that around. It is time to make a commitment.

Medicare, after it was passed, was put together in 1 year. We have great American ingenuity. If we are bold and have a vision and have a right priority, we can make sure that a year from now we are talking about the implementation of health insurance for everyone that is affordable and available to every single American.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. All time has been yielded. Morning business is closed.

INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2003

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. 1248, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1248) to reauthorize the Individuals with Disabilities Education Act, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Health, Education, Labor, and Pensions, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

S. 1248

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE.

[This Act may be cited as the ''Individuals with Disabilities Education Improvement Act of 2003''.

[TITLE I—AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

[SEC. 101. AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT.

[Parts A through D of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) are amended to read as follows:

["PART A—GENERAL PROVISIONS

["SEC. 601. SHORT TITLE; TABLE OF CONTENTS; FINDINGS; PURPOSES.

["(a) SHORT TITLE.—This Act may be cited as the 'Individuals with Disabilities Education Act'.

["(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

[''(c) FINDINGS.—Congress finds the following:

[''(1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

[''(2) Before the date of the enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94–142), the educational needs of millions of children with disabilities were not being fully met because—

[''(A) the children did not receive appropriate educational services;

[''(B) the children were excluded entirely from the public school system and from being educated with their peers;

[''(C) undiagnosed disabilities prevented the children from having a successful educational experience; or

[''(D) a lack of adequate resources within the public school system forced families to find services outside the public school system.

[''(3) Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this Act has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public education and in improving educational results for children with disabilities.

[''(4) However, the implementation of this Act has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.

[''(5) Over 25 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by—

[''(A) having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom to the maximum extent possible in order to—

[''(i) meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children; and

[''(ii) be prepared to lead productive and independent adult lives, to the maximum extent possible;

[''(B) strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home;

[''(C) coordinating this Act with other local, educational service agency, State, and Federal school improvement efforts, including improvement efforts under the Elementary and Secondary Education Act of 2001, in order to ensure that such children benefit from such efforts and that special education can become a service for such children rather than a place where they are sent;

[''(D) providing appropriate special education and related services, and aids and supports in the regular classroom, to such children, whenever appropriate;

[''(E) supporting high-quality, intensive preservice preparation professional development for all personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities, including the use of scientifically based instructional practices, to the maximum extent possible;

[''(F) providing incentives for whole-school approaches, scientifically based early reading programs, positive behavioral interventions and supports, and prereferral intervention to reduce the need to label children as disabled in order to address their learning and behavioral needs;

[''(G) focusing resources on teaching and learning while reducing paperwork and requirements that do not assist in improving educational results; and

[''(H) supporting the development and use of technology, including assistive technology devices and assistive technology services, to maximize accessibility for children with disabilities.

[''(6) While States, local educational agencies, and educational service agencies are primarily responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a supporting role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.

[''(7) A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

[''(8)(A) The Federal Government must be responsive to the growing needs of an increasingly more diverse society.

[''(B) America's ethnic profile is rapidly changing. In the year 2000, 1 of every 3 persons in the United States was a member of a minority group or was limited English proficient.

[''(C) Minority children comprise an increasing percentage of public school students.

[''(D) With such changing demographics, recruitment efforts for special education personnel should focus on increasing the participation of minorities in the teaching profession.

[''(9)(A) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation.

[''(B) Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education.

[''(C) This poses a special challenge for special education in the referral of, assessment of, and services for, our Nation's students from non-English language backgrounds.

[''(10)(A) Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.

[''(B) More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.

[''(C) African-American children are over identified as having mental retardation and emotional disturbance at rates greater than their white counterparts.

[''(D) In the 1998–1999 school year, African-American children represented just 14.8 percent of the population aged 6 through 21, but comprised 20.2 percent of all children with disabilities.

[''(E) Studies have found that schools with predominately Caucasian students and teachers have placed disproportionately high numbers of their minority students into special education.

[''(11)(A) As the number of minority students in special education increases, the number of minority teachers and related services personnel produced in colleges and universities continues to decrease.

[''(B) The opportunity for minority individuals, organizations, and Historically Black Colleges and Universities to participate fully in awards for grants and contracts, boards of organizations receiving funds under this Act, and peer review panels, and in the training of professionals in the area of special education is essential if we are to obtain greater success in the education of minority children with disabilities.

[''(d) PURPOSES.—The purposes of this title are—

[''(1)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment, further education, and independent living;

[''(B) to ensure that the rights of children with disabilities and parents of such children are protected; and

[''(C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;

[''(2) to assist States in the implementation of a Statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

[''(3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting systemic-change activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and

[''(4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

["SEC. 602. DEFINITIONS.

[''Except as otherwise provided, as used in this Act:

[''(1) ASSISTIVE TECHNOLOGY DEVICE.—The term 'assistive technology device' means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.

[''(2) ASSISTIVE TECHNOLOGY SERVICE.—The term 'assistive technology service' means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes—

[''(A) the evaluation of the needs of such child, including a functional evaluation of the child in the child's customary environment;

[''(B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child;

[''(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;

[''(D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

[''(E) training or technical assistance for such child, or, where appropriate, the family of such child; and

[''(F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of such child.

[''(3) CHILD WITH A DISABILITY.—

[''(A) IN GENERAL.—The term 'child with a disability' means a child—

[''(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

[''(ii) who, by reason thereof, needs special education and related services.

[''(B) CHILD AGED 3 THROUGH 9.—The term 'child with a disability' for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child—

[''(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

[''(ii) who, by reason thereof, needs special education and related services.

[''(4) CORE ACADEMIC SUBJECT.—The term 'core academic subject' has the meaning given the term in section 9101(11) of the Elementary and Secondary Education Act of 1965.

[''(5) EDUCATIONAL SERVICE AGENCY.—The term 'educational service agency'—

[''(A) means a regional public multiservice agency—

[''(i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and

[''(ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State; and

[''(B) includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school.

[''(6) ELEMENTARY SCHOOL.—The term 'elementary school' means a nonprofit institutional day or residential school that provides elementary education, as determined under State law.

[''(7) EQUIPMENT.—The term 'equipment' includes—

[''(A) machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house such machinery, utilities, or equipment; and

[''(B) all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published, and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

[''(8) EXCESS COSTS.—The term 'excess costs' means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student, as may be appropriate, and which shall be computed after deducting—

[''(A) amounts received—

[''(i) under part B of this title;

[''(ii) under part A of title I of the Elementary and Secondary Education Act of 1965; and

[''(iii) under parts A and B of title III of that Act; and

[''(B) any State or local funds expended for programs that would qualify for assistance under any of those parts.

[''(9) FREE APPROPRIATE PUBLIC EDUCATION.—The term 'free appropriate public education' means special education and related services that—

[''(A) have been provided at public expense, under public supervision and direction, and without charge;

[''(B) meet the standards of the State educational agency;

[''(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

[''(D) are provided in conformity with the individualized education program required under section 614(d).

[''(10) HIGHLY QUALIFIED; CONSULTATIVE SERVICES.—

[''(A) HIGHLY QUALIFIED.—The term 'highly qualified', when used with respect to any special education teacher teaching in a State, means a teacher who—

[''(i)(I) meets the definition of that term in section 9101(23) of the Elementary and Secondary Education Act of 1965, including full State certification as a special education teacher through a State approved special education teacher preparation program (including certification obtained through State or local educational agency approved alternative routes); or

[''(II) has passed a State special education licensing examination and holds a license to teach special education in such State,

except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's statute on public charter schools; and

[''(ii) does not have certification or licensure requirements waived on an emergency, temporary, or provisional basis;

[''(iii) if the teacher provides only consultative services to a regular education teacher with respect to a core academic subject, the special education teacher shall meet the standards for subject knowledge and teaching skills described in section 9101(23) of the Elementary and Secondary Education Act of 1965 that apply to elementary school teachers; and

[''(iv) if the teacher provides instruction in a core academic subject to middle or secondary students who are performing at the elementary level, the teacher shall meet the standards for subject knowledge and teaching skills described in section 9101(23) of the Elementary and Secondary Education Act of 1965 that apply to elementary school teachers.

[''(B) CONSULTATIVE SERVICES.—As used in subparagraph (A)(iii), the term 'consultative services' means—

[''(i) consultation on adapting curricula, using positive behavioral supports and interventions, and selecting appropriate accommodations, and does not include direct instruction of students; or

[''(ii) teaching in collaboration with a regular education teacher or teachers who is or are highly qualified in the core academic subjects being taught.

[''(11) INDIAN.—The term 'Indian' means an individual who is a member of an Indian tribe.

[''(12) INDIAN TRIBE.—The term 'Indian tribe' means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act).

[''(13) INDIVIDUALIZED EDUCATION PROGRAM.—The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 614(d).

[''(14) INDIVIDUALIZED FAMILY SERVICE PLAN.—The term 'individualized family service plan' has the meaning given such term in section 636.

[''(15) INFANT OR TODDLER WITH A DISABILITY.—The term 'infant or toddler with a disability' has the meaning given such term in section 632.

[''(16) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education'—

[''(A) has the meaning given such term in section 101 (a) and (b) of the Higher Education Act of 1965; and

[''(B) also includes any community college receiving funding from the Secretary of the Interior under the Tribally Controlled College or University Assistance Act of 1978.

[''(17) LOCAL EDUCATIONAL AGENCY.—

[''(A) The term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.

[''(B) The term includes—

[''(i) an educational service agency, as defined in paragraph (4); and

[''(ii) any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

[''(C) The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, but only to the extent that such inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

[''(18) NATIVE LANGUAGE.—The term 'native language', when used with respect to an individual of limited English proficiency, means the language normally used by the individual, or in the case of a child, the language normally used by the parents of the child.

[''(19) NONPROFIT.—The term 'nonprofit', as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by 1 or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

[''(20) OUTLYING AREA.—The term 'outlying area' means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

[''(21) PARENT.—The term 'parent'—

[''(A) includes a legal guardian; and

[''(B) except as used in sections 615(b)(2) and 639(a)(5), includes an individual assigned under either of those sections to be a surrogate parent.

[''(22) PARENT ORGANIZATION.—The term 'parent organization' has the meaning given such term in section 671(g).

[''(23) PARENT TRAINING AND INFORMATION CENTER.—The term 'parent training and information center' means a center assisted under section 671 or 672.

[''(24) RELATED SERVICES.—The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school health services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

[''(25) SECONDARY SCHOOL.—The term 'secondary school' means a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

[''(26) SECRETARY.—The term 'Secretary' means the Secretary of Education.

[''(27) SPECIAL EDUCATION.—The term 'special education' means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including—

[''(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

[''(B) instruction in physical education.

[''(28) SPECIFIC LEARNING DISABILITY.—

[''(A) IN GENERAL.—The term 'specific learning disability' means a disorder in 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

[''(B) DISORDERS INCLUDED.—Such term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

[''(C) DISORDERS NOT INCLUDED.—Such term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

[''(29) STATE.—The term 'State' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

[''(30) STATE EDUCATIONAL AGENCY.—The term 'State educational agency' means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

[''(31) SUPPLEMENTARY AIDS AND SERVICES.—The term 'supplementary aids and services' means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with section 612(a)(5).

[''(32) TRANSITION SERVICES.—The term 'transition services' means a coordinated set of activities for a child with a disability (as defined in paragraph (3)(A)) that—

[''(A) is designed to be within a results-oriented process, that 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 post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

[''(B) is based on the individual child's needs, taking into account the child's capacity, preferences, and interests; and

[''(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

["SEC. 603. OFFICE OF SPECIAL EDUCATION PROGRAMS.

[''(a) ESTABLISHMENT.—There shall be, within the Office of Special Education and Rehabilitative Services in the Department of Education, an Office of Special Education Programs, which shall be the principal agency in such Department for administering and carrying out this Act and other programs and activities concerning the education of children with disabilities.

[''(b) DIRECTOR.—The Office established under subsection (a) shall be headed by a Director who shall be selected by the Secretary and shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services.

[''(c) VOLUNTARY AND UNCOMPENSATED SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Secretary is authorized to accept voluntary and uncompensated services in furtherance of the purposes of this Act.

["SEC. 604. ABROGATION OF STATE SOVEREIGN IMMUNITY.

[''(a) IN GENERAL.—A State shall not be immune under the 11th amendment to the Constitution of the United States from suit in Federal court for a violation of this Act.

[''(b) REMEDIES.—In a suit against a State for a violation of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as those remedies are available for such a violation in the suit against any public entity other than a State.

[''(c) EFFECTIVE DATE.—Subsections (a) and (b) apply with respect to violations that occur in whole or part after the date of enactment of the Education of the Handicapped Act Amendments of 1990.

["SEC. 605. ACQUISITION OF EQUIPMENT; CONSTRUCTION OR ALTERATION OF FACILITIES.

[''(a) IN GENERAL.—If the Secretary determines that a program authorized under this Act will be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary is authorized to allow the use of those funds for those purposes.

[''(b) COMPLIANCE WITH CERTAIN REGULATIONS.—Any construction of new facilities or alteration of existing facilities under subsection (a) shall comply with the requirements of—

[''(1) appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the 'Americans with Disabilities Accessibility Guidelines for Buildings and Facilities'); or

[''(2) appendix A of subpart 101–19.6 of title 41, Code of Federal Regulations (commonly known as the 'Uniform Federal Accessibility Standards').

["SEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES.

[''The Secretary shall ensure that each recipient of assistance under this Act makes positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this Act.

["SEC. 607. REQUIREMENTS FOR PRESCRIBING REGULATIONS.

[''(a) IN GENERAL.—The Secretary may issue such regulations as are necessary to ensure that there is compliance with this Act.

[''(b) PROTECTIONS PROVIDED TO CHILDREN.—The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this Act that—

[''(1) violates or contradicts any provision of this Act; and

[''(2) procedurally or substantively lessens the protections provided to children with disabilities under this Act, as embodied in regulations in effect on July 20, 1983 (particularly as such protections related to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation.

[''(c) PUBLIC COMMENT PERIOD.—The Secretary shall provide a public comment period of not less than 60 days on any regulation proposed under part B or part C of this Act on which an opportunity for public comment is otherwise required by law.

[''(d) POLICY LETTERS AND STATEMENTS.—The Secretary may not issue policy letters or other statements (including letters or statements regarding issues of national significance) that—

[''(1) violate or contradict any provision of this Act; or

[''(2) establish a rule that is required for compliance with, and eligibility under, this Act without following the requirements of section 553 of title 5, United States Code.

[''(e) EXPLANATION AND ASSURANCES.—Any written response by the Secretary under subsection (d) regarding a policy, question, or interpretation under part B of this Act shall include an explanation in the written response that—

[''(1) such response is provided as informal guidance and is not legally binding;

[''(2) when required, such response is issued in compliance with the requirements of section 553 of title 5, United States Code; and

[''(3) such response represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented.

[''(f) CORRESPONDENCE FROM DEPARTMENT OF EDUCATION DESCRIBING INTERPRETATIONS OF THIS ACT.—

[''(1) IN GENERAL.—The Secretary shall, on a quarterly basis, publish in the Federal Register, and widely disseminate to interested entities through various additional forms of communication, a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of this Act or the regulations implemented pursuant to this Act.

[''(2) ADDITIONAL INFORMATION.—For each item of correspondence published in a list under paragraph (1), the Secretary shall—

[''(A) identify the topic addressed by the correspondence and shall include such other summary information as the Secretary determines to be appropriate; and

[''(B) ensure that all such correspondence is issued, where applicable, in compliance with the requirements of section 553 of title 5, United States Code.

["SEC. 608. STATE ADMINISTRATION.

[''(a) RULEMAKING.—Each State that receives funds under this Act shall—

[''(1) ensure that any State rules, regulations, and policies relating to this Act conform to the purposes of this Act; and

[''(2) identify in writing to its local educational agencies and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by this Act and Federal regulations.

[''(b) SUPPORT AND FACILITATION.—State rules, regulations, and policies under this Act shall support and facilitate local educational agency and school-level systemic reform designed to enable children with disabilities to meet the challenging State student academic achievement standards.

"SEC. 609. REPORT TO CONGRESS.

[''The Comptroller General shall conduct a review of Federal, State, and local requirements to determine which requirements result in excessive paperwork completion burdens for teachers, related services providers, and school administrators, and shall report to Congress not later than 18 months after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003 regarding such review along with strategic proposals for reducing the paperwork burdens on teachers.

["PART B—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

["SEC. 611. AUTHORIZATION; ALLOTMENT; USE OF FUNDS; AUTHORIZATION OF APPROPRIATIONS.

[''(a) GRANTS TO STATES.—

[''(1) PURPOSE OF GRANTS.—The Secretary shall make grants to States and the outlying areas, and provide funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with this part.

[''(2) MAXIMUM AMOUNT.—The maximum amount available for awarding grants under this part for any fiscal year is—

[''(A) the total number of children with disabilities in the 2002–2003 school year in the States who received special education and related services and who were—

[''(i) aged 3 through 5, if the State was eligible for a grant under section 619; and

[''(ii) aged 6 through 21; multiplied by

[''(B) 40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; adjusted by

[''(C) the rate of change in the sum of—

[''(i) 85 percent of the change in the nationwide total of the population described in (d)(3)(A)(i)(II); and

[''(ii) 15 percent of the change in the nationwide total of the population described in (d)(3)(A)(i)(III).

[''(b) OUTLYING AREAS AND FREELY ASSOCIATED STATES.—

[''(1) FUNDS RESERVED.—From the amount appropriated for any fiscal year under subsection (i), the Secretary shall reserve not more than 1 percent, which shall be used—

[''(A) to provide assistance to the outlying areas in accordance with their respective populations of individuals aged 3 through 21; and

[''(B) to provide each of the freely associated States grants that do not exceed the level each such freely associated State received for fiscal year 2003 under this part, but only if the freely associated State meets the requirements of section 611(b)(2)(C) as such section was in effect on the day before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003.

[''(2) SPECIAL RULE.—The provisions of Public Law 95–134, permitting the consolidation of grants by the outlying areas, shall not apply to funds provided to the outlying areas or the freely associated States under this section.

[''(3) DEFINITION.—As used in this subsection, the term 'freely associated States' means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

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

[''(d) ALLOCATIONS TO STATES.—

[''(1) IN GENERAL.—After reserving funds for studies and evaluations under section 665, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior under subsections (b) and (c) for a fiscal year, the Secretary shall allocate the remaining amount among the States in accordance with this subsection.

[''(2) SPECIAL RULE FOR USE OF FISCAL YEAR 1999 AMOUNT.—If a State received any funds under this section for fiscal year 1999 on the basis of children aged 3 through 5, but does not make a free appropriate public education available to all children with disabilities aged 3 through 5 in the State in any subsequent fiscal year, the Secretary shall compute the State's amount for fiscal year 1999, solely for the purpose of calculating the State's allocation in that subsequent year under paragraph (3) or (4), by subtracting the amount allocated to the State for fiscal year 1999 on the basis of those children.

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

[''(A) ALLOCATION OF INCREASE.—

[''(i) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall allocate for the fiscal year—

[''(I) to each State the amount the State received under this section for fiscal year 1999;

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

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

[''(ii) DATA.—For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

[''(B) LIMITATIONS.—Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

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

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

[''(I) the sum of—

[''(aa) the amount the State received under this section for fiscal year 1999; and

[''(bb) ⅓ of 1 percent of the amount by which the amount appropriated under subsection (i) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1999;

[''(II) the sum of—

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

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

[''(III) the sum of—

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

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

[''(iii) MAXIMUM.—Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of—

[''(I) the amount the State received under this section for the preceding fiscal year; and

[''(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under this section from the preceding fiscal year.

[''(C) RATABLE REDUCTION.—If the amount available for allocations under this paragraph is insufficient to pay those allocations in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).

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

[''(A) AMOUNTS GREATER THAN FISCAL YEAR 1999 ALLOCATIONS.—If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1999, each State shall be allocated the sum of—

[''(i) the amount the State received under this section for fiscal year 1999; and

[''(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fiscal year 1999 bears to the total of all such increases for all States.

[''(B) AMOUNTS EQUAL TO OR LESS THAN FISCAL YEAR 1999 ALLOCATIONS.—

[''(i) IN GENERAL.—If the amount available for allocations under this paragraph is equal to or less than the amount allocated to the States for fiscal year 1999, each State shall be allocated the amount the State received for fiscal year 1999.

[''(ii) RATABLE REDUCTION.—If the amount available for allocations under this paragraph is insufficient to make the allocations described in clause (i), those allocations shall be ratably reduced.

[''(e) STATE-LEVEL ACTIVITIES.—

[''(1) STATE ADMINISTRATION.—

[''(A) IN GENERAL.—For the purpose of administering this part, including paragraph (3), section 619, and the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities—

[''(i) each State may reserve not more than the maximum amount the State was eligible to reserve for State administration for fiscal year 2003 or $800,000 (adjusted by the cumulative rate of inflation since fiscal year 2003 as measured by the percentage increase, if any, in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), whichever is greater; and

[''(ii) each outlying area may reserve not more than 5 percent of the amount the outlying area receives under subsection (b) for any fiscal year or $35,000, whichever is greater.

[''(B) PART C.—Funds reserved under subparagraph (A) may be used for the administration of part C, if the State educational agency is the lead agency for the State under that part.

[''(C) CERTIFICATION.—Prior to expenditure of funds under this paragraph, the State shall certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) are current.

[''(2) OTHER STATE-LEVEL ACTIVITIES.—

[''(A) IN GENERAL.—For the purpose of providing State-level activities, each State may reserve for each of the fiscal years 2004 and 2005, not more than 10 percent of the amount that remains after subtracting the amount reserved under paragraph (1) from the amount of the State's allocation under subsection (d) for fiscal years 2004 and 2005, respectively. For fiscal years 2006, 2007, 2008, and 2009, the State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2005 (adjusted by the cumulative rate of inflation since fiscal year 2005 as measured by the percentage increase, if any, in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

[''(B) REQUIRED ACTIVITIES.—Funds reserved under subparagraph (A) shall be used to carry out the following activities:

[''(i) For monitoring, enforcement and complaint investigation.

[''(ii) To establish and implement the mediation processes required by section 615(e)(1), including providing for the costs of mediators and support personnel;

[''(iii) To fund the State protection and advocacy system, or other legal organizations that have expertise in—

[''(I) dispute resolution and due process;

[''(II) efforts to educate families regarding due process;

[''(III) voluntary mediation; and

[''(IV) the opportunity to resolve complaints.

[''(C) AUTHORIZED ACTIVITIES.—Funds reserved under subparagraph (A) may be used to carry out the following activities:

[''(i) To provide technical assistance, personnel development and training.

[''(ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process.

[''(iii) To assist local educational agencies in providing positive behavioral interventions and supports and mental health services for children with disabilities.

[''(iv) To improve the use of technology in the classroom by children with disabilities to enhance learning.

[''(v) To support the development and use of technology, including universally designed technologies and assistive technology devices, to maximize accessibility to the general curriculum for students with disabilities.

[''(vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to post-secondary activities.

[''(vii) To assist local educational agencies in meeting personnel shortages.

[''(viii) To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.

[''(ix) Alternative programming for children who have been expelled from school, and services for children in correctional facilities, children enrolled in State-operated or State-supported schools, and children in charter schools.

[''(x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 6111 of the Elementary and Secondary Education Act of 1965.

[''(3) LOCAL EDUCATIONAL AGENCY RISK POOL.—

[''(A) IN GENERAL.—For the purpose of assisting local educational agencies (and charter schools that are local educational agencies) in addressing the needs of high-need children and the unanticipated enrollment of other children eligible for service under this part, each State shall reserve for each of the fiscal years 2004 through 2009, 2 percent of the amount that remains after subtracting the amount reserved under paragraph (1) from the amount of the State's allocation under subsection (d) for each of the fiscal years 2004 through 2009, respectively, to—

[''(i) establish a high-cost fund; and

[''(ii) make disbursements from the high-cost fund to local educational agencies in accordance with this paragraph.

[''(B) REQUIRED DISBURSEMENTS FROM THE FUND.—Each State educational agency shall make disbursements from the fund established under subparagraph (A) to local educational agencies to pay the percentage, described in subparagraph (D), of the costs of providing a free appropriate public education to high-need children.

[''(C) APPLICATION.—A local educational agency that desires a disbursement under this subsection shall submit an application to the State educational agency at such time, in such manner, and containing such information as the State educational agency may require. Such application shall include assurances that funds provided under this paragraph shall not be used to pay costs that otherwise would be reimbursable as medical assistance for a child with a disability under the State medicaid program under title XIX of the Social Security Act.

[''(D) DISBURSEMENTS.—

[''(i) IN GENERAL.—A State educational agency shall make a disbursement to a local educational agency that submits an application under subparagraph (C) in an amount that is equal to 75 percent of the costs that are in excess of 4 times the average per-pupil expenditure in the United States or in the State where the child resides (whichever average per-pupil expenditure is lower) associated with educating each high need child served by such local educational agency in a fiscal year for whom such agency desires a disbursement.

[''(ii) APPROPRIATE COSTS.—The costs associated with educating a high need child under clause (i) are only those costs associated with providing direct special education and related services to such child that are identified in such child's appropriately developed IEP.

[''(E) LEGAL FEES.—The disbursements under subparagraph (D) shall not support legal fees, court costs, or other costs associated with a cause of action brought on behalf of such child to ensure a free appropriate public education for such child.

[''(F) PERMISSIBLE DISBURSEMENTS FROM REMAINING FUNDS.—A State educational agency may make disbursements to local educational agencies from any funds that are remaining in the high cost fund after making the required disbursements under subparagraph (D) for a fiscal year for the following purposes:

[''(i) To pay the costs associated with serving children with disabilities who moved into the areas served by such local agencies after the budget for the following school year had been finalized to assist the local educational agencies in providing a free appropriate public education for such children in such year.

[''(ii) To compensate local educational agencies for extraordinary costs, as determined by the State, of any children eligible for services under this part due to—

[''(I) unexpected enrollment or placement of children eligible for services under this part; or

[''(II) a significant underestimate of the average cost of providing services to children eligible for services under this part.

[''(G) REMAINING FUNDS.—Funds reserved under subparagraph (A) in any fiscal year but not expended in that fiscal year pursuant to subparagraph (D) or subparagraph (F) shall—

[''(i) be allocated to local educational agencies pursuant to subparagraphs (D) or (F) for the next fiscal year; or

[''(ii) be allocated to local educational agencies in the same manner as funds are allocated to local educational agencies under subsection (f).

[''(H) ASSURANCE OF A FREE APPROPRIATE PUBLIC EDUCATION.—Nothing in this section shall be construed—

[''(i) to limit or condition the right of a child with a disability who is assisted under this part to receive a free appropriate public education pursuant to section 612(a)(1) in a least restrictive environment pursuant to section 612(a)(5); or

[''(ii) to authorize a State educational agency or local educational agency to indicate a limit on what is expected to be spent on the education of a child with a disability.

[''(I) MEDICAID SERVICES NOT AFFECTED.—Disbursements provided under this subsection shall not be used to pay costs that otherwise would be reimbursable as medical assistance for a child with a disability under the State medicaid program under title XIX of the Social Security Act.

[''(J) DEFINITIONS.—In this paragraph:

[''(i) AVERAGE PER-PUPIL EXPENDITURE.—The term 'average per-pupil expenditure' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965.

[''(ii) HIGH-NEED CHILD.—The term 'high-need', when used with respect to a child with a disability, means a child with a disability for whom a free appropriate public education in a fiscal year costs more than 4 times the average per-pupil expenditure for such fiscal year.

[''(K) SPECIAL RULE FOR RISK POOL AND HIGH-NEED ASSISTANCE PROGRAMS IN EFFECT AS OF JANUARY 1, 2003.—Notwithstanding the provisions of subparagraphs (A) through (J), a State may use funds reserved pursuant to this paragraph for administering and implementing a placement neutral cost-sharing and reimbursement program of high-need, low-incidence, emergency, catastrophic, or

extraordinary aid to local educational agencies that provides services to students eligible under this part based on eligibility criteria for such programs that were operative on January 1, 2003.

[''(4) INAPPLICABILITY OF CERTAIN PROHIBITIONS.—A State may use funds the State reserves under paragraphs (1), (2), and (3) without regard to—

[''(A) the prohibition on commingling of funds in section 612(a)(17)(B); and

[''(B) the prohibition on supplanting other funds in section 612(a)(17)(C).

[''(5) REPORT ON USE OF FUNDS.—As part of the information required to be submitted to the Secretary under section 612, each State shall annually describe how amounts under this section—

[''(A) will be used to meet the requirements of this Act; and

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

[''(f) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

[''(1) SUBGRANTS REQUIRED.—Each State that receives a grant under this section for any fiscal year shall distribute any funds the State does not reserve under subsection (e) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under section 613 for use in accordance with this part.

[''(2) PROCEDURE FOR ALLOCATIONS TO LOCAL EDUCATIONAL AGENCIES.—

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

[''(i) BASE PAYMENTS.—The State shall first award each local educational agency described in paragraph (1) the amount the local educational agency would have received under this section for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 611(d) as section 611(d) was then in effect.

[''(ii) ALLOCATION OF REMAINING FUNDS.—After making allocations under clause (i), the State shall—

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

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

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

[''(g) DEFINITIONS.—For the purpose of this section—

[''(1) the term 'average per-pupil expenditure in public elementary schools and secondary schools in the United States' means—

[''(A) without regard to the source of funds—

[''(i) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the 50 States and the District of Columbia; plus

[''(ii) any direct expenditures by the State for the operation of those local educational agencies; divided by

[''(B) the aggregate number of children in average daily attendance to whom those local educational agencies provided free public education during that preceding year; and

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

[''(h) USE OF AMOUNTS BY SECRETARY OF THE INTERIOR.—

[''(1) PROVISION OF AMOUNTS FOR ASSISTANCE.—

[''(A) IN GENERAL.—The Secretary of Education shall provide amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 through 21 who are enrolled in elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of such payment for any fiscal year shall be equal to 80 percent of the amount allotted under subsection (c) for that fiscal year.

[''(B) CALCULATION OF NUMBER OF CHILDREN.—In the case of Indian students aged 3 through 5 who are enrolled in programs affiliated with the Bureau of Indian Affairs (hereafter in this subsection referred to as 'BIA') schools, and that are required by the States in which such schools are located to attain or maintain State accreditation, and which schools had such accreditation prior to the date of enactment of the Individuals with Disabilities Education Act Amendments of 1991, the school shall be allowed to count those children for the purpose of distribution of the funds provided under this paragraph to the Secretary of the Interior. The Secretary of the Interior shall be responsible for meeting all of the requirements of this part for these children, in accordance with paragraph (2).

[''(C) ADDITIONAL REQUIREMENT.—With respect to all other children aged 3 through 21 on reservations, the State educational agency shall be responsible for ensuring that all of the requirements of this part are implemented.

[''(2) SUBMISSION OF INFORMATION.—The Secretary of Education may provide the Secretary of the Interior amounts under paragraph (1) for a fiscal year only if the Secretary of the Interior submits to the Secretary of Education information that—

[''(A) demonstrates that the Department of the Interior meets the appropriate requirements, as determined by the Secretary of Education, of sections 612 (including monitoring and evaluation activities) and 613;

[''(B) includes a description of how the Secretary of the Interior will coordinate the provision of services under this part with local educational agencies, tribes and tribal organizations, and other private and Federal service providers;

[''(C) includes an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected local school boards before the adoption of the policies, programs, and procedures described in subparagraph (A)

[''(D) includes an assurance that the Secretary of the Interior will provide such information as the Secretary of Education may require to comply with section 618;

[''(E) includes an assurance that the Secretary of the Interior and the Secretary of Health and Human Services have entered into a memorandum of agreement, to be provided to the Secretary of Education, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with State and local educational agencies and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations (such agreement shall provide for the apportionment of responsibilities and costs including, but not limited to, child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies as needed for a child to remain in school or a program); and

[''(F) includes an assurance that the Department of the Interior will cooperate with the Department of Education in its exercise of monitoring and oversight of this application, and any agreements entered into between the Secretary of the Interior and other entities under this part, and will fulfill its duties under this part. Section 616(a) shall apply to the information described in this paragraph.

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

[''(A) IN GENERAL.—With funds appropriated under subsection (i), the Secretary of Education shall make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of the above to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payments under subparagraph (B) for any fiscal year shall be equal to 20 percent of the amount allotted under subsection (c).

[''(B) DISTRIBUTION OF FUNDS.—The Secretary of the Interior shall distribute the total amount of the payment under subparagraph (A) by allocating to each tribe or tribal organization an amount based on the number of children with disabilities ages 3 through 5 residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.

[''(C) SUBMISSION OF INFORMATION.—To receive a payment under this paragraph, the tribe or tribal organization shall submit such figures to the Secretary of the Interior as required to determine the amounts to be allocated under subparagraph (B). This information shall be compiled and submitted to the Secretary of Education.

[''(D) USE OF FUNDS.—The funds received by a tribe or tribal organization shall be used to assist in child find, screening, and other procedures for the early identification of children aged 3 through 5, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

[''(E) BIENNIAL REPORT.—To be eligible to receive a grant pursuant to subparagraph (A), the tribe or tribal organization shall

provide to the Secretary of the Interior a biennial report of activities undertaken under this paragraph, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis in the report to the Secretary of Education required under this subsection. The Secretary of Education may require any additional information from the Secretary of the Interior.

''(F) PROHIBITIONS.—None of the funds allocated under this paragraph may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

''(4) PLAN FOR COORDINATION OF SERVICES.—The Secretary of the Interior shall develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations covered under this Act. Such plan shall provide for the coordination of services benefiting these children from whatever source, including tribes, the Indian Health Service, other BIA divisions, and other Federal agencies. In developing the plan, the Secretary of the Interior shall consult with all interested and involved parties. The plan shall be based on the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities. The plan shall also be distributed upon request to States, State and local educational agencies, and other agencies providing services to infants, toddlers, and children with disabilities, to tribes, and to other interested parties.

''(5) ESTABLISHMENT OF ADVISORY BOARD.—To meet the requirements of section 612(a)(20), the Secretary of the Interior shall establish, under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under section 641 in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson shall be selected by the Secretary of the Interior. The advisory board shall—

''(A) assist in the coordination of services within the BIA and with other local, State, and Federal agencies in the provision of education for infants, toddlers, and children with disabilities;

''(B) advise and assist the Secretary of the Interior in the performance of the Secretary's responsibilities described in this subsection;

''(C) develop and recommend policies concerning effective inter- and intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter- and intra-agency programs and activities;

''(D) provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved educational programming for Indian infants, toddlers, and children with disabilities; and

''(E) provide assistance in the preparation of information required under paragraph (2)(D).

''(6) ANNUAL REPORTS.—

''(A) IN GENERAL.—The advisory board established under paragraph (5) shall prepare and submit to the Secretary of the Interior and to Congress an annual report containing a description of the activities of the advisory board for the preceding year.

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

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

''SEC. 612. STATE ELIGIBILITY.

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

''(1) FREE APPROPRIATE PUBLIC EDUCATION.—

''(A) IN GENERAL.—A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

''(B) LIMITATION.—The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children—

''(i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and

''(ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this part be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility—

''(I) were not actually identified as being a child with a disability under section 602(3); or

''(II) did not have an individualized education program under this part.

''(2) FULL EDUCATIONAL OPPORTUNITY GOAL.—The State has established a goal of providing full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal.

''(3) CHILD FIND.—

''(A) IN GENERAL.—All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

''(B) CONSTRUCTION.—Nothing in this Act requires that children be classified by their disability so long as each child who has a disability listed in section 602 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this part.

''(4) INDIVIDUALIZED EDUCATION PROGRAM.—An individualized education program, or an individualized family service plan that meets the requirements of section 636(d), is developed, reviewed, and revised for each child with a disability in accordance with section 614(d).

''(5) LEAST RESTRICTIVE ENVIRONMENT.—

''(A) IN GENERAL.—To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

''(B) ADDITIONAL REQUIREMENT.—

''(i) IN GENERAL.—A State funding mechanism shall not result in placements that violate the requirements of subparagraph (A), and a State shall not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability a free appropriate public education according to the unique needs of the child as described in the child's IEP.

''(ii) ASSURANCE.—If the State does not have policies and procedures to ensure compliance with clause (i), the State shall provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements.

''(6) PROCEDURAL SAFEGUARDS.—

''(A) IN GENERAL.—Children with disabilities and their parents are afforded the procedural safeguards required by section 615.

''(B) ADDITIONAL PROCEDURAL SAFEGUARDS.—Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

''(7) EVALUATION.—Children with disabilities are evaluated in accordance with subsections (a) through (c) of section 614.

''(8) CONFIDENTIALITY.—Agencies in the State comply with section 617(c) (relating to the confidentiality of records and information).

''(9) TRANSITION FROM PART C TO PRESCHOOL PROGRAMS.—Children participating in early-intervention programs assisted under part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(8). By the third birthday of such a child, an individualized education program or, if consistent with sections 614(d)(2)(B) and 636(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 637(a)(8).

''(10) CHILDREN IN PRIVATE SCHOOLS.—

''(A) CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS.—

''(i) IN GENERAL.—To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary

has arranged for services to those children under subsection (f):

[''(I) Amounts to be expended for the provision of those services (including direct services to parentally placed children) by the local educational agency shall be equal to a proportionate amount of Federal funds made available under this part.

[''(II) Such services may be provided to children with disabilities on the premises of private, including religious, schools, to the extent consistent with law.

[''(III) Each local educational agency shall maintain in its records and provide to the State educational agency the number of children evaluated under this paragraph, the number of children determined to be a child with a disability, and the number of children served under this subsection.

[''(ii) CHILD-FIND REQUIREMENT.—

[''(I) IN GENERAL.—The requirements of paragraph (3) of this subsection (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including religious, elementary schools and secondary schools. Such child find process shall be conducted in a comparable time period as for other students attending public schools in the local educational agency.

[''(II) EQUITABLE PARTICIPATION.—The child find process shall be designed to ensure the equitable participation of parentally placed private school children and an accurate count of such children.

[''(III) ACTIVITIES.—In carrying out this clause, the local educational agency, or where applicable, the State educational agency, shall undertake activities similar to those activities undertaken for its public school children.

[''(IV) COST.—The cost of carrying out this clause, including individual evaluations, may not be considered in determining whether a local education agency has met its obligations under clause (i).

[''(V) COMPLETION PERIOD.—Such child find process shall be completed in a time period comparable to that for other students attending public schools served by the local educational agency.

[''(iii) CONSULTATION.—To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, shall consult, with representatives of children with disabilities parentally placed in private schools, during the design and development of special education and related services for these children, including consultation regarding—

[''(I) the child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

[''(II) the determination of the proportionate share of Federal funds available to serve parentally placed private school children with disabilities under this paragraph, including the determination of how the proportionate share of those funds were calculated;

[''(III) the consultation process among the school district, private school officials, and parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;

[''(IV) how, where, and by whom special education and related services will be provided for parentally placed private school children, including a discussion of alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and

[''(V) how, if the local educational agency disagrees with the views of the private school officials on the provision of services through a contract, the local educational agency shall provide to the private school officials a written explanation of the reasons why such the local educational agency chose not to use a contractor.

[''(iv) WRITTEN AFFIRMATION.—When timely and meaningful consultation as required by this section has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such officials do not provide such affirmations within a reasonable period of time, the local educational agency shall forward the documentation of the consultation process to the State educational agency.

[''(v) COMPLIANCE.—

[''(I) IN GENERAL.—A private school official shall have the right to complain to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.

[''(II) PROCEDURE.—If the private school official wishes to complain, the official shall provide the basis of the noncompliance with this section by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency. If the private school official is dissatisfied with the decision of the State educational agency, such official may complain to the Secretary by providing the basis of the noncompliance with this section by the local educational agency to the Secretary, and the State educational agency shall forward the appropriate documentation to the Secretary.

[''(vi) PROVISION OF EQUITABLE SERVICES.—

[''(I) DIRECT SERVICES.—To the extent practicable, the local educational agency shall provide direct services to children with disabilities parentally placed in private schools.

[''(II) DIRECTLY OR THROUGH CONTRACTS.—A public agency may provide special education and related services directly or through contracts with public and private agencies, organizations, and institutions.

[''(III) SECULAR, NEUTRAL, NONIDEOLOGICAL.—Special education and related services provided to children with disabilities attending private schools, including materials and equipment, shall be secular, neutral, and nonideological.

[''(vii) PUBLIC CONTROL OF FUNDS.—The control of funds used to provide special education and related services under this section, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this Act, and a public agency shall administer the funds and property.

[''(B) CHILDREN PLACED IN, OR REFERRED TO, PRIVATE SCHOOLS BY PUBLIC AGENCIES.—

[''(i) IN GENERAL.—Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State.

[''(ii) STANDARDS.—In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights the children would have if served by such agencies.

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

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

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

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

[''(I) if—

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

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

[''(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 615(b)(3), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

[''(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

[''(iv) EXCEPTION.—Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement—

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

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

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

[''(II) may, in the discretion of a court or a hearing officer, not be reduced or denied for failure to provide such notice if—

[''(aa) the parent is illiterate and cannot write in English; or

[''(bb) compliance with clause (iii)(I) would likely have resulted in physical or serious emotional harm to the child.

[''(11) STATE EDUCATIONAL AGENCY RESPONSIBLE FOR GENERAL SUPERVISION.—

[''(A) IN GENERAL.—The State educational agency is responsible for ensuring that—

[''(i) the requirements of this part are met; and

[''(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State or local agency—

[''(I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and

[''(II) meet the educational standards of the State educational agency.

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

[''(C) EXCEPTION.—Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

[''(12) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES.—

[''(A) ESTABLISHING RESPONSIBILITY FOR SERVICES.—The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall include the following:

[''(i) AGENCY FINANCIAL RESPONSIBILITY.—An identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State Medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).

[''(ii) CONDITIONS AND TERMS OF REIMBURSEMENT.—The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.

[''(iii) INTERAGENCY DISPUTES.—Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

[''(iv) COORDINATION OF SERVICES PROCEDURES.—Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B)(i).

[''(B) OBLIGATION OF PUBLIC AGENCY.—

[''(i) IN GENERAL.—If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy, pursuant to subparagraph (A), or pursuant to an agreement under paragraph (C), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in section 602(1) relating to assistive technology devices, 602(2) relating to assistive technology services, 602(24) relating to related services, 602(31) relating to supplementary aids and services, and 602(32) relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subparagraph (A).

[''(ii) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY.—If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for developing the child's IEP) shall provide or pay for such services to the child. Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A)(ii).

[''(C) SPECIAL RULE.—The requirements of subparagraph (A) may be met through—

[''(i) State statute or regulation;

[''(ii) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

[''(iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary through the review and approval of the State's plan pursuant to this section.

[''(13) PROCEDURAL REQUIREMENTS RELATING TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY.—The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing.

[''(14) PERSONNEL STANDARDS.—

[''(A) IN GENERAL.—The State educational agency has established and maintains standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

[''(B) RELATED SERVICES PERSONNEL AND PARAPROFESSIONALS.—The standards under subparagraph (A) include standards for related services personnel and paraprofessionals that—

[''(i) are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and

[''(ii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.

[''(C) STANDARDS FOR SPECIAL EDUCATION TEACHERS.—The standards described in subparagraph (A) shall ensure that each special education teacher in the State who teaches in an elementary, middle, or secondary school is highly qualified not later than the 2006–2007 school year.

[''(D) POLICY.—In implementing this section, a State shall adopt a policy that includes a requirement that local educational agencies in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.

[''(15) PERFORMANCE GOALS AND INDICATORS.—The State—

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

[''(i) promote the purposes of this Act, as stated in section 601(d);

[''(ii) are the same as the State's definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the Elementary and Secondary Education Act of 1965;

[''(iii) address drop out rates, as well as such other factors as the State may determine; and

[''(iv) are consistent, to the extent appropriate, with any other goals and standards for children established by the State;

[''(B) has established performance indicators the State will use to assess progress toward achieving the goals described in subparagraph (A), including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the Elementary and Secondary Education Act of 1965; and

[''(C) will annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A).

[''(16) PARTICIPATION IN ASSESSMENTS.—

[''(A) IN GENERAL.— All children with disabilities are included in all general State and districtwide assessment programs and accountability systems, including assessments and accountability systems described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations, alternate assessments where necessary, and as indicated in their respective individualized education programs.

[''(B) ACCOMMODATION GUIDELINES.—The State (or, in the case of a districtwide assessment, the local educational agency) has developed guidelines for the provision of appropriate accommodations.

[''(C) ALTERNATE ASSESSMENTS.—

[''(i) IN GENERAL.—The State (or, in the case of a districtwide assessment, the local educational agency) has developed and implemented guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under subparagraph (B) as indicated in their respective individualized education programs.

[''(ii) REQUIREMENTS FOR ALTERNATE ASSESSMENTS.—The guidelines under clause (i) shall provide for alternate assessments that—

[''(I) are aligned with the State's challenging academic content and academic achievement standards; or

[''(II) measure the achievement of students against alternate academic achievement standards that are aligned with the State's academic content standards.

[''(iii) CONDUCT OF ALTERNATIVE ASSESSMENTS.—The State conducts the alternate assessments described in this subparagraph.

[''(D) REPORTS.—The State educational agency (or, in the case of a districtwide assessment, the local educational agency) makes available to the public, and reports to the public with the same frequency and in

the same detail as it reports on the assessment of nondisabled children, the following:

[''(i) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in those assessments.

[''(ii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(I).

[''(iii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(II).

[''(iv) The performance of 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.

[''(E) UNIVERSAL DESIGN.—The State educational agency (or, in the case of a districtwide assessment, the local educational agency) shall, to the extent possible, use universal design principles in developing and administering any assessments under this paragraph.

[''(17) SUPPLEMENTATION OF STATE, LOCAL, AND OTHER FEDERAL FUNDS.—

[''(A) EXPENDITURES.—Funds paid to a State under this part will be expended in accordance with all the provisions of this part.

[''(B) PROHIBITION AGAINST COMMINGLING.—Funds paid to a State under this part will not be commingled with State funds.

[''(C) PROHIBITION AGAINST SUPPLANTATION AND CONDITIONS FOR WAIVER BY SECRETARY.—Except as provided in section 613, funds paid to a State under this part will be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this part and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive, in whole or in part, the requirements of this subparagraph if the Secretary concurs with the evidence provided by the State.

[''(18) MAINTENANCE OF STATE FINANCIAL SUPPORT.—

[''(A) IN GENERAL.—The State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

[''(B) REDUCTION OF FUNDS FOR FAILURE TO MAINTAIN SUPPORT.—The Secretary shall reduce the allocation of funds under section 611 for any fiscal year following the fiscal year in which the State fails to comply with the requirement of subparagraph (A) by the same amount by which the State fails to meet the requirement.

[''(C) WAIVERS FOR EXCEPTIONAL OR UNCONTROLLABLE CIRCUMSTANCES.—The Secretary may waive the requirement of subparagraph (A) for a State, for 1 fiscal year at a time, if the Secretary determines that—

[''(i) granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

[''(ii) the State meets the standard in paragraph (17)(C) for a waiver of the requirement to supplement, and not to supplant, funds received under this part.

[''(D) SUBSEQUENT YEARS.—If, for any year, a State fails to meet the requirement of subparagraph (A), including any year for which the State is granted a waiver under subparagraph (C), the financial support required of the State in future years under subparagraph (A) shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

[''(E) REGULATIONS.—

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

[''(ii) TIMELINE.—The Secretary shall publish proposed regulations under clause (i) not later than 6 months after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, and shall issue final regulations under clause (i) not later than 1 year after such date of enactment.

[''(19) PUBLIC PARTICIPATION.—Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

[''(20) STATE ADVISORY PANEL.—

[''(A) IN GENERAL.—The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.

[''(B) MEMBERSHIP.—Such advisory panel shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, that is representative of the State population and that is composed of individuals involved in, or concerned with, the education of children with disabilities, including—

[''(i) parents of children with disabilities ages birth through 26;

[''(ii) individuals with disabilities;

[''(iii) teachers;

[''(iv) representatives of institutions of higher education that prepare special education and related services personnel;

[''(v) State and local education officials;

[''(vi) administrators of programs for children with disabilities;

[''(vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;

[''(viii) representatives of private schools and public charter schools;

[''(ix) at least 1 representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and

[''(x) representatives from the State juvenile and adult corrections agencies.

[''(C) SPECIAL RULE.—A majority of the members of the panel shall be individuals with disabilities ages birth through 26 or parents of such individuals.

[''(D) DUTIES.—The advisory panel shall—

[''(i) advise the State educational agency of unmet needs within the State in the education of children with disabilities;

[''(ii) comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;

[''(iii) advise the State educational agency in developing evaluations and reporting on data to the Secretary under section 618;

[''(iv) advise the State educational agency in developing corrective action plans to address findings identified in Federal monitoring reports under this part; and

[''(v) advise the State educational agency in developing and implementing policies relating to the coordination of services for children with disabilities.

[''(21) SUSPENSION AND EXPULSION RATES.—

[''(A) IN GENERAL.—The State educational agency examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities—

[''(i) among local educational agencies in the State; or

[''(ii) compared to such rates for nondisabled children within such agencies.

[''(B) REVIEW AND REVISION OF POLICIES.—If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that such policies, procedures, and practices comply with this Act.

[''(22) INSTRUCTIONAL MATERIALS.—

[''(A) IN GENERAL.—The State adopts the national instructional materials accessibility standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities in a timely manner after the publication of the standard by the Secretary in the Federal Register.

[''(B) PURCHASE REQUIREMENT.—Not later than 2 years after the date of the enactment of the Individuals with Disabilities Education Improvement Act of 2003, the State educational agency, when purchasing instructional materials for use in public elementary and secondary schools within the State, requires the publisher of the instructional materials, as a part of any purchase agreement that is made, renewed, or revised, to prepare and supply electronic files containing the contents of the instructional materials using the national instructional materials accessibility standard.

[''(C) DEFINITION.—For purposes of this paragraph, the term 'instructional materials' means printed textbooks and related core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by a State educational agency or local educational agency for use by pupils in the classroom.

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

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

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

[''(c) EXCEPTION FOR PRIOR STATE PLANS.—

[''(1) IN GENERAL.—If a State has on file with the Secretary policies and procedures that demonstrate that such State meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall consider such State to have met such requirement for purposes of receiving a grant under this part.

[''(2) MODIFICATIONS MADE BY STATE.—Subject to paragraph (3), an application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification to an application to the same extent and in the same manner as this section applies to the original plan.

[''(3) MODIFICATIONS REQUIRED BY THE SECRETARY.—If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the provisions of this Act are amended (or the regulations developed to carry out this Act are amended), there is a new interpretation of this Act by a Federal court or a State's highest court, or there is an official finding of noncompliance with Federal law or regulations, then the Secretary may require a State to modify its application only to the extent necessary to ensure the State's compliance with this part.

[''(d) APPROVAL BY THE SECRETARY.—

[''(1) IN GENERAL.—If the Secretary determines that a State is eligible to receive a grant under this part, the Secretary shall notify the State of that determination.

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

[''(A) with reasonable notice; and

[''(B) with an opportunity for a hearing.

[''(e) ASSISTANCE UNDER OTHER FEDERAL PROGRAMS.—Nothing in this title permits a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for children with disabilities in the State.

[''(f) BY-PASS FOR CHILDREN IN PRIVATE SCHOOLS.—

[''(1) IN GENERAL.—If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency was prohibited by law from providing for the equitable participation in special programs of children with disabilities enrolled in private elementary schools and secondary schools as required by subsection (a)(10)(A), or if the Secretary determines that a State educational agency, local educational agency, or other entity has substantially failed or is unwilling to provide for such equitable participation, then the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to such children through arrangements which shall be subject to the requirements of such subsection.

[''(2) PAYMENTS.—

[''(A) DETERMINATION OF AMOUNTS.—If the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services for a fiscal year an amount per child that does not exceed the amount determined by dividing—

[''(i) the total amount received by the State under this part for such fiscal year; by

[''(ii) the number of children with disabilities served in the prior year, as reported to the Secretary by the State under section 618.

[''(B) WITHHOLDING OF CERTAIN AMOUNTS.—Pending final resolution of any investigation or complaint that may result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates will be necessary to pay the cost of services described in subparagraph (A).

[''(C) PERIOD OF PAYMENTS.—The period under which payments are made under subparagraph (A) shall continue until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(10)(A).

[''(3) NOTICE AND HEARING.—

[''(A) IN GENERAL.—The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for at least 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary's designee to show cause why such action should not be taken.

[''(B) REVIEW OF ACTION.—If a State educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A), such agency may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the Secretary's action, as provided in section 2112 of title 28, United States Code.

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

[''(D) JURISDICTION OF COURT OF APPEALS; REVIEW BY UNITED STATES SUPREME COURT.—Upon the filing of a petition under subparagraph (B), the United States court of appeals shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

[''SEC. 613. LOCAL EDUCATIONAL AGENCY ELIGIBILITY.

[''(a) IN GENERAL.—A local educational agency is eligible for assistance under this part for a fiscal year if such agency submits a plan that provides assurances to the State educational agency that the local educational agency meets each of the following conditions:

[''(1) CONSISTENCY WITH STATE POLICIES.—The local educational agency, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under section 612.

[''(2) USE OF AMOUNTS.—

[''(A) IN GENERAL.—Amounts provided to the local educational agency under this part shall be expended in accordance with the applicable provisions of this part and—

[''(i) shall be used only to pay the excess costs of providing special education and related services to children with disabilities;

[''(ii) shall be used to supplement State, local, and other Federal funds and not to supplant such funds; and

[''(iii) shall not be used, except as provided in subparagraphs (B) and (C), to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.

[''(B) EXCEPTION.—Notwithstanding the restriction in subparagraph (A)(iii), a local educational agency may reduce the level of expenditures where such reduction is attributable to—

[''(i) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel;

[''(ii) a decrease in the enrollment of children with disabilities;

[''(iii) the termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the State educational agency, because the child—

[''(I) has left the jurisdiction of the agency;

[''(II) has reached the age at which the obligation of the agency to provide a free appropriate public education to the child has terminated; or

[''(III) no longer needs such program of special education; or

[''(iv) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

[''(C) TREATMENT OF FEDERAL FUNDS IN CERTAIN FISCAL YEARS.—

[''(i) 8 PERCENT RULE.—Notwithstanding clauses (ii) and (iii) of subparagraph (A), a local educational agency may treat as local funds, for the purposes of such clauses, not more than 8 percent of the amount of funds the local educational agency receives under this part.

[''(ii) 40 PERCENT RULE.—Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which States are allocated the maximum amount of grants pursuant to section 611(a)(2), a local educational agency may treat as local funds, for the purposes of such clauses, not more than 40 percent of the amount of funds the local educational agency receives under this part, subject to clause (iv).

[''(iii) EARLY INTERVENING PREREFERRAL SERVICES.—

[''(I) 8 PERCENT RULE.—If a local educational agency exercises authority pursuant to clause (i), the 8 percent funds shall be counted toward the percentage and amount of funds that may be used to provide early intervening prereferral services pursuant to subsection (f).

[''(II) 40 PERCENT RULE.—If a local educational agency exercises authority pursuant to clause (ii), the local educational agency shall use an amount of the 40 percent funds from clause (ii) that represents 15 percent of the total amount of funds the local educational agency receives under this part, to provide early intervening prereferral services pursuant to subsection (f).

[''(iv) SPECIAL RULE.—Funds treated as local funds pursuant to clause (i) or (ii) may be considered non-Federal or local funds for the purposes of—

[''(I) clauses (ii) and (iii) of subparagraph (A); and

[''(II) the provision of the local share of costs for title XIX of the Social Security Act.

[''(v) PROHIBITION.—If a State educational agency determines that a local educational agency is unable to establish and maintain programs of free appropriate public education that meet the requirements of this subsection, then the State educational agency shall prohibit the local educational agency from treating funds received under this part as local funds under clause (i) or (ii) for that fiscal year, but only if the State educational agency is authorized to do so by the State constitution or a State statute.

[''(vi) REPORT.—For each fiscal year in which a local educational agency exercises its authority pursuant to this paragraph and

treats Federal funds as local funds, the local educational agency shall report to the State educational agency the amount of funds so treated and the activities that were funded with such funds.

[''(D) SCHOOLWIDE PROGRAMS UNDER TITLE I OF THE ESEA.—Notwithstanding subparagraph (A) or any other provision of this part, a local educational agency may use funds received under this part for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount so used in any such program shall not exceed—

[''(i) the number of children with disabilities participating in the schoolwide program; multiplied by

[''(ii)(I) the amount received by the local educational agency under this part for that fiscal year; divided by

[''(II) the number of children with disabilities in the jurisdiction of that agency.

[''(3) PERSONNEL DEVELOPMENT.—The local educational agency shall ensure that all personnel necessary to carry out this part are appropriately and adequately prepared, consistent with the requirements of section 612(a)(14) of this Act and section 2122 of the Elementary and Secondary Education Act of 1965.

[''(4) PERMISSIVE USE OF FUNDS.—

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

[''(i) SERVICES AND AIDS THAT ALSO BENEFIT NONDISABLED CHILDREN.—For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if 1 or more nondisabled children benefit from such services.

[''(ii) EARLY INTERVENING SERVICES.—To develop and implement comprehensive, coordinated, early intervening educational services in accordance with subsection (f).

[''(B) CASE MANAGEMENT AND ADMINISTRATION.—A local educational agency may use funds received under this part to purchase appropriate technology, for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the individualized education program of children with disabilities, that is necessary to the implementation of such case management activities.

[''(5) TREATMENT OF CHARTER SCHOOLS AND THEIR STUDENTS.—In carrying out this part with respect to charter schools that are public schools of the local educational agency, the local educational agency—

[''(A) serves children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its 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 services on the site to its other public schools; and

[''(B) provides funds under this part to those charter schools on the same basis, including proportional distribution based on relative enrollment of children with disabilities, and at the same time, as the local educational agency distributes State, local, or a combination of State and local, funds to those charter schools under the State's charter school law.

[''(6) PURCHASE OF INSTRUCTIONAL MATERIALS.—Not later than 2 years after the date of the enactment of the Individuals with Disabilities Education Improvement Act of 2003, the local educational agency, when purchasing instructional materials for use in public elementary schools or secondary schools served by the local educational agency, requires the publisher of the instructional materials, as a part of any purchase agreement that is made, renewed, or revised, to prepare and supply electronic files containing the contents of the instructional materials using the national instructional materials accessibility standard described in section 612(a)(22).

[''(7) INFORMATION FOR STATE EDUCATIONAL AGENCY.—The local educational agency shall provide the State educational agency with information necessary to enable the State educational agency to carry out its duties under this part, including, with respect to paragraphs (15) and (16) of section 612(a), information relating to the performance of children with disabilities participating in programs carried out under this part.

[''(8) PUBLIC INFORMATION.—The local educational agency shall make available to parents of children with disabilities and to the general public all documents relating to the eligibility of such agency under this part.

[''(b) EXCEPTION FOR PRIOR LOCAL PLANS.—

[''(1) IN GENERAL.—If a local educational agency or State agency has on file with the State educational agency policies and procedures that demonstrate that such local educational agency, or such State agency, as the case may be, meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the State educational agency shall consider such local educational agency or State agency, as the case may be, to have met such requirement for purposes of receiving assistance under this part.

[''(2) MODIFICATION MADE BY LOCAL EDUCATIONAL AGENCY.—Subject to paragraph (3), an application submitted by a local educational agency in accordance with this section shall remain in effect until the local educational agency submits to the State educational agency such modifications as the local educational agency determines necessary.

[''(3) MODIFICATIONS REQUIRED BY STATE EDUCATIONAL AGENCY.—If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the provisions of this Act are amended (or the regulations developed to carry out this Act are amended), there is a new interpretation of this Act by Federal or State courts, or there is an official finding of noncompliance with Federal or State law or regulations, then the State educational agency may require a local educational agency to modify its application only to the extent necessary to ensure the local educational agency's compliance with this part or State law.

[''(c) NOTIFICATION OF LOCAL EDUCATIONAL AGENCY OR STATE AGENCY IN CASE OF INELIGIBILITY.—If the State educational agency determines that a local educational agency or State agency is not eligible under this section, then the State educational agency shall notify the local educational agency or State agency, as the case may be, of that determination and shall provide such local educational agency or State agency with reasonable notice and an opportunity for a hearing.

[''(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE.—

[''(1) IN GENERAL.—If the State educational agency, after reasonable notice and an opportunity for a hearing, finds that a local educational agency or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in subsection (a), the State educational agency shall reduce or shall not provide any further payments to the local educational agency or State agency until the State educational agency is satisfied that the local educational agency or State agency, as the case may be, is complying with that requirement.

[''(2) ADDITIONAL REQUIREMENT.—Any State agency or local educational agency in receipt of a notice described in paragraph (1) shall, by means of public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

[''(3) CONSIDERATION.—In carrying out its responsibilities under paragraph (1), the State educational agency shall consider any decision made in a hearing held under section 615 that is adverse to the local educational agency or State agency involved in that decision.

[''(e) JOINT ESTABLISHMENT OF ELIGIBILITY.—

[''(1) JOINT ESTABLISHMENT.—

[''(A) IN GENERAL.—A State educational agency may require a local educational agency to establish its eligibility jointly with another local educational agency if the State educational agency determines that the local educational agency will be ineligible under this section because the local educational agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

[''(B) CHARTER SCHOOL EXCEPTION.—A State educational agency may not require a charter school that is a local educational agency to jointly establish its eligibility under subparagraph (A) unless the charter school is explicitly permitted to do so under the State's charter school law.

[''(2) AMOUNT OF PAYMENTS.—If a State educational agency requires the joint establishment of eligibility under paragraph (1), the total amount of funds made available to the affected local educational agencies shall be equal to the sum of the payments that each such local educational agency would have received under section 611(f) if such agencies were eligible for such payments.

[''(3) REQUIREMENTS.—Local educational agencies that establish joint eligibility under this subsection shall—

[''(A) adopt policies and procedures that are consistent with the State's policies and procedures under section 612(a); and

[''(B) be jointly responsible for implementing programs that receive assistance under this part.

[''(4) REQUIREMENTS FOR EDUCATIONAL SERVICE AGENCIES.—

[''(A) IN GENERAL.—If an educational service agency is required by State law to carry out programs under this part, the joint responsibilities given to local educational agencies under this subsection shall—

[''(i) not apply to the administration and disbursement of any payments received by that educational service agency; and

[''(ii) be carried out only by that educational service agency.

[''(B) ADDITIONAL REQUIREMENT.—Notwithstanding any other provision of this subsection, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by section 612(a)(5).

[''(f) EARLY INTERVENING SERVICES.—

[''(1) IN GENERAL.—A local educational agency may not use more than 15 percent of the amount such agency receives under this part for any fiscal year, less any amount treated as local funds pursuant to subsection (a)(2)(C), if any, in combination with other amounts (which may include amounts other

than education funds), to develop and implement comprehensive, coordinated, early intervening educational 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 require additional academic and behavioral support to succeed in a general education environment.

[''(2) ACTIVITIES.—In implementing comprehensive, coordinated, early intervening educational services under this subsection, a local educational agency may carry out activities that include—

[''(A) professional development (which may be provided by entities other than local educational agencies) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software;

[''(B) providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction; and

[''(C) developing and implementing interagency financing structures for the provision of such services and supports.

[''(3) CONSTRUCTION.—Nothing in this subsection shall be construed to either limit or create a right to a free appropriate public education under this part.

[''(4) REPORTING.—Each local educational agency that develops and maintains comprehensive, coordinated, early intervening educational services with funds made available for this subsection, shall annually report to the State educational agency on—

[''(A) the number of children served under this subsection; and

[''(B) the number of children served under this subsection who are subsequently referred to special education.

[''(5) COORDINATION WITH CERTAIN PROJECTS UNDER ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—Funds made available to carry out this subsection may be used to carry out comprehensive, coordinated, early intervening educational services aligned with activities funded by, and carried out under, the Elementary and Secondary Education Act of 1965 if such funds are used to supplement, and not supplant, funds made available under the Elementary and Secondary Education Act of 1965 for the activities and services assisted under this subsection.

[''(g) DIRECT SERVICES BY THE STATE EDUCATIONAL AGENCY.—

[''(1) IN GENERAL.—A State educational agency shall use the payments that would otherwise have been available to a local educational agency or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that local educational agency, or for whom that State agency is responsible, if the State educational agency determines that the local educational agency or State agency, as the case may be—

[''(A) has not provided the information needed to establish the eligibility of such agency under this section;

[''(B) is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a);

[''(C) is unable or unwilling to be consolidated with 1 or more local educational agencies in order to establish and maintain such programs; or

[''(D) has 1 or more children with disabilities who can best be served by a regional or State program or service delivery system designed to meet the needs of such children.

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

[''(h) STATE AGENCY ELIGIBILITY.—Any State agency that desires to receive a subgrant for any fiscal year under section 611(f) shall demonstrate to the satisfaction of the State educational agency that—

[''(1) all children with disabilities who are participating in programs and projects funded under this part receive a free appropriate public education, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

[''(2) the agency meets such other conditions of this section as the Secretary determines to be appropriate.

[''(i) DISCIPLINARY INFORMATION.—The State may require that a local educational agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit such statement to the same extent that such disciplinary information is included in, and transmitted with, the student records of nondisabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If the State adopts such a policy, and the child transfers from 1 school to another, the transmission of any of the child's records shall include both the child's current individualized education program and any such statement of current or previous disciplinary action that has been taken against the child.

[''(j) STATE AGENCY FLEXIBILITY.—

[''(1) TREATMENT OF FEDERAL FUNDS IN CERTAIN FISCAL YEARS.—If a State educational agency pays or reimburses local educational agencies within the State for not less than 80 percent of the non-Federal share of the costs of special education and related services, or the State is the sole provider of free appropriate public education or direct services pursuant to section 612(b), then the State educational agency, notwithstanding sections 612(a) (17) and (18) and 612(b), may treat funds allocated pursuant to section 611 as general funds available to support the educational purposes described in paragraph (2) (A) and (B).

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

[''(A) 8 PERCENT RULE.—A State educational agency may treat not more than 8 percent of the funds the State educational agency receives under this part as general funds to support any educational purpose described in the Elementary and Secondary Education Act of 1965, needs-based student or teacher higher education programs, or the non-Federal share of costs of title XIX of the Social Security Act.

[''(B) 40 PERCENT RULE.—For any fiscal year for which States are allocated the maximum amount of grants pursuant to section 611(a)(2), a State educational agency may treat not more than 40 percent of the amount of funds the State educational agency receives under this part as general funds to support any educational purpose described in the Elementary and Secondary Education Act of 1965, needs-based student or teacher higher education programs, or the non-Federal share of costs of title XIX of the Social Security Act, subject to subparagraph (C).

[''(C) REQUIREMENT.—A State educational agency may exercise its authority pursuant to subparagraph (B) only if the State educational agency uses an amount of the 40 percent funds from subparagraph (B) that represents 15 percent of the total amount of funds the State educational agency receives under this part, to provide, or to pay or reimburse local educational agencies for providing, early intervening prereferral services pursuant to subsection (f).

[''(2) PROHIBITION.—Notwithstanding subsection (a), if the Secretary determines that a State educational agency is unable to establish, maintain, or oversee programs of free appropriate public education that meet the requirements of this part, then the Secretary shall prohibit the State educational agency from treating funds allocated under this part as general funds pursuant to paragraph (1).

[''(3) REPORT.—For each fiscal year for which a State educational agency exercises its authority pursuant to paragraph (1) and treats Federal funds as general funds, the State educational agency shall report to the Secretary the amount of funds so treated and the activities that were funded with such funds.

[''SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.

[''(a) EVALUATIONS AND REEVALUATIONS.—

[''(1) INITIAL EVALUATIONS.—

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

[''(B) REQUEST FOR INITIAL EVALUATION.—Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

[''(C) PROCEDURES.—Such initial evaluation shall consist of procedures—

[''(i) to determine whether a child is a child with a disability (as defined in section 602(3)) within 60 days of receiving parental consent for the evaluation, or, if the State has established a timeframe within which the evaluation must be conducted, within such timeframe; and

[''(ii) to determine the educational needs of such child.

[''(D) PARENTAL CONSENT.—

[''(i) IN GENERAL.—The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602(3) (A) or (B) shall obtain an informed consent from the parent of such child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

[''(ii) REFUSAL.—If the parents of such child refuse consent for the evaluation, the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under section 615, except to the extent inconsistent with State law relating to parental consent.

[''(iii) REFUSAL OR FAILURE TO CONSENT.—If the parent of a child does not provide informed consent to the receipt of special education and related services, or the parent fails to respond to a request to provide the

consent, the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child.

[''(2) REEVALUATIONS.—

[''(A) IN GENERAL.—A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c)—

[''(i) 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

[''(ii) if the child's parents or teacher requests a reevaluation.

[''(B) LIMITATION.—A reevaluation conducted under subparagraph (A) shall occur—

[''(i) not more than once a year, unless the parent and the local educational agency agree otherwise; and

[''(ii) at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.

[''(b) EVALUATION PROCEDURES.—

[''(1) NOTICE.—The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 615, that describes any evaluation procedures such agency proposes to conduct.

[''(2) CONDUCT OF EVALUATION.—In conducting the evaluation, the local educational agency shall—

[''(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining—

[''(i) whether the child is a child with a disability; and

[''(ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum, or for preschool children, to participate in appropriate activities;

[''(B) not use any single procedure, measure, or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

[''(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

[''(3) ADDITIONAL REQUIREMENTS.—Each local educational agency shall ensure that—

[''(A) tests and other evaluation materials used to assess a child under this section—

[''(i) are selected and administered so as not to be discriminatory on a racial or cultural basis;

[''(ii) are provided and administered, to the extent practicable, in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally;

[''(iii) are used for purposes for which the assessments or measures are valid and reliable;

[''(iv) are administered by trained and knowledgeable personnel; and

[''(v) are administered in accordance with any instructions provided by the producer of such tests;

[''(B) the child is assessed in all areas of suspected disability; and

[''(C) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

[''(4) DETERMINATION OF ELIGIBILITY.—Upon completion of administration of tests and other evaluation materials—

[''(A) the determination of whether the child is a child with a disability as defined in section 602(3) shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and

[''(B) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.

[''(5) SPECIAL RULE FOR ELIGIBILITY DETERMINATION.—In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is—

[''(A) lack of scientifically based instruction in reading;

[''(B) lack of instruction in mathematics; or

[''(C) limited English proficiency.

[''(6) SPECIFIC LEARNING DISABILITIES.—

[''(A) IN GENERAL.—Notwithstanding section 607, when determining whether a child has a specific learning disability as defined in section 602, a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.

[''(B) ADDITIONAL AUTHORITY.—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.

[''(c) ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS.—

[''(1) REVIEW OF EXISTING EVALUATION DATA.—As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team described in subsection (d)(1)(B) and other qualified professionals, as appropriate, shall—

[''(A) review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments, and observations, and teacher and related services providers observations; and

[''(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

[''(i) whether the child has a particular category of disability, as described in section 602(3), or, in case of a reevaluation of a child, whether the child continues to have such a disability;

[''(ii) the present levels of performance and educational needs of the child;

[''(iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

[''(iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general curriculum.

[''(2) SOURCE OF DATA.—The local educational agency shall administer such tests and other evaluation materials as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

[''(3) PARENTAL CONSENT.—Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(D), prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local educational agency can demonstrate that the local educational agency had taken reasonable measures to obtain such consent and the child's parent has failed to respond.

[''(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED.—If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child is or continues to be a child with a disability the local educational agency—

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

[''(i) that determination and the reasons for the determination; and

[''(ii) the right of such parents to request an assessment to determine whether the child is or continues to be a child with a disability; and

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

[''(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY.—

[''(A) IN GENERAL.—Except as provided in subparagraph (B), a local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

[''(B) EXCEPTION.—

[''(i) IN GENERAL.—The evaluation described in subparagraph (A) shall not be required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or to exceeding the age eligibility for a free appropriate public education under State law.

[''(ii) SUMMARY OF PERFORMANCE.—For a child whose eligibility under this part terminates under circumstances described in clause (i), a local educational agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include any further recommendations on how to assist the child in meeting the child's postsecondary goals.

[''(d) INDIVIDUALIZED EDUCATION PROGRAMS.—

[''(1) DEFINITIONS.—As used in this title:

[''(A) INDIVIDUALIZED EDUCATION PROGRAM.—

[''(i) IN GENERAL.—The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes—

[''(I) a statement of the child's present levels of academic achievement and functional performance, including—

[''(aa) how the child's disability affects the child's involvement and progress in the general curriculum; or

[''(bb) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

[''(II) a statement of measurable annual goals, including academic and functional goals, designed to—

[''(aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general curriculum; and

[''(bb) meet each of the child's other educational needs that result from the child's disability;

[''(III) a statement of how the child's progress toward the annual goals described in subclause (II) will be measured, including through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, that delineate the progress the child is making toward meeting the annual goals;

[''(IV) a statement of the special education and related services, and supplementary aids and services, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—

[''(aa) to advance appropriately toward attaining the annual goals;

[''(bb) to be involved in and make progress in the general curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and

[''(cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph;

[''(V) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in subclause (IV)(cc);

[''(VI)(aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16)(A); and

[''(bb) if the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why—

[''(AA) the child cannot participate in the regular assessment; and

[''(BB) the particular alternate assessment selected is appropriate for the child;

[''(VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications; and

[''(VIII) beginning not later than the first IEP to be in effect when the child is 14, and updated annually thereafter—

[''(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;

[''(bb) the transition services (including courses of study) needed by the child to reach those goals, including services to be provided by other agencies when needed; and

[''(cc) beginning at least 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 under this title, if any, that will transfer to the child on reaching the age of majority under section 615(m).

[''(ii) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require—

[''(I) that additional information be included in a child's IEP beyond what is explicitly required in this section; and

[''(II) the IEP Team to include information under 1 component of a child's IEP that is already contained under another component of such IEP.

[''(B) INDIVIDUALIZED EDUCATION PROGRAM TEAM.—The term 'individualized education program team' or 'IEP Team' means a group of individuals composed of—

[''(i) the parents of a child with a disability;

[''(ii) at least 1 regular education teacher of such child (if the child is, or may be, participating in the regular education environment);

[''(iii) at least 1 special education teacher, or where appropriate, at least 1 special education provider of such child;

[''(iv) a representative of the local educational agency who—

[''(I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

[''(II) is knowledgeable about the general curriculum; and

[''(III) is knowledgeable about the availability of resources of the local educational agency;

[''(v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi);

[''(vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

[''(vii) whenever appropriate, the child with a disability.

[''(C) IEP TEAM ATTENDANCE.—

[''(i) ATTENDANCE NOT NECESSARY.—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 agree that the attendance of such member is not necessary because no modification to the member's area of the curriculum or related services is being modified or discussed in the meeting.

[''(ii) EXCUSAL.—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—

[''(I) the parent and the local educational agency consent to the excusal; and

[''(II) the member submits input into the development of the IEP prior to the meeting.

[''(2) REQUIREMENT THAT PROGRAM BE IN EFFECT.—

[''(A) IN GENERAL.—At the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in its jurisdiction, an individualized education program, as defined in paragraph (1)(A).

[''(B) PROGRAM FOR CHILD AGED 3 THROUGH 5.—In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2-year-old child with a disability who will turn age 3 during the school year), an individualized family service plan that contains the material described in section 636, and that is developed in accordance with this section, may serve as the IEP of the child if using that plan as the IEP is—

[''(i) consistent with State policy; and

[''(ii) agreed to by the agency and the child's parents.

[''(3) DEVELOPMENT OF IEP.—

[''(A) IN GENERAL.—In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider—

[''(i) the strengths of the child;

[''(ii) the concerns of the parents for enhancing the education of their child;

[''(iii) the results of the initial evaluation or most recent evaluation of the child; and

[''(iv) the academic, developmental, and functional needs of the child.

[''(B) CONSIDERATION OF SPECIAL FACTORS.—The IEP Team shall—

[''(i) in the case of a child whose behavior impedes the child's learning or that of others, provide for positive behavioral interventions and supports, and other strategies to address that behavior;

[''(ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP;

[''(iii) in the case of a child who is blind or visually impaired—

[''(I) provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child; and

[''(II) consider, when appropriate, instructional services related to functional performance skills, orientation and mobility, and skills in the use of assistive technology devices, including low vision devices;

[''(iv) in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel, and access to the general curriculum and instruction at the child's academic level in the child's language and communication mode; and

[''(v) consider whether the child requires assistive technology devices and services.

[''(C) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—A regular education teacher of the child, as a member of the IEP Team shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(i)(IV).

[''(D) AGREEMENT.—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 remainder of the school year, and instead develop a written document to amend or modify the child's current IEP.

[''(E) CONSOLIDATION OF IEP TEAM MEETINGS.—To the extent possible, the local educational agency shall encourage the consolidation of reevaluations of a child with IEP Team meetings for the child.

[''(4) REVIEW AND REVISION OF IEP.—

[''(A) IN GENERAL.—The local educational agency shall ensure that, subject to subparagraph (B), the IEP Team—

[''(i) reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

[''(ii) revise the IEP as appropriate to address—

[''(I) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;

[''(II) the results of any reevaluation conducted under this section;

[''(III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B);

[''(IV) the child's anticipated needs; or

[''(V) other matters.

[''(B) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—A regular education teacher of the child, as a member of the IEP Team, shall, consistent with paragraph (1)(C), participate in the review and revision of the IEP of the child.

[''(5) THREE-YEAR IEP.—

[''(A) DEVELOPMENT OF 3-YEAR IEP.—The local educational agency may offer a child with a disability who has reached the age of 18, the option of developing a comprehensive 3-year IEP. With the consent of the parent, when appropriate, the IEP Team shall develop an IEP, as described in paragraphs (1) and (3), that is designed to serve the child for the final 3-year transition period, which includes a statement of—

[''(i) measurable goals that will enable the child to be involved in and make progress in the general education curriculum and that will meet the child's transitional and postsecondary needs that result from the child's disability; and

[''(ii) measurable annual goals for measuring progress toward meeting the postsecondary goals described in clause (i).

[''(B) REVIEW AND REVISION OF 3-YEAR IEP.—

[''(i) REQUIREMENT.—Each year the local educational agency shall ensure that the IEP Team—

[''(I) provides an annual review of the child's IEP to determine the child's current levels of progress and determine whether the annual goals for the child are being achieved; and

[''(II) revises the IEP, as appropriate, to enable the child to continue to meet the measurable transition goals set out in the IEP.

[''(ii) COMPREHENSIVE REVIEW.—If the review under clause (i) determines that the child is not making sufficient progress toward the goals described in subparagraph (A), the local educational agency shall ensure that the IEP Team provides a review, within 30 calendar days, of the IEP under paragraph (4).

[''(iii) PREFERENCE.—At the request of the child, or when appropriate, the parent, the IEP Team shall conduct a review of the child's 3-year IEP under paragraph (4) rather than an annual review under subparagraph (B)(i).

[''(6) FAILURE TO MEET TRANSITION OBJECTIVES.—If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(i)(VIII), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in that program.

[''(7) CHILDREN WITH DISABILITIES IN ADULT PRISONS.—

[''(A) IN GENERAL.—The following requirements shall not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

[''(i) The requirements contained in section 612(a)(16) and paragraph (1)(A)(i)(V) (relating to participation of children with disabilities in general assessments).

[''(ii) The requirements of items (aa) and (bb) of paragraph (1)(A)(i)(VII) (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this part will end, because of their age, before they will be released from prison.

[''(B) ADDITIONAL REQUIREMENT.—If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child's IEP Team may modify the child's IEP or placement notwithstanding the requirements of sections 612(a)(5)(A) and 614(d)(1)(A) if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

[''(e) EDUCATIONAL PLACEMENTS.—Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

[''(f) ALTERNATIVE MEANS OF MEETING PARTICIPATION.—When conducting IEP Team meetings and placement meetings pursuant to this section, 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.

["SEC. 615. PROCEDURAL SAFEGUARDS.

[''(a) ESTABLISHMENT OF PROCEDURES.—Any State educational agency, State agency, or local educational agency that receives assistance under this part shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies.

[''(b) TYPES OF PROCEDURES.—The procedures required by this section shall include—

[''(1) an opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

[''(2) procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child) to act as a surrogate for the parents;

[''(3) written prior notice to the parents of the child, in accordance with subsection (c)(1), whenever the local educational agency—

[''(A) proposes to initiate or change; or

[''(B) refuses to initiate or change,

the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child;

[''(4) procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so;

[''(5) an opportunity for mediation in accordance with subsection (e);

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

[''(7)(A) procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with subsection (c)(2) (which shall remain confidential)—

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

[''(ii) that shall include—

[''(I) the name of the child, the address of the residence of the child, and the name of the school the child is attending;

[''(II) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

[''(III) a proposed resolution of the problem to the extent known and available to the party at the time; and

[''(B) 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 requirements of subparagraph (A)(ii);

[''(8) a requirement that the local educational agency shall send a prior written notice pursuant to subsection (c)(1) in response to a parent's due process complaint notice under paragraph (7) if the local educational agency has not sent such a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice; and

[''(9) procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively.

[''(c) NOTIFICATION REQUIREMENTS.—

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

[''(A) a description of the action proposed or refused by the agency;

[''(B) an explanation of why the agency proposes or refuses to take the action;

[''(C) a description of any other options that the agency considered and the reasons why those options were rejected;

[''(D) a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;

[''(E) a description of any other factors that are relevant to the agency's proposal or refusal;

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

[''(G) sources for parents to contact to obtain assistance in understanding the provisions of this part.

[''(2) DUE PROCESS COMPLAINT NOTICE.—

[''(A) IN GENERAL.—The due process complaint notice required under subsection (b)(7)(A) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer in writing that the party believes the notice has not met the requirements of that subsection.

[''(B) TIMING.—The party sending a hearing officer notification under subparagraph (A) shall send the notification within 20 days of receiving the complaint.

[''(C) DETERMINATION.—Within 5 days of receipt of the notification provided under subparagraph (B), the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of subsection (b)(7)(A).

[''(d) PROCEDURAL SAFEGUARDS NOTICE.—

[''(1) IN GENERAL.—A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents—

[''(A) upon initial referral or parental request for evaluation;

[''(B) upon registration of a complaint under subsection (b)(6);

[''(C) at any individualized education program meeting required in accordance with subsection (k)(1); and

[''(D) upon request by a parent.

[''(2) CONTENTS.—The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents, unless it clearly is not feasible to do so, and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to—

[''(A) independent educational evaluation;

[''(B) prior written notice;

[''(C) parental consent;

[''(D) access to educational records;

[''(E) opportunity to present complaints, including the time period in which to make those complaints;

[''(F) the child's placement during pendency of due process proceedings;

[''(G) procedures for students who are subject to placement in an interim alternative educational setting;

[''(H) requirements for unilateral placement by parents of children in private schools at public expense;

[''(I) mediation;

[''(J) due process hearings, including requirements for disclosure of evaluation results and recommendations;

[''(K) State-level appeals (if applicable in that State);

[''(L) civil actions, including the time period in which to file such actions; and

[''(M) attorney's fees.

[''(e) MEDIATION.—

[''(1) IN GENERAL.—Any State educational agency or local educational agency that receives assistance under this part shall ensure

that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.

[''(2) REQUIREMENTS.—Such procedures shall meet the following requirements:

[''(A) The procedures shall ensure that the mediation process—

[''(i) is voluntary on the part of the parties;

[''(ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this part; and

[''(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

[''(B) OPPORTUNITY TO MEET WITH A DISINTERESTED PARTY.—A local educational agency or a State agency may establish procedures to offer to parents who choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with—

[''(i) a parent training and information center or community parent resource center in the State established under section 671 or 672; or

[''(ii) an appropriate alternative dispute resolution entity,

to encourage the use, and explain the benefits, of the mediation process to the parents.

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

[''(D) COSTS.—The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

[''(E) SCHEDULING AND LOCATION.—Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

[''(F) WRITTEN MEDIATION AGREEMENT.—An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement that is enforceable in any State court of competent jurisdiction or in a district court of the United States.

[''(G) MEDIATION DISCUSSIONS.—Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.

[''(f) IMPARTIAL DUE PROCESS HEARING.—

[''(1) IN GENERAL.—

[''(A) HEARING.—Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

[''(B) OPPORTUNITY TO RESOLVE COMPLAINT.—

[''(i) PRELIMINARY MEETING.—Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the IEP Team—

[''(I) within 15 days of receiving notice of the parents' complaint;

[''(II) which shall include a representative of the public agency who has decisionmaking authority on behalf of such agency; and

[''(III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and

[''(IV) where the parents of the child discuss their complaint, and the specific issues 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 described in subsection (e).

[''(ii) HEARING.—If the local educational agency has not resolved the complaint to the satisfaction of the parents within 15 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence.

[''(iii) WRITTEN SETTLEMENT AGREEMENT.—In the case that an agreement is reached to resolve the complaint at such meeting, the agreement shall be set forth in a written settlement agreement that is enforceable in any State court of competent jurisdiction or in a district court of the United States and signed by both the parent and a representative of the public agency who has decisionmaking authority on behalf of such agency.

[''(2) DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS.—

[''(A) IN GENERAL.—Not less than 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations, that the party intends to use at the hearing.

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

[''(3) LIMITATIONS ON HEARING.—

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

[''(i) not be—

[''(I) an employee of the State educational agency or the local educational agency involved in the education or care of the child; or

[''(II) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

[''(ii) possess a fundamental understanding of this Act, Federal and State regulations pertaining to this Act, and interpretations of this Act by State and Federal courts;

[''(iii) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

[''(iv) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

[''(B) SUBJECT MATTER OF HEARING.—The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.

[''(C) RULE OF CONSTRUCTION.—Nothing in this section 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.

[''(D) STATUTE OF LIMITATIONS.—A parent or public agency shall request an impartial due process hearing within 2 years of 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 requesting such a hearing under this part, in such time as the State law allows.

[''(E) EXCEPTION TO THE STATUTE OF LIMITATIONS.—The statute of limitations described in subparagraph (D) shall not apply if the parent was prevented from requesting the hearing due to—

[''(i) failure of the local educational agency to provide prior written or procedural safeguards notices;

[''(ii) false representations that the local educational agency was attempting to resolve the problem forming the basis of the complaint; or

[''(iii) the local educational agency's withholding of information from parents.

[''(F) DECISION OF HEARING OFFICER.—

[''(i) IN GENERAL.—Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

[''(ii) PROCEDURAL ISSUES.—In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies—

[''(I) compromised the child's right to an appropriate public education;

[''(II) seriously hampered the parents' opportunity to participate in the process; or

[''(III) caused a deprivation of educational benefits.

[''(iii) ENFORCEABILITY.—A decision made by the hearing officer is enforceable in any State court of competent jurisdiction or in a district court of the United States, unless either party appeals such decision under the provision of subsection (g) or (i)(2).

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

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

[''(h) SAFEGUARDS.—Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded—

[''(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

[''(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

[''(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

[''(4) the right to a written, or, at the option of the parents, electronic findings of fact and decisions, which findings and decisions—

[''(A) shall be made available to the public consistent with the requirements of section 617(c) (relating to the confidentiality of data, information, and records); and

[''(B) shall be transmitted to the advisory panel established pursuant to section 612(a)(20).

[''(i) ADMINISTRATIVE PROCEDURES.—

[''(1) IN GENERAL.—

[''(A) DECISION MADE IN HEARING.—A decision made in a hearing conducted pursuant to subsection (f) or (k) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2).

[''(B) DECISION MADE AT APPEAL.—A decision made under subsection (g) shall be final,

except that any party may bring an action under paragraph (2).

[''(2) RIGHT TO BRING CIVIL ACTION.—

[''(A) IN GENERAL.—Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy.

[''(B) LIMITATION.—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 action under this part, in such time as the State law allows.

[''(C) ADDITIONAL REQUIREMENTS.—In any action brought under this paragraph, the court—

[''(i) shall receive the records of the administrative proceedings;

[''(ii) shall hear additional evidence at the request of a party; and

[''(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

[''(3) JURISDICTION OF DISTRICT COURTS; ATTORNEYS' FEES.—

[''(A) IN GENERAL.—The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

[''(B) AWARD OF ATTORNEYS' FEES.—In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.

[''(C) DETERMINATION OF AMOUNT OF ATTORNEYS' FEES.—Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

[''(D) PROHIBITION OF ATTORNEYS' FEES AND RELATED COSTS FOR CERTAIN SERVICES.—

[''(i) IN GENERAL.—Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if—

[''(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

[''(II) the offer is not accepted within 10 days; and

[''(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

[''(ii) IEP TEAM MEETINGS.—Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e).

[''(iii) OPPORTUNITY TO RESOLVE COMPLAINTS.—A meeting conducted pursuant to subsection (f)(1)(B)(i) shall not be considered—

[''(I) a meeting convened as a result of an administrative hearing or judicial action; or

[''(II) an administrative hearing or judicial action for purposes of this paragraph.

[''(E) EXCEPTION TO PROHIBITION ON ATTORNEYS' FEES AND RELATED COSTS.—Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

[''(F) REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—Except as provided in subparagraph (G), whenever the court finds that—

[''(i) the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

[''(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

[''(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

[''(iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A),

the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

[''(G) EXCEPTION TO REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

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

[''(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING.—

[''(1) AUTHORITY OF SCHOOL PERSONNEL.—

[''(A) IN GENERAL.—School personnel under this section may order a change in the placement of a child with a disability who violates a code of student conduct to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

[''(B) ADDITIONAL AUTHORITY.—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 pursuant to subparagraph (C), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which the procedures would be applied to children without disabilities, except as provided in section 612(a)(1).

[''(C) MANIFESTATION DETERMINATION.—

[''(i) IN GENERAL.—Except as provided in subparagraphs (A) and (D), 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 IEP Team shall review all relevant information in the student's file, any information provided by the parents, and teacher observations, to determine—

[''(I) if the conduct in question was the result of the child's disability; or

[''(II) if the conduct in question resulted from the failure to implement the IEP or develop and implement behavioral interventions as required by section 614(d)(3)(B)(i).

[''(ii) MANIFESTATION.—If the IEP Team determines that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

[''(D) SPECIAL CIRCUMSTANCES.—In cases where a child carries or possesses a weapon at school or a school function, possesses or uses drugs or sells or solicits the sale of drugs while at school or a school function, or has committed serious bodily injury upon another person while at school or at a school function, school personnel may remove a student to an interim alternative educational setting for not more than 45 school days, without regard to whether the behavior is determined to be a manifestation of the child's disability.

[''(E) SERVICES.—A child with a disability who is removed from the child's current placement under subparagraph (B) or (D) shall—

[''(i) continue to receive educational services pursuant to section 612(a)(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

[''(ii) receive behavioral intervention services as described in section 614(d)(3)(B)(i) designed to address the behavior violation so that the violation does not recur.

[''(2) DETERMINATION OF SETTING.—The alternative educational setting shall be determined by the IEP Team.

[''(3) APPEAL.—

[''(A) IN GENERAL.—The parent of a child with a disability who disagrees with any decision regarding disciplinary action, placement, or the manifestation determination under this subsection may request a hearing.

[''(B) AUTHORITY OF HEARING OFFICER.—

[''(i) IN GENERAL.—If a parent of a child with a disability disagrees with a decision as described in subparagraph (A), the hearing officer may determine whether the decision regarding such action was appropriate.

[''(ii) CHANGE OF PLACEMENT ORDER.—A hearing officer under this section 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 such child is substantially likely to result in injury to the child or to others.

[''(4) PLACEMENT DURING APPEALS.—When a parent requests a hearing regarding a disciplinary procedure described in paragraph (1)(B) or challenges the interim alternative educational setting or manifestation determination—

[''(A) 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 for in paragraph (1)(B), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

[''(B) 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.

[''(5) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.—

[''(A) IN GENERAL.—A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this part if the local educational agency had

knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

[''(B) BASIS OF KNOWLEDGE.—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—

[''(i) the parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with the requirements contained in this clause) to personnel of the appropriate educational agency that the child is in need of special education and related services;

[''(ii) the parent of the child has requested an evaluation of the child pursuant to section 614;

[''(iii) the teacher of the child, or other personnel of the local educational agency, has expressed concern about a pattern of behavior demonstrated by the child, to the director of special education of such agency or to other administrative personnel of the agency; or

[''(iv) the child has engaged in a pattern of behavior that should have alerted personnel of the local educational agency that the child may be in need of special education and related services.

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

[''(D) CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE.—

[''(i) IN GENERAL.—If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

[''(ii) LIMITATIONS.—If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under paragraph (1), the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

[''(6) REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES.—

[''(A) CONSTRUCTION.—Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

[''(B) TRANSMITTAL OF RECORDS.—An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

[''(7) DEFINITIONS.—For purposes of this subsection, the following definitions apply:

[''(A) DRUG.—The term 'drug'—

[''(i) means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)); and

[''(ii) does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

[''(B) WEAPON.—The term 'weapon' has the meaning given the term 'dangerous weapon' under section 930(g)(2) of title 18, United States Code.

[''(C) SERIOUS BODILY INJURY.—The term 'serious bodily injury' has the meaning given the term 'serious bodily injury' under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

[''(1) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.

[''(m) TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY.—

[''(1) IN GENERAL.—A State that receives amounts from a grant under this part may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)—

[''(A) the public agency shall provide any notice required by this section to both the individual and the parents;

[''(B) all other rights accorded to parents under this part transfer to the child;

[''(C) the agency shall notify the individual and the parents of the transfer of rights; and

[''(D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

[''(2) SPECIAL RULE.—If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part.

[''SEC. 616. MONITORING, TECHNICAL ASSISTANCE, AND ENFORCEMENT.

[''(a) FEDERAL AND STATE MONITORING.—

[''(1) IN GENERAL.—The Secretary shall—

[''(A) monitor implementation of this Act through—

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

[''(ii) the system of indicators, described in subsection (b)(2);

[''(B) enforce this Act in accordance with subsection (c); and

[''(C) require States to monitor implementation of this Act by local educational agencies and enforce this Act in accordance with paragraph (3) of this subsection and subsection (c).

[''(2) FOCUSED MONITORING.—The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on improving educational results and functional outcomes for all children with disabilities, while ensuring compliance with program requirements, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

[''(3) MONITORING PRIORITIES.—The Secretary shall monitor, and shall require States to monitor, the following priority areas:

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

[''(B) Provision of transition services, as defined in section 602(32).

[''(C) State exercise of general supervisory authority, including the effective use of complaint resolution and mediation.

[''(D) Overrepresentation of racial and ethnic groups in special education and related services, to the extent the overrepresentation is the result of inappropriate policies, procedures, and practices.

[''(4) PERMISSIVE AREAS OF REVIEW.—The Secretary may examine other relevant information and data, including data provided by States under section 618, and data from the State's compliance plan under subsection (b)(2)(C).

[''(b) INDICATORS.—

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

[''(2) INDICATORS.—

[''(A) IN GENERAL.—Using the performance indicators established by States under section 612(a)(15), the Secretary shall review—

[''(i) the performance of children with disabilities in the State on assessments, including alternate assessments, dropout rates, and graduation rates, which for purposes of this paragraph means the number and percentage of students with disabilities who graduate with a regular diploma within the number of years specified in a student's IEP; and

[''(ii) the performance of children with disabilities in the State on assessments, including alternate assessments, dropout rates, and graduation rates, as compared to the performance and rates for all children.

[''(B) SECRETARY'S ASSESSMENT.—Based on that review and a review of the State's compliance plan under subparagraph (C), the Secretary shall assess the State's progress in improving educational results for children with disabilities.

[''(C) STATE COMPLIANCE PLAN.—Not later than 1 year after the date of the enactment of the Individuals with Disabilities Education Improvement Act of 2003, each State shall have in place a compliance plan developed in collaboration with the Secretary. Each State's compliance plan shall—

[''(i) include benchmarks to measure continuous progress on the priority areas described in subsection (a)(3);

[''(ii) describe strategies the State will use to achieve the benchmarks; and

[''(iii) be approved by the Secretary.

[''(3) DATA COLLECTION AND ANALYSIS.—The Secretary shall—

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

[''(B) provide technical assistance to improve the capacity of States to meet these data collection requirements.

[''(c) COMPLIANCE AND ENFORCEMENT.—

[''(1) IN GENERAL.—The Secretary shall examine relevant State information and data annually, to determine whether the State is

making satisfactory progress toward improving educational results for children with disabilities using the indicators described in subsection (b)(2)(A) and the benchmarks established in the State compliance plan under subsection (b)(2)(C), and is in compliance with the provisions of this Act.

[''(2) LACK OF SATISFACTORY PROGRESS BY A STATE.—

[''(A) IN GENERAL.—If after examining data, as provided in subsection (b)(2) (A) and (C), the Secretary determines that a State failed to make satisfactory progress in meeting the indicators described in subsection (b)(2)(A) or has failed to meet the benchmarks described in subsection (b)(2)(C) for 2 consecutive years after the State has developed its compliance plan, the Secretary shall notify the State that the State has failed to make satisfactory progress, and shall take 1 or more of the following actions:

[''(i) Direct the use of State level funds for technical assistance, services, or other expenditures to ensure that the State resolves the area or areas of unsatisfactory progress.

[''(ii) Withhold not less than 20, but not more than 50, percent of the State's funds for State administration and activities for the fiscal year under section 611(e), after providing the State the opportunity to show cause why the withholding should not occur, until the Secretary determines that sufficient progress has been made in improving educational results for children with disabilities.

[''(B) ADDITIONAL SECRETARIAL ACTION.—If, at the end of the 5th year after the Secretary has approved the compliance plan that the State has developed under subsection (b)(2)(C), the Secretary determines that a State failed to meet the benchmarks in the State compliance plan and make satisfactory progress in improving educational results for children with disabilities pursuant to the indicators described in subsection (b)(2)(A), the Secretary shall take 1 or more of the following actions:

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

[''(ii) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, withhold, in whole or in part, any further payments to the State under this part pursuant to subsection (c)(5).

[''(iii) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

[''(iv) Pending the outcome of any hearing to withhold payments under clause (ii), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate Federal funds, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate Federal funds should not be suspended.

[''(C) SUBSTANTIAL NONCOMPLIANCE.—Notwithstanding subparagraph (B), at any time that the Secretary determines that a State is not in substantial compliance with any provision of this part or that there is a substantial failure to comply with any condition of a local agency's or State agency's eligibility under this part, the Secretary shall take 1 or more of the following actions:

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

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

[''(iii) 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.

[''(iv) Recovery of funds under section 452 of the General Education Provisions Act.

[''(v) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, withhold, in whole or in part, any further payments to the State under this part.

[''(vi) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

[''(vii) Pending the outcome of any hearing to withhold payments under clause (v), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate Federal funds, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate Federal funds should not be suspended.

[''(3) EGREGIOUS NONCOMPLIANCE.—At any time that the Secretary determines that a State is in egregious noncompliance or is willfully disregarding the provisions of this Act, the Secretary shall take such additional enforcement actions as the Secretary determines to be appropriate from among those actions specified in paragraph (2)(C), and, additionally, may impose 1 or more of the following sanctions upon that State:

[''(A) Institute a cease and desist action under section 456 of the General Education Provisions Act.

[''(B) Refer the case to the Office of the Inspector General.

[''(4) REPORT TO CONGRESS.—The Secretary shall report to Congress within 30 days of taking enforcement action pursuant to paragraph (2) (B) or (C), or (3), on the specific action taken and the reasons why enforcement action was taken.

[''(5) NATURE OF WITHHOLDING.—If the Secretary withholds further payments under paragraphs (2)(B)(ii) and (2)(C)(v), the Secretary may determine that such withholding will be limited to programs or projects, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or State agencies affected by the failure. Until the Secretary is satisfied that there is no longer any failure to make satisfactory progress as specified in paragraph (2)(B), or to comply with the provisions of this part, as specified in paragraph (2)(C), payments to the State under this part shall be withheld in whole or in part, or payments by the State educational agency under this part shall be limited to local educational agencies and State agencies whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, State agency, or local educational agency that has received notice under paragraph (2)(B) or (2)(C) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

[''(6) JUDICIAL REVIEW.—

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

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

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

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

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

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

[''(e) STATE AND LOCAL MONITORING.—

[''(1) IN GENERAL.—The State educational agency shall monitor and enforce implementation of this Act, implement a system of monitoring the benchmarks in the State's compliance plan under subsection (b)(2)(C), and require local educational agencies to monitor and enforce implementation of this Act.

[''(2) ADDITIONAL ENFORCEMENT OPTIONS.—If a State educational agency determines that a local educational agency is not meeting the requirements of this part, including the benchmarks in the State's compliance plan, the State educational agency shall prohibit the local educational agency from treating funds received under this part as local funds under section 613(a)(2)(C) for any fiscal year.

["SEC. 617. ADMINISTRATION.

[''(a) RESPONSIBILITIES OF SECRETARY.—The Secretary shall—

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

[''(A) the education of children with disabilities; and

[''(B) carrying out this part; and

[''(2) provide short-term training programs and institutes.

[''(b) RULES AND REGULATIONS.—In carrying out the provisions of this part, the

Secretary shall issue regulations under this Act only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements of this Act.

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

[''(d) PERSONNEL.—The Secretary is authorized to hire qualified personnel necessary to carry out the Secretary's duties under subsection (a) and under sections 618, 661, and 664, without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates, except that not more than 20 such personnel shall be employed at any 1 time.

[''(e) MODEL FORMS.—Not later than the date that the Secretary publishes final regulations under this Act, to implement amendments made by the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall publish and disseminate widely to States, local educational agencies, and parent and community training and information centers—

[''(1) a model IEP form;

[''(2) a model form of the notice of procedural safeguards described in section 615(d); and

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

["SEC. 618. PROGRAM INFORMATION.

[''(a) IN GENERAL.—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide data each year to the Secretary of Education on—

[''(1)(A)—the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, and disability category, who are receiving a free appropriate public education;

[''(B) the number and percentage of children with disabilities, by race, ethnicity, and limited English proficiency status who are receiving early intervention services;

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

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

[''(E) the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, and disability category, who, for each year of age from age 14 through 21, stopped receiving special education and related services because of program completion or other reasons, and the reasons why those children stopped receiving special education and related services;

[''(F) the number and percentage of children with disabilities, by race, and ethnicity, who, from birth through age 2, stopped receiving early intervention services because of program completion or for other reasons;

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

[''(ii) the acts or items precipitating those removals; and

[''(iii) the number of children with disabilities who are subject to long-term suspensions or expulsions;

[''(H) the incidence and duration of disciplinary actions by race, ethnicity, limited English proficiency status, and disability category, of children with disabilities, including suspensions of 1 day or more;

[''(I) the number and percentage of children with disabilities who are removed to alternative educational settings or expelled as compared to children without disabilities who are removed to alternative educational settings or expelled;

[''(J) the number of due process complaints filed under section 615 and the number of hearings conducted;

[''(K) the number of hearings requested under section 615(k) and the number of changes in placements ordered as a result of those hearings;

[''(L) the number of hearings requested under section 615(k)(3)(B) and the number of changes in placements ordered as a result of those hearings; and

[''(M) the number of mediations held and the number of settlement agreements reached through such mediations;

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

[''(3) any other information that may be required by the Secretary.

[''(b) TECHNICAL ASSISTANCE.—The Secretary may provide technical assistance to States to ensure compliance with the data collection and reporting requirements under this Act.

[''(c) DISPROPORTIONALITY.—

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

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

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

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

[''(2) REVIEW AND REVISION OF POLICIES, PRACTICES, AND PROCEDURES.—In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, in accordance with paragraph (1), the State or the Secretary of the Interior, as the case may be, shall provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of this Act.

["SEC. 619. PRESCHOOL GRANTS.

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

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

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

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

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

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

[''(c) ALLOCATIONS TO STATES.—

[''(1) IN GENERAL.—The Secretary shall allocate the amount made available to carry out this section for a fiscal year among the States in accordance with paragraph (2) or (3), as the case may be.

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

[''(A) ALLOCATION.—

[''(i) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall—

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

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

[''(III) allocate 15 percent of those remaining funds to States on the basis of the States' relative populations of all children aged 3 through 5 who are living in poverty.

[''(ii) DATA.—For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

[''(B) LIMITATIONS.—Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

[''(i) PRECEDING YEARS.—No State's allocation shall be less than its allocation under this section for the preceding fiscal year.

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

[''(I) the sum of—

[''(aa) the amount the State received under this section for fiscal year 1997; and

[''(bb) ⅓ of 1 percent of the amount by which the amount appropriated under subsection (j) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1997;

[''(II) the sum of—

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

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

[''(III) the sum of—

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

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

[''(iii) MAXIMUM.—Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of—

[''(I) the amount the State received under this section for the preceding fiscal year; and

[''(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under this section from the preceding fiscal year.

[''(C) RATABLE REDUCTIONS.—If the amount available for allocations under this paragraph is insufficient to pay those allocations

in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).

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

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

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

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

[''(B) If the amount available for allocations under this paragraph is equal to or less than the amount allocated under this section to the States for fiscal year 1997, each State shall be allocated the amount the State received for that year, ratably reduced, if necessary.

[''(d) RESERVATION FOR STATE ACTIVITIES.—

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

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

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

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

[''(e) STATE ADMINISTRATION.—

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

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

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

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

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

[''(3) for activities at the State and local levels to meet the performance goals established by the State under section 612(a)(15) and to support implementation of the State plan under subpart 1 of part D if the State receives funds under that subpart; or

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

[''(g) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

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

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

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

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

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

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

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

[''(i) DEFINITION.—For the purpose of this section, the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

[''(j) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated to the Secretary such sums as may be necessary for each of the fiscal years 2004 through 2009.

[''PART C—INFANTS AND TODDLERS WITH DISABILITIES

[''SEC. 631. FINDINGS AND POLICY.

[''(a) FINDINGS.—Congress finds that there is an urgent and substantial need—

[''(1) to enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay, and to recognize the significant brain development which occurs during a child's first 3 years of life;

[''(2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;

[''(3) to maximize the potential for individuals with disabilities to live independently in society;

[''(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities; and

[''(5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, particularly minority, low-income, inner city, and rural children.

[''(b) POLICY.—It is the policy of the United States to provide financial assistance to States—

[''(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;

[''(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);

[''(3) to enhance State capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

[''(4) to encourage States to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.

[''SEC. 632. DEFINITIONS.

[''As used in this part:

[''(1) AT-RISK INFANT OR TODDLER.—The term 'at-risk infant or toddler' means an individual under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.

[''(2) COUNCIL.—The term 'council' means a State interagency coordinating council established under section 641.

[''(3) DEVELOPMENTAL DELAY.—The term 'developmental delay', when used with respect to an individual residing in a State, has the meaning given such term by the State under section 635(a)(1).

[''(4) EARLY INTERVENTION SERVICES.—The term 'early intervention services' means developmental services that—

[''(A) are provided under public supervision;

[''(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;

[''(C) are designed to meet the developmental needs of an infant or toddler with a disability in any 1 or more of the following areas:

[''(i) physical development;

[''(ii) cognitive development;

[''(iii) communication development;

[''(iv) social or emotional development; or

[''(v) adaptive development;

[''(D) meet the standards of the State in which the services are provided, including the requirements of this part;

[''(E) include—

[''(i) family training, counseling, and home visits;

[''(ii) special instruction;

[''(iii) speech-language pathology and audiology services;

[''(iv) occupational therapy;

[''(v) physical therapy;

[''(vi) psychological services;

[''(vii) service coordination services;

[''(viii) medical services only for diagnostic or evaluation purposes;

[''(ix) early identification, screening, and assessment services;

[''(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;

[''(xi) social work services;

[''(xii) vision services;

[''(xiii) assistive technology devices and assistive technology services; and

[''(xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;

[''(F) are provided by qualified personnel, including—

[''(i) special educators;

[''(ii) speech-language pathologists and audiologists;

[''(iii) occupational therapists;

[''(iv) physical therapists;

[''(v) psychologists;

[''(vi) social workers;

[''(vii) nurses;

[''(viii) nutritionists;

[''(ix) family therapists;

[''(x) orientation and mobility specialists; and

[''(xi) pediatricians and other physicians;

[''(G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and

[''(H) are provided in conformity with an individualized family service plan adopted in accordance with section 636.

[''(5) INFANT OR TODDLER WITH A DISABILITY.—The term 'infant or toddler with a disability'—

[''(A) means an individual under 3 years of age who needs early intervention services because the individual—

[''(i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in 1 or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or

[''(ii) has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay; and

[''(B) may also include, at a State's discretion, at-risk infants and toddlers.

["SEC. 633. GENERAL AUTHORITY.

[''The Secretary shall, in accordance with this part, make grants to States (from their allotments under section 643) to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

["SEC. 634. ELIGIBILITY.

[''In order to be eligible for a grant under section 633, a State shall demonstrate to the Secretary that the State—

[''(1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State; and

[''(2) has in effect a statewide system that meets the requirements of section 635.

["SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.

[''(a) IN GENERAL.—A statewide system described in section 633 shall include, at a minimum, the following components:

[''(1) A definition of the term 'developmental delay' that—

[''(A) will be used by the State in carrying out programs under this part; and

[''(B) covers, at a minimum, all infants and toddlers with—

[''(i) a developmental delay of 35 percent or more in 1 of the developmental areas described in section 632(5)(A)(i); or

[''(ii) a developmental delay of 25 percent or more in 2 or more of the developmental areas described in section 632(5)(A)(i).

[''(2) A State policy that is in effect and that ensures that appropriate early intervention services are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers and their families residing on a reservation geographically located in the State.

[''(3) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State, and a family-directed identification of the needs of each family of such an infant or toddler, to appropriately assist in the development of the infant or toddler.

[''(4) For each infant or toddler with a disability in the State, an individualized family service plan in accordance with section 636, including service coordination services in accordance with such service plan.

[''(5) A comprehensive child find system, consistent with part B, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources.

[''(6) A public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency designated or established under paragraph (10) to all primary referral sources, especially hospitals and physicians, of information for parents on the availability of early intervention services, and procedures for determining the extent to which such sources disseminate such information to parents of infants and toddlers.

[''(7) A central directory that includes information on early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State.

[''(8) A comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the State, which comprehensive system may include—

[''(A) implementing innovative strategies and activities for the recruitment and retention of early education service providers;

[''(B) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part;

[''(C) training personnel to work in rural and inner-city areas; and

[''(D) training personnel to coordinate transition services for infants and toddlers served under this part from an early intervention program under this part to preschool or other appropriate services.

[''(9) Subject to subsection (b), policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including the establishment and maintenance of standards which are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing early intervention services, except that nothing in this part (including this paragraph) shall be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained in accordance with State law, regulation, or written policy, to assist in the provision of early intervention services under this part to infants and toddlers with disabilities.

[''(10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out—

[''(A) the general administration and supervision of programs and activities receiving assistance under section 633, and the monitoring of programs and activities used by the State to carry out this part, whether or not such programs or activities are receiving assistance made available under section 633, to ensure that the State complies with this part;

[''(B) the identification and coordination of all available resources within the State from Federal, State, local, and private sources;

[''(C) the assignment of financial responsibility in accordance with section 637(a)(2) to the appropriate agencies;

[''(D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families under this part in a timely manner pending the resolution of any disputes among public agencies or service providers;

[''(E) the resolution of intra- and interagency disputes; and

[''(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.

[''(11) A policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements.

[''(12) A procedure for securing timely reimbursements of funds used under this part in accordance with section 640(a).

[''(13) Procedural safeguards with respect to programs under this part, as required by section 639.

[''(14) A system for compiling data requested by the Secretary under section 618 that relates to this part.

[''(15) A State interagency coordinating council that meets the requirements of section 641.

[''(16) Policies and procedures to ensure that, consistent with section 636(d)(5) to the maximum extent appropriate, early intervention services are provided in natural environments unless a specific outcome cannot be met satisfactorily for the infant or toddler in a natural environment.

[''(b) POLICY.—In implementing subsection (a)(9), a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable coursework necessary to meet the standards described in subsection (a)(9), consistent with State law within 3 years.

["SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN.

[''(a) ASSESSMENT AND PROGRAM DEVELOPMENT.—A statewide system described in section 633 shall provide, at a minimum, for each infant or toddler with a disability, and the infant's or toddler's family, to receive—

[''(1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;

[''(2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler; and

[''(3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (e), including a description of the appropriate transition services for the child.

[''(b) PERIODIC REVIEW.—The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

[''(c) PROMPTNESS AFTER ASSESSMENT.—The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parents' consent, early intervention services may commence prior to the completion of the assessment.

[''(d) CONTENT OF PLAN.—The individualized family service plan shall be in writing and contain—

[''(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;

[''(2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;

[''(3) a statement of the measurable outcomes expected to be achieved for the infant or toddler and the family, including, as appropriate, pre-literacy and language skills, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary;

[''(4) a statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;

[''(5) a statement of the natural environments in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;

[''(6) the projected dates for initiation of services and the anticipated length, duration, and frequency of the services;

[''(7) the identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and

[''(8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

[''(e) PARENTAL CONSENT.—The contents of the individualized family service plan shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in such plan. If the parents do not provide consent with respect to a particular early intervention service, then only the early intervention services to which consent is obtained shall be provided.

["SEC. 637. STATE APPLICATION AND ASSURANCES.

[''(a) APPLICATION.—A State desiring to receive a grant under section 633 shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application shall contain—

[''(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 633;

[''(2) a designation of an individual or entity responsible for assigning financial responsibility among appropriate agencies;

[''(3) information demonstrating eligibility of the State under section 634, including—

[''(A) information demonstrating to the Secretary's satisfaction that the State has in effect the statewide system required by section 633; and

[''(B) a description of services to be provided to infants and toddlers with disabilities and their families through the system;

[''(4) if the State provides services to at-risk infants and toddlers through the system, a description of such services;

[''(5) a description of the uses for which funds will be expended in accordance with this part;

[''(6) a description of the State policies and procedures that require the referral for early intervention services of a child under the age of 3 who—

[''(A) is involved in a substantiated case of child abuse or neglect; or

[''(B) is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure;

[''(7) a description of the procedure used to ensure that resources are made available under this part for all geographic areas within the State;

[''(8) a description of State policies and procedures that ensure that, prior to the adoption by the State of any other policy or procedure necessary to meet the requirements of this part, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities;

[''(9) a description of the policies and procedures to be used—

[''(A) to ensure a smooth transition for toddlers receiving early intervention services under this part to preschool, other appropriate services, or exiting the program, including a description of how—

[''(i) the families of such toddlers will be included in the transition plans required by subparagraph (C); and

[''(ii) the lead agency designated or established under section 635(a)(10) will—

[''(I) notify the local educational agency for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under part B, as determined in accordance with State law;

[''(II) in the case of a child who may be eligible for such preschool services, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency at least 90 days (and at the discretion of all such parties, not more than 6 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive; and

[''(III) in the case of a child who may not be eligible for such preschool services, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under part B, to discuss the appropriate services that the child may receive;

[''(B) to review the child's program options for the period from the child's third birthday through the remainder of the school year; and

[''(C) to establish a transition plan, including, as appropriate, steps to exit from the program; and

[''(10) such other information and assurances as the Secretary may reasonably require.

[''(b) ASSURANCES.—The application described in subsection (a)—

[''(1) shall provide satisfactory assurance that Federal funds made available under section 643 to the State will be expended in accordance with this part;

[''(2) shall contain an assurance that the State will comply with the requirements of section 640;

[''(3) shall provide satisfactory assurance that the control of funds provided under section 643, and title to property derived from those funds, will be in a public agency for the uses and purposes provided in this part and that a public agency will administer such funds and property;

[''(4) shall provide for—

[''(A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part; and

[''(B) keeping such reports and affording such access to the reports as the Secretary may find necessary to ensure the correctness and verification of the reports and proper disbursement of Federal funds under this part;

[''(5) provide satisfactory assurance that Federal funds made available under section 643 to the State—

[''(A) will not be commingled with State funds; and

[''(B) will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds;

[''(6) shall provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under section 643 to the State;

[''(7) shall provide satisfactory assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups, including minority, low-income, and rural families, in the planning and implementation of all the requirements of this part; and

[''(8) shall contain such other information and assurances as the Secretary may reasonably require by regulation.

[''(c) STANDARD FOR DISAPPROVAL OF APPLICATION.—The Secretary may not disapprove such an application unless the Secretary determines, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.

[''(d) SUBSEQUENT STATE APPLICATION.—If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets a requirement of this section, including any policy or procedure filed under part C, as in effect before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall consider the State to have met the requirement for purposes of receiving a grant under this part.

[''(e) MODIFICATION OF APPLICATION.—An application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification of an application to the same extent and in the same manner as this section applies to the original application.

[''(f) MODIFICATIONS REQUIRED BY THE SECRETARY.—The Secretary may require a State to modify its application under this section, but only to the extent necessary to ensure the State's compliance with this part, if—

[''(1) an amendment is made to this Act, or a Federal regulation issued under this Act;

[''(2) a new interpretation of this Act is made by a Federal court or the State's highest court; or

[''(3) an official finding of noncompliance with Federal law or regulations is made with respect to the State.

["SEC. 638. USES OF FUNDS.

[''In addition to using funds provided under section 633 to maintain and implement the statewide system required by such section, a State may use such funds—

[''(1) for direct early intervention services for infants and toddlers with disabilities, and their families, under this part that are not otherwise funded through other public or private sources;

[''(2) to expand and improve on services for infants and toddlers and their families under this part that are otherwise available;

[''(3) to provide a free appropriate public education, in accordance with part B, to children with disabilities from their third birthday to the beginning of the following school year; and

[''(4) in any State that does not provide services for at-risk infants and toddlers under section 637(a)(4), to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purposes of—

[''(A) identifying and evaluating at-risk infants and toddlers;

[''(B) making referrals of the infants and toddlers identified and evaluated under subparagraph (A); and

[''(C) conducting periodic follow-up on each such referral to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.

"SEC. 639. PROCEDURAL SAFEGUARDS.

[''(a) MINIMUM PROCEDURES.—The procedural safeguards required to be included in a statewide system under section 635(a)(13) shall provide, at a minimum, the following:

[''(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

[''(2) The right to confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.

[''(3) The right of the parents to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this part in accordance with State law without jeopardizing other early intervention services under this part.

[''(4) The opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

[''(5) Procedures to protect the rights of the infant or toddler whenever the parents of the infant or toddler are not known or cannot be found or the infant or toddler is a ward of the State, including the assignment of an individual (who shall not be an employee of the State lead agency, or other State agency, and who shall not be any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents.

[''(6) Written prior notice to the parents of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or placement of the infant or toddler with a disability, or the provision of appropriate early intervention services to the infant or toddler.

[''(7) Procedures designed to ensure that the notice required by paragraph (6) fully informs the parents, in the parents' native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

[''(8) The right of parents to use mediation in accordance with section 615, except that—

[''(A) any reference in the section to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);

[''(B) any reference in the section to a local educational agency shall be considered to be a reference to a local service provider or the State's lead agency under this part, as the case may be; and

[''(C) any reference in the section to the provision of free appropriate public education to children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

[''(b) SERVICES DURING PENDENCY OF PROCEEDINGS.—During the pendency of any proceeding or action involving a complaint by the parents of an infant or toddler with a disability, unless the State agency and the parents otherwise agree, the infant or toddler shall continue to receive the appropriate early intervention services currently being provided or, if applying for initial services, shall receive the services not in dispute.

["SEC. 640. PAYOR OF LAST RESORT.

[''(a) NONSUBSTITUTION.—Funds provided under section 643 may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under section 643 may be used to pay the provider of services pending reimbursement from the agency that has ultimate responsibility for the payment.

[''(b) REDUCTION OF OTHER BENEFITS.—Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to Medicaid for infants or toddlers with disabilities) within the State.

["SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.

[''(a) ESTABLISHMENT.—

[''(1) IN GENERAL.—A State that desires to receive financial assistance under this part shall establish a State interagency coordinating council.

[''(2) APPOINTMENT.—The council shall be appointed by the Governor. In making appointments to the council, the Governor shall ensure that the membership of the council reasonably represents the population of the State.

[''(3) CHAIRPERSON.—The Governor shall designate a member of the council to serve as the chairperson of the council, or shall require the council to so designate such a member. Any member of the council who is a representative of the lead agency designated under section 635(a)(10) may not serve as the chairperson of the council.

[''(b) COMPOSITION.—

[''(1) IN GENERAL.—The council shall be composed as follows:

[''(A) PARENTS.—At least 20 percent of the members shall be parents of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least 1 such member shall be a parent of an infant or toddler with a disability or a child with a disability aged 6 or younger.

[''(B) SERVICE PROVIDERS.—At least 20 percent of the members shall be public or private providers of early intervention services.

[''(C) STATE LEGISLATURE.—At least 1 member shall be from the State legislature.

[''(D) PERSONNEL PREPARATION.—At least 1 member shall be involved in personnel preparation.

[''(E) AGENCY FOR EARLY INTERVENTION SERVICES.—At least 1 member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies.

[''(F) AGENCY FOR PRESCHOOL SERVICES.—At least 1 member shall be from the State educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency.

[''(G) STATE MEDICAID AGENCY.—At least 1 member shall be from the agency responsible for the State medicaid program.

[''(H) HEAD START AGENCY.—At least 1 representative from a Head Start agency or program in the State.

[''(I) CHILD CARE AGENCY.—At least 1 representative from a State agency responsible for child care.

[''(2) OTHER MEMBERS.—The council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs, or where there is no BIA-operated or BIA-funded school, from the Indian Health Service or the tribe or tribal council.

[''(c) MEETINGS.—The council shall meet at least quarterly and in such places as the council determines necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

[''(d) MANAGEMENT AUTHORITY.—Subject to the approval of the Governor, the council may prepare and approve a budget using funds under this part to conduct hearings and forums, to reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives), to pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business, to hire staff, and to obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this part.

[''(e) FUNCTIONS OF COUNCIL.—

[''(1) DUTIES.—The council shall—

[''(A) advise and assist the lead agency designated or established under section 635(a)(10) in the performance of the responsibilities set forth in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements;

[''(B) advise and assist the lead agency in the preparation of applications and amendments thereto;

[''(C) advise and assist the State educational agency regarding the transition of toddlers with disabilities to preschool and other appropriate services; and

[''(D) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State.

[''(2) AUTHORIZED ACTIVITY.—The council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children from birth through age 5. The council may advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.

[''(f) CONFLICT OF INTEREST.—No member of the council shall cast a vote on any matter that is likely to provide a direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

["SEC. 642. FEDERAL ADMINISTRATION.

[''Sections 616, 617, and 618 shall, to the extent not inconsistent with this part, apply to the program authorized by this part, except that—

[''(1) any reference in such sections to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);

[''(2) any reference in such sections to a local educational agency, educational service agency, or a State agency shall be considered to be a reference to an early intervention service provider under this part; and

[''(3) any reference to the education of children with disabilities or the education of all children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

["SEC. 643. ALLOCATION OF FUNDS.

[''(a) RESERVATION OF FUNDS FOR OUTLYING AREAS.—

[''(1) IN GENERAL.—From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve not more than 1 percent for payments to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs.

[''(2) CONSOLIDATION OF FUNDS.—The provisions of Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds those areas receive under this part.

[''(b) PAYMENTS TO INDIANS.—

[''(1) IN GENERAL.—The Secretary shall, subject to this subsection, make payments to the Secretary of the Interior to be distributed to tribes, tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or consortia of the above entities for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for such fiscal year.

[''(2) ALLOCATION.—For each fiscal year, the Secretary of the Interior shall distribute the entire payment received under paragraph (1) by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation, as determined annually, divided by the total of such children served by all tribes, tribal organizations, or consortia.

[''(3) INFORMATION.—To receive a payment under this subsection, the tribe, tribal organization, or consortium shall submit such information to the Secretary of the Interior as is needed to determine the amounts to be distributed under paragraph (2).

[''(4) USE OF FUNDS.—The funds received by a tribe, tribal organization, or consortium shall be used to assist States in child find, screening, and other procedures for the early identification of Indian children under 3 years of age and for parent training. Such funds may also be used to provide early intervention services in accordance with this part. Such activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

[''(5) REPORTS.—To be eligible to receive a grant under paragraph (2), a tribe, tribal organization, or consortium shall make a biennial report to the Secretary of the Interior of activities undertaken under this subsection, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis to the Secretary of Education along with such other information as required under section 611(h)(3)(E). The Secretary of Education may require any additional information from the Secretary of the Interior.

[''(6) PROHIBITED USES OF FUNDS.—None of the funds under this subsection may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

[''(c) STATE ALLOTMENTS.—

[''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3) from the funds remaining for each fiscal year after the reservation and payments under subsections (a) and (b), the Secretary shall first allot to each State an amount that bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

[''(2) MINIMUM ALLOTMENTS.—Except as provided in paragraph (3), no State shall receive an amount under this section for any fiscal year that is less than the greater of—

[''(A) ½ of 1 percent of the remaining amount described in paragraph (1); or

[''(B) $500,000.

[''(3) RATABLE REDUCTION.—

[''(A) IN GENERAL.—If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allotments to such States for such year.

[''(B) ADDITIONAL FUNDS.—If additional funds become available for making payments under this subsection for a fiscal year, allotments that were reduced under subparagraph (A) shall be increased on the same basis the allotments were reduced.

[''(4) DEFINITIONS.—For the purpose of this subsection—

[''(A) the terms 'infants' and 'toddlers' mean children under 3 years of age; and

[''(B) the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

[''(d) REALLOTMENT OF FUNDS.—If a State elects not to receive its allotment under subsection (c), the Secretary shall reallot, among the remaining States, amounts from such State in accordance with such subsection.

["SEC. 644. AUTHORIZATION OF APPROPRIATIONS.

[''For the purpose of carrying out this part, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2009.

["PART D—NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF CHILDREN WITH DISABILITIES

["SEC. 650. FINDINGS.

[''Congress finds the following:

[''(1) The Federal Government has an ongoing obligation to support activities that contribute to positive results for children with disabilities, enabling them to lead productive and independent adult lives.

[''(2) Systemic change benefiting all students, including children with disabilities, requires the involvement of States, local educational agencies, parents, individuals with disabilities and their families, teachers and other service providers, and other interested individuals and organizations to develop and implement comprehensive strategies that improve educational results for children with disabilities.

[''(3) State educational agencies, in partnership with local educational agencies, parents of children with disabilities, and other individuals and organizations, are in the best position to improve education for children with disabilities and to address their special needs.

[''(4) An effective educational system serving students with disabilities should—

[''(A) maintain high academic achievement standards and clear performance goals for children, consistent with the standards and expectations for all students in the educational system, and provide for appropriate and effective strategies and methods to ensure that all children with disabilities have the opportunity to achieve those standards and goals;

[''(B) clearly define, in objective, measurable terms, the school and post-school results that children with disabilities are expected to achieve; and

[''(C) promote transition services as described in section 602(32) and coordinate State and local education, social, health, mental health, and other services, in addressing the full range of student needs, particularly the needs of children with disabilities who need significant levels of support to participate and learn in school and the community.

[''(5) The availability of an adequate number of qualified personnel is critical to serve effectively children with disabilities, to assume leadership positions in administration

and direct services, to provide teacher training, and to conduct high quality research to improve special education.

[''(6) High quality, comprehensive professional development programs are essential to ensure that the persons responsible for the education or transition of children with disabilities possess the skills and knowledge necessary to address the educational and related needs of those children.

[''(7) Models of professional development should be scientifically based and reflect successful practices, including strategies for recruiting, preparing, and retaining personnel.

[''(8) Continued support is essential for the development and maintenance of a coordinated and high quality program of research to inform successful teaching practices and model curricula for educating children with disabilities.

[''(9) A comprehensive research agenda should be established and pursued to promote the highest quality and rigor in special education research, and to address the full range of issues facing children with disabilities, parents of children with disabilities, school personnel, and others.

[''(10) Training, technical assistance, support, and dissemination activities are necessary to ensure that parts B and C are fully implemented and achieve high quality early intervention, educational, and transitional results for children with disabilities and their families.

[''(11) Parents, teachers, administrators, and related services personnel need technical assistance and information in a timely, coordinated, and accessible manner in order to improve early intervention, educational, and transitional services and results at the State and local levels for children with disabilities and their families.

[''(12) Parent training and information activities assist parents of a child with a disability in dealing with the multiple pressures of parenting such a child and are of particular importance in—

[''(A) playing a vital role in creating and preserving constructive relationships between parents of children with disabilities and schools by facilitating open communication between the parents and schools; encouraging dispute resolution at the earliest possible point in time; and discouraging the escalation of an adversarial process between the parents and schools;

[''(B) ensuring the involvement of parents in planning and decisionmaking with respect to early intervention, educational, and transitional services;

[''(C) achieving high quality early intervention, educational, and transitional results for children with disabilities;

[''(D) providing such parents information on their rights, protections, and responsibilities under this Act to ensure improved early intervention, educational, and transitional results for children with disabilities;

[''(E) assisting such parents in the development of skills to participate effectively in the education and development of their children and in the transitions described in section 602(32);

[''(F) supporting the roles of such parents as participants within partnerships seeking to improve early intervention, educational, and transitional services and results for children with disabilities and their families; and

[''(G) supporting such parents who may have limited access to services and supports, due to economic, cultural, or linguistic barriers.

[''(13) Support is needed to improve technological resources and integrate technology, including universally designed technologies, into the lives of children with disabilities, parents of children with disabilities, school personnel, and others through curricula, services, and assistive technologies.

[''Subpart 1—State Personnel Preparation and Professional Development Grants

[''SEC. 651. PURPOSE; DEFINITION; PROGRAM AUTHORITY.

[''(a) PURPOSE.—The purpose of this subpart is to assist State educational agencies in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities.

[''(b) DEFINITION.—In this subpart the term 'personnel' means special education teachers, general education teachers, principals, administrators, related services personnel, paraprofessionals, and early intervention personnel serving infants, toddlers, preschoolers, or children with disabilities.

[''(c) PROGRAM AUTHORITY.—

[''(1) COMPETITIVE GRANTS.—

[''(A) IN GENERAL.—For any fiscal year for which the amount appropriated under section 655 is less than $100,000,000, the Secretary is authorized to award grants, on a competitive basis, to State educational agencies to carry out the activities described in the State plan submitted under section 654.

[''(B) PRIORITY.—The Secretary may give priority to awarding grants under subparagraph (A) to State educational agencies that—

[''(i) have the greatest personnel shortages; or

[''(ii) demonstrate the greatest difficulty meeting the requirements of section 615(a)(14).

[''(C) MINIMUM.—The Secretary shall make a grant to each State educational agency selected under subparagraph (A) in an amount for each fiscal year that is—

[''(i) not less than $500,000, nor more than $2,000,000, in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

[''(ii) not less than $80,000 in the case of an outlying area.

[''(D) INCREASES.—The Secretary may increase the amount described in subparagraph (C) to account for inflation.

[''(E) FACTORS.—The Secretary shall set the amount of each grant under subparagraph (A) after considering—

[''(i) the amount of funds available for making the grants;

[''(ii) the relative population of the State or outlying area;

[''(iii) the types of activities proposed by the State or outlying area;

[''(iv) the alignment of proposed activities with section 612(a)(15);

[''(v) the alignment of proposed activities with the plans and applications submitted under sections 1111 and 2112, respectively, of the Elementary and Secondary Education Act of 1965; and

[''(vi) the use, as appropriate, of scientifically based activities.

[''(2) FORMULA GRANTS.—

[''(A) IN GENERAL.—For any fiscal year for which the funds appropriated under section 655 are equal to or greater than $100,000,000, the Secretary shall—

[''(i) reserve from such funds an amount sufficient to continue to make payments for the fiscal year in accordance with the terms of each multi-year grant awarded under paragraph (1) for which the grant period has not ended; and

[''(ii) use the remainder of such funds to award grants to State educational agencies, from allotments under subparagraph (B), to enable the State educational agencies to award contracts and subgrants, on a competitive basis, to carry out the authorized activities described in section 654.

[''(B) ALLOTMENT.—Except as provided in subparagraph (C), from the remainder of funds described in subparagraph (A)(ii) for a fiscal year, the Secretary shall make an allotment to each State educational agency in an amount that bears the same relation to such remainder as the amount of funds the State received under section 611(d)(3) for the preceding fiscal year bears to the amount of funds received by all States under such section for the preceding fiscal year.

[''(C) MINIMUM ALLOTMENT.—The amount of any State educational agency's allotment under this paragraph for any fiscal year shall not be less than ¼ of 1 percent of the amount made available under this part for such year.

[''SEC. 652. ELIGIBILITY AND COLLABORATIVE PROCESS.

[''(a) ELIGIBLE APPLICANTS.—A State educational agency may apply for a grant under this subpart for a grant period of not less than 1 year and not more than 5 years.

[''(b) PARTNERS.—

[''(1) IN GENERAL.—In order to be considered for a grant under this subpart, a State educational agency shall establish a partnership with local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities, including institutions of higher education and the State agencies responsible for administering part C, child care, and vocational rehabilitation.

[''(2) OTHER PARTNERS.—In order to be considered for a grant under this subpart, a State educational agency shall work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, which may include—

[''(A) the Governor;

[''(B) parents of children with disabilities ages birth through 26;

[''(C) parents of nondisabled children ages birth through 26;

[''(D) individuals with disabilities;

[''(E) parent training and information centers or community parent resource centers;

[''(F) community based and other nonprofit organizations involved in the education and employment of individuals with disabilities;

[''(G) general and special education teachers, paraprofessionals, related services personnel, and early intervention personnel;

[''(H) the State advisory panel established under part B;

[''(I) the State interagency coordinating council established under part C;

[''(J) institutions of higher education within the State;

[''(K) individuals knowledgeable about vocational education;

[''(L) the State agency for higher education;

[''(M) the State vocational rehabilitation agency;

[''(N) public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice;

[''(O) other providers of professional development that work with infants, toddlers, preschoolers, and children with disabilities; and

[''(P) other individuals.

[''SEC. 653. APPLICATIONS.

[''(a) IN GENERAL.—

[''(1) SUBMISSION.—A State educational agency that desires to receive a grant under this subpart shall submit to the Secretary an application at such time, in such manner, and including such information as the Secretary may require.

[''(2) STATE PLAN.—The application shall include a plan that identifies and addresses

the State and local needs for the professional development of administrators, principals, and teachers, as well as individuals who provide direct supplementary aids and services to children with disabilities, and that—

[''(A) is designed to enable the State to meet the requirements of section 612(a)(14);

[''(B) is based on an assessment of State and local needs that identifies critical aspects and areas in need of improvement related to the preparation, ongoing training, and professional development of personnel that serve infants, toddlers, preschoolers, and children with disabilities within the State, including—

[''(i) current and anticipated personnel vacancies and shortages; and

[''(ii) the number of preservice programs; and

[''(C) is integrated and aligned, to the maximum extent possible, with State plans and activities under the Elementary and Secondary Education Act of 1965, the Rehabilitation Act of 1973, and the Higher Education Act of 1965, as appropriate.

[''(3) REQUIREMENT.—The State application shall contain an assurance that the State educational agency shall carry out each of the strategies described in subsection (b)(4).

[''(b) ELEMENTS OF STATE PERSONNEL PREPARATION AND PROFESSIONAL DEVELOPMENT PLAN.—Each professional development plan shall—

[''(1) describe a partnership agreement that is in effect for the period of the grant, which agreement shall specify—

[''(A) the nature and extent of the partnership described in section 652(b) and the respective roles of each member of the partnership; and

[''(B) how the State will work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of the persons and organizations;

[''(2) describe how the strategies and activities described in paragraph (4) will be coordinated with other public resources (including part B and part C funds retained for use at the State level for personnel and professional development purposes) and private resources;

[''(3) describe how the State will align its professional development plan under this subpart with the plan and application submitted under sections 1111 and 2112, respectively, of the Elementary and Secondary Education Act of 1965;

[''(4) describe what strategies the State will use to address the professional development and personnel needs identified under subsection (a)(2) and how those strategies will be implemented, including—

[''(A) a description of the preservice and inservice programs and activities to be supported under this subpart that will provide personnel with the knowledge and skills to meet the needs of, and improve the performance and achievement of, infants, toddlers, preschoolers, and children with disabilities; and

[''(B) how such strategies shall be integrated, to the maximum extent possible, with other activities supported by grants funded under this part, including those under section 664;

[''(5) provide an assurance that the State will provide technical assistance to local educational agencies to improve the quality of professional development available to meet the needs of personnel who serve children with disabilities;

[''(6) provide an assurance that the State will provide technical assistance to entities that provide services to infants and toddlers with disabilities to improve the quality of professional development available to meet the needs of personnel serving such children;

[''(7) describe how the State will recruit and retain highly qualified teachers and other qualified personnel in geographic areas of greatest need;

[''(8) describe the steps the State will take to ensure that poor and minority children are not taught at higher rates by teachers who are not highly qualified; and

[''(9) describe how the State will assess, on a regular basis, the extent to which the strategies implemented under this subpart have been effective in meeting the performance goals described in section 612(a)(15).

[''(c) PEER REVIEW.—

[''(1) IN GENERAL.—The Secretary shall use a panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications for grants under section 651(c)(1).

[''(2) COMPOSITION OF PANEL.—A majority of a panel described in paragraph (1) shall be composed of individuals who are not employees of the Federal Government.

[''(3) PAYMENT OF FEES AND EXPENSES OF CERTAIN MEMBERS.—The Secretary may use available funds appropriated to carry out this subpart to pay the expenses and fees of panel members who are not employees of the Federal Government.

[''(d) REPORTING PROCEDURES.—Each State educational agency that receives a grant under this subpart shall submit annual performance reports to the Secretary. The reports shall describe the progress of the State in implementing its plan and analyzing the effectiveness of the State's activities under this subpart.

["SEC. 654. USE OF FUNDS.

[''(a) PROFESSIONAL DEVELOPMENT ACTIVITIES.—A State educational agency that receives a grant under this subpart shall use the grant funds to support activities in accordance with the State's plan described in section 653, including 1 or more of the following:

[''(1) Carrying out programs that provide support to both special education and regular education teachers of children with disabilities, such as programs that—

[''(A) provide teacher mentoring, team teaching, reduced class schedules and case loads, and intensive professional development; and

[''(B) use standards or assessments for guiding beginning teachers that are consistent with challenging State student academic achievement and functional standards and with the requirements for professional development as defined in section 9101(34) of the Elementary and Secondary Education Act of 1965.

[''(2) Encouraging and supporting the training of special education and regular education teachers and administrators to effectively utilize and integrate technology—

[''(A) into curricula and instruction, including training to improve the ability to collect, manage, and analyze data to improve teaching, decisionmaking, school improvement efforts, and accountability;

[''(B) to enhance learning by children with disabilities; and

[''(C) to effectively communicate with parents.

[''(3) Providing professional development activities that—

[''(A) improve the knowledge of special education and regular education teachers concerning—

[''(i) the academic and developmental or functional needs of students with disabilities; or

[''(ii) effective instructional strategies, methods, and skills, and the use of State academic content standards and student academic achievement and functional standards, and State assessments, to improve teaching practices and student academic achievement; and

[''(B) improve the knowledge of special education and regular education teachers and principals and, in appropriate cases, paraprofessionals, concerning effective instructional practices and that—

[''(i) provide training in how to teach and address the needs of students with different learning styles;

[''(ii) involve collaborative groups of teachers and administrators;

[''(iii) provide training in methods of—

[''(I) positive behavior interventions and supports to improve student behavior in the classroom;

[''(II) scientifically based reading instruction, including early literacy instruction;

[''(III) early and appropriate interventions to identify and help children with disabilities;

[''(IV) effective instruction for children with low incidence disabilities;

[''(V) successful transitioning to postsecondary opportunities; and

[''(VI) using classroom-based techniques to assist children prior to referral for special education;

[''(iv) provide training to enable special education and regular education teachers and principals to work with and involve parents in their child's education, including parents of low income and limited English proficient children with disabilities;

[''(v) provide training for special education, regular education, principals, and related services personnel in planning, developing, and implementing effective and appropriate IEPs; and

[''(vi) providing training to meet the needs of students with significant health, mobility, or behavioral needs prior to serving such students;

[''(C) train administrators, principals, and other relevant school personnel in conducting effective IEP meetings; and

[''(D) develop and enhance instructional leadership skills of principals.

[''(4) Developing and implementing initiatives to promote the recruitment and retention of highly qualified special education teachers, particularly initiatives that have been proven effective in recruitment and retaining highly qualified teachers, including programs that provide—

[''(A) teacher mentoring from exemplary special education teachers, principals, or superintendents;

[''(B) induction and support for special education teachers during their first 3 years of employment as teachers, respectively; or

[''(C) incentives, including financial incentives, to retain special education teachers who have a record of success in helping students with disabilities.

[''(5) Carrying out programs and activities that are designed to improve the quality of personnel who serve children with disabilities, such as—

[''(A) innovative professional development programs (which may be provided through partnerships that include institutions of higher education), including programs that train teachers and principals to integrate technology into curricula and instruction to improve teaching, learning, and technology literacy, which professional development shall be consistent with the definition of professional development described in section 9101(34) of the Elementary and Secondary Education Act of 1965; and

[''(B) development and use of proven, cost effective strategies for the implementation of professional development activities, such as through the use of technology and distance learning.

[''(b) OTHER ACTIVITIES.—A State educational agency that receives a grant under this subpart shall use the grant funds to support activities in accordance with the State's plan described in section 653, including 1 or more of the following:

[''(1) Reforming special education and regular education teacher certification (including recertification) or licensing requirements to ensure that—

[''(A) special education and regular education teachers have—

[''(i) the training and information necessary to address the full range of needs of children with disabilities across disability categories; and

[''(ii) the necessary subject matter knowledge and teaching skills in the academic subjects that they teach;

[''(B) special education and regular education teacher certification (including recertification) or licensing requirements are aligned with challenging State academic content standards; and

[''(C) special education and regular education teachers have the subject matter knowledge and teaching skills, including technology literacy, necessary to help students meet challenging State student academic achievement and functional standards.

[''(2) Programs that establish, expand, or improve alternative routes for State certification of special education teachers for highly qualified individuals with a baccalaureate or master's degree, including mid-career professionals from other occupations, paraprofessionals, and recent college or university graduates with records of academic distinction who demonstrate the potential to become highly effective special education teachers.

[''(3) Teacher advancement initiatives for special education teachers that promote professional growth and emphasize multiple career paths (such as paths to becoming a career teacher, mentor teacher, or exemplary teacher) and pay differentiation.

[''(4) Developing and implementing mechanisms to assist local educational agencies and schools in effectively recruiting and retaining highly qualified special education teachers.

[''(5) Reforming tenure systems, implementing teacher testing for subject matter knowledge, and implementing teacher testing for State certification or licensing, consistent with title II of the Higher Education Act of 1965.

[''(6) Funding projects to promote reciprocity of teacher certification or licensing between or among States for special education teachers, except that no reciprocity agreement developed under this paragraph or developed using funds provided under this subpart may lead to the weakening of any State teaching certification or licensing requirement.

[''(7) Developing or assisting local educational agencies to serve children with disabilities through the development and use of proven, innovative strategies to deliver intensive professional development programs that are both cost effective and easily accessible, such as strategies that involve delivery through the use of technology, peer networks, and distance learning.

[''(8) Developing, or assisting local educational agencies in developing, merit based performance systems, and strategies that provide differential and bonus pay for special education teachers.

[''(9) Supporting activities that ensure that teachers are able to use challenging State academic content standards and student academic and functional achievement standards, and State assessments for all children with disabilities, to improve instructional practices and improve the academic achievement of children with disabilities.

[''(10) Coordinating with, and expanding centers established under, section 2113(c)(18) of the Elementary and Secondary Education Act of 1965 to benefit special education teachers.

[''(c) CONTRACTS AND SUBGRANTS.—Each such State educational agency—

[''(1) shall award contracts or subgrants to local educational agencies, institutions of higher education, parent training and information centers, or community parent resource centers, as appropriate, to carry out its State plan under this subpart; and

[''(2) may award contracts and subgrants to other public and private entities, including the lead agency under part C, to carry out such plan.

[''(d) USE OF FUNDS FOR PROFESSIONAL DEVELOPMENT.—A State educational agency that receives a grant under this subpart shall use—

[''(1) not less than 75 percent of the funds the State educational agency receives under the grant for any fiscal year for activities under subsection (a); and

[''(2) not more than 25 percent of the funds the State educational agency receives under the grant for any fiscal year for activities under subsection (b).

[''(e) GRANTS TO OUTLYING AREAS.—Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds received under this subpart.

[''SEC. 655. AUTHORIZATION OF APPROPRIATIONS.

[''There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 2004 through 2009.

[''Subpart 2—Scientifically Based Research, Technical Assistance, Model Demonstration Projects, and Dissemination of Information

[''SEC. 660. PURPOSE.

[''The purpose of this subpart is—

[''(1) to provide Federal funding for scientifically based research, technical assistance, model demonstration projects, and information dissemination to improve early intervention, educational, and transitional results for children with disabilities; and

[''(2) to assist State educational agencies and local educational agencies in improving their education systems.

[''SEC. 661. ADMINISTRATIVE PROVISIONS.

[''(a) COMPREHENSIVE PLAN.—

[''(1) IN GENERAL.—After receiving input from interested individuals with relevant expertise, the Secretary shall develop and implement a comprehensive plan for activities carried out under this subpart (other than activities assisted under sections 662 and 665) in order to enhance the provision of early intervention, educational, related and transitional services to children with disabilities under parts B and C. The plan shall be coordinated with the agenda developed pursuant to section 662(d) and shall include mechanisms to address early intervention, educational, related service and transitional needs identified by State educational agencies in applications submitted for State program improvement grants under subpart 1.

[''(2) PUBLIC COMMENT.—The Secretary shall provide a public comment period of at least 60 days on the plan.

[''(3) DISTRIBUTION OF FUNDS.—In implementing the plan, the Secretary shall, to the extent appropriate, ensure that funds are awarded to recipients under this subpart to carry out activities that benefit, directly or indirectly, children with the full range of disabilities and of all ages.

[''(4) REPORTS TO CONGRESS.—The Secretary shall annually report to Congress on the Secretary's activities under this subpart, including an initial report not later than 12 months after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003.

[''(b) ELIGIBLE APPLICANTS.—

[''(1) IN GENERAL.—Except as otherwise provided in this subpart, the following entities are eligible to apply for a grant, contract, or cooperative agreement under this subpart:

[''(A) A State educational agency.

[''(B) A local educational agency.

[''(C) A public charter school that is a local educational agency under State law.

[''(D) An institution of higher education.

[''(E) Any other public agency.

[''(F) A private nonprofit organization.

[''(G) An outlying area.

[''(H) An Indian tribe or a tribal organization (as defined under section 4 of the Indian Self-Determination and Education Assistance Act).

[''(I) A for-profit organization.

[''(2) SPECIAL RULE.—The Secretary may limit the entities eligible for an award of a grant, contract, or cooperative agreement to 1 or more categories of eligible entities described in paragraph (1).

[''(c) SPECIAL POPULATIONS.—

[''(1) APPLICATION REQUIREMENT.—In making an award of a grant, contract, or cooperative agreement under this subpart, the Secretary shall, as appropriate, require an applicant to meet the criteria set forth by the Secretary under this subpart and demonstrate how the applicant will address the needs of children with disabilities from minority backgrounds.

[''(2) REQUIRED OUTREACH AND TECHNICAL ASSISTANCE.—Notwithstanding any other provision of this Act other than paragraph (1), the Secretary shall reserve at least 1 percent of the total amount of funds made available to carry out this subpart for 1 or both of the following activities:

[''(A) To provide outreach and technical assistance to Historically Black Colleges and Universities, and to institutions of higher education with minority enrollments of at least 25 percent, to promote the participation of such colleges, universities, and institutions in activities under this subpart.

[''(B) To enable Historically Black Colleges and Universities, and the institutions described in subparagraph (A), to assist other colleges, universities, institutions, and agencies in improving educational and transitional results for children with disabilities.

[''(C) RESERVATION OF FUNDS.—The Secretary may reserve funds made available under this subpart to satisfy the requirements of subparagraphs (A) and (B).

[''(d) PRIORITIES.—The Secretary, in making an award of a grant, contract, or cooperative agreement under this subpart, may, without regard to the rulemaking procedures under section 553(a) of title 5, United States Code, limit competitions to, or otherwise give priority to—

[''(1) projects that address 1 or more—

[''(A) age ranges;

[''(B) disabilities;

[''(C) school grades;

[''(D) types of educational placements or early intervention environments;

[''(E) types of services;

[''(F) content areas, such as reading; or

[''(G) effective strategies for helping children with disabilities learn appropriate behavior in the school and other community based educational settings;

[''(2) projects that address the needs of children based on the severity or incidence of their disability;

[''(3) projects that address the needs of—

[''(A) low achieving students;

[''(B) underserved populations;

[''(C) children from low income families;

[''(D) limited English proficient children;
[''(E) unserved and underserved areas;
[''(F) rural or urban areas;
[''(G) children whose behavior interferes with their learning and socialization;
[''(H) children with reading difficulties; or
[''(I) children in charter schools;
[''(4) projects to reduce inappropriate identification of children as children with disabilities, particularly among minority children;
[''(5) projects that are carried out in particular areas of the country, to ensure broad geographic coverage;
[''(6) projects that promote the development and use of universally designed technologies, assistive technology devices, and assistive technology services to maximize children with disabilities' access to and participation in the general curriculum; and
[''(7) any activity that is authorized in this subpart or subpart 3.

[''(e) APPLICANT AND RECIPIENT RESPONSIBILITIES.—
[''(1) DEVELOPMENT AND ASSESSMENT OF PROJECTS.—The Secretary shall require that an applicant for, and a recipient of, a grant, contract, or cooperative agreement for a project under this subpart—
[''(A) involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project; and
[''(B) where appropriate, determine whether the project has any potential for replication and adoption by other entities.
[''(2) ADDITIONAL RESPONSIBILITIES.—The Secretary may require a recipient of a grant, contract, or cooperative agreement under this subpart to—
[''(A) share in the cost of the project;
[''(B) prepare the research and evaluation findings and products from the project in formats that are useful for specific audiences, including parents, administrators, teachers, early intervention personnel, related services personnel, and individuals with disabilities;
[''(C) disseminate such findings and products; and
[''(D) collaborate with other such recipients in carrying out subparagraphs (B) and (C).

[''(f) APPLICATION MANAGEMENT.—
[''(1) STANDING PANEL.—
[''(A) IN GENERAL.—The Secretary shall establish and use a standing panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications under this subpart (other than applications for assistance under sections 662 and 665) that, individually, request more than $75,000 per year in Federal financial assistance.
[''(B) MEMBERSHIP.—The standing panel shall include, at a minimum—
[''(i) individuals who are representatives of institutions of higher education that plan, develop, and carry out high quality programs of personnel preparation;
[''(ii) individuals who design and carry out scientifically based research targeted to the improvement of special education programs and services;
[''(iii) individuals who have recognized experience and knowledge necessary to integrate and apply scientifically based research findings to improve educational and transitional results for children with disabilities;
[''(iv) individuals who administer programs at the State or local level in which children with disabilities participate;
[''(v) individuals who prepare parents of children with disabilities to participate in making decisions about the education of their children;
[''(vi) individuals who establish policies that affect the delivery of services to children with disabilities;
[''(vii) parents of children with disabilities ages birth through 26 who are benefiting, or have benefited, from coordinated research, personnel preparation, and technical assistance; and
[''(viii) individuals with disabilities.
[''(C) TERM.—Unless approved by the Secretary due to extenuating circumstances related to shortages of experts in a particular area of expertise or for a specific competition, no individual shall serve on the standing panel for more than 3 consecutive years.
[''(2) PEER REVIEW PANELS FOR PARTICULAR COMPETITIONS.—
[''(A) COMPOSITION.—The Secretary shall ensure that each sub panel selected from the standing panel that reviews applications under this subpart (other than sections 662 and 665) includes—
[''(i) individuals with knowledge and expertise on the issues addressed by the activities authorized by this subpart; and
[''(ii) to the extent practicable, parents of children with disabilities ages birth through 26, individuals with disabilities, and persons from diverse backgrounds.
[''(B) FEDERAL EMPLOYMENT LIMITATION.—A majority of the individuals on each sub panel that reviews an application under this subpart (other than an application under sections 662 and 665) shall be individuals who are not employees of the Federal Government.
[''(3) USE OF DISCRETIONARY FUNDS FOR ADMINISTRATIVE PURPOSES.—
[''(A) EXPENSES AND FEES OF NON-FEDERAL PANEL MEMBERS.—The Secretary may use funds made available under this subpart to pay the expenses and fees of the panel members who are not officers or employees of the Federal Government.
[''(B) ADMINISTRATIVE SUPPORT.—The Secretary may use not more than 1 percent of the funds made available to carry out this subpart to pay non-Federal entities for administrative support related to management of applications submitted under this subpart.
[''(4) AVAILABILITY OF CERTAIN PRODUCTS.—The Secretary shall ensure that recipients of grants, cooperative agreements, or contracts under this subpart and subpart 3 make available in formats that are accessible to individuals with disabilities any products developed under such grants, cooperative agreements, or contracts that the recipient is making available to the public.

[''(g) PROGRAM EVALUATION.—The Secretary may use funds made available to carry out this subpart to evaluate activities carried out under this subpart.

[''(h) MINIMUM FUNDING REQUIRED.—
[''(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall ensure that, for each fiscal year, at least the following amounts are provided under this subpart to address the following needs:
[''(A) $12,832,000 to address the educational, related services, transitional, and early intervention needs of children with deaf-blindness.
[''(B) $4,000,000 to address the postsecondary, vocational, technical, continuing, and adult education needs of individuals with deafness.
[''(C) $4,000,000 to address the educational, related services, and transitional needs of children with an emotional disturbance and those who are at risk of developing an emotional disturbance.
[''(2) RATABLE REDUCTION.—If the total amount appropriated to carry out sections 662, 664, and 674 for any fiscal year is less than $130,000,000, the amounts listed in paragraph (1) shall be ratably reduced.
[''(i) ELIGIBILITY FOR FINANCIAL ASSISTANCE.—No State or local educational agency, or other public institution or agency, may receive a grant or enter into a contract or cooperative agreement under this subpart that relates exclusively to programs, projects, and activities pertaining to children aged 3 through 5, inclusive, unless the State is eligible to receive a grant under section 619(b).

[''SEC. 662. RESEARCH TO IMPROVE RESULTS FOR CHILDREN WITH DISABILITIES.

[''(a) NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH.—
[''(1) ESTABLISHMENT.—
[''(A) IN GENERAL.—There is established, in the Institute of Education Sciences established under section 111 of the Education Sciences Reform Act of 2002 (hereinafter in this section referred to as 'the Institute'), the National Center for Special Education Research.
[''(B) MISSION.—The mission of the National Center for Special Education Research (hereafter in this section referred to as the 'Center') shall be to—
[''(i) sponsor research to expand knowledge and understanding of the needs of infants, toddlers, and children with disabilities in order to improve the developmental, educational, and transitional results of such individuals;
[''(ii) sponsor research to improve services provided under, and support the implementation of, this Act; and
[''(iii) evaluate the implementation and effectiveness of this Act in coordination with the National Center for Education Evaluation.
[''(2) COMMISSIONER.—The Center shall be headed by a Commissioner for Special Education Research (hereinafter in this section referred to as 'the Commissioner'). The Commissioner shall be appointed by the Director of the Institute (hereinafter in this section referred to as 'the Director') in accordance with section 117 of the Education Sciences Reform Act of 2002. The Commissioner shall have substantial knowledge of the Center's activities, including a high level of expertise in the fields of research, research management, and the education of children with disabilities.
[''(3) APPLICABILITY OF EDUCATION SCIENCES REFORM ACT OF 2002.—Parts A and E of the Education Sciences Reform Act of 2002, and the standards for peer review of applications and for the conduct and evaluation of research under sections 133(a) and 134 of such Act, respectively, shall apply to the Secretary, the Director, and the Commissioner in carrying out this section.
[''(4) GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS.—In carrying out the duties under this part, the Director may award grants to, or enter into contracts or cooperative agreements with, eligible entities.
[''(b) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this section include research activities to—
[''(1) improve services provided under this Act in order to improve academic achievement, functional outcomes, and educational results for children with disabilities;
[''(2) identify scientifically based educational practices that support learning and improve academic achievement, functional outcomes, and educational results for all students with disabilities;
[''(3) examine the special needs of preschool aged children, infants, and toddlers with disabilities, including factors that may result in developmental delays;
[''(4) identify scientifically based related services and interventions that promote participation and progress in the general education curriculum and general education settings;

[''(5) improve the alignment, compatibility, and development of valid and reliable assessments, including alternate assessments as described in section 1111(b) of the Elementary and Secondary Education Act of 1965;

[''(6) examine State content standards and alternate assessments for students with significant cognitive impairment in terms of academic achievement, individualized instructional need, appropriate education settings, and improved post-school results;

[''(7) examine the educational, developmental, and transitional needs of children with high incidence and low incidence disabilities;

[''(8) examine the extent to which overidentification and underidentification of children with disabilities occurs, and the causes thereof;

[''(9) improve reading and literacy skills of children with disabilities;

[''(10) examine and improve secondary and postsecondary education and transitional outcomes and results for children with disabilities;

[''(11) examine methods of early intervention for children with disabilities who need significant levels of support;

[''(12) examine and incorporate universal design concepts in the development of standards, assessments, curricula, and instructional methods as a method to improve educational and transitional results for children with disabilities;

[''(13) improve the preparation of personnel who provide educational and related services to children with disabilities to increase the academic achievement of students with disabilities;

[''(14) examine the excess costs of educating a child with a disability and expenses associated with high cost special education and related services; and

[''(15) help parents improve educational results for their children, particularly related to transition issues.

[''(c) STANDARDS.—The Commissioner shall ensure that activities assisted under this section—

[''(1) conform to high standards of quality, integrity, accuracy, validity, and reliability;

[''(2) are carried out in conjunction with the standards for the conduct and evaluation of all research and development established by the National Center for Education Research; and

[''(3) are objective, secular, neutral, and nonideological, and are free of partisan political influence, and racial, cultural, gender, regional, or disability bias.

[''(d) PLAN.—The Commissioner shall propose to the Director a research plan, developed in collaboration with the Assistant Secretary for Special Education and Rehabilitative Services, that—

[''(1) is consistent with the priorities and mission of the Institute of Education Sciences and the mission of the Special Education Research Center;

[''(2) shall be carried out, updated, and modified, as appropriate;

[''(3) is consistent with the purpose of this Act;

[''(4) contains an appropriate balance across all age ranges and types of children with disabilities;

[''(5) provides for research that is objective and uses measurable indicators to assess its progress and results;

[''(6) is coordinated with the comprehensive plan developed under section 661; and

[''(7) provides that the research conducted under this part is relevant to special education practice and policy.

[''(e) APPLICATIONS.—An eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require.

[''(f) DISSEMINATION.—The Center shall—

[''(1) synthesize and disseminate, through the National Center for Education Evaluation and Regional Assistance, the findings and results of special education research conducted or supported by the Center; and

[''(2) assist the Director in the preparation of a biennial report, as described in section 119 of the Education Sciences Reform Act of 2003.

[''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2004 through 2009.

[''SEC. 663. TECHNICAL ASSISTANCE, DEMONSTRATION PROJECTS, DISSEMINATION OF INFORMATION, AND IMPLEMENTATION OF SCIENTIFICALLY BASED RESEARCH.

[''(a) IN GENERAL.—From amounts made available under section 675, the Secretary, on a competitive basis, shall award grants to, or enter into contracts or cooperative agreements with, eligible entities to provide technical assistance, carry out model demonstration projects, disseminate useful information, and implement activities that are supported by scientifically based research.

[''(b) REQUIRED ACTIVITIES.—The Secretary shall support activities to improve services provided under this Act, including the practices of professionals and others involved in providing such services to children with disabilities, that promote academic achievement and functional performance to improve educational results and functional outcomes for children with disabilities through—

[''(1) implementing effective strategies that are conducive to learning and for addressing inappropriate behavior of students with disabilities in schools, including strategies to prevent children with emotional and behavioral problems from developing emotional disturbances that require the provision of special education and related services;

[''(2) improving the alignment, compatibility, and development of valid and reliable assessment methods, including alternate assessment methods and evaluation methods, for assessing adequately yearly progress as described in section 1111(b)(2)(B) of the Elementary and Secondary Education Act of 1965;

[''(3) providing information to both regular education teachers and special education teachers to address the different learning styles and disabilities of students;

[''(4) disseminating innovative, effective, and efficient curricula, materials (including those that are universally designed), instructional approaches, and strategies that—

[''(A) support effective transitions between educational settings or from school to post-school settings;

[''(B) support effective inclusion of students with disabilities in general education settings, especially students with low-incidence disabilities; and

[''(C) improve educational and transitional results at all levels of the educational system in which the activities are carried out and, in particular, that improve the progress of children with disabilities, as measured by assessments within the general education curriculum involved; and

[''(5) demonstrating and applying scientifically-based findings to facilitate systematic changes related to the provision of services to children with disabilities.

[''(c) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this section include activities to improve services provided under this Act, including the practices of professionals and others involved in providing such services to children with disabilities, that promote academic achievement and functional outcomes to improve results for children with disabilities through—

[''(1) applying and testing research findings in typical service settings to determine the usability, effectiveness, and general applicability of those findings in such areas as improving instructional methods, curricula, and tools, such as textbooks and media;

[''(2) demonstrating and applying scientifically-based findings to facilitate systemic changes related to the provision of services to children with disabilities, in policy, procedure, practice, and the training and use of personnel;

[''(3) supporting and promoting the coordination of early intervention, education, and transitional services for children with disabilities with services provided by health, rehabilitation, and social service agencies;

[''(4) promoting improved alignment and compatibility of general and special education reforms concerned with curriculum and instructional reform, and evaluating of such reforms;

[''(5) enabling professionals, parents of children with disabilities, and other persons, to learn about, and implement, the findings of scientifically based research and effective practices developed in model demonstration projects, relating to the provision of services to children with disabilities;

[''(6) disseminating information relating to successful approaches to overcoming systemic barriers to the effective and efficient delivery of early intervention, educational, and transitional services, to personnel who provide services to children with disabilities;

[''(7) assisting States and local educational agencies with the process of planning systemic changes that will promote improved early intervention, educational, and transitional results for children with disabilities;

[''(8) promoting change through a multi-State or regional framework that benefits States, local educational agencies, and other participants in partnerships that are in the process of achieving systemic-change outcomes;

[''(9) focusing on the needs and issues that are specific to a population of children with disabilities, such as providing single-State and multi-State technical assistance and in-service training—

[''(A) to schools and agencies serving deaf-blind children and their families;

[''(B) to programs and agencies serving other groups of children with low-incidence disabilities and their families; and

[''(C) to address the postsecondary education needs of individuals who are deaf or hard-of-hearing;

[''(10) demonstrating models of personnel preparation to ensure appropriate placements and services for all students with disabilities and to reduce disproportionality in eligibility, placement, and disciplinary actions for minority and limited English proficient children; and

[''(11) disseminating information on how to reduce racial and ethnic disproportionalities.

[''(d) BALANCE AMONG DISABILITIES AND AGE RANGES.—In carrying out this section, the Secretary shall ensure that there is an appropriate balance across all age ranges and disabilities.

[''(e) LINKING STATES TO INFORMATION SOURCES.—In carrying out this section, the Secretary may support projects that link States to technical assistance resources, including special education and general education resources, and may make research and related products available through libraries, electronic networks, parent training projects, and other information sources.

[''(f) APPLICATIONS.—

[''(1) IN GENERAL.—An eligible entity that desires to receive a grant, or to enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

[''(2) CONTENTS.—The Secretary may, as appropriate, require eligible entities to demonstrate that the projects described in their applications are supported by scientifically based research that has been carried out in conjunction with the standards for the conduct and evaluation of all research and development established by the National Center for Education Research.

[''(3) PRIORITY.—As appropriate, the Secretary shall give priority to applications that propose to serve teachers and school personnel directly in the school environment or that strengthen State and local agency capacity to improve instructional practices of personnel to improve educational results for children with disabilities in the school environment.

[''SEC. 664. PERSONNEL DEVELOPMENT TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES.

[''(a) IN GENERAL.—The Secretary, on a competitive basis, shall award grants to, or enter into contracts or cooperative agreements with, eligible entities—

[''(1) to help address State identified needs for highly qualified personnel in special education, related services, early intervention, transition, and regular education, to work with children with disabilities, consistent with the needs identified in the State plan described in section 653(a)(2) and the standards described in section 612(a)(14);

[''(2) to ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined, through scientifically based research, to be successful in serving those children;

[''(3) to encourage increased focus on academics and core content areas in special education personnel preparation programs;

[''(4) to ensure that regular education teachers have the necessary skills and knowledge to provide instruction to students with disabilities in the regular education classroom;

[''(5) to ensure that all special education teachers teaching in core academic subjects are highly qualified;

[''(6) to ensure that preservice and in-service personnel preparation programs include training in—

[''(A) the use of new technologies;

[''(B) the area of early intervention, educational, and transition services;

[''(C) effectively involving parents; and

[''(D) positive behavior supports; and

[''(7) to provide high-quality professional development for principals, superintendents, and other administrators, including training in—

[''(A) instructional leadership;

[''(B) behavioral supports in the school and classroom;

[''(C) paperwork reduction;

[''(D) promoting improved collaboration between special education and general education teachers;

[''(E) assessment and accountability;

[''(F) ensuring effective learning environments; and

[''(G) fostering positive relationships with parents.

[''(b) PERSONNEL DEVELOPMENT; AUTHORIZED ACTIVITIES.—

[''(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities to prepare personnel, including activities for the preparation of personnel who will serve children with high-incidence and low-incidence disabilities, consistent with the objectives described in subsection (a).

[''(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include the following:

[''(A) Supporting collaborative personnel preparation activities undertaken by institutions of higher education, local educational agencies, and other local entities—

[''(i) to improve and reform their existing programs, to support effective existing programs, to support the development of new programs, and to prepare teachers and related services personnel—

[''(I) to meet the diverse needs of children with disabilities for early intervention, educational, and transitional services; and

[''(II) to work collaboratively in regular classroom settings; and

[''(ii) to incorporate best practices and scientifically based research about preparing personnel—

[''(I) so the personnel will have the knowledge and skills to improve educational results for children with disabilities; and

[''(II) to implement effective teaching strategies and interventions to prevent the misidentification, overidentification, or underidentification of children as having a disability, especially minority and limited English proficient children.

[''(B) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of highly qualified teachers to reduce shortages in personnel.

[''(C) Providing continuous personnel preparation, training, and professional development designed to provide support and ensure retention of teachers and personnel who teach and provide related services to children with disabilities.

[''(D) Developing and improving programs for paraprofessionals to become special education teachers, related services personnel, and early intervention personnel, including interdisciplinary training to enable the paraprofessionals to improve early intervention, educational, and transitional results for children with disabilities.

[''(E) Demonstrating models for the preparation of, and interdisciplinary training of, early intervention, special education, and general education personnel, to enable the personnel to acquire the collaboration skills necessary to work within teams and to improve results for children with disabilities, particularly within the general education curriculum.

[''(F) Promoting effective parental involvement practices to enable the personnel to work with parents and involve parents in the education of such parents' children.

[''(G) Promoting the transferability, across State and local jurisdictions, of licensure and certification of teachers and administrators working with such children.

[''(H) Developing and disseminating models that prepare teachers with strategies, including positive behavioral interventions, for addressing the conduct of children with disabilities that impedes their learning and that of others in the classroom.

[''(I) Developing and improving programs to enhance the ability of general education teachers, principals, school administrators, and school board members to improve results for children with disabilities.

[''(J) Supporting institutions of higher education with minority enrollments of at least 25 percent for the purpose of preparing personnel to work with children with disabilities.

[''(K) Preparing personnel to work in high need elementary schools and secondary schools, including urban schools, rural schools, and schools operated by an entity described in section 7113(d)(1)(A)(ii) of the Elementary and Secondary Education Act of 1965, and schools that serve high numbers or percentages of limited English proficient children.

[''(L) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of new, qualified teachers, especially from groups that are underrepresented in the teaching profession, including individuals with disabilities.

[''(c) LOW INCIDENCE DISABILITIES; AUTHORIZED ACTIVITIES.—

[''(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that benefit children with low incidence disabilities.

[''(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

[''(A) Preparing persons who—

[''(i) have prior training in educational and other related service fields; and

[''(ii) are studying to obtain degrees, certificates, or licensure that will enable the persons to assist children with low incidence disabilities to achieve the objectives set out in their individualized education programs described in section 614(d), or to assist infants and toddlers with low incidence disabilities to achieve the outcomes described in their individualized family service plans described in section 636.

[''(B) Providing personnel from various disciplines with interdisciplinary training that will contribute to improvement in early intervention, educational, and transitional results for children with low incidence disabilities.

[''(C) Preparing personnel in the innovative uses and application of technology, including universally designed technologies, assistive technology devices, and assistive technology services—

[''(i) to enhance learning by children with low incidence disabilities through early intervention, educational, and transitional services; and

[''(ii) to improve communication with parents.

[''(D) Preparing personnel who provide services to visually impaired or blind children to teach and use Braille in the provision of services to such children.

[''(E) Preparing personnel to be qualified educational interpreters, to assist children with low incidence disabilities, particularly deaf and hard of hearing children in school and school related activities, and deaf and hard of hearing infants and toddlers and preschool children in early intervention and preschool programs.

[''(F) Preparing personnel who provide services to children with significant cognitive disabilities and children with multiple disabilities.

[''(3) DEFINITION.—As used in this section, the term 'low incidence disability' means—

[''(A) a visual or hearing impairment, or simultaneous visual and hearing impairments;

[''(B) a significant cognitive impairment; or

[''(C) any impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive early intervention services or a free appropriate public education.

[''(4) SELECTION OF RECIPIENTS.—In selecting recipients under this subsection, the Secretary may give preference to eligible entities submitting applications that include 1 or more of the following:

[''(A) A proposal to prepare personnel in more than 1 low incidence disability, such as deaf and blindness.

[''(B) A demonstration of an effective collaboration with an eligible entity and a local educational agency that ensures recruitment and subsequent retention of highly qualified personnel to serve children with disabilities.

[''(C) A proposal to address the personnel and professional development needs in the State, as identified in section 653(a)(2).

[''(5) PREPARATION IN USE OF BRAILLE.—The Secretary shall ensure that all recipients of assistance under this subsection who will use that assistance to prepare personnel to provide services to visually impaired or blind children that can appropriately be provided in Braille will prepare those individuals to provide those services in Braille.

[''(d) LEADERSHIP PREPARATION; AUTHORIZED ACTIVITIES.—

[''(1) IN GENERAL.—In carrying out this section, the Secretary shall support leadership preparation activities that are consistent with the objectives described in subsection (a).

[''(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

[''(A) Preparing personnel at the graduate, doctoral, and postdoctoral levels of training to administer, enhance, or provide services to improve results for children with disabilities.

[''(B) Providing interdisciplinary training for various types of leadership personnel, including teacher preparation faculty, administrators, researchers, supervisors, principals, related services personnel, and other persons whose work affects early intervention, educational, and transitional services for children with disabilities.

[''(e) ENHANCED SUPPORT AND TRAINING FOR BEGINNING SPECIAL EDUCATORS; AUTHORIZED ACTIVITIES.—

[''(1) IN GENERAL.—In carrying out this section, the Secretary shall support personnel preparation activities that are consistent with the objectives described in subsection (a).

[''(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include—

[''(A) enhancing and restructuring an existing program or developing a preservice teacher education program, to prepare special education teachers, at colleges or departments of education within the institution of higher education, by incorporating an additional 5th year clinical learning opportunity, field experience, or supervised practicum into a program of preparation and coursework for special education teachers; or

[''(B) Creating or supporting professional development schools that provide—

[''(i) high quality mentoring and induction opportunities with ongoing support for beginning special education teachers; or

[''(ii) inservice professional development to veteran special education teachers through the ongoing exchange of information and instructional strategies.

[''(3) ELIGIBLE PARTNERSHIPS.—Eligible recipients of assistance under this subsection are partnerships—

[''(A) that shall consist of—

[''(i) 1 or more institutions of higher education with special education personnel preparation programs;

[''(ii) 1 or more local educational agencies; and

[''(iii) in the case of activities assisted under paragraph (2)(B), an elementary school or secondary school; and

[''(B) that may consist of other entities eligible for assistance under this part, such as a State educational agency.

[''(4) PRIORITY.—In awarding grants or entering into contracts or cooperative agreements under this subsection, the Secretary shall give priority to partnerships that include local educational agencies that serve—

[''(A) high numbers or percentages of low-income students; or

[''(B) schools that have failed to make adequate yearly progress toward enabling children with disabilities to meet academic achievement standards.

[''(f) TRAINING TO SUPPORT GENERAL EDUCATORS; AUTHORIZED ACTIVITIES.—

[''(1) IN GENERAL.—In carrying out this section, the Secretary shall support personnel preparation activities that are consistent with the objectives described in subsection (a).

[''(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include—

[''(A) high quality professional development for general educators that develops the knowledge and skills, and enhances the ability, of general educators to—

[''(i) utilize classroom-based techniques to identify students who may be eligible for special education services, and deliver instruction in a way that meets the individualized needs of children with disabilities through appropriate supports, accommodations, and curriculum modifications;

[''(ii) utilize classroom-based techniques, such as scientifically based reading instruction;

[''(iii) work collaboratively with special education teachers and related services personnel;

[''(iv) implement strategies, such as positive behavioral interventions—

[''(I) to address the behavior of children with disabilities that impedes the learning of such children and others; or

[''(II) to prevent children from being misidentified as children with disabilities;

[''(v) prepare children with disabilities to participate in statewide assessments (with and without accommodations) and alternative assessment, as appropriate;

[''(vi) develop effective practices for ensuring that all children with disabilities are a part of all accountability systems under the Elementary and Secondary Education Act of 1965;

[''(vii) work with and involve parents of children with disabilities in their child's education;

[''(viii) understand how to effectively construct IEPs, participate in IEP meetings, and implement IEPs; and

[''(ix) in the case of principals and superintendents, be instructional leaders and promote improved collaboration between general educators, special education teachers, and related services personnel; and

[''(B) release and planning time for the activities described in this subsection.

[''(3) ELIGIBLE PARTNERSHIPS.—Eligible recipients of assistance under this subsection are partnerships—

[''(A) that shall consist of—

[''(i) 1 or more institutions of higher education with special education personnel preparation programs;

[''(ii) 1 or more local educational agencies; and

[''(B) that may consist of other entities eligible for assistance under this part, such as a State educational agency.

[''(g) APPLICATIONS.—

[''(1) IN GENERAL.—Any eligible entity that desires to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

[''(2) IDENTIFIED STATE NEEDS.—

[''(A) REQUIREMENT TO ADDRESS IDENTIFIED NEEDS.—Any application under subsection (b), (c), (d), (e), or (f) shall include information demonstrating to the satisfaction of the Secretary that the activities described in the application will address needs identified by the State or States the applicant proposes to serve, consistent with the needs identified in the State plan described in section 653(a)(2).

[''(B) COOPERATION WITH STATE EDUCATIONAL AGENCIES.—Any applicant that is not a local educational agency or a State educational agency shall include in the application information demonstrating to the satisfaction of the Secretary that the applicant and 1 or more State educational agencies have engaged in a cooperative effort to carry out and monitor the project to be assisted.

[''(3) ACCEPTANCE BY STATES OF PERSONNEL PREPARATION REQUIREMENTS.—The Secretary may require applicants to provide assurances from 1 or more States that such States—

[''(A) intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities or serving infants and toddlers with disabilities; and

[''(B) need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the States' comprehensive systems of personnel development under parts B and C.

[''(h) SELECTION OF RECIPIENTS.—

[''(1) IMPACT OF PROJECT.—In selecting award recipients under this section, the Secretary shall consider the impact of the proposed project described in the application in meeting the need for personnel identified by the States.

[''(2) REQUIREMENT FOR APPLICANTS TO MEET STATE AND PROFESSIONAL STANDARDS.—The Secretary shall make grants and enter into contracts and cooperative agreements under this section only to eligible applicants that meet State and professionally recognized standards for the preparation of special education and related services personnel, if the purpose of the project is to assist personnel in obtaining degrees.

[''(3) PREFERENCES.—In selecting recipients under this section, the Secretary may give preference to institutions of higher education that are—

[''(A) educating regular education personnel to meet the needs of children with disabilities in integrated settings;

[''(B) educating special education personnel to work in collaboration with regular educators in integrated settings; and

[''(C) successfully recruiting and preparing individuals with disabilities and individuals from groups that are underrepresented in the profession for which the institution of higher education is preparing individuals.

[''(i) SERVICE OBLIGATION.—Each application for funds under subsections (b), (c), (d), and (e) shall include an assurance that the applicant will ensure that individuals who receive a scholarship under the proposed project will subsequently provide special education and related services to children with disabilities for a period of 1 year for every year for which assistance was received, or repay all or part of the cost of that assistance, in accordance with regulations issued by the Secretary.

[''(j) SCHOLARSHIPS.—The Secretary may include funds for scholarships, with necessary stipends and allowances, in awards under subsections (b), (c), (d), and (e).

[''(k) DEFINITIONS.—In this section the term 'personnel' means special education

teachers, general education teachers, principals, administrators, related services personnel, paraprofessionals, and early intervention personnel serving infants, toddlers, preschoolers, or children with disabilities.

[''(l) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2004 through 2010.

["SEC. 665. STUDIES AND EVALUATIONS.

[''(a) STUDIES AND EVALUATIONS.—

[''(1) DELEGATION.—The Secretary shall delegate to the Director of the Institute for Education Sciences responsibility to carry out this section.

[''(2) ASSESSMENT.—The Secretary shall, directly or through grants, contracts, or cooperative agreements awarded on a competitive basis, assess the progress in the implementation of this Act, including the effectiveness of State and local efforts to provide—

[''(A) a free appropriate public education to children with disabilities; and

[''(B) early intervention services to infants and toddlers with disabilities, and infants and toddlers who would be at risk of having substantial developmental delays if early intervention services were not provided to them.

[''(b) NATIONAL ASSESSMENT.—

[''(1) IN GENERAL.—The Secretary shall carry out a national assessment of activities carried out with Federal funds under this Act in order—

[''(A) to determine the effectiveness of this Act in achieving its purposes;

[''(B) to provide timely information to the President, Congress, the States, local educational agencies, and the public on how to implement this Act more effectively; and

[''(C) to provide the President and Congress with information that will be useful in developing legislation to achieve the purposes of this Act more effectively.

[''(2) CONSULTATION.—The Secretary shall plan, review, and conduct the national assessment under this subsection in consultation with researchers, State practitioners, local practitioners, parents of children with disabilities, and other appropriate individuals.

[''(3) SCOPE OF ASSESSMENT.—The national assessment shall assess the—

[''(A) implementation of programs assisted under this Act and the impact of those programs on addressing the developmental, educational, and transitional needs of, and improving the academic achievement and functional outcomes of, children with disabilities to enable the children to reach challenging developmental goals and challenging State academic content standards based on State academic assessments, including alternative assessments;

[''(B) types of programs and services that have demonstrated the greatest likelihood of helping students reach the challenging State academic content standards and developmental goals;

[''(C) implementation of the personal preparation professional development activities assisted under this Act and the impact on instruction, student academic achievement, and teacher qualifications to enhance the ability of special education teachers and regular education teachers to improve results for children with disabilities; and

[''(D) effectiveness of schools, local educational agencies, States, and other recipients of assistance under this Act, in achieving the purposes of this Act in—

[''(i) improving the academic achievement of children with disabilities and their performance on regular statewide assessments, and the performance of children with disabilities on alternate assessments;

[''(ii) improving the participation rate of children with disabilities in the general education curriculum;

[''(iii) improving the transitions of children with disabilities at natural transition points;

[''(iv) placing and serving children with disabilities, including minority children, in the least restrictive environment appropriate;

[''(v) preventing children with disabilities, especially children with emotional disturbances and specific learning disabilities, from dropping out of school;

[''(vi) addressing the reading and literacy needs of children with disabilities;

[''(vii) coordinating services provided under this Act with each other, with other educational and pupil services (including preschool services), and with health and social services funded from other sources;

[''(viii) improving the participation of parents of children with disabilities in the education of their children;

[''(ix) resolving disagreements between education personnel and parents through alternate dispute resolution activities including mediation and voluntary binding arbitration; and

[''(x) reducing the misidentification of children, especially minority and limited English proficient children.

[''(4) INTERIM AND FINAL REPORTS.—The Secretary shall submit to the President and Congress—

[''(A) an interim report that summarizes the preliminary findings of the national assessment not later than 3 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003; and

[''(B) a final report of the findings of the assessment not later than 5 years after the date of enactment of the Individual with Disabilities Education Improvement Act of 2003.

[''(c) STUDY ON ENSURING ACCOUNTABILITY FOR STUDENTS WITH SIGNIFICANT DISABILITIES.—The Secretary shall carry out a national study or studies to examine—

[''(1) the criteria that States use to determine eligibility for alternate assessments and the number and type of children who take those assessments;

[''(2) the validity and reliability of alternate assessment instruments and procedures;

[''(3) the alignment of alternate assessments with State academic content and achievement standards or with alternate academic achievement standards; and

[''(4) the use and effectiveness of alternate assessments in appropriately measuring student progress and outcomes specific to individualized instructional need.

[''(d) ANNUAL REPORT.—The Secretary shall provide an annual report to Congress that—

[''(1) summarizes the research conducted under section 662;

[''(2) analyzes and summarizes the data reported by the States and the Secretary of the Interior under section 618;

[''(3) summarizes the studies and evaluations conducted under this section and the timeline for their completion;

[''(4) describes the extent and progress of the national assessment; and

[''(5) describes the findings and determinations resulting from reviews of State implementation of this Act.

[''(e) AUTHORIZED ACTIVITIES.—In carrying out this subsection, the Secretary may support objective studies, evaluations, and assessments, including studies that—

[''(1) analyze measurable impact, outcomes, and results achieved by State educational agencies and local educational agencies through their activities to reform policies, procedures, and practices designed to improve educational and transitional services and results for children with disabilities;

[''(2) analyze State and local needs for professional development, parent training, and other appropriate activities that can reduce the need for disciplinary actions involving children with disabilities;

[''(3) assess educational and transitional services and results for children with disabilities from minority backgrounds, including—

[''(A) data on—

[''(i) the number of minority children who are referred for special education evaluation;

[''(ii) the number of minority children who are receiving special education and related services and their educational or other service placement;

[''(iii) the number of minority children who graduated from secondary programs with a regular diploma in the standard number of years; and

[''(iv) the number of minority children who drop out of the educational system; and

[''(B) the performance of children with disabilities from minority backgrounds on State assessments and other performance indicators established for all students;

[''(4) measure educational and transitional services and results of children with disabilities served under this Act, including longitudinal studies that—

[''(A) examine educational and transitional services and results for children with disabilities who are 3 through 17 years of age and are receiving special education and related services under this Act, using a national, representative sample of distinct age cohorts and disability categories; and

[''(B) examine educational results, transition services, postsecondary placement, and employment status of individuals with disabilities, 18 through 21 years of age, who are receiving or have received special education and related services under this Act; and

[''(5) identify and report on the placement of children with disabilities by disability category.

[''(f) RESERVATION FOR STUDIES AND TECHNICAL ASSISTANCE.—

[''(1) IN GENERAL.—Except as provided in paragraph (2) and notwithstanding any other provision of this Act, the Secretary may reserve not more than ½ of 1 percent of the amount appropriated under parts B and C for each fiscal year to carry out this section, of which $3,000,000 shall be available to carry out subsection (c).

[''(2) MAXIMUM AMOUNT.—For the first fiscal year for which the amount described in paragraph (1) is at least $40,000,000, the maximum amount the Secretary may reserve under paragraph (1), is $40,000,000. For each subsequent fiscal year, the maximum amount the Secretary may reserve under paragraph (1) is $40,000,000, increased by the cumulative rate of inflation since the fiscal year described in the previous sentence.

[''(3) USE OF MAXIMUM AMOUNT.—In any fiscal year described in paragraph (2) for which the Secretary reserves the maximum amount described in that paragraph, the Secretary shall use at least ½ of the reserved amount for activities under subsection (d).

["Subpart 3—Supports To Improve Results for Children With Disabilities

["SEC. 670. PURPOSES.

[''The purposes of this subpart are to ensure that—

[''(1) children with disabilities and their parents receive training and information on their rights, responsibilities, and protections under this Act, in order to develop the skills necessary to cooperatively and effectively participate in planning and decision making relating to early intervention, educational, and transitional services;

[''(2) parents, teachers, administrators, early intervention personnel, related services personnel, and transition personnel receive coordinated and accessible technical assistance and information to assist them in improving early intervention, educational, and transitional services and results for children with disabilities and their families; and

[''(3) appropriate technology and media are researched, developed, and demonstrated, to improve and implement early intervention, educational, and transitional services and results for children with disabilities and their families.

["SEC. 671. PARENT TRAINING AND INFORMATION CENTERS.

[''(a) PROGRAM AUTHORIZED.—The Secretary may award grants to, and enter into contracts and cooperative agreements with, parent organizations to support parent training and information centers to carry out activities under this section.

[''(b) REQUIRED ACTIVITIES.—Each parent training and information center that receives assistance under this section shall—

[''(1) provide training and information that meets the needs of parents of children with disabilities living in the area served by the center, particularly underserved parents and parents of children who may be inappropriately identified, to enable their children with disabilities to—

[''(A) meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

[''(B) be prepared to lead productive independent adult lives, to the maximum extent possible;

[''(2) serve the parents of infants, toddlers, and children with the full range of disabilities described in section 602(3);

[''(3) assist parents to—

[''(A) better understand the nature of their children's disabilities and their educational, developmental, and transitional needs;

[''(B) communicate effectively and work collaboratively with personnel responsible for providing special education, early intervention, transition services, and related services;

[''(C) participate in decisionmaking processes and the development of individualized education programs under part B and individualized family service plans under part C;

[''(D) obtain appropriate information about the range, type, and quality of options, programs, services, technologies, and research based practices and interventions, and resources available to assist children with disabilities and their families in school and at home;

[''(E) understand the provisions of this Act for the education of, and the provision of early intervention services to, children with disabilities; and

[''(F) participate in school reform activities;

[''(4) in States where the State elects to contract with the parent training and information center, contract with State educational agencies to provide, consistent with subparagraphs (B) and (D) of section 615(e)(2), individuals who meet with parents to explain the mediation process to the parents;

[''(5) assist parents in resolving disputes in the most expeditious and effective way possible, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in section 615(e);

[''(6) assist parents and students with disabilities to understand their rights and responsibilities under this Act, including those under section 615(m) on the student's reaching the age of majority;

[''(7) assist parents to understand the availability of, and how to effectively use, procedural safeguards under this Act;

[''(8) assist parents in understanding, preparing for, and participating in, the process described in section 615(f)(1)(B);

[''(9) network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 663, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities described in section 602(3); and

[''(10) annually report to the Secretary on—

[''(A) the number and demographics of parents to whom the center provided information and training in the most recently concluded fiscal year;

[''(B) the effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities; and

[''(C) the number of parents served who have resolved disputes through alternative methods of dispute resolution.

[''(c) OPTIONAL ACTIVITIES.—A parent training and information center that receives assistance under this section may provide information to teachers and other professionals to assist the teachers and professionals in improving results for children with disabilities.

[''(d) APPLICATION REQUIREMENTS.—Each application for assistance under this section shall identify with specificity the special efforts that the parent organization will undertake—

[''(1) to ensure that the needs for training and information of underserved parents of children with disabilities in the area to be served are effectively met; and

[''(2) to work with community based organizations.

[''(e) DISTRIBUTION OF FUNDS.—

[''(1) IN GENERAL.—The Secretary shall—

[''(A) make at least 1 award to a parent organization in each State for a parent training and information center which is designated as the statewide parent training and information center; or

[''(B) in the case of a large State, make awards to multiple parent training and information centers, but only if the centers demonstrate that coordinated services and supports will occur among the multiple centers.

[''(2) SELECTION REQUIREMENT.—The Secretary shall select among applications submitted by parent organizations in a State in a manner that ensures the most effective assistance to parents, including parents in urban and rural areas, in the State.

[''(f) QUARTERLY REVIEW.—

[''(1) MEETINGS.—The board of directors of each parent organization that receives an award under this section shall meet at least once in each calendar quarter to review the activities for which the award was made.

[''(2) CONTINUATION AWARD.—When an organization requests a continuation award under this section, the board of directors shall submit to the Secretary a written review of the parent training and information program conducted by the organization during the preceding fiscal year.

[''(g) DEFINITION OF PARENT ORGANIZATION.—As used in this section, the term 'parent organization' means a private nonprofit organization (other than an institution of higher education) that has a board of directors—

[''(1) the majority of whom are parents of children with disabilities ages birth through 26;

[''(2) that includes—

[''(A) individuals working in the fields of special education, related services, and early intervention; and

[''(B) individuals with disabilities;

[''(3) the parent and professional members of which are broadly representative of the population to be served; and

[''(4) has as its mission serving families of children and youth with disabilities who—

[''(A) are ages birth through 26; and

[''(B) have the full range of disabilities described in section 602(3).

["SEC. 672. COMMUNITY PARENT RESOURCE CENTERS.

[''(a) IN GENERAL.—The Secretary may award grants to, and enter into contracts and cooperative agreements with, local parent organizations to support parent training and information centers that will help ensure that underserved parents of children with disabilities, including low income parents, parents of children with limited English proficiency, and parents with disabilities, have the training and information the parents need to enable the parents to participate effectively in helping their children with disabilities—

[''(1) to meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

[''(2) to be prepared to lead productive independent adult lives, to the maximum extent possible.

[''(b) REQUIRED ACTIVITIES.—Each community parent resource center assisted under this section shall—

[''(1) provide training and information that meets the training and information needs of parents of children with disabilities proposed to be served by the grant, contract, or cooperative agreement;

[''(2) carry out the activities required of parent training and information centers under paragraphs (2) through (9) of section 671(b);

[''(3) establish cooperative partnerships with the parent training and information centers funded under section 671; and

[''(4) be designed to meet the specific needs of families who experience significant isolation from available sources of information and support.

[''(c) DEFINITION.—As used in this section, the term 'local parent organization' means a parent organization, as defined in section 671(g), that—

[''(1) has a board of directors the majority of whom are parents of children with disabilities ages birth through 26 from the community to be served; and

[''(2) has as its mission serving parents of children with disabilities who—

[''(A) are ages birth through 26; and

[''(B) have the full range of disabilities described in section 602(3).

["SEC. 673. TECHNICAL ASSISTANCE FOR PARENT TRAINING AND INFORMATION CENTERS.

[''(a) IN GENERAL.—The Secretary may, directly or through awards to eligible entities, provide technical assistance for developing, assisting, and coordinating parent training and information programs carried out by parent training and information centers receiving assistance under sections 671 and 672.

[''(b) AUTHORIZED ACTIVITIES.—The Secretary may provide technical assistance to a parent training and information center under this section in areas such as—

[''(1) effective national coordination of parent training efforts, which includes encouraging collaborative efforts among award recipients under sections 671 and 672;

[''(2) dissemination of information, scientifically based research, and research based practices and interventions;

[''(3) promotion of the use of technology, including universal designed technologies,

assistive technology devices, and assistive technology services;

[''(4) reaching underserved populations;

[''(5) including children with disabilities in general education programs;

[''(6) facilitation of transitions from—

[''(A) early intervention services to preschool;

[''(B) preschool to elementary school;

[''(C) elementary school to secondary school; and

[''(D) secondary school to postsecondary environments; and

[''(7) promotion of alternative methods of dispute resolution, including mediation.

[''SEC. 674. TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND UTILIZATION; AND MEDIA SERVICES.

[''(a) IN GENERAL.—The Secretary, on a competitive basis, shall award grants to, and enter into contracts and cooperative agreements with, eligible entities to support activities described in subsections (b) and (c).

[''(b) TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND USE.—

[''(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities to promote the development, demonstration, and use of technology.

[''(2) AUTHORIZED ACTIVITIES.—The following activities may be carried out under this subsection:

[''(A) Conducting research on and promoting the demonstration and use of innovative, emerging, and universally designed technologies for children with disabilities, by improving the transfer of technology from research and development to practice.

[''(B) Supporting research, development, and dissemination of technology with universal design features, so that the technology is accessible to the broadest range of individuals with disabilities without further modification or adaptation.

[''(C) Demonstrating the use of systems to provide parents and teachers with information and training concerning early diagnosis of, intervention for, and effective teaching strategies for, young children with reading disabilities.

[''(D) Supporting the use of Internet-based communications for students with cognitive disabilities in order to maximize their academic and functional skills.

[''(c) EDUCATIONAL MEDIA SERVICES; OPTIONAL ACTIVITIES.—In carrying out this section, the Secretary may support—

[''(1) educational media activities that are designed to be of educational value in the classroom setting to children with disabilities;

[''(2) providing (A) video description, (B) open captioning, (C) closed captioning of television programs, videos, or other materials appropriate for use in the classroom setting, or (D) news (but news only until September 30, 2006), when such services are not provided by the producer or distributor of such information, materials, or news, including programs and materials associated with new and emerging technologies, such as CDs, DVDs, video streaming, and other forms of multimedia;

[''(3) distributing materials described in paragraphs (1) and (2) through such mechanisms as a loan service; and

[''(4) providing free educational materials, including textbooks, in accessible media for visually impaired and print disabled students in elementary schools and secondary schools.

[''(d) APPLICATIONS.—Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

[''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2004 through 2009.

[''SEC. 675. AUTHORIZATION OF APPROPRIATIONS.

[''There are authorized to be appropriated to carry out sections 671, 672, 673, and 663 such sums as may be necessary for each of the fiscal years 2004 through 2009.

[''Subpart 4—Interim Alternative Educational Settings, Behavioral Supports, and Whole School Interventions

''SEC. 681. PURPOSE.

[''The purpose of this subpart is to authorize resources to foster a safe learning environment that supports academic achievement for all students by improving the quality of interim alternative educational settings, providing more behavioral supports in schools, and supporting whole school interventions.

[''SEC. 682. DEFINITION OF ELIGIBLE ENTITY.

[''In this subpart, the term 'eligible entity' means—

[''(1) a local educational agency; or

[''(2) a consortium consisting of a local educational agency and 1 or more of the following entities:

[''(A) another local educational agency;

[''(B) a community-based organization with a demonstrated record of effectiveness in helping special needs students with behavioral challenges succeed;

[''(C) an institution of higher education;

[''(D) a mental health provider; or

[''(E) an educational service agency.

[''SEC. 683. PROGRAM AUTHORIZED.

[''The Secretary is authorized to award grants, on a competitive basis, to eligible entities to enable the eligible entities—

[''(1) to establish or expand behavioral supports and whole school behavioral interventions by providing for effective, research-based practices, including—

[''(A) comprehensive, early screening efforts for students at risk for emotional and behavioral difficulties;

[''(B) training for school staff on early identification, prereferral, and referral procedures;

[''(C) training for administrators, teachers, related services personnel, behavioral specialists, and other school staff in whole school positive behavioral interventions and supports, behavioral intervention planning, and classroom and student management techniques;

[''(D) joint training for administrators, parents, teachers, related services personnel, behavioral specialists, and other school staff on effective strategies for positive behavioral interventions and behavior management strategies that focus on the prevention of behavior problems;

[''(E) developing or implementing specific curricula, programs, or interventions aimed at addressing behavioral problems;

[''(F) stronger linkages between school-based services and community-based resources, such as community mental health and primary care providers; or

[''(G) using behavioral specialists, related services personnel, and other staff necessary to implement behavioral supports; or

[''(2) to improve interim alternative educational settings by—

[''(A) improving the training of administrators, teachers, related services personnel, behavioral specialists, and other school staff (including ongoing mentoring of new teachers);

[''(B) attracting and retaining a high quality, diverse staff;

[''(C) providing for on-site counseling services;

[''(D) utilizing research-based interventions, curriculum, and practices;

[''(E) allowing students to use instructional technology that provides individualized instruction;

[''(F) ensuring that the services are fully consistent with the goals of the individual student's IEP;

[''(G) promoting effective case management and collaboration among parents, teachers, physicians, related services personnel, behavioral specialists, principals, administrators, and other school staff;

[''(H) promoting interagency coordination and coordinated service delivery among schools, juvenile courts, child welfare agencies, community mental health providers, primary care providers, public recreation agencies, and community-based organizations; or

[''(I) providing for behavioral specialists to help students transitioning from interim alternative educational settings reintegrate into their regular classrooms.

[''SEC. 684. PROGRAM EVALUATIONS.

[''(a) REPORT AND EVALUATION.—Each eligible entity receiving a grant under this subpart shall prepare and submit annually to the Secretary a report on the outcomes of the activities assisted under the grant.

[''(b) BEST PRACTICES ON WEB SITE.—The Secretary shall make available on the Department's web site information for parents, teachers, and school administrators on best practices for interim alternative educational settings, behavior supports, and whole school intervention.

[''SEC. 685. AUTHORIZATION OF APPROPRIATIONS.

[''There are authorized to be appropriated to carry out this subpart $50,000,000 for fiscal year 2004 and such sums as may be necessary for each of the 5 succeeding fiscal years.''.

[TITLE II—REHABILITATION ACT OF 1973

[SEC. 201. FINDINGS.

[Section 2(a) of the Rehabilitation Act of 1973 (29 U.S.C. 701(a)) is amended—

[(1) in paragraph (5), by striking ''and'' at the end;

[(2) in paragraph (6), by striking the period and inserting ''; and''; and

[(3) by adding at the end the following:

[''(7) there is a substantial need to improve and expand services for students with disabilities under this Act.''.

[SEC. 202. DEFINITIONS.

[Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705) is amended—

[(1) by redesignating paragraphs (35) through (39) as paragraphs (36) through (40), respectively;

[(2) in subparagraph (A)(ii) of paragraph (36) (as redesignated in paragraph (1)), by striking ''paragraph (36)(C)'' and inserting ''paragraph (37)(C)''; and

[(3) by inserting after paragraph (34) the following:

[''(35)(A) The term 'student with a disability' means an individual with a disability who—

[''(i) is not younger than 14 and not older than 21;

[''(ii) has been determined to be eligible under section 102(a) for assistance under this title; and

[''(iii)(I) is eligible for, and is receiving, special education under part B of the Individuals with Disabilities Education Act (29 U.S.C. 1411 et seq.); or

[''(II) is an individual with a disability, for purposes of section 504.

[''(B) The term 'students with disabilities' means more than 1 student with a disability.''.

[SEC. 203. ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.

[Section 100 of the Rehabilitation Act of 1973 (29 U.S.C. 720) is amended—

[(1) by redesignating subsection (d) as subsection (e); and

[(2) by inserting after subsection (c) the following:

[''(d) ADDITIONAL AUTHORIZATION OF APPROPRIATIONS FOR SERVICES TO STUDENTS WITH DISABILITIES.—In addition to any funds appropriated under subsection (b)(1), there are authorized to be appropriated such sums as may be necessary for fiscal years 2004 through 2009 to carry out programs and activities under sections 101(a)(25)(B) and 103(b)(6).''.

[SEC. 204. STATE PLAN.

[(a) ASSESSMENT AND STRATEGIES.—Section 101(a)(15) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(15)) is amended—

[(1) in subparagraph (A)(i)—

[(A) in subclause (II), by striking ''and'' at the end;

[(B) in subclause (III), by adding ''and'' at the end; and

[(C) by adding at the end the following:

[''(IV) students with disabilities, including their need for transition services;''; and

[(2) in subparagraph (D)—

[(A) by redesignating clauses (iii), (iv), and (v) as clauses (iv), (v), and (vi), respectively; and

[(B) by inserting after clause (ii) the following:

[''(iii) the methods to be used to improve and expand vocational rehabilitation services for students with disabilities, including the coordination of services designed to facilitate the transition of such students from the receipt of educational services in school to the receipt of vocational rehabilitation services under this title.''.

[(b) SERVICES FOR STUDENTS WITH DISABILITIES.—Section 101(a) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)) is amended by adding at the end the following:

[''(25) SERVICES FOR STUDENTS WITH DISABILITIES.—The State plan shall provide an assurance satisfactory to the Secretary that the State—

[''(A) has developed and implemented strategies to address the needs identified in the assessment described in paragraph (15), and achieve the goals and priorities identified by the State, to improve and expand vocational rehabilitation services for students with disabilities on a statewide basis in accordance with paragraph (15); and

[''(B) will use funds appropriated under section 100(d) to carry out programs or activities designed to improve and expand vocational rehabilitation services for students with disabilities that—

[''(i) facilitate the transition of the students with disabilities from the receipt of educational services in school, to the receipt of vocational rehabilitation services under this title, including, at a minimum, those services specified in the interagency agreement required in paragraph (11)(D);

[''(ii) improve the achievement of post-school goals of students with disabilities, including improving the achievement through attendance at meetings regarding individualized education programs developed under section 614 of the Individuals with Disabilities Education Act (20 U.S.C. 1414);

[''(iii) provide vocational guidance, career exploration services, and job search skills and strategies and technical assistance to students with disabilities;

[''(iv) support the provision of training and technical assistance to State and local educational agency and designated State agency personnel responsible for the planning and provision of services to students with disabilities; and

[''(v) support outreach activities to students with disabilities who are eligible for, and need, services under this title.''.

[SEC. 205. SCOPE OF SERVICES.

[Section 103 of the Rehabilitation Act of 1973 (29 U.S.C. 723) is amended—

[(1) in subsection (a)(15), by inserting '', including services described in clauses (i) through (iii) of section 101(a)(25)(B)'' before the semicolon; and

[(2) in subsection (b), by striking paragraph (6) and inserting the following:

[''(6)(A)(i) Consultation and technical assistance services to assist State and local educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.

[''(ii) Training and technical assistance described in section 101(a)(25)(B)(iv).

[''(B) Services for groups of individuals with disabilities who meet the requirements of clauses (i) and (iii) of section 7(35)(A), including services described in clauses (i), (ii), (iii), and (v) of section 101(a)(25)(B), to assist in the transition from school to post-school activities.''.

[SEC. 206. STANDARDS AND INDICATORS.

[Section 106(a) of the Rehabilitation Act of 1973 (29 U.S.C. 726(a)) is amended by striking paragraph (1)(C) and all that follows through paragraph (2) and inserting the following:

[''(2) MEASURES.—The standards and indicators shall include outcome and related measures of program performance that—

[''(A) facilitate the accomplishment of the purpose and policy of this title;

[''(B) to the maximum extent practicable, are consistent with the core indicators of performance, and corresponding State adjusted levels of performance, established under section 136(b) of the Workforce Investment Act of 1998 (29 U.S.C. 2871(b)); and

[''(C) include measures of the program's performance with respect to the transition to post-school activities, and achievement of the post-school goals, of students with disabilities served under the program.''.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Individuals with Disabilities Education Improvement Act of 2003''.

SEC. 2. ORGANIZATION OF THE ACT.

This Act is organized into the following titles:

TITLE I—AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

SEC. 101. AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT.

Parts A through D of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) are amended to read as follows:

''PART A—GENERAL PROVISIONS

''SEC. 601. SHORT TITLE; TABLE OF CONTENTS; FINDINGS; PURPOSES.

''(a) SHORT TITLE.—This Act may be cited as the 'Individuals with Disabilities Education Act'.

''(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

''(c) FINDINGS.—Congress finds the following:

''(1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

''(2) Before the date of the enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94–142), the educational needs of millions of children with disabilities were not being fully met because—

''(A) the children did not receive appropriate educational services;

''(B) the children were excluded entirely from the public school system and from being educated with their peers;

''(C) undiagnosed disabilities prevented the children from having a successful educational experience; or

''(D) a lack of adequate resources within the public school system forced families to find services outside the public school system.

''(3) Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this Act has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public education and in improving educational results for children with disabilities.

''(4) However, the implementation of this Act has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.

''(5) Over 25 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by—

''(A) having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom to the maximum extent possible in order to—

''(i) meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children; and

''(ii) be prepared to lead productive and independent adult lives, to the maximum extent possible;

''(B) strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home;

''(C) coordinating this Act with other local, educational service agency, State, and Federal school improvement efforts, including improvement efforts under the Elementary and Secondary Education Act of 1965, in order to ensure that such children benefit from such efforts and that special education can become a service for such children rather than a place where they are sent;

''(D) providing appropriate special education and related services, and aids and supports in the regular classroom, to such children, whenever appropriate;

''(E) supporting high-quality, intensive preservice preparation and professional development for all personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities, including the use of scientifically based instructional practices, to the maximum extent possible;

''(F) providing incentives for whole-school approaches, scientifically based early reading programs, positive behavioral interventions and supports, and prereferral interventions to reduce the need to label children as disabled in order to address their learning and behavioral needs;

''(G) focusing resources on teaching and learning while reducing paperwork and requirements that do not assist in improving educational results; and

''(H) supporting the development and use of technology, including assistive technology devices and assistive technology services, to maximize accessibility for children with disabilities.

''(6) While States, local educational agencies, and educational service agencies are primarily responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a supporting role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.

''(7) A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

''(8) Parents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways.

''(9) Teachers, schools, local educational agencies, and States should be relieved of irrelevant and unnecessary paperwork burdens that do not lead to improved educational outcomes.

''(10)(A) The Federal Government must be responsive to the growing needs of an increasingly more diverse society.

''(B) America's ethnic profile is rapidly changing. In the year 2000, 1 of every 3 persons in the United States was a member of a minority group or was limited English proficient.

''(C) Minority children comprise an increasing percentage of public school students.

''(D) With such changing demographics, recruitment efforts for special education personnel should focus on increasing the participation of minorities in the teaching profession.

''(11)(A) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation.

''(B) Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education.

''(C) This poses a special challenge for special education in the referral of, assessment of, and services for, our Nation's students from non-English language backgrounds.

''(12)(A) Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.

''(B) More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.

''(C) African-American children are identified as having mental retardation and emotional disturbance at rates greater than their white counterparts.

''(D) In the 1998–1999 school year, African-American children represented just 14.8 percent of the population aged 6 through 21, but comprised 20.2 percent of all children with disabilities.

''(E) Studies have found that schools with predominately Caucasian students and teachers have placed disproportionately high numbers of their minority students into special education.

''(13)(A) As the number of minority students in special education increases, the number of minority teachers and related services personnel produced in colleges and universities continues to decrease.

''(B) The opportunity for minority individuals, organizations, and Historically Black Colleges and Universities to participate fully in awards for grants and contracts, boards of organizations receiving funds under this Act, and peer review panels, and in the training of professionals in the area of special education is essential if we are to obtain greater success in the education of minority children with disabilities.

''(14) As the 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.

''(d) PURPOSES.—The purposes of this title are—

''(1)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment, further education, and independent living;

''(B) to ensure that the rights of children with disabilities and parents of such children are protected; and

''(C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;

''(2) to assist States in the implementation of a Statewide, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

''(3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting systemic-change activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and

''(4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

''SEC. 602. DEFINITIONS.

''Except as otherwise provided, as used in this Act:

''(1) ASSISTIVE TECHNOLOGY DEVICE.—The term 'assistive technology device' means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the post-surgical maintenance, programming, or replacement of such device, or an external device connected with the use of a surgically implanted medical device (other than the costs of performing routine maintenance and monitoring of such external device at the same time the child is receiving other services under this Act).

''(2) ASSISTIVE TECHNOLOGY SERVICE.—The term 'assistive technology service' means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes—

''(A) the evaluation of the needs of such child, including a functional evaluation of the child in the child's customary environment;

''(B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child;

''(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;

''(D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

''(E) training or technical assistance for such child, or, where appropriate, the family of such child; and

''(F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of such child.

''(3) CHILD WITH A DISABILITY.—

''(A) IN GENERAL.—The term 'child with a disability' means a child—

''(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

''(ii) who, by reason thereof, needs special education and related services.

''(B) CHILD AGED 3 THROUGH 9.—The term 'child with a disability' for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child—

''(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

''(ii) who, by reason thereof, needs special education and related services.

''(4) CORE ACADEMIC SUBJECT.—The term 'core academic subject' has the meaning given the term in section 9101(11) of the Elementary and Secondary Education Act of 1965.

''(5) EDUCATIONAL SERVICE AGENCY.—The term 'educational service agency'—

''(A) means a regional public multiservice agency—

''(i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and

''(ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State; and

''(B) includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school.

''(6) ELEMENTARY SCHOOL.—The term 'elementary school' means a nonprofit institutional day or residential school that provides elementary education, as determined under State law.

''(7) EQUIPMENT.—The term 'equipment' includes—

''(A) machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house such machinery, utilities, or equipment; and

''(B) all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published, and audiovisual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

''(8) EXCESS COSTS.—The term 'excess costs' means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student, as may be appropriate, and which shall be computed after deducting—

''(A) amounts received—

''(i) under part B of this title;

''(ii) under part A of title I of the Elementary and Secondary Education Act of 1965; and

''(iii) under parts A and B of title III of that Act; and

''(B) any State or local funds expended for programs that would qualify for assistance under any of those parts.

''(9) FREE APPROPRIATE PUBLIC EDUCATION.—The term 'free appropriate public education' means special education and related services that—

''(A) have been provided at public expense, under public supervision and direction, and without charge;

''(B) meet the standards of the State educational agency;

''(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

''(D) are provided in conformity with the individualized education program required under section 614(d).

''(10) HIGHLY QUALIFIED.—The term 'highly qualified' means the following:

''(A) ALL SPECIAL EDUCATION TEACHERS.—When used with respect to any public elementary school or secondary school special education teacher teaching in a State, means that the teacher holds at least a bachelor's degree and that—

''(i) the teacher has obtained full State certification as a special education teacher through a State-approved special education teacher preparation program (including certification obtained through alternative routes to certification) or other comparably rigorous methods, or passed the State teacher special education licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law;

''(ii) the teacher has not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

''(iii) the teacher demonstrates knowledge of special education and the teaching skills necessary to teach children with disabilities.

''(B) NEW ELEMENTARY SCHOOL SPECIAL EDUCATION TEACHERS.—When used with respect to a special education elementary school teacher who is new to the profession, means that the teacher demonstrated, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum (which may consist of passing a State-required certification or licensing test or tests in reading, writing, mathematics, and other areas of the basic elementary school curriculum).

''(C) NEW MIDDLE SCHOOL AND SECONDARY SCHOOL SPECIAL EDUCATION TEACHERS.—When used with respect to a special education middle school or secondary school teacher who is new to the profession, means that the teacher has demonstrated a high level of competency in each of the academic subjects in which the teacher teaches by—

''(i) passing a rigorous State academic subject test in each of the academic subjects in which the teacher teaches (which may consist of a passing level of performance on a State-required certification or licensing test or tests in each of the academic subjects in which the teacher teaches); or

''(ii) successful completion, in each of the academic subjects in which the teacher teaches, of an academic major, graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing.

''(D) VETERAN SPECIAL EDUCATION TEACHERS.—When used with respect to an elementary school, middle school, or secondary school special education teacher who is not new to the profession, means that the teacher has—

''(i) met the applicable standard in subparagraph (B) or (C), which includes an option for a test; or

''(ii) has demonstrated competence in all the academic subjects in which the teacher teaches based on a high objective uniform State standard of evaluation for special education teachers that—

''(I) is set by the State for both grade-appropriate academic subject matter knowledge and special education teaching skills;

''(II) is aligned with challenging State academic content and student academic achievement standards and developed in consultation with special education teachers, core content specialists, teachers, principals, and school administrators;

''(III) provides objective, coherent information about the teachers' attainment of knowledge of core content knowledge in the academic subjects in which a teacher teaches;

''(IV) is applied uniformly to all special education teachers who teach in the same academic subject and the same grade level throughout the State;

''(V) takes into consideration, but is not based primarily on, the time the teacher has been teaching in the academic subject;

''(VI) is made available to the public on request; and

''(VII) may involve multiple objective measures of teacher competency.

''(E) TEACHERS PROVIDING CONSULTATIVE SERVICES.—

''(i) IN GENERAL.—Notwithstanding subparagraphs (B) through (D), when used with respect to a special education teacher who provides only consultative services to a highly qualified regular education teacher (as the term highly qualified is defined in section 9101(23) of the Elementary and Secondary Education Act of 1965), means that the teacher meets the requirements of subparagraph (A).

''(ii) CONSULTATIVE SERVICES.—As used in clause (i), the term 'consultative services' means services that adjust the learning environment, modify instructional methods, adapt curricula, use positive behavior supports and interventions, and select and implement appropriate accommodations to meet the needs of individual children.

''(F) EXCEPTION.—Notwithstanding subparagraphs (B) through (D), when used with respect to a special education teacher who teaches more than 1 subject, primarily to middle school and secondary school-aged children with significant cognitive disabilities, means that the teacher has demonstrated subject knowledge and teaching skills in reading, mathematics, and other areas of the basic elementary school curriculum by—

''(i) passing a rigorous State test (which may consist of passing a State-required certification or licensing test or tests in those areas); or

''(ii) demonstrating competency in all the academic subjects in which the teacher teaches, based on a high objective uniform State standard as described in subparagraph (D)(ii).

''(11) INDIAN.—The term 'Indian' means an individual who is a member of an Indian tribe.

''(12) INDIAN TRIBE.—The term 'Indian tribe' means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act).

''(13) INDIVIDUALIZED EDUCATION PROGRAM.—The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 614(d).

''(14) INDIVIDUALIZED FAMILY SERVICE PLAN.—The term 'individualized family service plan' has the meaning given such term in section 636.

''(15) INFANT OR TODDLER WITH A DISABILITY.—The term 'infant or toddler with a disability' has the meaning given such term in section 632.

''(16) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education'—

''(A) has the meaning given such term in section 101 (a) and (b) of the Higher Education Act of 1965; and

''(B) also includes any community college receiving funding from the Secretary of the Interior under the Tribally Controlled College or University Assistance Act of 1978.

''(17) LIMITED ENGLISH PROFICIENT.—The term 'limited English proficient' has the meaning given the term in section 9101(25) of the Elementary and Secondary Education Act of 1965.

''(18) LOCAL EDUCATIONAL AGENCY.—

''(A) The term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.

''(B) The term includes—

''(i) an educational service agency, as defined in paragraph (5); and

''(ii) any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

''(C) The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, but only to the extent that such inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

''(19) NATIVE LANGUAGE.—The term 'native language', when used with respect to an individual of limited English proficiency, means the language normally used by the individual, or in the case of a child, the language normally used by the parents of the child.

''(20) NONPROFIT.—The term 'nonprofit', as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by 1 or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

''(21) OUTLYING AREA.—The term 'outlying area' means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

''(22) PARENT.—The term 'parent'—

''(A) includes a legal guardian; and

''(B) except as used in sections 615(b)(2) and 639(a)(5), includes an individual assigned under either of those sections to be a surrogate parent.

''(23) PARENT ORGANIZATION.—The term 'parent organization' has the meaning given such term in section 671(g).

''(24) PARENT TRAINING AND INFORMATION CENTER.—The term 'parent training and information center' means a center assisted under section 671 or 672.

''(25) RELATED SERVICES.—The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school health services, counseling services, including rehabilitation counseling, orientation and mobility services, travel training instruction, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children. The term does not include a medical device that is surgically implanted, or the post-surgical maintenance, programming, or replacement of such device, or an external device connected with the use of a surgically implanted medical device (other than the costs of performing routine maintenance and monitoring of such external device at the same time the child is receiving other services under this Act).

''(26) SECONDARY SCHOOL.—The term 'secondary school' means a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

''(27) SECRETARY.—The term 'Secretary' means the Secretary of Education.

''(28) SPECIAL EDUCATION.—The term 'special education' means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including—

''(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

''(B) instruction in physical education.

''(29) SPECIFIC LEARNING DISABILITY.—

''(A) IN GENERAL.—The term 'specific learning disability' means a disorder in 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

''(B) DISORDERS INCLUDED.—Such term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

''(C) DISORDERS NOT INCLUDED.—Such term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

''(30) STATE.—The term 'State' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

''(31) STATE EDUCATIONAL AGENCY.—The term 'State educational agency' means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

''(32) SUPPLEMENTARY AIDS AND SERVICES.—The term 'supplementary aids and services' means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with section 612(a)(5).

''(33) TRANSITION SERVICES.—The term 'transition services' means a coordinated set of activities for a child with a disability (as defined in paragraph (3)(A)) that—

''(A) is designed to be within a results-oriented process, that 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 post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

''(B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and

''(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

''SEC. 603. OFFICE OF SPECIAL EDUCATION PROGRAMS.

''(a) ESTABLISHMENT.—There shall be, within the Office of Special Education and Rehabilitative Services in the Department of Education, an Office of Special Education Programs, which shall be the principal agency in such Department for administering and carrying out this Act and other programs and activities concerning the education of children with disabilities.

''(b) DIRECTOR.—The Office established under subsection (a) shall be headed by a Director who shall be selected by the Secretary and shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services.

''(c) VOLUNTARY AND UNCOMPENSATED SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Secretary is authorized to accept voluntary and uncompensated services in furtherance of the purposes of this Act.

''SEC. 604. ABROGATION OF STATE SOVEREIGN IMMUNITY.

''(a) IN GENERAL.—A State shall not be immune under the 11th amendment to the Constitution of the United States from suit in Federal court for a violation of this Act.

''(b) REMEDIES.—In a suit against a State for a violation of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as those remedies are available for such a violation in the suit against any public entity other than a State.

''(c) EFFECTIVE DATE.—Subsections (a) and (b) apply with respect to violations that occur in whole or part after the date of enactment of the Education of the Handicapped Act Amendments of 1990.

''SEC. 605. ACQUISITION OF EQUIPMENT; CONSTRUCTION OR ALTERATION OF FACILITIES.

''(a) IN GENERAL.—If the Secretary determines that a program authorized under this Act will be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary is authorized to allow the use of those funds for those purposes.

''(b) COMPLIANCE WITH CERTAIN REGULATIONS.—Any construction of new facilities or alteration of existing facilities under subsection (a) shall comply with the requirements of—

''(1) appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the 'Americans with Disabilities Accessibility Guidelines for Buildings and Facilities'); or

''(2) appendix A of subpart 101–19.6 of title 41, Code of Federal Regulations (commonly known as the 'Uniform Federal Accessibility Standards').

''SEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES.

''The Secretary shall ensure that each recipient of assistance under this Act makes positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this Act.

''SEC. 607. REQUIREMENTS FOR PRESCRIBING REGULATIONS.

''(a) IN GENERAL.—In carrying out the provisions of this Act, the Secretary shall issue regulations under this Act only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements of this Act.

''(b) PROTECTIONS PROVIDED TO CHILDREN.—The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this Act that—

''(1) violates or contradicts any provision of this Act; and

''(2) procedurally or substantively lessens the protections provided to children with disabilities under this Act, as embodied in regulations in effect on July 20, 1983 (particularly as such protections related to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program

meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation.

''(c) PUBLIC COMMENT PERIOD.—The Secretary shall provide a public comment period of not more than 90 days on any regulation proposed under part B or part C of this Act on which an opportunity for public comment is otherwise required by law.

''(d) POLICY LETTERS AND STATEMENTS.—The Secretary may not issue policy letters or other statements (including letters or statements regarding issues of national significance) that—

''(1) violate or contradict any provision of this Act; or

''(2) establish a rule that is required for compliance with, and eligibility under, this Act without following the requirements of section 553 of title 5, United States Code.

''(e) EXPLANATION AND ASSURANCES.—Any written response by the Secretary under subsection (d) regarding a policy, question, or interpretation under part B of this Act shall include an explanation in the written response that—

''(1) such response is provided as informal guidance and is not legally binding;

''(2) when required, such response is issued in compliance with the requirements of section 553 of title 5, United States Code; and

''(3) such response represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented.

''(f) CORRESPONDENCE FROM DEPARTMENT OF EDUCATION DESCRIBING INTERPRETATIONS OF THIS ACT.—

''(1) IN GENERAL.—The Secretary shall, on a quarterly basis, publish in the Federal Register, and widely disseminate to interested entities through various additional forms of communication, a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of this Act or the regulations implemented pursuant to this Act.

''(2) ADDITIONAL INFORMATION.—For each item of correspondence published in a list under paragraph (1), the Secretary shall—

''(A) identify the topic addressed by the correspondence and shall include such other summary information as the Secretary determines to be appropriate; and

''(B) ensure that all such correspondence is issued, where applicable, in compliance with the requirements of section 553 of title 5, United States Code.

''SEC. 608. STATE ADMINISTRATION.

''(a) RULEMAKING.—Each State that receives funds under this Act shall—

''(1) ensure that any State rules, regulations, and policies relating to this Act conform to the purposes of this Act; and

''(2) identify in writing to its local educational agencies and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by this Act and Federal regulations.

''(b) SUPPORT AND FACILITATION.—State rules, regulations, and policies under this Act shall support and facilitate local educational agency and school-level systemic reform designed to enable children with disabilities to meet the challenging State student academic achievement standards.

''SEC. 609. REPORT TO CONGRESS.

''The Comptroller General shall conduct a review of Federal, State, and local requirements relating to the education of children with disabilities to determine which requirements result in excessive paperwork completion burdens for teachers, related services providers, and school administrators, and shall report to Congress not later than 18 months after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003 regarding such review along with strategic proposals for reducing the paperwork burdens on teachers.

''PART B—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

''SEC. 611. AUTHORIZATION; ALLOTMENT; USE OF FUNDS; AUTHORIZATION OF APPROPRIATIONS.

''(a) GRANTS TO STATES.—

''(1) PURPOSE OF GRANTS.—The Secretary shall make grants to States and the outlying areas, and provide funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with this part.

''(2) MAXIMUM AMOUNT.—The maximum amount available for awarding grants under this section for any fiscal year is—

''(A) the total number of children with disabilities in the 2002–2003 school year in the States who received special education and related services and who were—

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

''(ii) aged 6 through 21; multiplied by

''(B) 40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; adjusted by;

''(C) the rate of change in the sum of—

''(i) 85 percent of the change in the nationwide total of the population described in subsection (d)(3)(A)(i)(II); and

''(ii) 15 percent of the change in the nationwide total of the population described in subsection (d)(3)(A)(i)(III).

''(b) OUTLYING AREAS AND FREELY ASSOCIATED STATES.—

''(1) FUNDS RESERVED.—From the amount appropriated for any fiscal year under subsection (i), the Secretary shall reserve not more than 1 percent, which shall be used—

''(A) to provide assistance to the outlying areas in accordance with their respective populations of individuals aged 3 through 21; and

''(B) to provide each freely associated State a grant in the amount that such freely associated State received for fiscal year 2003 under this part, but only if the freely associated State meets the applicable requirements of this part, as well as the requirements of section 611(b)(2)(C) as such section was in effect on the day before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003.

''(2) SPECIAL RULE.—The provisions of Public Law 95–134, permitting the consolidation of grants by the outlying areas, shall not apply to funds provided to the outlying areas or the freely associated States under this section.

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

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

''(d) ALLOCATIONS TO STATES.—

''(1) IN GENERAL.—After reserving funds for studies and evaluations under section 665, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior under subsections (b) and (c) for a fiscal year, the Secretary shall allocate the remaining amount among the States in accordance with this subsection.

''(2) SPECIAL RULE FOR USE OF FISCAL YEAR 1999 AMOUNT.—If a State received any funds under this section for fiscal year 1999 on the basis of children aged 3 through 5, but does not make a free appropriate public education available to all children with disabilities aged 3 through 5 in the State in any subsequent fiscal year, the Secretary shall compute the State's amount for fiscal year 1999, solely for the purpose of calculating the State's allocation in that subsequent year under paragraph (3) or (4), by subtracting the amount allocated to the State for fiscal year 1999 on the basis of those children.

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

''(A) ALLOCATION OF INCREASE.—

''(i) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall allocate for the fiscal year—

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

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

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

''(ii) DATA.—For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

''(B) LIMITATIONS.—Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

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

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

''(I) the sum of—

''(aa) the amount the State received under this section for fiscal year 1999; and

''(bb) ⅓ of 1 percent of the amount by which the amount appropriated under subsection (i) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1999;

''(II) the sum of—

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

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

''(III) the sum of—

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

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

''(iii) MAXIMUM.—Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of—

''(I) the amount the State received under this section for the preceding fiscal year; and

''(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under this section from the preceding fiscal year.

''(C) RATABLE REDUCTION.—If the amount available for allocations under this paragraph is insufficient to pay those allocations in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).

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

''(A) AMOUNTS GREATER THAN FISCAL YEAR 1999 ALLOCATIONS.—If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1999, each State shall be allocated the sum of—

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

''(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fiscal year 1999 bears to the total of all such increases for all States.

''(B) AMOUNTS EQUAL TO OR LESS THAN FISCAL YEAR 1999 ALLOCATIONS.—

''(i) IN GENERAL.—If the amount available for allocations under this paragraph is equal to or less than the amount allocated to the States for fiscal year 1999, each State shall be allocated the amount the State received for fiscal year 1999.

''(ii) RATABLE REDUCTION.—If the amount available for allocations under this paragraph is insufficient to make the allocations described in clause (i), those allocations shall be ratably reduced.

''(e) STATE-LEVEL ACTIVITIES.—

''(1) STATE ADMINISTRATION.—

''(A) IN GENERAL.—For the purpose of administering this part, including paragraph (3), section 619, and the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities—

''(i) each State may reserve not more than the maximum amount the State was eligible to reserve for State administration for fiscal year 2003 or $800,000 (adjusted by the cumulative rate of inflation since fiscal year 2003 as measured by the percentage increase, if any, in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), whichever is greater; and

''(ii) each outlying area may reserve not more than 5 percent of the amount the outlying area receives under subsection (b) for any fiscal year or $35,000, whichever is greater.

''(B) PART C.—Funds reserved under subparagraph (A) may be used for the administration of part C, if the State educational agency is the lead agency for the State under that part.

''(C) CERTIFICATION.—Prior to expenditure of funds under this paragraph, the State shall certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) are current as of the date of submission of the certification.

''(2) OTHER STATE-LEVEL ACTIVITIES.—

''(A) STATE-LEVEL ACTIVITIES.—

''(i) IN GENERAL.—For the purpose of carrying out State-level activities, each State may reserve for each of the fiscal years 2004 and 2005, not more than 10 percent of the amount that remains after subtracting the amount reserved under paragraph (1) from the amount of the State's allocation under subsection (d) for fiscal years 2004 and 2005, respectively. For fiscal years 2006, 2007, 2008, and 2009, the State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2005 (adjusted by the cumulative rate of inflation since fiscal year 2005 as measured by the percentage increase, if any, in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

''(ii) SMALL STATE ADJUSTMENT.—Notwithstanding clause (i), in the case of a State for which the maximum amount reserved for State administration under paragraph (1) is not greater than $800,000 (as adjusted pursuant to paragraph (1)(A)(i)), the State may reserve for the purpose of carrying out State-level activities for each of the fiscal years 2004 and 2005, not more than 12 percent of the amount that remains after subtracting the amount reserved under paragraph (1) from the amount of the State's allocation under subsection (d) for fiscal years 2004 and 2005, respectively. For each of the fiscal years 2006, 2007, 2008, and 2009, each such State may reserve for such purpose the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2005 (adjusted by the cumulative rate of inflation since fiscal year 2005 as measured by the percentage increase, if any, in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

''(B) REQUIRED ACTIVITIES.—Funds reserved under subparagraph (A) shall be used to carry out the following activities:

''(i) For monitoring, enforcement and complaint investigation.

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

''(iii) To support the State protection and advocacy system to advise and assist parents in the areas of—

''(I) dispute resolution and due process;

''(II) voluntary mediation; and

''(III) the opportunity to resolve complaints.

''(C) AUTHORIZED ACTIVITIES.—Funds reserved under subparagraph (A) may be used to carry out the following activities:

''(i) For support and direct services, including technical assistance, personnel preparation, and professional development and training.

''(ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process.

''(iii) To assist local educational agencies in providing positive behavioral interventions and supports and mental health services for children with disabilities.

''(iv) To improve the use of technology in the classroom by children with disabilities to enhance learning.

''(v) To support the development and use of technology, including universally designed technologies and assistive technology devices, to maximize accessibility to the general curriculum for children with disabilities.

''(vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to post-secondary activities.

''(vii) To assist local educational agencies in meeting personnel shortages.

''(viii) To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.

''(ix) Alternative programming for children who have been expelled from school, and services for children in correctional facilities, children enrolled in State-operated or State-supported schools, and children in charter schools.

''(x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 6111 of the Elementary and Secondary Education Act of 1965.

''(3) LOCAL EDUCATIONAL AGENCY RISK POOL.—

''(A) IN GENERAL.—For the purpose of assisting local educational agencies (and charter schools that are local educational agencies) in addressing the needs of high-need children and the unanticipated enrollment of other children eligible for services under this part, each State shall reserve for each of the fiscal years 2004 through 2009, 2 percent of the amount that remains after subtracting the amount reserved under paragraph (1) from the amount of the State's allocation under subsection (d) for each of the fiscal years 2004 through 2009, respectively, to—

''(i) establish a high-cost fund; and

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

''(B) REQUIRED DISBURSEMENTS FROM THE FUND.—

''(i) IN GENERAL.—Each State educational agency shall make disbursements from the fund established under subparagraph (A) to local educational agencies to pay the percentage, described in subparagraph (D), of the costs of providing a free appropriate public education to high-need children.

''(ii) SPECIAL RULE.—If funds reserved for a fiscal year under subparagraph (A) are insufficient to pay the percentage described in subparagraph (D) to assist all the local educational agencies having applications approved under subparagraph (C), then the State educational agency shall ratably reduce the amount paid to each local educational agency that receives a disbursement for that fiscal year.

''(C) APPLICATION.—A local educational agency that desires a disbursement under this subsection shall submit an application to the State educational agency at such time, in such manner, and containing such information as the State educational agency may require. Such application shall include assurances that funds provided under this paragraph shall not be used to pay costs that otherwise would be reimbursable as medical assistance for a child with a disability under the State medicaid program under title XIX of the Social Security Act.

''(D) DISBURSEMENTS.—

''(i) IN GENERAL.—A State educational agency shall make a disbursement to a local educational agency that submits an application under subparagraph (C) in an amount that is equal to 75 percent of the costs that are in excess of 4 times the average per-pupil expenditure in the United States or in the State where the child resides (whichever average per-pupil expenditure is lower) associated with educating each high need child served by such local educational agency in a fiscal year for whom such agency desires a disbursement.

''(ii) APPROPRIATE COSTS.—The costs associated with educating a high need child under clause (i) are only those costs associated with providing direct special education and related services to such child that are identified in such child's appropriately developed IEP.

''(E) LEGAL FEES.—The disbursements under subparagraph (D) shall not support legal fees, court costs, or other costs associated with a cause of action brought on behalf of such child to ensure a free appropriate public education for such child.

''(F) PERMISSIBLE DISBURSEMENTS FROM REMAINING FUNDS.—A State educational agency may make disbursements to local educational agencies from any funds that are remaining in the high cost fund after making the required disbursements under subparagraph (D) for a fiscal year for the following purposes:

''(i) To pay the costs associated with serving children with disabilities who moved into the areas served by such local agencies after the budget for the following school year had been finalized to assist the local educational agencies in providing a free appropriate public education for such children in such year.

''(ii) To compensate local educational agencies for extraordinary costs, as determined by the State, of any children eligible for services under this part due to—

''(I) unexpected enrollment or placement of children eligible for services under this part; or

''(II) a significant underestimate of the average cost of providing services to children eligible for services under this part.

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

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

''(ii) be allocated to local educational agencies in the same manner as funds are allocated to local educational agencies under subsection (f).

''(H) ASSURANCE OF A FREE APPROPRIATE PUBLIC EDUCATION.—Nothing in this section shall be construed—

''(i) to limit or condition the right of a child with a disability who is assisted under this part to receive a free appropriate public education

pursuant to section 612(a)(1) in a least restrictive environment pursuant to section 612(a)(5); or

''(ii) to authorize a State educational agency or local educational agency to indicate a limit on what is expected to be spent on the education of a child with a disability.

''(I) MEDICAID SERVICES NOT AFFECTED.—Disbursements provided under this subsection shall not be used to pay costs that otherwise would be reimbursable as medical assistance for a child with a disability under the State medicaid program under title XIX of the Social Security Act.

''(J) DEFINITIONS.—In this paragraph:

''(i) AVERAGE PER-PUPIL EXPENDITURE.—The term 'average per-pupil expenditure' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965.

''(ii) HIGH-NEED CHILD.—The term 'high-need', when used with respect to a child with a disability, means a child with a disability for whom a free appropriate public education in a fiscal year costs more than 4 times the average per-pupil expenditure for such fiscal year.

''(K) SPECIAL RULE FOR RISK POOL AND HIGH-NEED ASSISTANCE PROGRAMS IN EFFECT AS OF JANUARY 1, 2003.—Notwithstanding the provisions of subparagraphs (A) through (J), a State may use funds reserved pursuant to this paragraph for administering and implementing a placement-neutral cost-sharing and reimbursement program of high-need, low-incidence, emergency, catastrophic, or extraordinary aid to local educational agencies that provides services to students eligible under this part based on eligibility criteria for such programs that were operative on January 1, 2003.

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

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

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

''(5) REPORT ON USE OF FUNDS.—As part of the information required to be submitted to the Secretary under section 612, each State shall annually describe how amounts under this section—

''(A) will be used to meet the requirements of this Act; and

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

''(6) FLEXIBILITY IN USING FUNDS FOR PART C.—Any State eligible to receive a grant under section 619 may use funds made available under paragraph (1)(A), subsection (f)(3), or section 619(f)(5) to develop and implement a State policy jointly with the lead agency under part C and the State educational agency to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates pre-literacy, 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.

''(f) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

''(1) SUBGRANTS REQUIRED.—Each State that receives a grant under this section for any fiscal year shall distribute any funds the State does not reserve under subsection (e) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under section 613 for use in accordance with this part.

''(2) PROCEDURE FOR ALLOCATIONS TO LOCAL EDUCATIONAL AGENCIES.—

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

''(i) BASE PAYMENTS.—The State shall first award each local educational agency described in paragraph (1) the amount the local educational agency would have received under this section for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 611(d) as section 611(d) was then in effect.

''(ii) ALLOCATION OF REMAINING FUNDS.—After making allocations under clause (i), the State shall—

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

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

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

''(g) DEFINITIONS.—For the purpose of this section—

''(1) the term 'average per-pupil expenditure in public elementary schools and secondary schools in the United States' means—

''(A) without regard to the source of funds—

''(i) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the 50 States and the District of Columbia; plus

''(ii) any direct expenditures by the State for the operation of those local educational agencies; divided by

''(B) the aggregate number of children in average daily attendance to whom those local educational agencies provided free public education during that preceding year; and

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

''(h) USE OF AMOUNTS BY SECRETARY OF THE INTERIOR.—

''(1) PROVISION OF AMOUNTS FOR ASSISTANCE.—

''(A) IN GENERAL.—The Secretary of Education shall provide amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 through 21 who are enrolled in elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of such payment for any fiscal year shall be equal to 80 percent of the amount allotted under subsection (c) for that fiscal year.

''(B) CALCULATION OF NUMBER OF CHILDREN.—In the case of Indian students aged 3 through 5 who are enrolled in programs affiliated with the Bureau of Indian Affairs (hereafter in this subsection referred to as 'BIA') schools, and that are required by the States in which such schools are located to attain or maintain State accreditation, and which schools had such accreditation prior to the date of enactment of the Individuals with Disabilities Education Act Amendments of 1991, the school shall be allowed to count those children for the purpose of distribution of the funds provided under this paragraph to the Secretary of the Interior. The Secretary of the Interior shall be responsible for meeting all of the requirements of this part for these children, in accordance with paragraph (2).

''(C) ADDITIONAL REQUIREMENT.—With respect to all other children aged 3 through 21 on reservations, the State educational agency shall be responsible for ensuring that all of the requirements of this part are implemented.

''(2) SUBMISSION OF INFORMATION.—The Secretary of Education may provide the Secretary of the Interior amounts under paragraph (1) for a fiscal year only if the Secretary of the Interior submits to the Secretary of Education information that—

''(A) demonstrates that the Department of the Interior meets the appropriate requirements, as determined by the Secretary of Education, of sections 612 (including monitoring and evaluation activities) and 613;

''(B) includes a description of how the Secretary of the Interior will coordinate the provision of services under this part with local educational agencies, tribes and tribal organizations, and other private and Federal service providers;

''(C) includes an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected local school boards before the adoption of the policies, programs, and procedures described in subparagraph (A);

''(D) includes an assurance that the Secretary of the Interior will provide such information as the Secretary of Education may require to comply with section 618;

''(E) includes an assurance that the Secretary of the Interior and the Secretary of Health and Human Services have entered into a memorandum of agreement, to be provided to the Secretary of Education, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with State and local educational agencies and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations (such agreement shall provide for the apportionment of responsibilities and costs including, but not limited to, child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies as needed for a child to remain in school or a program); and

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

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

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

''(A) IN GENERAL.—With funds appropriated under subsection (i), the Secretary of Education shall make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of the above to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payments under subparagraph (B) for any fiscal year shall be equal to 20 percent of the amount allotted under subsection (c).

''(B) DISTRIBUTION OF FUNDS.—The Secretary of the Interior shall distribute the total amount of the payment under subparagraph (A) by allocating to each tribe or tribal organization an

amount based on the number of children with disabilities ages 3 through 5 residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.

''(C) SUBMISSION OF INFORMATION.—To receive a payment under this paragraph, the tribe or tribal organization shall submit such figures to the Secretary of the Interior as required to determine the amounts to be allocated under subparagraph (B). This information shall be compiled and submitted to the Secretary of Education.

''(D) USE OF FUNDS.—The funds received by a tribe or tribal organization shall be used to assist in child find, screening, and other procedures for the early identification of children aged 3 through 5, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

''(E) BIENNIAL REPORT.—To be eligible to receive a grant pursuant to subparagraph (A), the tribe or tribal organization shall provide to the Secretary of the Interior a biennial report of activities undertaken under this paragraph, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis in the report to the Secretary of Education required under this subsection. The Secretary of Education may require any additional information from the Secretary of the Interior.

''(F) PROHIBITIONS.—None of the funds allocated under this paragraph may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

''(5) PLAN FOR COORDINATION OF SERVICES.—The Secretary of the Interior shall develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations covered under this Act. Such plan shall provide for the coordination of services benefiting these children from whatever source, including tribes, the Indian Health Service, other BIA divisions, and other Federal agencies. In developing the plan, the Secretary of the Interior shall consult with all interested and involved parties. The plan shall be based on the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities. The plan shall also be distributed upon request to States, State and local educational agencies, and other agencies providing services to infants, toddlers, and children with disabilities, to tribes, and to other interested parties.

''(6) ESTABLISHMENT OF ADVISORY BOARD.—To meet the requirements of section 612(a)(20), the Secretary of the Interior shall establish, under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under section 641 in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson shall be selected by the Secretary of the Interior. The advisory board shall—

''(A) assist in the coordination of services within the BIA and with other local, State, and Federal agencies in the provision of education for infants, toddlers, and children with disabilities;

''(B) advise and assist the Secretary of the Interior in the performance of the Secretary's responsibilities described in this subsection;

''(C) develop and recommend policies concerning effective inter- and intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter- and intra-agency programs and activities;

''(D) provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved educational programming for Indian infants, toddlers, and children with disabilities; and

''(E) provide assistance in the preparation of information required under paragraph (2)(D).

''(7) ANNUAL REPORTS.—

''(A) IN GENERAL.—The advisory board established under paragraph (6) shall prepare and submit to the Secretary of the Interior and to Congress an annual report containing a description of the activities of the advisory board for the preceding year.

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

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

''SEC. 612. STATE ELIGIBILITY.

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

''(1) FREE APPROPRIATE PUBLIC EDUCATION.—

''(A) IN GENERAL.—A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

''(B) LIMITATION.—The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children—

''(i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and

''(ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this part be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility—

''(I) were not actually identified as being a child with a disability under section 602(3); or

''(II) did not have an individualized education program under this part.

''(C) STATE FLEXIBILITY.—A State that provides early intervention services in accordance with part C to a child who is eligible for services under section 619, is not required to provide such child with a free appropriate public education.

''(2) FULL EDUCATIONAL OPPORTUNITY GOAL.—The State has established a goal of providing full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal.

''(3) CHILD FIND.—

''(A) IN GENERAL.—All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

''(B) CONSTRUCTION.—Nothing in this Act requires that children be classified by their disability so long as each child who has a disability listed in section 602 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this part.

''(4) INDIVIDUALIZED EDUCATION PROGRAM.—An individualized education program, or an individualized family service plan that meets the requirements of section 636(d), is developed, reviewed, and revised for each child with a disability in accordance with section 614(d).

''(5) LEAST RESTRICTIVE ENVIRONMENT.—

''(A) IN GENERAL.—To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

''(B) ADDITIONAL REQUIREMENT.—

''(i) IN GENERAL.—A State funding mechanism shall not result in placements that violate the requirements of subparagraph (A), and a State shall not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability a free appropriate public education according to the unique needs of the child as described in the child's IEP.

''(ii) ASSURANCE.—If the State does not have policies and procedures to ensure compliance with clause (i), the State shall provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements.

''(6) PROCEDURAL SAFEGUARDS.—

''(A) IN GENERAL.—Children with disabilities and their parents are afforded the procedural safeguards required by section 615.

''(B) ADDITIONAL PROCEDURAL SAFEGUARDS.—Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

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

''(8) CONFIDENTIALITY.—Agencies in the State comply with section 617(c) (relating to the confidentiality of records and information).

''(9) TRANSITION FROM PART C TO PRESCHOOL PROGRAMS.—Children participating in early-intervention programs assisted under part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(8). By the third birthday of such a child, an individualized education program or, if consistent with sections 614(d)(2)(B) and 636(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in

transition planning conferences arranged by the designated lead agency under section 635(a)(10).

''(10) CHILDREN IN PRIVATE SCHOOLS.—

''(A) CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS.—

''(i) IN GENERAL.—To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):

''(I) Amounts to be expended for the provision of those services (including direct services to parentally placed children) by the local educational agency shall be equal to a proportionate amount of Federal funds made available under this part.

''(II) Such services may be provided to children with disabilities on the premises of private, including religious, schools, to the extent consistent with law.

''(III) Each local educational agency shall maintain in its records and provide to the State educational agency the number of children evaluated under this paragraph, the number of children determined to be children with disabilities, and the number of children served under this subsection.

''(ii) CHILD-FIND REQUIREMENT.—

''(I) IN GENERAL.—The requirements of paragraph (3) of this subsection (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including religious, elementary schools and secondary schools. Such child find process shall be conducted in a comparable time period as for other students attending public schools in the local educational agency.

''(II) EQUITABLE PARTICIPATION.—The child find process shall be designed to ensure the equitable participation of parentally placed private school children and an accurate count of such children.

''(III) ACTIVITIES.—In carrying out this clause, the local educational agency, or where applicable, the State educational agency, shall undertake activities similar to those activities undertaken for its public school children.

''(IV) COST.—The cost of carrying out this clause, including individual evaluations, may not be considered in determining whether a local education agency has met its obligations under clause (i).

''(iii) CONSULTATION.—To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, shall consult, with representatives of children with disabilities who are parentally placed in private schools, during the design and development of special education and related services for these children, including consultation regarding—

''(I) the child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

''(II) the determination of the proportionate share of Federal funds available to serve parentally placed private school children with disabilities under this paragraph, including the determination of how the proportionate share of those funds were calculated;

''(III) the consultation process among the school district, private school officials, and parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;

''(IV) how, where, and by whom special education and related services will be provided for parentally placed private school children, including a discussion of alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and

''(V) how, if the local educational agency disagrees with the views of the private school officials on the provision of services through a contract, the local educational agency shall provide to the private school officials a written explanation of the reasons why the local educational agency chose not to provide services through a contract.

''(iv) WRITTEN AFFIRMATION.—When timely and meaningful consultation as required by this section has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such officials do not provide such affirmations within a reasonable period of time, the local educational agency shall forward the documentation of the consultation process to the State educational agency.

''(v) COMPLIANCE.—

''(I) IN GENERAL.—A private school official shall have the right to complain to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.

''(II) PROCEDURE.—If the private school official wishes to complain, the official shall provide the basis of the noncompliance with this section by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency. If the private school official is dissatisfied with the decision of the State educational agency, such official may complain to the Secretary by providing the basis of the noncompliance with this section by the local educational agency to the Secretary, and the State educational agency shall forward the appropriate documentation to the Secretary.

''(vi) PROVISION OF EQUITABLE SERVICES.—

''(I) DIRECT SERVICES.—To the extent practicable, the local educational agency shall provide direct services to children with disabilities parentally placed in private schools.

''(II) DIRECTLY OR THROUGH CONTRACTS.—A public agency may provide special education and related services directly or through contracts with public and private agencies, organizations, and institutions.

''(III) SECULAR, NEUTRAL, NONIDEOLOGICAL.—Special education and related services provided to children with disabilities attending private schools, including materials and equipment, shall be secular, neutral, and nonideological.

''(vii) PUBLIC CONTROL OF FUNDS.—The control of funds used to provide special education and related services under this section, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this Act, and a public agency shall administer the funds and property.

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

''(i) IN GENERAL.—Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State.

''(ii) STANDARDS.—In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights the children would have if served by such agencies.

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

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

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

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

''(I) if—

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

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

''(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 615(b)(3), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

''(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

''(iv) EXCEPTION.—Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement—

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

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

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

''(II) may, in the discretion of a court or a hearing officer, not be reduced or denied for failure to provide such notice if—

''(aa) the parent is illiterate and cannot write in English; or

''(bb) compliance with clause (iii)(I) would likely have resulted in physical or serious emotional harm to the child.

''(11) STATE EDUCATIONAL AGENCY RESPONSIBLE FOR GENERAL SUPERVISION.—

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

''(i) the requirements of this part are met; and

''(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State or local agency—

''(I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and

''(II) meet the educational standards of the State educational agency.

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

''(C) EXCEPTION.—Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

''(12) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES.—

''(A) ESTABLISHING RESPONSIBILITY FOR SERVICES.—The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall include the following:

''(i) AGENCY FINANCIAL RESPONSIBILITY.—An identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State Medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).

''(ii) CONDITIONS AND TERMS OF REIMBURSEMENT.—The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.

''(iii) INTERAGENCY DISPUTES.—Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

''(iv) COORDINATION OF SERVICES PROCEDURES.—Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B)(i).

''(B) OBLIGATION OF PUBLIC AGENCY.—

''(i) IN GENERAL.—If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy pursuant to subparagraph (A), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in section 602(1) relating to assistive technology devices, 602(2) relating to assistive technology services, 602(25) relating to related services, 602(32) relating to supplementary aids and services, and 602(33) relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subparagraph (A) or an agreement pursuant to subparagraph (C).

''(ii) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY.—If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for developing the child's IEP) shall provide or pay for such services to the child. Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A)(ii).

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

''(i) State statute or regulation;

''(ii) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

''(iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary.

''(13) PROCEDURAL REQUIREMENTS RELATING TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY.—The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing.

''(14) PERSONNEL STANDARDS.—

''(A) IN GENERAL.—The State educational agency has established and maintains standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

''(B) RELATED SERVICES PERSONNEL AND PARAPROFESSIONALS.—The standards under subparagraph (A) include standards for related services personnel and paraprofessionals that—

''(i) are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;

''(ii) ensure that related services personnel who deliver services in their discipline or profession meet the requirements of clause (i) and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

''(iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.

''(C) STANDARDS FOR SPECIAL EDUCATION TEACHERS.—

''(i) IN GENERAL.—The standards described in subparagraph (A) shall ensure that each person employed as a special education teacher in the State who teaches in an elementary, middle, or secondary school is highly qualified not later than the end of the 2006–2007 school year.

''(ii) COMPLIANCE.—Notwithstanding paragraphs (2) and (3) of section 1119(a) of the Elementary and Secondary Education Act of 1965, for purposes of determining compliance with such paragraphs—

''(I) the Secretary, the State educational agency, and local educational agencies shall apply the definition of highly qualified in section 602(10) to special education teachers; and

''(II) the State shall ensure that all special education teachers teaching in core academic subjects within the State are highly qualified (as defined in section 602(10)) not later than the end of the 2006–2007 school year.

''(iii) PARENTS' RIGHT TO KNOW.—In carrying out section 1111(h)(6) of the Elementary and Secondary Education Act of 1965 with respect to special education teachers, a local educational agency shall—

''(I) include in a response to a request under such section any additional information needed to demonstrate that the teacher meets the applicable requirements of section 602(10) relating to certification or licensure as a special education teacher; and

''(II) apply the definition of highly qualified in section 602(10) in carrying out section 1111(h)(6)(B)(ii).

''(D) POLICY.—In implementing this section, a State shall adopt a policy that includes a requirement that local educational agencies in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.

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

''(15) PERFORMANCE GOALS AND INDICATORS.—The State—

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

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

''(ii) are the same as the State's definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the Elementary and Secondary Education Act of 1965;

''(iii) address graduation rates and drop out rates, as well as such other factors as the State may determine; and

''(iv) are consistent, to the extent appropriate, with any other goals and standards for children established by the State;

''(B) has established performance indicators the State will use to assess progress toward achieving the goals described in subparagraph (A), including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the Elementary and Secondary Education Act of 1965; and

''(C) will annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A).

''(16) PARTICIPATION IN ASSESSMENTS.—

''(A) IN GENERAL.— All children with disabilities are included in all general State and districtwide assessment programs and accountability systems, including assessments and accountability systems described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations, alternate assessments where necessary, and as indicated in their respective individualized education programs.

''(B) ACCOMMODATION GUIDELINES.—The State (or, in the case of a districtwide assessment, the local educational agency) has developed guidelines for the provision of appropriate accommodations.

''(C) ALTERNATE ASSESSMENTS.—

''(i) IN GENERAL.—The State (or, in the case of a districtwide assessment, the local educational agency) has developed and implemented guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under subparagraph (B) as indicated in their respective individualized education programs.

''(ii) REQUIREMENTS FOR ALTERNATE ASSESSMENTS.—The guidelines under clause (i) shall provide for alternate assessments that—

''(I) are aligned with the State's challenging academic content and academic achievement standards; and

''(II) if the State has adopted alternate academic achievement standards permitted under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, measure the achievement of children with disabilities against those standards.

''(iii) CONDUCT OF ALTERNATIVE ASSESSMENTS.—The State conducts the alternate assessments described in this subparagraph.

''(D) REPORTS.—The State educational agency (or, in the case of a districtwide assessment, the local educational agency) makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

''(i) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in those assessments.

''(ii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(I).

''(iii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(II).

''(iv) The performance of 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.

''(E) UNIVERSAL DESIGN.—The State educational agency (or, in the case of a districtwide assessment, the local educational agency) shall, to the extent feasible, use universal design principles in developing and administering any assessments under this paragraph.

''(17) SUPPLEMENTATION OF STATE, LOCAL, AND OTHER FEDERAL FUNDS.—

''(A) EXPENDITURES.—Funds paid to a State under this part will be expended in accordance with all the provisions of this part.

''(B) PROHIBITION AGAINST COMMINGLING.—Funds paid to a State under this part will not be commingled with State funds.

''(C) PROHIBITION AGAINST SUPPLANTATION AND CONDITIONS FOR WAIVER BY SECRETARY.—Except as provided in section 613, funds paid to a State under this part will be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this part and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive, in whole or in part, the requirements of this subparagraph if the Secretary concurs with the evidence provided by the State.

''(18) MAINTENANCE OF STATE FINANCIAL SUPPORT.—

''(A) IN GENERAL.—The State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

''(B) REDUCTION OF FUNDS FOR FAILURE TO MAINTAIN SUPPORT.—The Secretary shall reduce the allocation of funds under section 611 for any fiscal year following the fiscal year in which the State fails to comply with the requirement of subparagraph (A) by the same amount by which the State fails to meet the requirement.

''(C) WAIVERS FOR EXCEPTIONAL OR UNCONTROLLABLE CIRCUMSTANCES.—The Secretary may waive the requirement of subparagraph (A) for a State, for 1 fiscal year at a time, if the Secretary determines that—

''(i) granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

''(ii) the State meets the standard in paragraph (17)(C) for a waiver of the requirement to supplement, and not to supplant, funds received under this part.

''(D) SUBSEQUENT YEARS.—If, for any year, a State fails to meet the requirement of subparagraph (A), including any year for which the State is granted a waiver under subparagraph (C), the financial support required of the State in future years under subparagraph (A) shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

''(19) PUBLIC PARTICIPATION.—Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

''(20) STATE ADVISORY PANEL.—

''(A) IN GENERAL.—The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.

''(B) MEMBERSHIP.—Such advisory panel shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, that is representative of the State population and that is composed of individuals involved in, or concerned with, the education of children with disabilities, including—

''(i) parents of children with disabilities ages birth through 26;

''(ii) individuals with disabilities;

''(iii) teachers;

''(iv) representatives of institutions of higher education that prepare special education and related services personnel;

''(v) State and local education officials;

''(vi) administrators of programs for children with disabilities;

''(vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;

''(viii) representatives of private schools and public charter schools;

''(ix) at least 1 representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and

''(x) representatives from the State juvenile and adult corrections agencies.

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

''(D) DUTIES.—The advisory panel shall—

''(i) advise the State educational agency of unmet needs within the State in the education of children with disabilities;

''(ii) comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;

''(iii) advise the State educational agency in developing evaluations and reporting on data to the Secretary under section 618;

''(iv) advise the State educational agency in developing corrective action plans to address findings identified in Federal monitoring reports under this part; and

''(v) advise the State educational agency in developing and implementing policies relating to the coordination of services for children with disabilities.

''(21) SUSPENSION AND EXPULSION RATES.—

''(A) IN GENERAL.—The State educational agency examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities—

''(i) among local educational agencies in the State; or

''(ii) compared to such rates for nondisabled children within such agencies.

''(B) REVIEW AND REVISION OF POLICIES.—If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that such policies, procedures, and practices comply with this Act.

''(22) ACCESS TO INSTRUCTIONAL MATERIALS.—

''(A) IN GENERAL.—The State adopts the national Instructional Materials Accessibility Standard described in section 675(a) for the purposes of providing instructional materials to blind persons or other persons with print disabilities in a timely manner after the publication of the standard in the Federal Register.

''(B) PREPARATION AND DELIVERY OF FILES.—Not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, a State educational agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, enters into a written contract with the publisher of the print instructional materials to—

''(i) prepare, and on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center, established pursuant to section 675(b), electronic files containing the contents of the print instructional materials using the Instructional Materials Accessibility Standard; or

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

''(C) ASSISTIVE TECHNOLOGY.—In carrying out subparagraph (B), the State educational agency, to the maximum extent possible, shall work collaboratively with the State agency responsible for assistive technology programs.

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

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

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

''(c) EXCEPTION FOR PRIOR STATE PLANS.—

''(1) IN GENERAL.—If a State has on file with the Secretary policies and procedures that demonstrate that such State meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall consider such State to have met such requirement for purposes of receiving a grant under this part.

''(2) MODIFICATIONS MADE BY STATE.—Subject to paragraph (3), an application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a

modification to an application to the same extent and in the same manner as this section applies to the original plan.

''(3) MODIFICATIONS REQUIRED BY THE SECRETARY.—If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the provisions of this Act are amended (or the regulations developed to carry out this Act are amended), there is a new interpretation of this Act by a Federal court or a State's highest court, or there is an official finding of noncompliance with Federal law or regulations, then the Secretary may require a State to modify its application only to the extent necessary to ensure the State's compliance with this part.

''(d) APPROVAL BY THE SECRETARY.—

''(1) IN GENERAL.—If the Secretary determines that a State is eligible to receive a grant under this part, the Secretary shall notify the State of that determination.

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

''(A) with reasonable notice; and

''(B) with an opportunity for a hearing.

''(e) ASSISTANCE UNDER OTHER FEDERAL PROGRAMS.—Nothing in this title permits a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for children with disabilities in the State.

''(f) BY-PASS FOR CHILDREN IN PRIVATE SCHOOLS.—

''(1) IN GENERAL.—If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency was prohibited by law from providing for the equitable participation in special programs of children with disabilities enrolled in private elementary schools and secondary schools as required by subsection (a)(10)(A), or if the Secretary determines that a State educational agency, local educational agency, or other entity has substantially failed or is unwilling to provide for such equitable participation, then the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to such children through arrangements which shall be subject to the requirements of such subsection.

''(2) PAYMENTS.—

''(A) DETERMINATION OF AMOUNTS.—If the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services for a fiscal year an amount per child that does not exceed the amount determined by dividing—

''(i) the total amount received by the State under this part for such fiscal year; by

''(ii) the number of children with disabilities served in the prior year, as reported to the Secretary by the State under section 618.

''(B) WITHHOLDING OF CERTAIN AMOUNTS.—Pending final resolution of any investigation or complaint that may result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates will be necessary to pay the cost of services described in subparagraph (A).

''(C) PERIOD OF PAYMENTS.—The period under which payments are made under subparagraph (A) shall continue until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(10)(A).

''(3) NOTICE AND HEARING.—

''(A) IN GENERAL.—The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for at least 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary's designee to show cause why such action should not be taken.

''(B) REVIEW OF ACTION.—If a State educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A), such agency may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the Secretary's action, as provided in section 2112 of title 28, United States Code.

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

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

''SEC. 613. LOCAL EDUCATIONAL AGENCY ELIGIBILITY.

''(a) IN GENERAL.—A local educational agency is eligible for assistance under this part for a fiscal year if such agency submits a plan that provides assurances to the State educational agency that the local educational agency meets each of the following conditions:

''(1) CONSISTENCY WITH STATE POLICIES.—The local educational agency, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under section 612.

''(2) USE OF AMOUNTS.—

''(A) IN GENERAL.—Amounts provided to the local educational agency under this part shall be expended in accordance with the applicable provisions of this part and—

''(i) shall be used only to pay the excess costs of providing special education and related services to children with disabilities;

''(ii) shall be used to supplement State, local, and other Federal funds and not to supplant such funds; and

''(iii) shall not be used, except as provided in subparagraphs (B) and (C), to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.

''(B) EXCEPTION.—Notwithstanding the restriction in subparagraph (A)(iii), a local educational agency may reduce the level of expenditures where such reduction is attributable to—

''(i) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel;

''(ii) a decrease in the enrollment of children with disabilities;

''(iii) the termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the State educational agency, because the child—

''(I) has left the jurisdiction of the agency;

''(II) has reached the age at which the obligation of the agency to provide a free appropriate public education to the child has terminated; or

''(III) no longer needs such program of special education; or

''(iv) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

''(C) TREATMENT OF FEDERAL FUNDS IN CERTAIN FISCAL YEARS.—

''(i) 8 PERCENT RULE.—Notwithstanding clauses (ii) and (iii) of subparagraph (A), a local educational agency may treat as local funds, for the purposes of such clauses, not more than 8 percent of the amount of funds the local educational agency receives under this part.

''(ii) 40 PERCENT RULE.—Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which States are allocated the maximum amount of grants pursuant to section 611(a)(2), a local educational agency may treat as local funds, for the purposes of such clauses, not more than 40 percent of the amount of funds the local educational agency receives under this part, subject to clause (iv).

''(iii) EARLY INTERVENING SERVICES.—

''(I) 8 PERCENT RULE.—If a local educational agency exercises authority pursuant to clause (i), the 8 percent funds shall be counted toward the percentage and amount of funds that may be used to provide early intervening educational services pursuant to subsection (f).

''(II) 40 PERCENT RULE.—If a local educational agency exercises authority pursuant to clause (ii), the local educational agency shall use an amount of the 40 percent funds from clause (ii) that represents 15 percent of the total amount of funds the local educational agency receives under this part, to provide early intervening educational services pursuant to subsection (f).

''(iv) SPECIAL RULE.—Funds treated as local funds pursuant to clause (i) or (ii) may be considered non-Federal or local funds for the purposes of—

''(I) clauses (ii) and (iii) of subparagraph (A); and

''(II) the provision of the local share of costs for title XIX of the Social Security Act.

''(v) REPORT.—For each fiscal year in which a local educational agency exercises its authority pursuant to this subparagraph and treats Federal funds as local funds, the local educational agency shall report to the State educational agency the amount of funds so treated and the activities that were funded with such funds.

''(D) SCHOOLWIDE PROGRAMS UNDER TITLE I OF THE ESEA.—Notwithstanding subparagraph (A) or any other provision of this part, a local educational agency may use funds received under this part for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount so used in any such program shall not exceed—

''(i) the number of children with disabilities participating in the schoolwide program; multiplied by

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

''(II) the number of children with disabilities in the jurisdiction of that agency.

''(3) PERSONNEL DEVELOPMENT.—The local educational agency shall ensure that all personnel necessary to carry out this part are appropriately and adequately prepared, consistent with the requirements of section 612(a)(14) of this Act and section 2122 of the Elementary and Secondary Education Act of 1965.

''(4) PERMISSIVE USE OF FUNDS.—

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

''(i) SERVICES AND AIDS THAT ALSO BENEFIT NONDISABLED CHILDREN.—For the costs of special education and related services, and supplementary aids and services, provided in a regular

class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if 1 or more nondisabled children benefit from such services.

''(ii) EARLY INTERVENING SERVICES.—To develop and implement coordinated, early intervening educational services in accordance with subsection (f).

''(B) ADMINISTRATIVE CASE MANAGEMENT.—A local educational agency may use funds received under this part to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the individualized education program of children with disabilities, that is needed for the implementation of such case management activities.

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

''(A) serves children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its 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 services on the site to its other public schools; and

''(B) provides funds under this part to those charter schools on the same basis, including proportional distribution based on relative enrollment of children with disabilities, and at the same time, as the local educational agency distributes State, local, or a combination of State and local, funds to those charter schools under the State's charter school law.

''(6) PURCHASE OF INSTRUCTIONAL MATERIALS.—Not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, a local educational agency, when purchasing print instructional materials, acquires these instructional materials in the same manner as a State educational agency described in section 612(a)(22).

''(7) INFORMATION FOR STATE EDUCATIONAL AGENCY.—The local educational agency shall provide the State educational agency with information necessary to enable the State educational agency to carry out its duties under this part, including, with respect to paragraphs (15) and (16) of section 612(a), information relating to the performance of children with disabilities participating in programs carried out under this part.

''(8) PUBLIC INFORMATION.—The local educational agency shall make available to parents of children with disabilities and to the general public all documents relating to the eligibility of such agency under this part.

''(9) RECORDS REGARDING MIGRATORY CHILDREN WITH DISABILITIES.—The local educational agency shall cooperate in the Secretary's efforts under section 1308 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6398) 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.

''(b) EXCEPTION FOR PRIOR LOCAL PLANS.—

''(1) IN GENERAL.—If a local educational agency or State agency has on file with the State educational agency policies and procedures that demonstrate that such local educational agency, or such State agency, as the case may be, meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the State educational agency shall consider such local educational agency or State agency, as the case may be, to have met such requirement for purposes of receiving assistance under this part.

''(2) MODIFICATION MADE BY LOCAL EDUCATIONAL AGENCY.—Subject to paragraph (3), an application submitted by a local educational agency in accordance with this section shall remain in effect until the local educational agency submits to the State educational agency such modifications as the local educational agency determines necessary.

''(3) MODIFICATIONS REQUIRED BY STATE EDUCATIONAL AGENCY.—If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the provisions of this Act are amended (or the regulations developed to carry out this Act are amended), there is a new interpretation of this Act by Federal or State courts, or there is an official finding of noncompliance with Federal or State law or regulations, then the State educational agency may require a local educational agency to modify its application only to the extent necessary to ensure the local educational agency's compliance with this part or State law.

''(c) NOTIFICATION OF LOCAL EDUCATIONAL AGENCY OR STATE AGENCY IN CASE OF INELIGIBILITY.—If the State educational agency determines that a local educational agency or State agency is not eligible under this section, then the State educational agency shall notify the local educational agency or State agency, as the case may be, of that determination and shall provide such local educational agency or State agency with reasonable notice and an opportunity for a hearing.

''(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE.—

''(1) IN GENERAL.—If the State educational agency, after reasonable notice and an opportunity for a hearing, finds that a local educational agency or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in subsection (a), the State educational agency shall reduce or shall not provide any further payments to the local educational agency or State agency until the State educational agency is satisfied that the local educational agency or State agency, as the case may be, is complying with that requirement.

''(2) ADDITIONAL REQUIREMENT.—Any State agency or local educational agency in receipt of a notice described in paragraph (1) shall, by means of public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

''(3) CONSIDERATION.—In carrying out its responsibilities under paragraph (1), the State educational agency shall consider any decision made in a hearing held under section 615 that is adverse to the local educational agency or State agency involved in that decision.

''(e) JOINT ESTABLISHMENT OF ELIGIBILITY.—

''(1) JOINT ESTABLISHMENT.—

''(A) IN GENERAL.—A State educational agency may require a local educational agency to establish its eligibility jointly with another local educational agency if the State educational agency determines that the local educational agency will be ineligible under this section because the local educational agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

''(B) CHARTER SCHOOL EXCEPTION.—A State educational agency may not require a charter school that is a local educational agency to jointly establish its eligibility under subparagraph (A) unless the charter school is explicitly permitted to do so under the State's charter school law.

''(2) AMOUNT OF PAYMENTS.—If a State educational agency requires the joint establishment of eligibility under paragraph (1), the total amount of funds made available to the affected local educational agencies shall be equal to the sum of the payments that each such local educational agency would have received under section 611(f) if such agencies were eligible for such payments.

''(3) REQUIREMENTS.—Local educational agencies that establish joint eligibility under this subsection shall—

''(A) adopt policies and procedures that are consistent with the State's policies and procedures under section 612(a); and

''(B) be jointly responsible for implementing programs that receive assistance under this part.

''(4) REQUIREMENTS FOR EDUCATIONAL SERVICE AGENCIES.—

''(A) IN GENERAL.—If an educational service agency is required by State law to carry out programs under this part, the joint responsibilities given to local educational agencies under this subsection shall—

''(i) not apply to the administration and disbursement of any payments received by that educational service agency; and

''(ii) be carried out only by that educational service agency.

''(B) ADDITIONAL REQUIREMENT.—Notwithstanding any other provision of this subsection, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by section 612(a)(5).

''(f) EARLY INTERVENING SERVICES.—

''(1) IN GENERAL.—A local educational agency may not use more than 15 percent of the amount such agency receives under this part for any fiscal year, less any amount treated as local funds pursuant to subsection (a)(2)(C), if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening educational 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 do not meet the definition of a child with a disability under section 602(3) but who need additional academic and behavioral support to succeed in a general education environment.

''(2) ACTIVITIES.—In implementing coordinated, early intervening educational services under this subsection, a local educational agency may carry out activities that include—

''(A) professional development (which may be provided by entities other than local educational agencies) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software;

''(B) providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction; and

''(C) developing and implementing interagency financing structures for the provision of such services and supports.

''(3) CONSTRUCTION.—Nothing in this subsection shall be construed to either limit or create a right to a free appropriate public education under this part.

''(4) REPORTING.—Each local educational agency that develops and maintains coordinated, early intervening educational services with funds made available for this subsection, shall annually report to the State educational agency on—

''(A) the number of children served under this subsection; and

''(B) the number of children served under this subsection who are subsequently referred to special education.

''(5) COORDINATION WITH CERTAIN PROJECTS UNDER ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—Funds made available to carry out this subsection may be used to carry out coordinated, early intervening educational services aligned with activities funded by, and carried

out under, the Elementary and Secondary Education Act of 1965 if such funds are used to supplement, and not supplant, funds made available under the Elementary and Secondary Education Act of 1965 for the activities and services assisted under this subsection.

''(6) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, the Comptroller General shall conduct a study on the types of services provided to children served under this subsection, and shall submit a report to Congress regarding the study.

''(g) DIRECT SERVICES BY THE STATE EDUCATIONAL AGENCY.—

''(1) IN GENERAL.—A State educational agency shall use the payments that would otherwise have been available to a local educational agency or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that local educational agency, or for whom that State agency is responsible, if the State educational agency determines that the local educational agency or State agency, as the case may be—

''(A) has not provided the information needed to establish the eligibility of such agency under this section;

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

''(C) is unable or unwilling to be consolidated with 1 or more local educational agencies in order to establish and maintain such programs; or

''(D) has 1 or more children with disabilities who can best be served by a regional or State program or service delivery system designed to meet the needs of such children.

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

''(h) STATE AGENCY ELIGIBILITY.—Any State agency that desires to receive a subgrant for any fiscal year under section 611(f) shall demonstrate to the satisfaction of the State educational agency that—

''(1) all children with disabilities who are participating in programs and projects funded under this part receive a free appropriate public education, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

''(2) the agency meets such other conditions of this section as the Secretary determines to be appropriate.

''(i) DISCIPLINARY INFORMATION.—The State may require that a local educational agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit such statement to the same extent that such disciplinary information is included in, and transmitted with, the student records of nondisabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If the State adopts such a policy, and the child transfers from 1 school to another, the transmission of any of the child's records shall include both the child's current individualized education program and any such statement of current or previous disciplinary action that has been taken against the child.

''(j) STATE AGENCY FLEXIBILITY.—

''(1) TREATMENT OF FEDERAL FUNDS IN CERTAIN FISCAL YEARS.—If a State educational agency pays or reimburses local educational agencies within the State for not less than 80 percent of the non-Federal share of the costs of special education and related services, or the State is the sole provider of free appropriate public education or direct services pursuant to section 612(b), then the State educational agency, notwithstanding sections 612(a) (17) and (18) and 612(b), may treat funds allocated pursuant to section 611 as general funds available to support the educational purposes described in paragraph (2) (A) and (B).

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

''(A) 8 PERCENT RULE.—A State educational agency may treat not more than 8 percent of the funds the State educational agency receives under this part as general funds to support any educational purpose described in the Elementary and Secondary Education Act of 1965, needs-based student or teacher higher education programs, or the non-Federal share of costs of title XIX of the Social Security Act.

''(B) 40 PERCENT RULE.—For any fiscal year for which States are allocated the maximum amount of grants pursuant to section 611(a)(2), a State educational agency may treat not more than 40 percent of the amount of funds the State educational agency receives under this part as general funds to support any educational purpose described in the Elementary and Secondary Education Act of 1965, needs-based student or teacher higher education programs, or the non-Federal share of costs of title XIX of the Social Security Act, subject to subparagraph (C).

''(C) REQUIREMENT.—A State educational agency may exercise its authority pursuant to subparagraph (B) only if the State educational agency uses an amount of the 40 percent funds from subparagraph (B) that represents 15 percent of the total amount of funds the State educational agency receives under this part, to provide, or to pay or reimburse local educational agencies for providing, early intervening prereferral services pursuant to subsection (f).

''(2) PROHIBITION.—Notwithstanding subsection (a), if the Secretary determines that a State educational agency is unable to establish, maintain, or oversee programs of free appropriate public education that meet the requirements of this part, then the Secretary shall prohibit the State educational agency from treating funds allocated under this part as general funds pursuant to paragraph (1).

''(3) REPORT.—For each fiscal year for which a State educational agency exercises its authority pursuant to paragraph (1) and treats Federal funds as general funds, the State educational agency shall report to the Secretary the amount of funds so treated and the activities that were funded with such funds.

''SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.

''(a) EVALUATIONS AND REEVALUATIONS.—

''(1) INITIAL EVALUATIONS.—

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

''(B) REQUEST FOR INITIAL EVALUATION.—Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

''(C) PROCEDURES.—Such initial evaluation shall consist of procedures—

''(i) to determine whether a child is a child with a disability (as defined in section 602(3)) within 60 days of receiving parental consent for the evaluation, or, if the State has established a timeframe within which the evaluation must be conducted, within such timeframe; and

''(ii) to determine the educational needs of such child.

''(D) PARENTAL CONSENT.—

''(i) IN GENERAL.—The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602(3) (A) or (B) shall obtain an informed consent from the parent of such child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

''(ii) REFUSAL.—If the parents of such child refuse consent for the evaluation, the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under section 615, except to the extent inconsistent with State law relating to parental consent.

''(iii) REFUSAL OR FAILURE TO CONSENT.—If the parent of a child does not provide informed consent to the receipt of special education and related services, or the parent fails to respond to a request to provide the consent, the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide the special education and related services for which the local educational agency requests such informed consent.

''(2) REEVALUATIONS.—

''(A) IN GENERAL.—A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c)—

''(i) 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

''(ii) if the child's parents or teacher requests a reevaluation.

''(B) LIMITATION.—A reevaluation conducted under subparagraph (A) shall occur—

''(i) not more than once a year, unless the parent and the local educational agency agree otherwise; and

''(ii) at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.

''(b) EVALUATION PROCEDURES.—

''(1) NOTICE.—The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 615, that describes any evaluation procedures such agency proposes to conduct.

''(2) CONDUCT OF EVALUATION.—In conducting the evaluation, the local educational agency shall—

''(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining—

''(i) whether the child is a child with a disability; and

''(ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum, or for preschool children, to participate in appropriate activities;

''(B) not use any single procedure, measure, or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

''(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

''(3) ADDITIONAL REQUIREMENTS.—Each local educational agency shall ensure that—

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

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

''(ii) are provided and administered, to the extent practicable, in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally;

''(iii) are used for purposes for which the assessments or measures are valid and reliable;

''(iv) are administered by trained and knowledgeable personnel; and

''(v) are administered in accordance with any instructions provided by the producer of such tests;

''(B) the child is assessed in all areas of suspected disability; and

''(C) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

''(4) DETERMINATION OF ELIGIBILITY.—Upon completion of administration of tests and other evaluation materials—

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

''(B) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.

''(5) SPECIAL RULE FOR ELIGIBILITY DETERMINATION.—In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is—

''(A) lack of scientifically based instruction in reading;

''(B) lack of instruction in mathematics; or

''(C) limited English proficiency.

''(6) SPECIFIC LEARNING DISABILITIES.—

''(A) IN GENERAL.—Notwithstanding section 607(b), when determining whether a child has a specific learning disability as defined in section 602(29), a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.

''(B) ADDITIONAL AUTHORITY.—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 described in paragraphs (2) and (3).

''(c) ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS.—

''(1) REVIEW OF EXISTING EVALUATION DATA.—As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team described in subsection (d)(1)(B) and other qualified professionals, as appropriate, shall—

''(A) review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments, and observations, and teacher and related services providers observations; and

''(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

''(i) whether the child has a particular category of disability, as described in section 602(3), or, in case of a reevaluation of a child, whether the child continues to have such a disability;

''(ii) the present levels of performance and educational needs of the child;

''(iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

''(iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general curriculum.

''(2) SOURCE OF DATA.—The local educational agency shall administer such tests and other evaluation materials and procedures as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

''(3) PARENTAL CONSENT.—Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(D), prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local educational agency can demonstrate that the local educational agency had taken reasonable measures to obtain such consent and the child's parent has failed to respond.

''(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED.—If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child is or continues to be a child with a disability, the local educational agency—

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

''(i) that determination and the reasons for the determination; and

''(ii) the right of such parents to request an assessment to determine whether the child is or continues to be a child with a disability; and

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

''(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), a local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

''(B) EXCEPTION.—

''(i) IN GENERAL.—The evaluation described in subparagraph (A) shall not be required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or to exceeding the age eligibility for a free appropriate public education under State law.

''(ii) SUMMARY OF PERFORMANCE.—For a child whose eligibility under this part terminates under circumstances described in clause (i), a local educational agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

''(d) INDIVIDUALIZED EDUCATION PROGRAMS.—

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

''(A) INDIVIDUALIZED EDUCATION PROGRAM.—

''(i) IN GENERAL.—The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes—

''(I) a statement of the child's present levels of academic achievement and functional performance, including—

''(aa) how the child's disability affects the child's involvement and progress in the general curriculum; or

''(bb) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

''(II) a statement of measurable annual goals, including academic and functional goals, designed to—

''(aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general curriculum; and

''(bb) meet each of the child's other educational needs that result from the child's disability;

''(III) a description of how the child's progress toward meeting the annual goals described in subclause (II) 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;

''(IV) a statement of the special education and related services, and supplementary aids and services, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—

''(aa) to advance appropriately toward attaining the annual goals;

''(bb) to be involved in and make progress in the general curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and

''(cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph;

''(V) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in subclause (IV)(cc);

''(VI)(aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16)(A); and

''(bb) if the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why—

''(AA) the child cannot participate in the regular assessment; and

''(BB) the particular alternate assessment selected is appropriate for the child;

''(VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications; and

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

''(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;

''(bb) the transition services (including courses of study) needed by the child to reach those goals, including services to be provided by other agencies when needed; and

''(cc) beginning at least 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 under this title, if any, that will transfer to the child on reaching the age of majority under section 615(m).

''(ii) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require—

''(I) that additional information be included in a child's IEP beyond what is explicitly required in this section; and

''(II) the IEP Team to include information under 1 component of a child's IEP that is already contained under another component of such IEP.

''(B) INDIVIDUALIZED EDUCATION PROGRAM TEAM.—The term 'individualized education program team' or 'IEP Team' means a group of individuals composed of—

''(i) the parents of a child with a disability;

''(ii) at least 1 regular education teacher of such child (if the child is, or may be, participating in the regular education environment);

''(iii) at least 1 special education teacher, or where appropriate, at least 1 special education provider of such child;

''(iv) a representative of the local educational agency who—

''(I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

''(II) is knowledgeable about the general curriculum; and

''(III) is knowledgeable about the availability of resources of the local educational agency;

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

''(vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

''(vii) whenever appropriate, the child with a disability.

''(C) IEP TEAM ATTENDANCE.—

''(i) ATTENDANCE NOT NECESSARY.—A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if that member, the parent of a child with a disability, and the local educational agency agree that the attendance of such member is not necessary because no modification to the member's area of the curriculum or related services is being modified or discussed in the meeting.

''(ii) EXCUSAL.—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—

''(I) that member, the parent, and the local educational agency consent to the excusal; and

''(II) the member submits input into the development of the IEP prior to the meeting.

''(iii) WRITTEN AGREEMENT AND CONSENT REQUIRED.—A parent's agreement under clause (i) and consent under clause (ii) shall be in writing.

''(2) REQUIREMENT THAT PROGRAM BE IN EFFECT.—

''(A) IN GENERAL.—At the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in its jurisdiction, an individualized education program, as defined in paragraph (1)(A).

''(B) PROGRAM FOR CHILD AGED 3 THROUGH 5.—In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2-year-old child with a disability who will turn age 3 during the school year), an individualized family service plan that contains the material described in section 636, and that is developed in accordance with this section, may serve as the IEP of the child if using that plan as the IEP is—

''(i) consistent with State policy; and

''(ii) agreed to by the agency and the child's parents.

''(3) DEVELOPMENT OF IEP.—

''(A) IN GENERAL.—In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider—

''(i) the strengths of the child;

''(ii) the concerns of the parents for enhancing the education of their child;

''(iii) the results of the initial evaluation or most recent evaluation of the child; and

''(iv) the academic, developmental, and functional needs of the child.

''(B) CONSIDERATION OF SPECIAL FACTORS.—The IEP Team shall—

''(i) in the case of a child whose behavior impedes the child's learning or that of others, provide for positive behavioral interventions and supports, and other strategies to address that behavior;

''(ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP;

''(iii) in the case of a child who is blind or visually impaired—

''(I) provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child; and

''(II) consider, when appropriate, instructional services related to functional performance skills, orientation and mobility, and skills in the use of assistive technology devices, including low vision devices;

''(iv) consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

''(v) consider whether the child requires assistive technology devices and services.

''(C) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—A regular education teacher of the child, as a member of the IEP Team shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(i)(IV).

''(D) AGREEMENT.—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.

''(E) CONSOLIDATION OF IEP TEAM MEETINGS.—To the extent possible, the local educational agency shall encourage the consolidation of reevaluations of a child with IEP Team meetings for the child.

''(4) REVIEW AND REVISION OF IEP.—

''(A) IN GENERAL.—The local educational agency shall ensure that, subject to subparagraph (B), the IEP Team—

''(i) reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

''(ii) revise the IEP as appropriate to address—

''(I) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;

''(II) the results of any reevaluation conducted under this section;

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

''(IV) the child's anticipated needs; or

''(V) other matters.

''(B) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—A regular education teacher of the child, as a member of the IEP Team, shall, consistent with paragraph (1)(C), participate in the review and revision of the IEP of the child.

''(5) THREE-YEAR IEP.—

''(A) DEVELOPMENT OF 3-YEAR IEP.—The local educational agency may offer a child with a disability who has reached the age of 18, the option of developing a comprehensive 3-year IEP. With the consent of the parent, when appropriate, the IEP Team shall develop an IEP, as described in paragraphs (1) and (3), that is designed to serve the child for the final 3-year transition period, which includes a statement of—

''(i) measurable goals that will enable the child to be involved in and make progress in the general education curriculum and that will meet the child's transitional and postsecondary needs that result from the child's disability; and

''(ii) measurable annual goals for measuring progress toward meeting the postsecondary goals described in clause (i).

''(B) REVIEW AND REVISION OF 3-YEAR IEP.—

''(i) REQUIREMENT.—Each year the local educational agency shall ensure that the IEP Team—

''(I) provides an annual review of the child's IEP to determine the child's current levels of progress and determine whether the annual goals for the child are being achieved; and

''(II) revises the IEP, as appropriate, to enable the child to continue to meet the measurable transition goals set out in the IEP.

''(ii) COMPREHENSIVE REVIEW.—If the review under clause (i) determines that the child is not making sufficient progress toward the goals described in subparagraph (A), the local educational agency shall ensure that the IEP Team provides a review, within 30 calendar days, of the IEP under paragraph (4).

''(iii) PREFERENCE.—At the request of the child, or when appropriate, the parent, the IEP Team shall conduct a review of the child's 3-year IEP under paragraph (4) rather than an annual review under subparagraph (B)(i).

''(6) FAILURE TO MEET TRANSITION OBJECTIVES.—If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(i)(VIII), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in that program.

''(7) CHILDREN WITH DISABILITIES IN ADULT PRISONS.—

''(A) IN GENERAL.—The following requirements shall not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

''(i) The requirements contained in section 612(a)(16) and paragraph (1)(A)(i)(V) (relating to participation of children with disabilities in general assessments).

''(ii) The requirements of items (aa) and (bb) of paragraph (1)(A)(i)(VIII) (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this part will end, because of their age, before they will be released from prison.

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

''(e) EDUCATIONAL PLACEMENTS.—Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

''(f) ALTERNATIVE MEANS OF MEETING PARTICIPATION.—When conducting IEP Team meetings and placement meetings pursuant to this section, 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.

''SEC. 615. PROCEDURAL SAFEGUARDS.

''(a) ESTABLISHMENT OF PROCEDURES.—Any State educational agency, State agency, or local educational agency that receives assistance under this part shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies.

''(b) TYPES OF PROCEDURES.—The procedures required by this section shall include—

''(1) an opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to

such child, and to obtain an independent educational evaluation of the child;

''(2) procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child) to act as a surrogate for the parents;

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

''(A) proposes to initiate or change; or

''(B) refuses to initiate or change,

the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child;

''(4) procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so;

''(5) an opportunity for mediation in accordance with subsection (e);

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

''(7)(A) procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with subsection (c)(2) (which shall remain confidential)—

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

''(ii) that shall include—

''(I) the name of the child, the address of the residence of the child, and the name of the school the child is attending;

''(II) in the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child and the name of the school the child is attending;

''(III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

''(IV) a proposed resolution of the problem to the extent known and available to the party at the time; and

''(B) 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 requirements of subparagraph (A)(ii);

''(8) a requirement that the local educational agency shall send a prior written notice pursuant to subsection (c)(1) in response to a parent's due process complaint notice under paragraph (7) if the local educational agency has not sent such a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice; and

''(9) procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively.

''(c) NOTIFICATION REQUIREMENTS.—

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

''(A) a description of the action proposed or refused by the agency;

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

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

''(D) a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;

''(E) a description of any other factors that are relevant to the agency's proposal or refusal;

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

''(G) sources for parents to contact to obtain assistance in understanding the provisions of this part.

''(2) DUE PROCESS COMPLAINT NOTICE.—

''(A) IN GENERAL.—The due process complaint notice required under subsection (b)(7)(A) 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 requirements of that subsection.

''(B) TIMING.—The party sending a hearing officer notification under subparagraph (A) shall send the notification within 20 days of receiving the complaint.

''(C) DETERMINATION.—Within 5 days of receipt of the notification provided under subparagraph (B), the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of subsection (b)(7)(A), and shall immediately notify both parties in writing of such determination.

''(D) PARENT'S AMENDED NOTICE OF COMPLAINT.—

''(i) IN GENERAL.—A parent may amend the parent's due process complaint notice only if—

''(I) the public agency consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to subsection (f)(1)(B); or

''(II) the hearing officer grants permission, but may do so only before a due process hearing occurs.

''(ii) APPLICABLE TIMELINE.—The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice.

''(d) PROCEDURAL SAFEGUARDS NOTICE.—

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

''(A) upon initial referral or parental request for evaluation;

''(B) upon registration of a complaint under subsection (b)(6); and

''(C) upon request by a parent.

''(2) CONTENTS.—The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents, unless it clearly is not feasible to do so, and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to—

''(A) independent educational evaluation;

''(B) prior written notice;

''(C) parental consent;

''(D) access to educational records;

''(E) the opportunity to present and resolve complaints, including—

''(i) the time period in which to make a complaint;

''(ii) the opportunity for the agency to resolve the complaint; and

''(iii) the availability of mediation;

''(F) the child's placement during pendency of due process proceedings;

''(G) procedures for students who are subject to placement in an interim alternative educational setting;

''(H) requirements for unilateral placement by parents of children in private schools at public expense;

''(I) due process hearings, including requirements for disclosure of evaluation results and recommendations;

''(J) State-level appeals (if applicable in that State);

''(K) civil actions, including the time period in which to file such actions; and

''(L) attorney's fees.

''(e) MEDIATION.—

''(1) IN GENERAL.—Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.

''(2) REQUIREMENTS.—Such procedures shall meet the following requirements:

''(A) The procedures shall ensure that the mediation process—

''(i) is voluntary on the part of the parties;

''(ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this part; and

''(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

''(B) OPPORTUNITY TO MEET WITH A DISINTERESTED PARTY.—A local educational agency or a State agency may establish procedures to offer to parents and schools who choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with—

''(i) a parent training and information center or community parent resource center in the State established under section 671 or 672; or

''(ii) an appropriate alternative dispute resolution entity,

to encourage the use, and explain the benefits, of the mediation process to the parents.

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

''(D) COSTS.—The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

''(E) SCHEDULING AND LOCATION.—Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

''(F) WRITTEN MEDIATION AGREEMENT.—An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement that is enforceable in any State court of competent jurisdiction or in a district court of the United States.

''(G) MEDIATION DISCUSSIONS.—Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.

''(f) IMPARTIAL DUE PROCESS HEARING.—

''(1) IN GENERAL.—

''(A) HEARING.—Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

''(B) OPPORTUNITY TO RESOLVE COMPLAINT.—

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

''(I) within 15 days of receiving notice of the parents' complaint;

''(II) which shall include a representative of the public agency who has decisionmaking authority on behalf of such agency;

''(III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and

''(IV) where the parents of the child discuss their complaint, and the specific issues 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 described in subsection (e).

''(ii) HEARING.—If the local educational agency has not resolved the complaint to the satisfaction of the parents within 15 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence.

''(iii) WRITTEN SETTLEMENT AGREEMENT.—In the case that an agreement is reached to resolve the complaint at such meeting, the agreement shall be set forth in a written settlement agreement that is—

''(I) signed by both the parent and a representative of the public agency who has decisionmaking authority on behalf of such agency; and

''(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.

''(2) DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS.—

''(A) IN GENERAL.—Not less than 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations, that the party intends to use at the hearing.

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

''(3) LIMITATIONS ON HEARING.—

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

''(i) not be—

''(I) an employee of the State educational agency or the local educational agency involved in the education or care of the child; or

''(II) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

''(ii) possess a fundamental understanding of this Act, Federal and State regulations pertaining to this Act, and interpretations of this Act by State and Federal courts;

''(iii) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

''(iv) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

''(B) SUBJECT MATTER OF HEARING.—The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.

''(C) RULE OF CONSTRUCTION.—Nothing in this section 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.

''(D) TIMELINE FOR REQUESTING HEARING.—A parent or public agency shall request an impartial due process hearing within 2 years of 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 requesting such a hearing under this part, in such time as the State law allows.

''(E) EXCEPTION TO THE STATUTE OF LIMITATIONS.—The statute of limitations described in subparagraph (D) shall not apply if the parent was prevented from requesting the hearing due to—

''(i) failure of the local educational agency to provide prior written or procedural safeguards notices;

''(ii) false representations that the local educational agency was attempting to resolve the problem forming the basis of the complaint; or

''(iii) the local educational agency's withholding of information from parents.

''(F) DECISION OF HEARING OFFICER.—

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

''(ii) PROCEDURAL ISSUES.—In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies—

''(I) compromised the child's right to an appropriate public education;

''(II) seriously hampered the parents' opportunity to participate in the process; or

''(III) caused a deprivation of educational benefits.

''(iii) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.

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

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

''(h) SAFEGUARDS.—Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded—

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

''(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

''(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

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

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

''(B) shall be transmitted to the advisory panel established pursuant to section 612(a)(20).

''(i) ADMINISTRATIVE PROCEDURES.—

''(1) IN GENERAL.—

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

''(B) DECISION MADE AT APPEAL.—A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2).

''(2) RIGHT TO BRING CIVIL ACTION.—

''(A) IN GENERAL.—Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy.

''(B) LIMITATION.—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 action under this part, in such time as the State law allows.

''(C) ADDITIONAL REQUIREMENTS.—In any action brought under this paragraph, the court—

''(i) shall receive the records of the administrative proceedings;

''(ii) shall hear additional evidence at the request of a party; and

''(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

''(3) JURISDICTION OF DISTRICT COURTS; ATTORNEYS' FEES.—

''(A) IN GENERAL.—The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

''(B) AWARD OF ATTORNEYS' FEES.—In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.

''(C) DETERMINATION OF AMOUNT OF ATTORNEYS' FEES.—Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

''(D) PROHIBITION OF ATTORNEYS' FEES AND RELATED COSTS FOR CERTAIN SERVICES.—

''(i) IN GENERAL.—Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if—

''(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

''(II) the offer is not accepted within 10 days; and

''(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

''(ii) IEP TEAM MEETINGS.—Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e).

''(iii) OPPORTUNITY TO RESOLVE COMPLAINTS.—A meeting conducted pursuant to subsection (f)(1)(B)(i) shall not be considered—

''(I) a meeting convened as a result of an administrative hearing or judicial action; or

''(II) an administrative hearing or judicial action for purposes of this paragraph.

''(E) EXCEPTION TO PROHIBITION ON ATTORNEYS' FEES AND RELATED COSTS.—Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

''(F) REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—Except as provided in subparagraph (G), whenever the court finds that—

''(i) the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

''(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

''(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

''(iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A),

the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

''(G) EXCEPTION TO REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

''(4) PARENTS REPRESENTING THEIR CHILDREN IN COURT.—Subject to subsection (m), and notwithstanding any other provision of Federal law regarding attorney representation (including the Federal Rules of Civil Procedure), a parent of a child with a disability may represent the child in any action under this part in Federal or State court, without the assistance of an attorney.

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

''(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING.—

''(1) AUTHORITY OF SCHOOL PERSONNEL.—

''(A) IN GENERAL.—School personnel under this section may order a change in the placement of a child with a disability who violates a code of student conduct to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

''(B) ADDITIONAL AUTHORITY.—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 pursuant to subparagraph (C), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which the procedures would be applied to children without disabilities, except as provided in section 612(a)(1).

''(C) MANIFESTATION DETERMINATION.—

''(i) IN GENERAL.—Except as provided in subparagraphs (A) and (D), 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 IEP Team shall review all relevant information in the student's file, any information provided by the parents, and teacher observations, to determine—

''(I) if the conduct in question was the result of the child's disability; or

''(II) if the conduct in question resulted from the failure to implement the IEP or to implement behavioral interventions as required by section 614(d)(3)(B)(i).

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

''(D) SPECIAL CIRCUMSTANCES.—In cases where a child—

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

''(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school or a school function under the jurisdiction of a State or local educational agency; or

''(iii) has committed serious bodily injury upon another person while at school or at a school function under the jurisdiction of a State or local educational agency,

school personnel may remove a student to an interim alternative educational setting for not more than 45 school days, without regard to whether the behavior is determined to be a manifestation of the child's disability.

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

''(F) SERVICES.—A child with a disability who is removed from the child's current placement under subparagraph (B) or (D) shall—

''(i) continue to receive educational services pursuant to section 612(a)(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

''(ii) receive behavioral intervention services as described in section 614(d)(3)(B)(i), and a functional behavioral assessment (but only if the local educational agency did not conduct such an assessment before the violation occurred), designed to address the behavior violation so that the violation does not recur.

''(2) DETERMINATION OF SETTING.—The alternative educational setting shall be determined by the IEP Team.

''(3) APPEAL.—

''(A) IN GENERAL.—The parent of a child with a disability who disagrees with any decision regarding disciplinary action, placement, or the manifestation determination under this subsection, 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 others, may request a hearing.

''(B) AUTHORITY OF HEARING OFFICER.—

''(i) IN GENERAL.—If a parent of a child with a disability disagrees with a decision as described in subparagraph (A), the hearing officer may determine whether the decision regarding such action was appropriate.

''(ii) CHANGE OF PLACEMENT ORDER.—A hearing officer under this section 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 such child is substantially likely to result in injury to the child or to others.

''(4) PLACEMENT DURING APPEALS.—When a parent requests a hearing regarding a disciplinary procedure described in paragraph (1)(B) or challenges the interim alternative educational setting or manifestation determination—

''(A) 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 for in paragraph (1)(B), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

''(B) 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.

''(5) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.—

''(A) IN GENERAL.—A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

''(B) BASIS OF KNOWLEDGE.—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—

''(i) the parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with the requirements contained in this clause) to personnel of the appropriate educational agency that the child is in need of special education and related services;

''(ii) the parent of the child has requested an evaluation of the child pursuant to section 614;

''(iii) the teacher of the child, or other personnel of the local educational agency, has expressed concern about a pattern of behavior demonstrated by the child, to the director of special education of such agency or to other administrative personnel of the agency; or

''(iv) the child has engaged in a pattern of behavior that should have alerted personnel of the local educational agency that the child may be in need of special education and related services.

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

''(D) CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE.—

''(i) IN GENERAL.—If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

''(ii) LIMITATIONS.—If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under paragraph (1), the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

''(6) REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES.—

''(A) CONSTRUCTION.—Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

''(B) TRANSMITTAL OF RECORDS.—An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

''(7) DEFINITIONS.—For purposes of this subsection, the following definitions apply:

''(A) CONTROLLED SUBSTANCE.—The term 'controlled substance' means a drug or other substance identified under schedule I, II, III, IV, or

V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

''(B) ILLEGAL DRUG.—The term 'illegal drug' means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

''(C) WEAPON.—The term 'weapon' has the meaning given the term 'dangerous weapon' under section 930(g)(2) of title 18, United States Code.

''(D) SERIOUS BODILY INJURY.—The term 'serious bodily injury' has the meaning given the term 'serious bodily injury' under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

''(l) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.

''(m) TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY.—

''(1) IN GENERAL.—A State that receives amounts from a grant under this part may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)—

''(A) the public agency shall provide any notice required by this section to both the individual and the parents;

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

''(C) the agency shall notify the individual and the parents of the transfer of rights; and

''(D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

''(2) SPECIAL RULE.—If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part.

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

''SEC. 616. MONITORING, TECHNICAL ASSISTANCE, AND ENFORCEMENT.

''(a) FEDERAL AND STATE MONITORING.—

''(1) IN GENERAL.—The Secretary shall—

''(A) monitor implementation of this Act through—

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

''(ii) the system of indicators, described in subsection (b)(2); and

''(B) enforce this Act in accordance with subsection (c); and

''(C) require States to monitor implementation of this Act by local educational agencies and enforce this Act in accordance with paragraph (3) of this subsection and subsection (c).

''(2) FOCUSED MONITORING.—The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on improving educational results and functional outcomes for all children with disabilities, while ensuring compliance with program requirements, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

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

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

''(B) Provision of transition services, as defined in section 602(33).

''(C) State exercise of general supervisory authority, including the effective use of complaint resolution and mediation.

''(D) Overrepresentation of racial and ethnic groups in special education and related services, to the extent the overrepresentation is the result of inappropriate policies, procedures, and practices.

''(4) PERMISSIVE AREAS OF REVIEW.—The Secretary may examine other relevant information and data, including data provided by States under section 618, and data from the State's compliance plan under subsection (b)(2)(C).

''(b) INDICATORS.—

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

''(2) INDICATORS.—

''(A) IN GENERAL.—Using the performance indicators established by States under section 612(a)(15), the Secretary shall review—

''(i) the performance of children with disabilities in the State on assessments, including alternate assessments, dropout rates, and graduation rates, which for purposes of this paragraph means the number and percentage of students with disabilities who graduate with a regular diploma within the number of years specified in a student's IEP; and

''(ii) the performance of children with disabilities in the State on assessments, including alternate assessments, dropout rates, and graduation rates, as compared to the performance and rates for all children.

''(B) SECRETARY'S ASSESSMENT.—Based on that review and a review of the State's compliance plan under subparagraph (C), the Secretary shall assess the State's progress in improving educational results for children with disabilities.

''(C) STATE COMPLIANCE PLAN.—Not later than 1 year after the date of the enactment of the Individuals with Disabilities Education Improvement Act of 2003, each State shall have in place a compliance plan developed in collaboration with the Secretary. Each State's compliance plan shall—

''(i) include benchmarks to measure continuous progress on the priority areas described in subsection (a)(3);

''(ii) describe strategies the State will use to achieve the benchmarks; and

''(iii) be approved by the Secretary.

''(D) PUBLIC REPORTING AND PRIVACY.—

''(i) IN GENERAL.—After the Secretary approves a State's compliance plan under subparagraph (C), the State shall use the benchmarks in the plan and the indicators described in this subsection to analyze the progress of each local educational agency in the State on those benchmarks and indicators.

''(ii) REPORT.—The State shall report annually to the public on each local educational agency's progress under clause (i), except where doing so would result in the disclosure of personally identifiable information about individual children or where the available data is insufficient to yield statistically reliable information.

''(3) DATA COLLECTION AND ANALYSIS.—The Secretary shall—

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

''(B) provide technical assistance to improve the capacity of States to meet these data collection requirements.

''(c) COMPLIANCE AND ENFORCEMENT.—

''(1) IN GENERAL.—The Secretary shall examine relevant State information and data annually, to determine whether the State is making satisfactory progress toward improving educational results for children with disabilities using the indicators described in subsection (b)(2)(A) and the benchmarks established in the State compliance plan under subsection (b)(2)(C), and is in compliance with the provisions of this Act.

''(2) LACK OF SATISFACTORY PROGRESS BY A STATE.—

''(A) IN GENERAL.—If after examining data, as provided in subsection (b)(2) (A) and (C), the Secretary determines that a State failed to make satisfactory progress in meeting the indicators described in subsection (b)(2)(A) or has failed to meet the benchmarks described in subsection (b)(2)(C) for 2 consecutive years after the State has developed its compliance plan, the Secretary shall notify the State that the State has failed to make satisfactory progress, and shall take 1 or more of the following actions:

''(i) Direct the use of State level funds for technical assistance, services, or other expenditures to ensure that the State resolves the area or areas of unsatisfactory progress.

''(ii) Withhold not less than 20, but not more than 50, percent of the State's funds for State administration and activities for the fiscal year under section 611(e), after providing the State the opportunity to show cause why the withholding should not occur, until the Secretary determines that sufficient progress has been made in improving educational results for children with disabilities.

''(B) ADDITIONAL SECRETARIAL ACTION.—If, at the end of the 5th year after the Secretary has approved the compliance plan that the State has developed under subsection (b)(2)(C), the Secretary determines that a State failed to meet the benchmarks in the State compliance plan and make satisfactory progress in improving educational results for children with disabilities pursuant to the indicators described in subsection (b)(2)(A), the Secretary shall take 1 or more of the following actions:

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

''(ii) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, withhold, in whole or in part, any further payments to the State under this part pursuant to subsection (c)(5).

''(iii) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

''(iv) Pending the outcome of any hearing to withhold payments under clause (ii), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate Federal funds, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate Federal funds should not be suspended.

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

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

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

''(iii) 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.

''(iv) Recovery of funds under section 452 of the General Education Provisions Act.

''(v) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, withhold, in whole or in part, any further payments to the State under this part.

''(vi) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

''(vii) Pending the outcome of any hearing to withhold payments under clause (v), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate Federal funds, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate Federal funds should not be suspended.

''(3) EGREGIOUS NONCOMPLIANCE.—At any time that the Secretary determines that a State is in egregious noncompliance or is willfully disregarding the provisions of this Act, the Secretary shall take such additional enforcement actions as the Secretary determines to be appropriate from among those actions specified in paragraph (2)(C), and, additionally, may impose 1 or more of the following sanctions upon that State:

''(A) Institute a cease and desist action under section 456 of the General Education Provisions Act.

''(B) Refer the case to the Office of the Inspector General.

''(4) REPORT TO CONGRESS.—The Secretary shall report to Congress within 30 days of taking enforcement action pursuant to paragraph (2)(B) or (C), or (3), on the specific action taken and the reasons why enforcement action was taken.

''(5) NATURE OF WITHHOLDING.—If the Secretary withholds further payments under paragraphs (2)(B)(ii) and (2)(C)(v), the Secretary may determine that such withholding will be limited to programs or projects, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or State agencies affected by the failure. Until the Secretary is satisfied that there is no longer any failure to make satisfactory progress as specified in paragraph (2)(B), or to comply with the provisions of this part, as specified in paragraph (2)(C), payments to the State under this part shall be withheld in whole or in part, or payments by the State educational agency under this part shall be limited to local educational agencies and State agencies whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, State agency, or local educational agency that has received notice under paragraph (2)(B) or (2)(C) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

''(6) JUDICIAL REVIEW.—

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

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

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

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

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

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

''(e) STATE AND LOCAL MONITORING.—

''(1) IN GENERAL.—The State educational agency shall monitor and enforce implementation of this Act, implement a system of monitoring the benchmarks in the State's compliance plan under subsection (b)(2)(C), and require local educational agencies to monitor and enforce implementation of this Act.

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

''SEC. 617. ADMINISTRATION.

''(a) RESPONSIBILITIES OF SECRETARY.—The Secretary shall—

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

''(A) the education of children with disabilities; and

''(B) carrying out this part; and

''(2) provide short-term training programs and institutes.

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

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

''(d) MODEL FORMS.—Not later than the date that the Secretary publishes final regulations under this Act, to implement amendments made by the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall publish and disseminate widely to States, local educational agencies, and parent and community training and information centers—

''(1) a model IEP form;

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

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

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

''SEC. 618. PROGRAM INFORMATION.

''(a) IN GENERAL.—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide data each year to the Secretary of Education and the public on—

''(1)(A) the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are receiving a free appropriate public education;

''(B) the number and percentage of children with disabilities, by race, gender, and ethnicity, who are receiving early intervention services;

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

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

''(E) the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who, for each year of age from age 14 through 21, stopped receiving special education and related services because of program completion (including graduation with a regular secondary school diploma), or other reasons, and the reasons why those children stopped receiving special education and related services;

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

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

''(ii) the acts or items precipitating those removals; and

''(iii) the number of children with disabilities who are subject to long-term suspensions or expulsions;

''(H) the incidence and duration of disciplinary actions by race, ethnicity, limited English proficiency status, gender, and disability category, of children with disabilities, including suspensions of 1 day or more;

''(I) the number and percentage of children with disabilities who are removed to alternative educational settings or expelled as compared to children without disabilities who are removed to alternative educational settings or expelled;

''(J) the number of due process complaints filed under section 615 and the number of hearings conducted;

''(K) the number of hearings requested under section 615(k) and the number of changes in placements ordered as a result of those hearings;

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

''(M) the number of mediations held and the number of settlement agreements reached through such mediations;

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

''(3) any other information that may be required by the Secretary.

''(b) DATA REPORTING.—The data described in subsection (a) shall be reported by each State at the school district and State level in a manner that does not result in the disclosure of data identifiable to individual children.

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

''(d) DISPROPORTIONALITY.—

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

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

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

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

''(2) REVIEW AND REVISION OF POLICIES, PRACTICES, AND PROCEDURES.—In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, in accordance with paragraph (1), the State or the Secretary of the Interior, as the case may be, shall provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of this Act.

''SEC. 619. PRESCHOOL GRANTS.

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

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

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

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

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

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

''(c) ALLOCATIONS TO STATES.—

''(1) IN GENERAL.—The Secretary shall allocate the amount made available to carry out this section for a fiscal year among the States in accordance with paragraph (2) or (3), as the case may be.

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

''(A) ALLOCATION.—

''(i) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall—

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

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

''(III) allocate 15 percent of those remaining funds to States on the basis of the States' relative populations of all children aged 3 through 5 who are living in poverty.

''(ii) DATA.—For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

''(B) LIMITATIONS.—Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

''(i) PRECEDING YEARS.—No State's allocation shall be less than its allocation under this section for the preceding fiscal year.

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

''(I) the sum of—

''(aa) the amount the State received under this section for fiscal year 1997; and

''(bb) ⅓ of 1 percent of the amount by which the amount appropriated under subsection (j) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1997;

''(II) the sum of—

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

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

''(III) the sum of—

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

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

''(iii) MAXIMUM.—Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of—

''(I) the amount the State received under this section for the preceding fiscal year; and

''(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under this section from the preceding fiscal year.

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

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

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

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

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

''(B) If the amount available for allocations under this paragraph is equal to or less than the amount allocated under this section to the States for fiscal year 1997, each State shall be allocated the amount the State received for that year, ratably reduced, if necessary.

''(d) RESERVATION FOR STATE ACTIVITIES.—

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

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

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

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

''(e) STATE ADMINISTRATION.—

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

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

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

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

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

''(3) for activities at the State and local levels to meet the performance goals established by the State under section 612(a)(15);

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

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

''(g) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

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

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

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

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

and secondary schools within the local educational agency's jurisdiction; and

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

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

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

''(i) DEFINITION.—For the purpose of this section, the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

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

"PART C—INFANTS AND TODDLERS WITH DISABILITIES

"SEC. 631. FINDINGS AND POLICY.

''(a) FINDINGS.—Congress finds that there is an urgent and substantial need—

''(1) to enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay, and to recognize the significant brain development which occurs during a child's first 3 years of life;

''(2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;

''(3) to maximize the potential for individuals with disabilities to live independently in society;

''(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities; and

''(5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, particularly minority, low-income, inner city, and rural children.

''(b) POLICY.—It is the policy of the United States to provide financial assistance to States—

''(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;

''(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);

''(3) to enhance State capacity to provide high quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

''(4) to encourage States to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.

"SEC. 632. DEFINITIONS.

''As used in this part:

''(1) AT-RISK INFANT OR TODDLER.—The term 'at-risk infant or toddler' means an individual under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.

''(2) COUNCIL.—The term 'council' means a State interagency coordinating council established under section 641.

''(3) DEVELOPMENTAL DELAY.—The term 'developmental delay', when used with respect to an individual residing in a State, has the meaning given such term by the State under section 635(a)(1).

''(4) EARLY INTERVENTION SERVICES.—The term 'early intervention services' means developmental services that—

''(A) are provided under public supervision;

''(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;

''(C) are designed to meet the developmental needs of an infant or toddler with a disability in any 1 or more of the following areas:

''(i) physical development;

''(ii) cognitive development;

''(iii) communication development;

''(iv) social or emotional development; or

''(v) adaptive development;

''(D) meet the standards of the State in which the services are provided, including the requirements of this part;

''(E) include—

''(i) family training, counseling, and home visits;

''(ii) special instruction;

''(iii) speech-language pathology and audiology services, and sign language and cued language services;

''(iv) occupational therapy;

''(v) physical therapy;

''(vi) psychological services;

''(vii) service coordination services;

''(viii) medical services only for diagnostic or evaluation purposes;

''(ix) early identification, screening, and assessment services;

''(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;

''(xi) social work services;

''(xii) vision services;

''(xiii) assistive technology devices and assistive technology services; and

''(xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;

''(F) are provided by qualified personnel, including—

''(i) special educators;

''(ii) speech-language pathologists and audiologists;

''(iii) teachers of the deaf;

''(iv) occupational therapists;

''(v) physical therapists;

''(vi) psychologists;

''(vii) social workers;

''(viii) nurses;

''(ix) nutritionists;

''(x) family therapists;

''(xi) orientation and mobility specialists;

''(xii) vision specialists, including opthamologists and optometrists; and

''(xiii) pediatricians and other physicians;

''(G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and

''(H) are provided in conformity with an individualized family service plan adopted in accordance with section 636.

''(5) INFANT OR TODDLER WITH A DISABILITY.—The term 'infant or toddler with a disability'—

''(A) means an individual under 3 years of age who needs early intervention services because the individual—

''(i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in 1 or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or

''(ii) has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay; and

''(B) may also include, at a State's discretion—

''(i) at-risk infants and toddlers; and

''(ii) children with disabilities who are eligible for services under section 619 and who previously received services under this part until such children enter, or are eligible under State law to enter, kindergarten.

"SEC. 633. GENERAL AUTHORITY.

''The Secretary shall, in accordance with this part, make grants to States (from their allotments under section 643) to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

"SEC. 634. ELIGIBILITY.

''In order to be eligible for a grant under section 633, a State shall demonstrate to the Secretary that the State—

''(1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State; and

''(2) has in effect a statewide system that meets the requirements of section 635.

"SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.

''(a) IN GENERAL.—A statewide system described in section 633 shall include, at a minimum, the following components:

''(1) A definition of the term 'developmental delay' that—

''(A) will be used by the State in carrying out programs under this part; and

''(B) covers, at a minimum, all infants and toddlers with—

''(i) a developmental delay of 35 percent or more in 1 of the developmental areas described in section 632(5)(A)(i); or

''(ii) a developmental delay of 25 percent or more in 2 or more of the developmental areas described in section 632(5)(A)(i).

''(2) A State policy that is in effect and that ensures that appropriate early intervention services are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers and their families residing on a reservation geographically located in the State.

''(3) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State, and a family-directed identification of the needs of each family of such an infant or toddler, to appropriately assist in the development of the infant or toddler.

''(4) For each infant or toddler with a disability in the State, an individualized family service plan in accordance with section 636, including service coordination services in accordance with such service plan.

''(5) A comprehensive child find system, consistent with part B, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources.

''(6) A public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency designated or established under paragraph (10) to all primary referral sources, especially hospitals and physicians, of information for parents on the availability of early intervention services, and procedures for determining the extent to which such sources disseminate such information to parents of infants and toddlers.

''(7) A central directory that includes information on early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State.

''(8) A comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the State, which comprehensive system may include—

''(A) implementing innovative strategies and activities for the recruitment and retention of early education service providers;

''(B) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part;

''(C) training personnel to work in rural and inner-city areas; and

''(D) training personnel to coordinate transition services for infants and toddlers served under this part from an early intervention program under this part to preschool or other appropriate services.

''(9) Policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including the establishment and maintenance of standards which are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing early intervention services, except that nothing in this part (including this paragraph) shall be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained in accordance with State law, regulation, or written policy, to assist in the provision of early intervention services under this part to infants and toddlers with disabilities.

''(10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out—

''(A) the general administration and supervision of programs and activities receiving assistance under section 633, and the monitoring of programs and activities used by the State to carry out this part, whether or not such programs or activities are receiving assistance made available under section 633, to ensure that the State complies with this part;

''(B) the identification and coordination of all available resources within the State from Federal, State, local, and private sources;

''(C) the assignment of financial responsibility in accordance with section 637(a)(2) to the appropriate agencies;

''(D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families under this part in a timely manner pending the resolution of any disputes among public agencies or service providers;

''(E) the resolution of intra- and interagency disputes; and

''(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.

''(11) A policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements.

''(12) A procedure for securing timely reimbursements of funds used under this part in accordance with section 640(a).

''(13) Procedural safeguards with respect to programs under this part, as required by section 639.

''(14) A system for compiling data requested by the Secretary under section 618 that relates to this part.

''(15) A State interagency coordinating council that meets the requirements of section 641.

''(16) Policies and procedures to ensure that, consistent with section 636(d)(5) to the maximum extent appropriate, early intervention services are provided in natural environments unless a specific outcome cannot be met satisfactorily for the infant or toddler in a natural environment.

''(b) FLEXIBILITY TO SERVE CHILDREN 3 YEARS OF AGE TO UNDER 6 YEARS OF AGE.—

''(1) IN GENERAL.—A statewide system described in section 633 may include a State policy, developed and implemented jointly by the lead agency and the State educational agency, under which parents of children with disabilities who are eligible for services under section 619 and previously received services under this part, may choose the continuation of early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) for such children under this part until such children enter, or are eligible under State law to enter, kindergarten.

''(2) REQUIREMENTS.—If a statewide system includes a State policy described in paragraph (1), the statewide system shall ensure—

''(A) that parents of infants or toddlers with disabilities (as defined in section 632(5)(A)) provide informed written consent to the State, before such infants and toddlers reach 3 years of age, as to whether such parents intend to choose the continuation of early intervention services pursuant to this subsection for such infants or toddlers;

''(B) that the State policy will not affect the right of any child served pursuant to this subsection to instead receive a free appropriate public education under part B;

''(C) that parents of children served pursuant to this subsection are provided with annual notice—

''(i) of such parents' right to elect services pursuant to this subsection or under part B; and

''(ii) fully explaining the differences between receiving services pursuant to this subsection and receiving services under part B, including—

''(I) the types of services available under both provisions;

''(II) applicable procedural safeguards under both provisions, including due-process protections and mediation or other dispute resolution options; and

''(III) the possible costs, if any (including any fees to be charged to families as described in section 632(4)(B)) to parents under both provisions;

''(D) that the conference under section 637(a)(9)(A)(ii)(II), the review under section 637(a)(9)(B), and the establishment of a transition plan under section 637(a)(9)(C) occur not less than 90 days (and at the discretion of the parties to the conference, not more than 9 months) before each of the following:

''(i) the time the child will first be eligible for services under part B, including under section 619; and

''(ii) if the child is receiving services in accordance with this subsection, the time the child will no longer receive those services;

''(E) the continuance of all early intervention services outlined in the child's individualized family service plan under section 636 while any eligibility determination is being made for services under this subsection;

''(F) that services provided pursuant to this subsection include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills and are provided in accordance with an individualized family service plan under section 636; and

''(G) the referral for evaluation for early intervention services of a child below the age of 3 who experiences a substantiated case of exposure to violence or trauma.

''(3) REPORTING REQUIREMENT.—If a statewide system includes a State policy described in paragraph (1), the State shall submit to the Secretary, in the State's report under section 637(b)(4)(A), a report on—

''(A) the percentage of children with disabilities who are eligible for services under section 619 but whose parents choose for such children to continue to receive early intervention services under this part; and

''(B) the number of children who are eligible for services under section 619 who instead continue to receive early intervention services under this part.

''(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to require a provider of services under this part to provide a child served under this part with a free appropriate public education.

''(5) AVAILABLE FUNDS.—If a statewide system includes a State policy described in paragraph (1), the policy shall describe the funds (including an identification as Federal, State, or local funds) that will be used to ensure that the option described in paragraph (1) is available to eligible children and families who provide the consent described in paragraph (2)(A), including fees to be charged to families as described in section 632(4)(B).

''SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN.

''(a) ASSESSMENT AND PROGRAM DEVELOPMENT.—A statewide system described in section 633 shall provide, at a minimum, for each infant or toddler with a disability, and the infant's or toddler's family, to receive—

''(1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;

''(2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler; and

''(3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (e), including a description of the appropriate transition services for the child.

''(b) PERIODIC REVIEW.—The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

''(c) PROMPTNESS AFTER ASSESSMENT.—The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parents' consent, early intervention services may commence prior to the completion of the assessment.

''(d) CONTENT OF PLAN.—The individualized family service plan shall be in writing and contain—

''(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;

''(2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;

''(3) a statement of the measurable outcomes expected to be achieved for the infant or toddler and the family, including, as appropriate, preliteracy and language skills, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary;

''(4) a statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including

the frequency, intensity, and method of delivering services;

''(5) a statement of the natural environments in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;

''(6) the projected dates for initiation of services and the anticipated length, duration, and frequency of the services;

''(7) the identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and

''(8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

''(e) PARENTAL CONSENT.—The contents of the individualized family service plan shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in such plan. If the parents do not provide consent with respect to a particular early intervention service, then only the early intervention services to which consent is obtained shall be provided.

''SEC. 637. STATE APPLICATION AND ASSURANCES.

''(a) APPLICATION.—A State desiring to receive a grant under section 633 shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application shall contain—

''(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 633;

''(2) a certification to the Secretary that the arrangements to establish financial responsibility for services provided under this part pursuant to section 640(b) are current as of the date of submission of the certification;

''(3) information demonstrating eligibility of the State under section 634, including—

''(A) information demonstrating to the Secretary's satisfaction that the State has in effect the statewide system required by section 633; and

''(B) a description of services to be provided to infants and toddlers with disabilities and their families through the system;

''(4) if the State provides services to at-risk infants and toddlers through the system, a description of such services;

''(5) a description of the uses for which funds will be expended in accordance with this part;

''(6) a description of the State policies and procedures that require the referral for evaluation for early intervention services of a child under the age of 3 who—

''(A) is involved in a substantiated case of child abuse or neglect; or

''(B) is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure;

''(7) a description of the procedure used to ensure that resources are made available under this part for all geographic areas within the State;

''(8) a description of State policies and procedures that ensure that, prior to the adoption by the State of any other policy or procedure necessary to meet the requirements of this part, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities;

''(9) a description of the policies and procedures to be used—

''(A) to ensure a smooth transition for toddlers receiving early intervention services under this part (and children receiving those services under section 635(b)) to preschool, other appropriate services, or exiting the program, including a description of how—

''(i) the families of such toddlers and children will be included in the transition plans required by subparagraph (C); and

''(ii) the lead agency designated or established under section 635(a)(10) will—

''(I) notify the local educational agency for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under part B, as determined in accordance with State law;

''(II) in the case of a child who may be eligible for such preschool services, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency at least 90 days (and at the discretion of all such parties, not more than 9 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive; and

''(III) in the case of a child who may not be eligible for such preschool services, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under part B, to discuss the appropriate services that the child may receive;

''(B) to review the child's program options for the period from the child's third birthday through the remainder of the school year; and

''(C) to establish a transition plan, including, as appropriate, steps to exit from the program; and

''(10) such other information and assurances as the Secretary may reasonably require.

''(b) ASSURANCES.—The application described in subsection (a)—

''(1) shall provide satisfactory assurance that Federal funds made available under section 643 to the State will be expended in accordance with this part;

''(2) shall contain an assurance that the State will comply with the requirements of section 640;

''(3) shall provide satisfactory assurance that the control of funds provided under section 643, and title to property derived from those funds, will be in a public agency for the uses and purposes provided in this part and that a public agency will administer such funds and property;

''(4) shall provide for—

''(A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part; and

''(B) keeping such reports and affording such access to the reports as the Secretary may find necessary to ensure the correctness and verification of the reports and proper disbursement of Federal funds under this part;

''(5) provide satisfactory assurance that Federal funds made available under section 643 to the State—

''(A) will not be commingled with State funds; and

''(B) will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds;

''(6) shall provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under section 643 to the State;

''(7) shall provide satisfactory assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups, including minority, low-income, and rural families, in the planning and implementation of all the requirements of this part; and

''(8) shall contain such other information and assurances as the Secretary may reasonably require by regulation.

''(c) STANDARD FOR DISAPPROVAL OF APPLICATION.—The Secretary may not disapprove such an application unless the Secretary determines, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.

''(d) SUBSEQUENT STATE APPLICATION.—If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets a requirement of this section, including any policy or procedure filed under part C, as in effect before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall consider the State to have met the requirement for purposes of receiving a grant under this part.

''(e) MODIFICATION OF APPLICATION.—An application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification of an application to the same extent and in the same manner as this section applies to the original application.

''(f) MODIFICATIONS REQUIRED BY THE SECRETARY.—The Secretary may require a State to modify its application under this section, but only to the extent necessary to ensure the State's compliance with this part, if—

''(1) an amendment is made to this Act, or a Federal regulation issued under this Act;

''(2) a new interpretation of this Act is made by a Federal court or the State's highest court; or

''(3) an official finding of noncompliance with Federal law or regulations is made with respect to the State.

''SEC. 638. USES OF FUNDS.

''In addition to using funds provided under section 633 to maintain and implement the statewide system required by such section, a State may use such funds—

''(1) for direct early intervention services for infants and toddlers with disabilities, and their families, under this part that are not otherwise funded through other public or private sources;

''(2) to expand and improve on services for infants and toddlers and their families under this part that are otherwise available;

''(3) to provide a free appropriate public education, in accordance with part B, to children with disabilities from their third birthday to the beginning of the following school year;

''(4) with the written consent of the parents, to continue to provide early intervention services under this part to children with disabilities from their 3rd birthday to the beginning of the following school year, in lieu of a free appropriate public education provided in accordance with part B; and

''(5) in any State that does not provide services for at-risk infants and toddlers under section 637(a)(4), to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purposes of—

''(A) identifying and evaluating at-risk infants and toddlers;

''(B) making referrals of the infants and toddlers identified and evaluated under subparagraph (A); and

''(C) conducting periodic follow-up on each such referral to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.

''SEC. 639. PROCEDURAL SAFEGUARDS.

''(a) MINIMUM PROCEDURES.—The procedural safeguards required to be included in a statewide system under section 635(a)(13) shall provide, at a minimum, the following:

''(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a

civil action with respect to the complaint in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

''(2) The right to confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.

''(3) The right of the parents to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this part in accordance with State law without jeopardizing other early intervention services under this part.

''(4) The opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

''(5) Procedures to protect the rights of the infant or toddler whenever the parents of the infant or toddler are not known or cannot be found or the infant or toddler is a ward of the State, including the assignment of an individual (who shall not be an employee of the State lead agency, or other State agency, and who shall not be any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents.

''(6) Written prior notice to the parents of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or placement of the infant or toddler with a disability, or the provision of appropriate early intervention services to the infant or toddler.

''(7) Procedures designed to ensure that the notice required by paragraph (6) fully informs the parents, in the parents' native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

''(8) The right of parents to use mediation in accordance with section 615, except that—

''(A) any reference in the section to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);

''(B) any reference in the section to a local educational agency shall be considered to be a reference to a local service provider or the State's lead agency under this part, as the case may be; and

''(C) any reference in the section to the provision of free appropriate public education to children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

''(b) SERVICES DURING PENDENCY OF PROCEEDINGS.—During the pendency of any proceeding or action involving a complaint by the parents of an infant or toddler with a disability, unless the State agency and the parents otherwise agree, the infant or toddler shall continue to receive the appropriate early intervention services currently being provided or, if applying for initial services, shall receive the services not in dispute.

''SEC. 640. PAYOR OF LAST RESORT.

''(a) NONSUBSTITUTION.—Funds provided under section 643 may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under section 643 may be used to pay the provider of services pending reimbursement from the agency that has ultimate responsibility for the payment.

''(b) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES.—

''(1) ESTABLISHING FINANCIAL RESPONSIBILITY FOR SERVICES.—

''(A) IN GENERAL.—The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency and the State educational agency, in order to ensure—

''(i) the provision of, and financial responsibility for, services provided under this part; and

''(ii) such services are consistent with the requirements of section 635 and the State's application pursuant to section 637, including the provision of such services during the pendency of any dispute.

''(B) CONSISTENCY BETWEEN AGREEMENTS OR MECHANISMS UNDER PARTS B AND D.—The Chief Executive Officer of a State or designee of the officer shall ensure that the terms and conditions of such agreement or mechanism are consistent with the terms and conditions of the State's agreement or mechanism under section 612(a)(12).

''(2) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY.—

''(A) IN GENERAL.—If a public agency other than an educational agency fails to provide or pay for the services pursuant to an agreement required under paragraph (1) the local educational agency or State agency (as determined by the Chief Executive Officer or designee) shall provide or pay for the provision of such services to the child.

''(B) REIMBURSEMENT.—Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism required under paragraph (1).

''(3) SPECIAL RULE.—The requirements of paragraph (1) may be met through—

''(A) State statute or regulation;

''(B) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

''(C) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary through the review and approval of the State's application pursuant to section 637.

''(c) REDUCTION OF OTHER BENEFITS.—Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to Medicaid for infants or toddlers with disabilities) within the State.

''SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—A State that desires to receive financial assistance under this part shall establish a State interagency coordinating council.

''(2) APPOINTMENT.—The council shall be appointed by the Governor. In making appointments to the council, the Governor shall ensure that the membership of the council reasonably represents the population of the State.

''(3) CHAIRPERSON.—The Governor shall designate a member of the council to serve as the chairperson of the council, or shall require the council to so designate such a member. Any member of the council who is a representative of the lead agency designated under section 635(a)(10) may not serve as the chairperson of the council.

''(b) COMPOSITION.—

''(1) IN GENERAL.—The council shall be composed as follows:

''(A) PARENTS.—At least 20 percent of the members shall be parents of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least 1 such member shall be a parent of an infant or toddler with a disability or a child with a disability aged 6 or younger.

''(B) SERVICE PROVIDERS.—At least 20 percent of the members shall be public or private providers of early intervention services.

''(C) STATE LEGISLATURE.—At least 1 member shall be from the State legislature.

''(D) PERSONNEL PREPARATION.—At least 1 member shall be involved in personnel preparation.

''(E) AGENCY FOR EARLY INTERVENTION SERVICES.—At least 1 member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies.

''(F) AGENCY FOR PRESCHOOL SERVICES.—At least 1 member shall be from the State educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency.

''(G) STATE MEDICAID AGENCY.—At least 1 member shall be from the agency responsible for the State medicaid program.

''(H) HEAD START AGENCY.—At least 1 representative from a Head Start agency or program in the State.

''(I) CHILD CARE AGENCY.—At least 1 representative from a State agency responsible for child care.

''(J) AGENCY FOR HEALTH INSURANCE.—At least 1 member shall be from the agency responsible for the State regulation of health insurance.

''(2) OTHER MEMBERS.—The council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs, or where there is no BIA-operated or BIA-funded school, from the Indian Health Service or the tribe or tribal council.

''(c) MEETINGS.—The council shall meet at least quarterly and in such places as the council determines necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

''(d) MANAGEMENT AUTHORITY.—Subject to the approval of the Governor, the council may prepare and approve a budget using funds under this part to conduct hearings and forums, to reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives), to pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business, to hire staff, and to obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this part.

''(e) FUNCTIONS OF COUNCIL.—

''(1) DUTIES.—The council shall—

''(A) advise and assist the lead agency designated or established under section 635(a)(10) in the performance of the responsibilities set forth in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements;

''(B) advise and assist the lead agency in the preparation of applications and amendments thereto;

''(C) advise and assist the State educational agency regarding the transition of toddlers with disabilities to preschool and other appropriate services; and

''(D) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State.

''(2) AUTHORIZED ACTIVITY.—The council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children from birth through age 5. The council may advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.

''(f) CONFLICT OF INTEREST.—No member of the council shall cast a vote on any matter that is likely to provide a direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

''SEC. 642. FEDERAL ADMINISTRATION.

''Sections 616, 617, and 618 shall, to the extent not inconsistent with this part, apply to the program authorized by this part, except that—

''(1) any reference in such sections to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);

''(2) any reference in such sections to a local educational agency, educational service agency, or a State agency shall be considered to be a reference to an early intervention service provider under this part; and

''(3) any reference to the education of children with disabilities or the education of all children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

''SEC. 643. ALLOCATION OF FUNDS.

''(a) RESERVATION OF FUNDS FOR OUTLYING AREAS.—

''(1) IN GENERAL.—From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve not more than 1 percent for payments to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs.

''(2) CONSOLIDATION OF FUNDS.—The provisions of Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds those areas receive under this part.

''(b) PAYMENTS TO INDIANS.—

''(1) IN GENERAL.—The Secretary shall, subject to this subsection, make payments to the Secretary of the Interior to be distributed to tribes, tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or consortia of the above entities for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for such fiscal year.

''(2) ALLOCATION.—For each fiscal year, the Secretary of the Interior shall distribute the entire payment received under paragraph (1) by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation, as determined annually, divided by the total of such children served by all tribes, tribal organizations, or consortia.

''(3) INFORMATION.—To receive a payment under this subsection, the tribe, tribal organization, or consortium shall submit such information to the Secretary of the Interior as is needed to determine the amounts to be distributed under paragraph (2).

''(4) USE OF FUNDS.—The funds received by a tribe, tribal organization, or consortium shall be used to assist States in child find, screening, and other procedures for the early identification of Indian children under 3 years of age and for parent training. Such funds may also be used to provide early intervention services in accordance with this part. Such activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

''(5) REPORTS.—To be eligible to receive a grant under paragraph (2), a tribe, tribal organization, or consortium shall make a biennial report to the Secretary of the Interior of activities undertaken under this subsection, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis to the Secretary of Education along with such other information as required under section 611(h)(3)(E). The Secretary of Education may require any additional information from the Secretary of the Interior.

''(6) PROHIBITED USES OF FUNDS.—None of the funds under this subsection may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

''(c) STATE ALLOTMENTS.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), from the funds remaining for each fiscal year after the reservation and payments under subsections (a), (b), and (e), the Secretary shall first allot to each State an amount that bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

''(2) MINIMUM ALLOTMENTS.—Except as provided in paragraph (3), no State shall receive an amount under this section for any fiscal year that is less than the greater of—

''(A) ½ of 1 percent of the remaining amount described in paragraph (1); or

''(B) $500,000.

''(3) RATABLE REDUCTION.—

''(A) IN GENERAL.—If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allotments to such States for such year.

''(B) ADDITIONAL FUNDS.—If additional funds become available for making payments under this subsection for a fiscal year, allotments that were reduced under subparagraph (A) shall be increased on the same basis the allotments were reduced.

''(4) DEFINITIONS.—For the purpose of this subsection—

''(A) the terms 'infants' and 'toddlers' mean children under 3 years of age; and

''(B) the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

''(d) REALLOTMENT OF FUNDS.—If a State elects not to receive its allotment under subsection (c), the Secretary shall reallot, among the remaining States, amounts from such State in accordance with such subsection.

''(e) RESERVATION FOR STATE BONUS GRANTS.—The Secretary shall reserve 10 percent of the amount by which the amount appropriated under section 644 for any fiscal year exceeds $434,159,000 to make allotments to States that are carrying out the policy described in section 635(b), in accordance with the formula described in subsection (c)(1) without regard to subsections (c) (2) and (3).

''SEC. 644. AUTHORIZATION OF APPROPRIATIONS.

''For the purpose of carrying out this part, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2009.

''PART D—NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF CHILDREN WITH DISABILITIES

''SEC. 650. FINDINGS.

''Congress finds the following:

''(1) The Federal Government has an ongoing obligation to support activities that contribute to positive results for children with disabilities, enabling them to lead productive and independent adult lives.

''(2) Systemic change benefiting all students, including children with disabilities, requires the involvement of States, local educational agencies, parents, individuals with disabilities and their families, teachers and other service providers, and other interested individuals and organizations to develop and implement comprehensive strategies that improve educational results for children with disabilities.

''(3) State educational agencies, in partnership with local educational agencies, parents of children with disabilities, and other individuals and organizations, are in the best position to improve education for children with disabilities and to address their special needs.

''(4) An effective educational system serving students with disabilities should—

''(A) maintain high academic achievement standards and clear performance goals for children with disabilities, consistent with the standards and expectations for all students in the educational system, and provide for appropriate and effective strategies and methods to ensure that all children with disabilities have the opportunity to achieve those standards and goals;

''(B) clearly define, in objective, measurable terms, the school and post-school results that children with disabilities are expected to achieve; and

''(C) promote transition services and coordinate State and local education, social, health, mental health, and other services, in addressing the full range of student needs, particularly the needs of children with disabilities who need significant levels of support to participate and learn in school and the community.

''(5) The availability of an adequate number of qualified personnel is critical to serve effectively children with disabilities, to assume leadership positions in administration and direct services, to provide teacher training, and to conduct high quality research to improve special education.

''(6) High quality, comprehensive professional development programs are essential to ensure that the persons responsible for the education or transition of children with disabilities possess the skills and knowledge necessary to address the educational and related needs of those children.

''(7) Models of professional development should be scientifically based and reflect successful practices, including strategies for recruiting, preparing, and retaining personnel.

''(8) Continued support is essential for the development and maintenance of a coordinated and high quality program of research to inform successful teaching practices and model curricula for educating children with disabilities.

''(9) A comprehensive research agenda should be established and pursued to promote the highest quality and rigor in special education research, and to address the full range of issues

facing children with disabilities, parents of children with disabilities, school personnel, and others.

''(10) Training, technical assistance, support, and dissemination activities are necessary to ensure that parts B and C are fully implemented and achieve high quality early intervention, educational, and transitional results for children with disabilities and their families.

''(11) Parents, teachers, administrators, and related services personnel need technical assistance and information in a timely, coordinated, and accessible manner in order to improve early intervention, educational, and transitional services and results at the State and local levels for children with disabilities and their families.

''(12) Parent training and information activities assist parents of a child with a disability in dealing with the multiple pressures of parenting such a child and are of particular importance in—

''(A) playing a vital role in creating and preserving constructive relationships between parents of children with disabilities and schools by facilitating open communication between the parents and schools; encouraging dispute resolution at the earliest possible point in time; and discouraging the escalation of an adversarial process between the parents and schools;

''(B) ensuring the involvement of parents in planning and decisionmaking with respect to early intervention, educational, and transitional services;

''(C) achieving high quality early intervention, educational, and transitional results for children with disabilities;

''(D) providing such parents information on their rights, protections, and responsibilities under this Act to ensure improved early intervention, educational, and transitional results for children with disabilities;

''(E) assisting such parents in the development of skills to participate effectively in the education and development of their children and in the transitions described in section 673(b)(6);

''(F) supporting the roles of such parents as participants within partnerships seeking to improve early intervention, educational, and transitional services and results for children with disabilities and their families; and

''(G) supporting such parents who may have limited access to services and supports, due to economic, cultural, or linguistic barriers.

''(13) Support is needed to improve technological resources and integrate technology, including universally designed technologies, into the lives of children with disabilities, parents of children with disabilities, school personnel, and others through curricula, services, and assistive technologies.

''Subpart 1—State Personnel Preparation and Professional Development Grants

''SEC. 651. PURPOSE; DEFINITION; PROGRAM AUTHORITY.

''(a) PURPOSE.—The purpose of this subpart is to assist State educational agencies in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities.

''(b) DEFINITION.—In this subpart, the term 'personnel' means special education teachers, regular education teachers, principals, administrators, related services personnel, paraprofessionals, and early intervention personnel serving infants, toddlers, preschoolers, or children with disabilities, except where a particular category of personnel, such as related services personnel, is identified.

''(c) COMPETITIVE GRANTS.—

''(1) IN GENERAL.—Except as provided in subsection (d), for any fiscal year for which the amount appropriated under section 655, that remains after the Secretary reserves funds under subsection (e) for the fiscal year, is less than $100,000,000, the Secretary shall award grants, on a competitive basis, to State educational agencies to carry out the activities described in the State plan submitted under section 653.

''(2) PRIORITY.—In awarding grants under paragraph (1), the Secretary may give priority to State educational agencies that—

''(A) are in States with the greatest personnel shortages; or

''(B) demonstrate the greatest difficulty meeting the requirements of section 612(a)(14).

''(3) MINIMUM.—The Secretary shall make a grant to each State educational agency selected under paragraph (1) in an amount for each fiscal year that is—

''(A) not less than $500,000, nor more than $4,000,000, in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

''(B) not less than $80,000 in the case of an outlying area.

''(4) INCREASES.—The Secretary may increase the amounts under in paragraph (3) to account for inflation.

''(5) FACTORS.—The Secretary shall set the amount of each grant under paragraph (1) after considering—

''(A) the amount of funds available for making the grants;

''(B) the relative population of the State or outlying area;

''(C) the types of activities proposed by the State or outlying area;

''(D) the alignment of proposed activities with section 612(a)(14);

''(E) the alignment of proposed activities with the State plans and applications submitted under sections 1111 and 2112, respectively, of the Elementary and Secondary Education Act of 1965; and

''(F) the use, as appropriate, of scientifically based activities.

''(d) FORMULA GRANTS.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), for the first fiscal year for which the amount appropriated under section 655, that remains after the Secretary reserves funds under subsection (e) for the fiscal year, is equal to or greater than $100,000,000, and for each fiscal year thereafter, the Secretary shall allot to each State educational agency, whose application meets the requirements of this subpart, an amount that bears the same relation to the amount appropriated as the amount the State received under section 611(d) for that fiscal year bears to the amount of funds received by all States (whose applications meet the requirements of this subpart) under section 611(d) for that fiscal year.

''(2) MINIMUM ALLOTMENTS FOR STATES THAT RECEIVED COMPETITIVE GRANTS.—

''(A) IN GENERAL.—The amount allotted under this subsection to any State that received a competitive multi-year grant under subsection (c) for which the grant period has not expired shall be at least the amount specified for that fiscal year in the State's grant award document under that subsection.

''(B) SPECIAL RULE.—Each such State shall use the minimum amount described in subparagraph (A) for the activities described in its competitive grant award document for that year, unless the Secretary approves a request from the State to spend the funds on other activities.

''(3) MINIMUM ALLOTMENT.—The amount of any State educational agency's allotment under this subsection for any fiscal year shall not be less than—

''(A) the greater of $500,000 or ½ of 1 percent of the total amount available under this subsection for that year, in the case of each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

''(B) $80,000, in the case of an outlying area.

''(e) CONTINUATION AWARDS.—

''(1) IN GENERAL.—Notwithstanding any other provision of this subpart, from funds appropriated under section 655 for each fiscal year, the Secretary shall reserve the amount that is necessary to make a continuation award to any State (at the request of the State) that received a multi-year award under this part (as this part was in effect on the day before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003), to enable the State to carry out activities in accordance with the terms of the multi-year award.

''(2) PROHIBITION.—A State that receives a continuation award under paragraph (1) for any fiscal year may not receive any other award under this subpart for that fiscal year.

''SEC. 652. ELIGIBILITY AND COLLABORATIVE PROCESS.

''(a) ELIGIBLE APPLICANTS.—A State educational agency may apply for a grant under this subpart for a grant period of not less than 1 year and not more than 5 years.

''(b) PARTNERS.—

''(1) IN GENERAL.—In order to be considered for a grant under this subpart, a State educational agency shall establish a partnership with local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities, including institutions of higher education and the State agencies responsible for administering part C, child care, and vocational rehabilitation programs.

''(2) OTHER PARTNERS.—In order to be considered for a grant under this subpart, a State educational agency shall work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, which may include—

''(A) the Governor;

''(B) parents of children with disabilities ages birth through 26;

''(C) parents of nondisabled children ages birth through 26;

''(D) individuals with disabilities;

''(E) parent training and information centers or community parent resource centers funded under sections 671 and 672, respectively;

''(F) community based and other nonprofit organizations involved in the education and employment of individuals with disabilities;

''(G) personnel as defined in section 651(b);

''(H) the State advisory panel established under part B;

''(I) the State interagency coordinating council established under part C;

''(J) individuals knowledgeable about vocational education;

''(K) the State agency for higher education;

''(L) public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice;

''(M) other providers of professional development that work with infants, toddlers, preschoolers, and children with disabilities; and

''(N) other individuals.

''(3) REQUIRED PARTNER.—If State law assigns responsibility for teacher preparation and certification to an individual, entity, or agency other than the State educational agency, the State educational agency shall—

''(A) include that individual, entity, or agency as a partner in the partnership under this subsection; and

''(B) ensure that any activities the State will carry out under this subpart that are within that partner's jurisdiction (which may include activities described in section 654(b)) are carried out by that partner.

''SEC. 653. APPLICATIONS.

''(a) IN GENERAL.—

''(1) SUBMISSION.—A State educational agency that desires to receive a grant under this subpart shall submit to the Secretary an application at such time, in such manner, and including such information as the Secretary may require.

''(2) STATE PLAN.—The application shall include a plan that identifies and addresses the State and local needs for the personnel preparation and professional development of administrators, principals, and teachers, as well as individuals who provide direct supplementary aids

and services to children with disabilities, and that—

''(A) is designed to enable the State to meet the requirements of section 612(a)(14) and section 635(a) (8) and (9);

''(B) is based on an assessment of State and local needs that identifies critical aspects and areas in need of improvement related to the preparation, ongoing training, and professional development of personnel that serve infants, toddlers, preschoolers, and children with disabilities within the State, including—

''(i) current and anticipated personnel vacancies and shortages; and

''(ii) the number of preservice programs; and

''(C) is integrated and aligned, to the maximum extent possible, with State plans and activities under the Elementary and Secondary Education Act of 1965, the Rehabilitation Act of 1973, and the Higher Education Act of 1965.

''(3) REQUIREMENT.—The State application shall contain an assurance that the State educational agency will carry out each of the strategies described in subsection (b)(4).

''(b) ELEMENTS OF STATE PERSONNEL PREPARATION AND PROFESSIONAL DEVELOPMENT PLAN.—Each professional development plan under subsection (a)(2) shall—

''(1) describe a partnership agreement that is in effect for the period of the grant, which agreement shall specify—

''(A) the nature and extent of the partnership described in section 652(b) and the respective roles of each member of the partnership, including the partner described in section 652(b)(3) if applicable; and

''(B) how the State will work with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of the persons and organizations;

''(2) describe how the strategies and activities described in paragraph (4) will be coordinated with other public resources (including part B and part C funds retained for use at the State level for personnel and professional development purposes) and private resources;

''(3) describe how the State will align its professional development plan under this subpart with the plan and application submitted under sections 1111 and 2112, respectively, of the Elementary and Secondary Education Act of 1965;

''(4) describe what strategies the State will use to address the professional development and personnel needs identified under subsection (a)(2) and how those strategies will be implemented, including—

''(A) a description of the preservice and inservice programs and activities to be supported under this subpart that will provide personnel with the knowledge and skills to meet the needs of, and improve the performance and achievement of, infants, toddlers, preschoolers, and children with disabilities; and

''(B) how such strategies shall be integrated, to the maximum extent possible, with other activities supported by grants funded under this part, including those under section 664;

''(5) provide an assurance that the State will provide technical assistance to local educational agencies to improve the quality of professional development available to meet the needs of personnel who serve children with disabilities;

''(6) provide an assurance that the State will provide technical assistance to entities that provide services to infants and toddlers with disabilities to improve the quality of professional development available to meet the needs of personnel serving such children;

''(7) describe how the State will recruit and retain highly qualified teachers and other qualified personnel in geographic areas of greatest need;

''(8) describe the steps the State will take to ensure that poor and minority children are not taught at higher rates by teachers who are not highly qualified; and

''(9) describe how the State will assess, on a regular basis, the extent to which the strategies implemented under this subpart have been effective in meeting the performance goals described in section 612(a)(15).

''(c) PEER REVIEW.—

''(1) IN GENERAL.—The Secretary shall use a panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications for grants under section 651(c)(1).

''(2) COMPOSITION OF PANEL.—A majority of a panel described in paragraph (1) shall be composed of individuals who are not employees of the Federal Government.

''(3) PAYMENT OF FEES AND EXPENSES OF CERTAIN MEMBERS.—The Secretary may use available funds appropriated to carry out this subpart to pay the expenses and fees of panel members who are not employees of the Federal Government.

''(d) REPORTING PROCEDURES.—Each State educational agency that receives a grant under this subpart shall submit annual performance reports to the Secretary. The reports shall describe the progress of the State in implementing its plan and analyze the effectiveness of the State's activities under this subpart.

"SEC. 654. USE OF FUNDS.

''(a) PROFESSIONAL DEVELOPMENT ACTIVITIES.—A State educational agency that receives a grant under this subpart shall use the grant funds to support activities in accordance with the State's plan described in section 653, including 1 or more of the following:

''(1) Carrying out programs that provide support to both special education and regular education teachers of children with disabilities and principals, such as programs that—

''(A) provide teacher mentoring, team teaching, reduced class schedules and case loads, and intensive professional development; and

''(B) use standards or assessments for guiding beginning teachers that are consistent with challenging State student academic achievement and functional standards and with the requirements for professional development as defined in section 9101(34) of the Elementary and Secondary Education Act of 1965.

''(2) Encouraging and supporting the training of special education and regular education teachers and administrators to effectively use and integrate technology—

''(A) into curricula and instruction, including training to improve the ability to collect, manage, and analyze data to improve teaching, decisionmaking, school improvement efforts, and accountability;

''(B) to enhance learning by children with disabilities; and

''(C) to effectively communicate with parents.

''(3) Providing professional development activities that—

''(A) improve the knowledge of special education and regular education teachers concerning—

''(i) the academic and developmental or functional needs of students with disabilities; or

''(ii) effective instructional strategies, methods, and skills, and the use of State academic content standards and student academic achievement and functional standards, and State assessments, to improve teaching practices and student academic achievement;

''(B) improve the knowledge of special education and regular education teachers and principals and, in appropriate cases, paraprofessionals, concerning effective instructional practices and that—

''(i) provide training in how to teach and address the needs of children with different learning styles and children with limited English proficiency;

''(ii) involve collaborative groups of teachers and administrators;

''(iii) provide training in methods of—

''(I) positive behavioral interventions and supports to improve student behavior in the classroom;

''(II) scientifically based reading instruction, including early literacy instruction;

''(III) early and appropriate interventions to identify and help children with disabilities;

''(IV) effective instruction for children with low incidence disabilities;

''(V) successful transitioning to postsecondary opportunities; and

''(VI) using classroom-based techniques to assist children prior to referral for special education;

''(iv) provide training to enable personnel to work with and involve parents in their child's education, including parents of low income and limited English proficient children with disabilities;

''(v) provide training for special education personnel and regular education personnel in planning, developing, and implementing effective and appropriate IEPs; and

''(vi) providing training to meet the needs of students with significant health, mobility, or behavioral needs prior to serving such students; and

''(C) train administrators, principals, and other relevant school personnel in conducting effective IEP meetings.

''(4) Developing and implementing initiatives to promote the recruitment and retention of highly qualified special education teachers, particularly initiatives that have been proven effective in recruitment and retaining highly qualified teachers, including programs that provide—

''(A) teacher mentoring from exemplary special education teachers, principals, or superintendents;

''(B) induction and support for special education teachers during their first 3 years of employment as teachers; or

''(C) incentives, including financial incentives, to retain special education teachers who have a record of success in helping students with disabilities.

''(5) Carrying out programs and activities that are designed to improve the quality of personnel who serve children with disabilities, such as—

''(A) innovative professional development programs (which may be provided through partnerships that include institutions of higher education), including programs that train teachers and principals to integrate technology into curricula and instruction to improve teaching, learning, and technology literacy, which professional development shall be consistent with the definition of professional development in section 9101(34) of the Elementary and Secondary Education Act of 1965; and

''(B) the development and use of proven, cost effective strategies for the implementation of professional development activities, such as through the use of technology and distance learning.

''(6) Carrying out programs and activities that are designed to improve the quality of early intervention personnel, including paraprofessionals and primary referral sources, such as—

''(A) professional development programs to improve the delivery of early intervention services;

''(B) initiatives to promote the recruitment and retention of early intervention personnel; and

''(C) interagency activities to ensure that personnel are adequately prepared and trained.

''(b) OTHER ACTIVITIES.—A State educational agency that receives a grant under this subpart shall use the grant funds to support activities in accordance with the State's plan described in section 653, including 1 or more of the following:

''(1) Reforming special education and regular education teacher certification (including recertification) or licensing requirements to ensure that—

''(A) special education and regular education teachers have—

''(i) the training and information necessary to address the full range of needs of children with disabilities across disability categories; and

''(ii) the necessary subject matter knowledge and teaching skills in the academic subjects that they teach;

''(B) special education and regular education teacher certification (including recertification) or licensing requirements are aligned with challenging State academic content standards; and

''(C) special education and regular education teachers have the subject matter knowledge and teaching skills, including technology literacy, necessary to help students with disabilities meet challenging State student academic achievement and functional standards.

''(2) Programs that establish, expand, or improve alternative routes for State certification of special education teachers for highly qualified individuals with a baccalaureate or master's degree, including mid-career professionals from other occupations, paraprofessionals, and recent college or university graduates with records of academic distinction who demonstrate the potential to become highly effective special education teachers.

''(3) Teacher advancement initiatives for special education teachers that promote professional growth and emphasize multiple career paths (such as paths to becoming a career teacher, mentor teacher, or exemplary teacher) and pay differentiation.

''(4) Developing and implementing mechanisms to assist local educational agencies and schools in effectively recruiting and retaining highly qualified special education teachers.

''(5) Reforming tenure systems, implementing teacher testing for subject matter knowledge, and implementing teacher testing for State certification or licensing, consistent with title II of the Higher Education Act of 1965.

''(6) Funding projects to promote reciprocity of teacher certification or licensing between or among States for special education teachers, except that no reciprocity agreement developed under this paragraph or developed using funds provided under this subpart may lead to the weakening of any State teaching certification or licensing requirement.

''(7) Developing or assisting local educational agencies to serve children with disabilities through the development and use of proven, innovative strategies to deliver intensive professional development programs that are both cost effective and easily accessible, such as strategies that involve delivery through the use of technology, peer networks, and distance learning.

''(8) Developing, or assisting local educational agencies in developing, merit based performance systems, and strategies that provide differential and bonus pay for special education teachers.

''(9) Supporting activities that ensure that teachers are able to use challenging State academic content standards and student academic and functional achievement standards, and State assessments for all children with disabilities, to improve instructional practices and improve the academic achievement of children with disabilities.

''(10) When applicable, coordinating with, and expanding centers established under, section 2113(c)(18) of the Elementary and Secondary Education Act of 1965 to benefit special education teachers.

''(c) CONTRACTS AND SUBGRANTS.—Each such State educational agency—

''(1) shall award contracts or subgrants to local educational agencies, institutions of higher education, parent training and information centers, or community parent resource centers, as appropriate, to carry out its State plan under this subpart; and

''(2) may award contracts and subgrants to other public and private entities, including the lead agency under part C, to carry out such plan.

''(d) USE OF FUNDS FOR PROFESSIONAL DEVELOPMENT.—A State educational agency that receives a grant under this subpart shall use—

''(1) not less than 75 percent of the funds the State educational agency receives under the grant for any fiscal year for activities under subsection (a); and

''(2) not more than 25 percent of the funds the State educational agency receives under the grant for any fiscal year for activities under subsection (b).

''(e) GRANTS TO OUTLYING AREAS.—Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds received under this subpart.

''SEC. 655. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 2004 through 2009.

''Subpart 2—Scientifically Based Research, Technical Assistance, Model Demonstration Projects, and Dissemination of Information

''SEC. 660. PURPOSE.

''The purpose of this subpart is—

''(1) to provide Federal funding for scientifically based research, technical assistance, model demonstration projects, and information dissemination to improve early intervention, educational, and transitional results for children with disabilities; and

''(2) to assist State educational agencies and local educational agencies in improving their education systems.

''SEC. 661. ADMINISTRATIVE PROVISIONS.

''(a) COMPREHENSIVE PLAN.—

''(1) IN GENERAL.—After receiving input from interested individuals with relevant expertise, the Secretary shall develop and implement a comprehensive plan for activities carried out under this subpart (other than activities assisted under section 665 and subpart 3) in order to enhance the provision of early intervention, educational, related and transitional services to children with disabilities under parts B and C. The plan shall be coordinated with the plan developed pursuant to section 177(c) of the Education Sciences Reform Act of 2002 and shall include mechanisms to address early intervention, educational, related service and transitional needs identified by State educational agencies in applications submitted for State Personnel and Professional Development grants under subpart 1 and for grants under this subpart.

''(2) PUBLIC COMMENT.—The Secretary shall provide a public comment period of at least 60 days on the plan.

''(3) DISTRIBUTION OF FUNDS.—In implementing the plan, the Secretary shall, to the extent appropriate, ensure that funds are awarded to recipients under this subpart, subpart 3, and subpart 4 to carry out activities that benefit, directly or indirectly, children with the full range of disabilities and of all ages.

''(4) REPORTS TO CONGRESS.—The Secretary shall annually report to Congress on the Secretary's activities under this subpart, subpart 3, and subpart 4, including an initial report not later than 12 months after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003.

''(b) ELIGIBLE APPLICANTS.—

''(1) IN GENERAL.—Except as otherwise provided in this subpart, the following entities are eligible to apply for a grant, contract, or cooperative agreement under this subpart:

''(A) A State educational agency.

''(B) A local educational agency.

''(C) A public charter school that is a local educational agency under State law.

''(D) An institution of higher education.

''(E) Any other public agency.

''(F) A private nonprofit organization.

''(G) An outlying area.

''(H) An Indian tribe or a tribal organization (as defined under section 4 of the Indian Self-Determination and Education Assistance Act).

''(I) A for-profit organization.

''(2) SPECIAL RULE.—The Secretary may limit the entities eligible for an award of a grant, contract, or cooperative agreement to 1 or more categories of eligible entities described in paragraph (1).

''(c) SPECIAL POPULATIONS.—

''(1) APPLICATION REQUIREMENT.—In making an award of a grant, contract, or cooperative agreement under this subpart, subpart 3, and subpart 4, the Secretary shall, as appropriate, require an applicant to meet the criteria set forth by the Secretary under this subpart and demonstrate how the applicant will address the needs of children with disabilities from minority backgrounds.

''(2) OUTREACH AND TECHNICAL ASSISTANCE.—Notwithstanding any other provision of this Act, the Secretary shall reserve at least 1 percent of the total amount of funds made available to carry out this subpart, subpart 3, or subpart 4 for 1 or both of the following activities:

''(A) To provide outreach and technical assistance to Historically Black Colleges and Universities, and to institutions of higher education with minority enrollments of at least 25 percent, to promote the participation of such colleges, universities, and institutions in activities under this subpart.

''(B) To enable Historically Black Colleges and Universities, and the institutions described in subparagraph (A), to assist other colleges, universities, institutions, and agencies in improving educational and transitional results for children with disabilities.

''(d) PRIORITIES.—The Secretary, in making an award of a grant, contract, or cooperative agreement under this subpart, subpart 3, or subpart 4, may, without regard to the rulemaking procedures under section 553(a) of title 5, United States Code, limit competitions to, or otherwise give priority to—

''(1) projects that address 1 or more—

''(A) age ranges;

''(B) disabilities;

''(C) school grades;

''(D) types of educational placements or early intervention environments;

''(E) types of services;

''(F) content areas, such as reading; or

''(G) effective strategies for helping children with disabilities learn appropriate behavior in the school and other community based educational settings;

''(2) projects that address the needs of children based on the severity or incidence of their disability;

''(3) projects that address the needs of—

''(A) low achieving students;

''(B) underserved populations;

''(C) children from low income families;

''(D) limited English proficient children;

''(E) unserved and underserved areas;

''(F) rural or urban areas;

''(G) children whose behavior interferes with their learning and socialization;

''(H) children with reading difficulties;

''(I) children in charter schools; or

''(J) children who are gifted and talented;

''(4) projects to reduce inappropriate identification of children as children with disabilities, particularly among minority children;

''(5) projects that are carried out in particular areas of the country, to ensure broad geographic coverage;

''(6) projects that promote the development and use of universally designed technologies, assistive technology devices, and assistive technology services to maximize children with disabilities' access to and participation in the general education curriculum; and

''(7) any activity that is authorized in this subpart or subpart 3.

''(e) APPLICANT AND RECIPIENT RESPONSIBILITIES.—

''(1) DEVELOPMENT AND ASSESSMENT OF PROJECTS.—The Secretary shall require that an applicant for, and a recipient of, a grant, contract, or cooperative agreement for a project under this subpart, subpart 3, or subpart 4—

''(A) involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project; and

''(B) where appropriate, determine whether the project has any potential for replication and adoption by other entities.

''(2) ADDITIONAL RESPONSIBILITIES.—The Secretary may require a recipient of a grant, contract, or cooperative agreement under this subpart, subpart 3, or subpart 4 to—

''(A) share in the cost of the project;

''(B) prepare any findings and products from the project in formats that are useful for specific audiences, including parents, administrators, teachers, early intervention personnel, related services personnel, and individuals with disabilities;

''(C) disseminate such findings and products; and

''(D) collaborate with other such recipients in carrying out subparagraphs (B) and (C).

''(f) APPLICATION MANAGEMENT.—

''(1) STANDING PANEL.—

''(A) IN GENERAL.—The Secretary shall establish and use a standing panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications under this subpart (other than applications for assistance under section 665), subpart 3, and subpart 4 that, individually, request more than $75,000 per year in Federal financial assistance.

''(B) MEMBERSHIP.—The standing panel shall include, at a minimum—

''(i) individuals who are representatives of institutions of higher education that plan, develop, and carry out high quality programs of personnel preparation;

''(ii) individuals who design and carry out scientifically based research targeted to the improvement of special education programs and services;

''(iii) individuals who have recognized experience and knowledge necessary to integrate and apply scientifically based research findings to improve educational and transitional results for children with disabilities;

''(iv) individuals who administer programs at the State or local level in which children with disabilities participate;

''(v) individuals who prepare parents of children with disabilities to participate in making decisions about the education of their children;

''(vi) individuals who establish policies that affect the delivery of services to children with disabilities;

''(vii) parents of children with disabilities ages birth through 26 who are benefiting, or have benefited, from coordinated research, personnel preparation, and technical assistance; and

''(viii) individuals with disabilities.

''(C) TERM.—Unless approved by the Secretary due to extenuating circumstances related to shortages of experts in a particular area of expertise or for a specific competition, no individual shall serve on the standing panel for more than 3 consecutive years.

''(2) PEER REVIEW PANELS FOR PARTICULAR COMPETITIONS.—

''(A) COMPOSITION.—The Secretary shall ensure that each sub panel selected from the standing panel that reviews applications under this subpart (other than section 665), subpart 3, and subpart 4 includes—

''(i) individuals with knowledge and expertise on the issues addressed by the activities authorized by the relevant subpart; and

''(ii) to the extent practicable, parents of children with disabilities ages birth through 26, individuals with disabilities, and persons from diverse backgrounds.

''(B) FEDERAL EMPLOYMENT LIMITATION.—A majority of the individuals on each sub panel that reviews an application under this subpart (other than an application under section 665), subpart 3, and subpart 4 shall be individuals who are not employees of the Federal Government.

''(3) USE OF DISCRETIONARY FUNDS FOR ADMINISTRATIVE PURPOSES.—

''(A) EXPENSES AND FEES OF NON-FEDERAL PANEL MEMBERS.—The Secretary may use funds made available under this subpart, subpart 3, and subpart 4 to pay the expenses and fees of the panel members who are not officers or employees of the Federal Government.

''(B) ADMINISTRATIVE SUPPORT.—The Secretary may use not more than 1 percent of the funds made available to carry out this subpart, subpart 3, or subpart 4 to pay non-Federal entities for administrative support related to management of applications submitted under this subpart.

''(4) AVAILABILITY OF CERTAIN PRODUCTS.—The Secretary shall ensure that recipients of grants, cooperative agreements, or contracts under this subpart, subpart 3, and subpart 4 make available in formats that are accessible to individuals with disabilities any products developed under such grants, cooperative agreements, or contracts that the recipient is making available to the public.

''(g) PROGRAM EVALUATION.—The Secretary may use funds made available to carry out this subpart, subpart 3, and subpart 4 to evaluate activities carried out under this subpart.

''(h) MINIMUM FUNDING REQUIRED.—

''(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall ensure that, for each fiscal year, at least the following amounts are provided under this subpart and subpart 3 to address the following needs:

''(A) $12,832,000 to address the educational, related services, transitional, and early intervention needs of children with deaf-blindness.

''(B) $4,000,000 to address the postsecondary, vocational, technical, continuing, and adult education needs of individuals with deafness.

''(C) $4,000,000 to address the educational, related services, and transitional needs of children with an emotional disturbance and those who are at risk of developing an emotional disturbance.

''(2) RATABLE REDUCTION.—If the total amount appropriated to carry out this subpart, subpart 3, and part E of the Education Sciences Reform Act of 2002 for any fiscal year is less than $130,000,000, the amounts listed in paragraph (1) shall be ratably reduced.

''(i) ELIGIBILITY FOR FINANCIAL ASSISTANCE.—No State or local educational agency, or other public institution or agency, may receive a grant or enter into a contract or cooperative agreement under this subpart that relates exclusively to programs, projects, and activities pertaining to children aged 3 through 5, inclusive, unless the State is eligible to receive a grant under section 619(b).

''SEC. 662. RESEARCH COORDINATION TO IMPROVE RESULTS FOR CHILDREN WITH DISABILITIES.

''The Secretary shall coordinate research carried out under this subpart with research carried out under part E of the Education Sciences Reform Act of 2002.

''SEC. 663. TECHNICAL ASSISTANCE, DEMONSTRATION PROJECTS, DISSEMINATION OF INFORMATION, AND IMPLEMENTATION OF SCIENTIFICALLY BASED RESEARCH.

''(a) IN GENERAL.—From amounts made available under section 675, the Secretary, on a competitive basis, shall award grants to, or enter into contracts or cooperative agreements with, eligible entities to provide technical assistance, carry out model demonstration projects, disseminate useful information, and implement activities that are supported by scientifically based research.

''(b) REQUIRED ACTIVITIES.—The Secretary shall support activities to improve services provided under this Act, including the practices of professionals and others involved in providing such services to children with disabilities, that promote academic achievement and functional performance to improve educational results and functional outcomes for children with disabilities through—

''(1) implementing effective strategies that are conducive to learning and for addressing inappropriate behavior of students with disabilities in schools, including strategies to prevent children with emotional and behavioral problems from developing emotional disturbances that require the provision of special education and related services;

''(2) improving the alignment, compatibility, and development of valid and reliable assessment methods, including alternate assessment methods and evaluation methods, for assessing adequately yearly progress as described in section 1111(b)(2) of the Elementary and Secondary Education Act of 1965;

''(3) providing information to both regular education teachers and special education teachers to address the different learning styles and disabilities of students;

''(4) disseminating information on innovative, effective, and efficient curricula, materials (including those that are universally designed), instructional approaches, and strategies that—

''(A) support effective transitions between educational settings or from school to post-school settings;

''(B) support effective inclusion of students with disabilities in general education settings, especially students with low-incidence disabilities; and

''(C) improve educational and transitional results at all levels of the educational system in which the activities are carried out and, in particular, that improve the progress of children with disabilities, as measured by assessments within the general education curriculum involved; and

''(5) demonstrating and applying scientifically-based findings to facilitate systematic changes related to the provision of services to children with disabilities.

''(c) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this section include activities to improve services provided under this Act, including the practices of professionals and others involved in providing such services to children with disabilities, that promote increased academic achievement and enhanced functional outcomes for children with disabilities through—

''(1) supporting and promoting the coordination of early intervention, education, and transitional services for children with disabilities with services provided by health, rehabilitation, and social service agencies;

''(2) promoting improved alignment and compatibility of general and special education reforms concerned with curriculum and instructional reform, and evaluating of such reforms;

''(3) enabling professionals, parents of children with disabilities, and other persons, to learn about, and implement, the findings of scientifically based research and effective practices relating to the provision of services to children with disabilities;

''(4) disseminating information relating to successful approaches to overcoming systemic barriers to the effective and efficient delivery of early intervention, educational, and transitional services, to personnel who provide services to children with disabilities;

''(5) assisting States and local educational agencies with the process of planning systemic changes that will promote improved early intervention, educational, and transitional results for children with disabilities;

''(6) promoting change through a multi-State or regional framework that benefits States, local educational agencies, and other participants in partnerships that are in the process of achieving systemic change;

''(7) focusing on the needs and issues that are specific to a population of children with disabilities, such as providing single-State and multi-State technical assistance and in-service training—

''(A) to schools and agencies serving deaf-blind children and their families;

''(B) to programs and agencies serving other groups of children with low-incidence disabilities and their families;

''(C) to address the postsecondary education needs of individuals who are deaf or hard-of-hearing; and

''(D) to schools and personnel providing special education and related services for children with autism spectrum disorders;

''(8) demonstrating models of personnel preparation to ensure appropriate placements and services for all students with disabilities and to reduce disproportionality in eligibility, placement, and disciplinary actions for minority and limited English proficient children: and

''(9) disseminating information on how to reduce racial and ethnic disproportionalities.

''(d) BALANCE AMONG DISABILITIES AND AGE RANGES.—In carrying out this section, the Secretary shall ensure that there is an appropriate balance across all age ranges and disabilities.

''(e) LINKING STATES TO INFORMATION SOURCES.—In carrying out this section, the Secretary may support projects that link States to technical assistance resources, including special education and general education resources, and may make research and related products available through libraries, electronic networks, parent training projects, and other information sources.

''(f) APPLICATIONS.—

''(1) IN GENERAL.—An eligible entity that desires to receive a grant, or to enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(2) CONTENTS.—The Secretary may, as appropriate, require eligible entities to demonstrate that the projects described in their applications are supported by scientifically based research that has been carried out in conjunction with the standards for the conduct and evaluation of all research and development established by the National Center for Education Research under sections 133 and 134 of the Education Sciences Reform Act of 2002.

''(3) PRIORITY.—As appropriate, the Secretary shall give priority to applications that propose to serve teachers and school personnel directly in the school environment or that strengthen State and local agency capacity to improve instructional practices of personnel to improve educational results for children with disabilities in the school environment.

''SEC. 664. PERSONNEL DEVELOPMENT TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES.

''(a) IN GENERAL.—The Secretary, on a competitive basis, shall award grants to, or enter into contracts or cooperative agreements with, eligible entities for 1 or more of the following:

''(1) To help address the needs identified in the State plan described in section 653(a)(2) for highly qualified personnel, as defined in section 651(b), to work with infants, toddlers, or children with disabilities, consistent with the standards described in section 612(a)(14).

''(2) To ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined, through scientifically based research, to be successful in serving those children.

''(3) To encourage increased focus on academics and core content areas in special education personnel preparation programs.

''(4) To ensure that regular education teachers have the necessary skills and knowledge to provide instruction to students with disabilities in the regular education classroom.

''(5) To ensure that all special education teachers are highly qualified.

''(6) To ensure that preservice and in-service personnel preparation programs include training in—

''(A) the use of new technologies;

''(B) the area of early intervention, educational, and transition services;

''(C) effectively involving parents; and

''(D) positive behavioral supports.

''(7) To provide high-quality professional development for principals, superintendents, and other administrators, including training in—

''(A) instructional leadership;

''(B) behavioral supports in the school and classroom;

''(C) paperwork reduction;

''(D) promoting improved collaboration between special education and general education teachers;

''(E) assessment and accountability;

''(F) ensuring effective learning environments; and

''(G) fostering positive relationships with parents.

''(b) PERSONNEL DEVELOPMENT; AUTHORIZED ACTIVITIES.—

''(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities to prepare personnel, including activities for the preparation of personnel who will serve children with high-incidence and low-incidence disabilities, consistent with the objectives described in subsection (a).

''(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include the following:

''(A) Supporting collaborative personnel preparation activities undertaken by institutions of higher education, local educational agencies, and other local entities—

''(i) to improve and reform their existing programs, to support effective existing programs, to support the development of new programs, and to prepare teachers, principals, administrators, and related services personnel—

''(I) to meet the diverse needs of children with disabilities for early intervention, educational, and transitional services; and

''(II) to work collaboratively in regular classroom settings; and

''(ii) to incorporate best practices and scientifically based research about preparing personnel—

''(I) so the personnel will have the knowledge and skills to improve educational results for children with disabilities; and

''(II) to implement effective teaching strategies and interventions to prevent the misidentification, overidentification, or underidentification of children as having a disability, especially minority and limited English proficient children.

''(B) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of highly qualified teachers to reduce teachers shortages.

''(C) Providing continuous personnel preparation, training, and professional development designed to provide support and ensure retention of teachers and personnel who teach and provide related services to children with disabilities.

''(D) Developing and improving programs for paraprofessionals to become special education teachers, related services personnel, and early intervention personnel, including interdisciplinary training to enable the paraprofessionals to improve early intervention, educational, and transitional results for children with disabilities.

''(E) Demonstrating models for the preparation of, and interdisciplinary training of, early intervention, special education, and general education personnel, to enable the personnel to acquire the collaboration skills necessary to work within teams and to improve results for children with disabilities, particularly within the general education curriculum.

''(F) Promoting effective parental involvement practices to enable the personnel to work with parents and involve parents in the education of such parents' children.

''(G) Promoting the transferability, across State and local jurisdictions, of licensure and certification of teachers, principals, and administrators working with such children.

''(H) Developing and disseminating models that prepare teachers with strategies, including positive behavioral interventions, for addressing the conduct of children with disabilities that impedes their learning and that of others in the classroom.

''(I) Developing and improving programs to enhance the ability of general education teachers, principals, school administrators, and school board members to improve results for children with disabilities.

''(J) Supporting institutions of higher education with minority enrollments of at least 25 percent for the purpose of preparing personnel to work with children with disabilities.

''(K) Preparing personnel to work in high need elementary schools and secondary schools, including urban schools, rural schools, and schools operated by an entity described in section 7113(d)(1)(A)(ii) of the Elementary and Secondary Education Act of 1965, and schools that serve high numbers or percentages of limited English proficient children.

''(L) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of new, highly qualified teachers, especially from groups that are underrepresented in the teaching profession, including individuals with disabilities.

''(M) Developing and improving programs to train special education teachers to develop an expertise in autism spectrum disorders.

''(c) LOW INCIDENCE DISABILITIES; AUTHORIZED ACTIVITIES.—

''(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that benefit children with low incidence disabilities.

''(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

''(A) Preparing persons who—

''(i) have prior training in educational and other related service fields; and

''(ii) are studying to obtain degrees, certificates, or licensure that will enable the persons to assist children with low incidence disabilities to achieve the objectives set out in their individualized education programs described in section 614(d), or to assist infants and toddlers with low incidence disabilities to achieve the outcomes described in their individualized family service plans described in section 636.

''(B) Providing personnel from various disciplines with interdisciplinary training that will contribute to improvement in early intervention, educational, and transitional results for children with low incidence disabilities.

''(C) Preparing personnel in the innovative uses and application of technology, including universally designed technologies, assistive technology devices, and assistive technology services—

''(i) to enhance learning by children with low incidence disabilities through early intervention, educational, and transitional services; and

''(ii) to improve communication with parents.

''(D) Preparing personnel who provide services to visually impaired or blind children to teach and use Braille in the provision of services to such children.

''(E) Preparing personnel to be qualified educational interpreters, to assist children with low incidence disabilities, particularly deaf and hard of hearing children in school and school related activities, and deaf and hard of hearing infants and toddlers and preschool children in early intervention and preschool programs.

''(F) Preparing personnel who provide services to children with significant cognitive disabilities and children with multiple disabilities.

''(3) DEFINITION.—As used in this section, the term 'low incidence disability' means—

''(A) a visual or hearing impairment, or simultaneous visual and hearing impairments;

''(B) a significant cognitive impairment; or

''(C) any impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive early intervention services or a free appropriate public education.

''(4) SELECTION OF RECIPIENTS.—In selecting recipients under this subsection, the Secretary may give preference to eligible entities submitting applications that include 1 or more of the following:

''(A) A proposal to prepare personnel in more than 1 low incidence disability, such as deafness and blindness.

''(B) A demonstration of an effective collaboration with an eligible entity and a local educational agency that promotes recruitment and subsequent retention of highly qualified personnel to serve children with disabilities.

''(5) PREPARATION IN USE OF BRAILLE.—The Secretary shall ensure that all recipients of assistance under this subsection who will use that assistance to prepare personnel to provide services to visually impaired or blind children that can appropriately be provided in Braille will prepare those individuals to provide those services in Braille.

''(d) LEADERSHIP PREPARATION; AUTHORIZED ACTIVITIES.—

''(1) IN GENERAL.—In carrying out this section, the Secretary shall support leadership preparation activities that are consistent with the objectives described in subsection (a).

''(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

''(A) Preparing personnel at the graduate, doctoral, and postdoctoral levels of training to administer, enhance, or provide services to improve results for children with disabilities.

''(B) Providing interdisciplinary training for various types of leadership personnel, including teacher preparation faculty, administrators, researchers, supervisors, principals, related services personnel, and other persons whose work affects early intervention, educational, and transitional services for children with disabilities.

''(e) ENHANCED SUPPORT AND TRAINING FOR BEGINNING SPECIAL EDUCATORS; AUTHORIZED ACTIVITIES.—

''(1) IN GENERAL.—In carrying out this section, the Secretary shall support personnel preparation activities that are consistent with the objectives described in subsection (a).

''(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include—

''(A) enhancing and restructuring an existing program or developing a preservice teacher education program, to prepare special education teachers, at colleges or departments of education within the institution of higher education, by incorporating an additional 5th year clinical learning opportunity, field experience, or supervised practicum into a program of preparation and coursework for special education teachers; or

''(B) Creating or supporting professional development schools that provide—

''(i) high quality mentoring and induction opportunities with ongoing support for beginning special education teachers; or

''(ii) inservice professional development to veteran special education teachers through the ongoing exchange of information and instructional strategies.

''(3) ELIGIBLE PARTNERSHIPS.—Eligible recipients of assistance under this subsection are partnerships—

''(A) that shall consist of—

''(i) 1 or more institutions of higher education with special education personnel preparation programs; and

''(ii) 1 or more local educational agencies; and

''(iii) in the case of activities assisted under paragraph (2)(B), an elementary school or secondary school; and

''(B) that may include other entities eligible for assistance under this part, such as a State educational agency.

''(4) PRIORITY.—In awarding grants or entering into contracts or cooperative agreements under this subsection, the Secretary shall give priority to partnerships that include local educational agencies that serve—

''(A) high numbers or percentages of low-income students; or

''(B) schools that have failed to make adequate yearly progress toward enabling children with disabilities to meet academic achievement standards.

''(f) TRAINING TO SUPPORT GENERAL EDUCATORS; AUTHORIZED ACTIVITIES.—

''(1) IN GENERAL.—In carrying out this section, the Secretary shall support personnel preparation activities that are consistent with the objectives described in subsection (a).

''(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include—

''(A) high quality professional development for general educators that develops the knowledge and skills, and enhances the ability, of general educators to—

''(i) use classroom-based techniques to identify students who may be eligible for special education services, and deliver instruction in a way that meets the individualized needs of children with disabilities through appropriate supports, accommodations, and curriculum modifications;

''(ii) use classroom-based techniques, such as scientifically based reading instruction;

''(iii) work collaboratively with special education teachers and related services personnel;

''(iv) implement strategies, such as positive behavioral interventions—

''(I) to address the behavior of children with disabilities that impedes the learning of such children and others; or

''(II) to prevent children from being misidentified as children with disabilities;

''(v) prepare children with disabilities to participate in statewide assessments (with or without accommodations) and alternate assessments, as appropriate;

''(vi) develop effective practices for ensuring that all children with disabilities are a part of all accountability systems under the Elementary and Secondary Education Act of 1965;

''(vii) work with and involve parents of children with disabilities in their child's education;

''(viii) understand how to effectively construct IEPs, participate in IEP meetings, and implement IEPs; and

''(ix) in the case of principals and superintendents, be instructional leaders and promote improved collaboration between general educators, special education teachers, and related services personnel; and

''(B) release and planning time for the activities described in this subsection.

''(3) ELIGIBLE PARTNERSHIPS.—Eligible recipients of assistance under this subsection are partnerships—

''(A) that consist of—

''(i) 1 or more institutions of higher education with special education personnel preparation programs; and

''(ii) 1 or more local educational agencies; and

''(B) that may include other entities eligible for assistance under this part, such as a State educational agency.

''(g) APPLICATIONS.—

''(1) IN GENERAL.—Any eligible entity that desires to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(2) IDENTIFIED STATE NEEDS.—

''(A) REQUIREMENT TO ADDRESS IDENTIFIED NEEDS.—Any application under subsection (b), (c), (d), (e), or (f) shall include information demonstrating to the satisfaction of the Secretary that the activities described in the application will address needs identified by the State or States the applicant proposes to serve, consistent with the needs identified in the State plan described in section 653(a)(2).

''(B) COOPERATION WITH STATE EDUCATIONAL AGENCIES.—Any applicant that is not a local educational agency or a State educational agency shall include in the application information demonstrating to the satisfaction of the Secretary that the applicant and 1 or more State educational agencies or local educational agencies have engaged in a cooperative effort to carry out and monitor the project to be assisted.

''(3) ACCEPTANCE BY STATES OF PERSONNEL PREPARATION REQUIREMENTS.—The Secretary may require applicants to provide assurances from 1 or more States that such States intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities or serving infants and toddlers with disabilities.

''(h) SELECTION OF RECIPIENTS.—

''(1) IMPACT OF PROJECT.—In selecting award recipients under this section, the Secretary shall consider the impact of the proposed project described in the application in meeting the need for personnel identified by the States.

''(2) REQUIREMENT FOR APPLICANTS TO MEET STATE AND PROFESSIONAL STANDARDS.—The Secretary shall make grants and enter into contracts and cooperative agreements under this section only to eligible applicants that meet State and professionally recognized standards for the preparation of special education and related services personnel, if the purpose of the project is to assist personnel in obtaining degrees.

''(3) PREFERENCES.—In selecting recipients under this section, the Secretary may give preference to institutions of higher education that are—

''(A) educating regular education personnel to meet the needs of children with disabilities in integrated settings;

''(B) educating special education personnel to work in collaboration with regular educators in integrated settings; and

''(C) successfully recruiting and preparing individuals with disabilities and individuals from groups that are underrepresented in the profession for which the institution of higher education is preparing individuals.

''(i) SERVICE OBLIGATION.—Each application for funds under subsections (b), (c), (d), and (e) shall include an assurance that the applicant will ensure that individuals who receive assistance under the proposed project will subsequently provide special education and related services to children with disabilities for a period of 1 year for every year for which assistance was received, or repay all or part of the cost of that assistance, in accordance with regulations issued by the Secretary.

''(j) SCHOLARSHIPS.—The Secretary may include funds for scholarships, with necessary stipends and allowances, in awards under subsections (b), (c), (d), and (e).

''(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2004 through 2009.

''SEC. 665. STUDIES AND EVALUATIONS.

''(a) STUDIES AND EVALUATIONS.—

''(1) DELEGATION.—The Secretary shall delegate to the Director of the Institute for Education Sciences responsibility to carry out this section, other than subsections (d) and (f).

''(2) ASSESSMENT.—The Secretary shall, directly or through grants, contracts, or cooperative agreements awarded on a competitive basis, assess the progress in the implementation of this Act, including the effectiveness of State and local efforts to provide—

''(A) a free appropriate public education to children with disabilities; and

''(B) early intervention services to infants and toddlers with disabilities, and infants and toddlers who would be at risk of having substantial developmental delays if early intervention services were not provided to them.

''(b) NATIONAL ASSESSMENT.—

''(1) IN GENERAL.—The Secretary shall carry out a national assessment of activities carried out with Federal funds under this Act in order—

''(A) to determine the effectiveness of this Act in achieving its purposes;

''(B) to provide timely information to the President, Congress, the States, local educational agencies, and the public on how to implement this Act more effectively; and

''(C) to provide the President and Congress with information that will be useful in developing legislation to achieve the purposes of this Act more effectively.

''(2) CONSULTATION.—The Secretary shall plan, review, and conduct the national assessment under this subsection in consultation with researchers, State practitioners, local practitioners, parents of children with disabilities, and other appropriate individuals.

''(3) SCOPE OF ASSESSMENT.—The national assessment shall assess the—

''(A) implementation of programs assisted under this Act and the impact of those programs on addressing the developmental, educational, and transitional needs of, and improving the academic achievement and functional outcomes of, children with disabilities to enable the children to reach challenging developmental goals and challenging State academic content standards based on State academic assessments, including alternate assessments;

''(B) types of programs and services that have demonstrated the greatest likelihood of helping students reach the challenging State academic content standards and developmental goals;

''(C) implementation of the personnel preparation and professional development activities assisted under this Act and the impact on instruction, student academic achievement, and teacher qualifications to enhance the ability of special education teachers and regular education teachers to improve results for children with disabilities; and

''(D) effectiveness of schools, local educational agencies, States, and other recipients of assistance under this Act, in achieving the purposes of this Act in—

''(i) improving the academic achievement of children with disabilities and their performance on regular statewide assessments, and the performance of children with disabilities on alternate assessments;

''(ii) improving the participation rate of children with disabilities in the general education curriculum;

''(iii) improving the transitions of children with disabilities at natural transition points;

''(iv) placing and serving children with disabilities, including minority children, in the least restrictive environment appropriate;

''(v) preventing children with disabilities, especially children with emotional disturbances and specific learning disabilities, from dropping out of school;

''(vi) addressing the reading and literacy needs of children with disabilities;

''(vii) coordinating services provided under this Act with each other, with other educational and pupil services (including preschool services), and with health and social services funded from other sources;

''(viii) improving the participation of parents of children with disabilities in the education of their children;

''(ix) resolving disagreements between education personnel and parents through alternate dispute resolution activities including mediation; and

''(x) reducing the misidentification of children, especially minority and limited English proficient children.

''(4) INTERIM AND FINAL REPORTS.—The Secretary shall submit to the President and Congress—

''(A) an interim report that summarizes the preliminary findings of the national assessment not later than 3 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003; and

''(B) a final report of the findings of the assessment not later than 5 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003.

''(c) STUDY ON ENSURING ACCOUNTABILITY FOR STUDENTS WITH SIGNIFICANT DISABILITIES.—The Secretary shall carry out a national study or studies to examine—

''(1) the criteria that States use to determine eligibility for alternate assessments and the number and type of children who take those assessments;

''(2) the validity and reliability of alternate assessment instruments and procedures;

''(3) the alignment of alternate assessments with State academic content and achievement standards or with alternate academic achievement standards; and

''(4) the use and effectiveness of alternate assessments in appropriately measuring student progress and outcomes specific to individualized instructional need.

''(d) ANNUAL REPORT.—The Secretary shall provide an annual report to Congress that—

''(1) summarizes the research conducted under section 662;

''(2) analyzes and summarizes the data reported by the States and the Secretary of the Interior under section 618;

''(3) summarizes the studies and evaluations conducted under this section and the timeline for their completion;

''(4) describes the extent and progress of the national assessment; and

''(5) describes the findings and determinations resulting from reviews of State implementation of this Act.

''(e) AUTHORIZED ACTIVITIES.—In carrying out this section, the Secretary may support objective studies, evaluations, and assessments, including studies that—

''(1) analyze measurable impact, outcomes, and results achieved by State educational agencies and local educational agencies through their activities to reform policies, procedures, and practices designed to improve educational and transitional services and results for children with disabilities;

''(2) analyze State and local needs for professional development, parent training, and other appropriate activities that can reduce the need for disciplinary actions involving children with disabilities;

''(3) assess educational and transitional services and results for children with disabilities from minority backgrounds, including—

''(A) data on—

''(i) the number of minority children who are referred for special education evaluation;

''(ii) the number of minority children who are receiving special education and related services and their educational or other service placement;

''(iii) the number of minority children who graduated from secondary programs with a regular diploma in the standard number of years; and

''(iv) the number of minority children who drop out of the educational system; and

''(B) the performance of children with disabilities from minority backgrounds on State assessments and other performance indicators established for all students;

''(4) measure educational and transitional services and results of children with disabilities served under this Act, including longitudinal studies that—

''(A) examine educational and transitional services and results for children with disabilities who are 3 through 17 years of age and are receiving special education and related services under this Act, using a national, representative sample of distinct age cohorts and disability categories; and

''(B) examine educational results, transition services, postsecondary placement, and employment status of individuals with disabilities, 18 through 21 years of age, who are receiving or have received special education and related services under this Act; and

''(5) identify and report on the placement of children with disabilities by disability category.

''(f) STUDY.—The Secretary shall study, and report to Congress regarding, the extent to which States adopt policies described in section 635(b)(1) and on the effects of those policies.

''(g) RESERVATION FOR STUDIES AND EVALUATIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2) and notwithstanding any other provision of this Act, the Secretary may reserve not more than ½ of 1 percent of the amount appropriated under parts B and C for each fiscal year to carry out this section, of which not more than $3,000,000 shall be available to carry out subsection (c).

''(2) MAXIMUM AMOUNT.—The maximum amount the Secretary may reserve under paragraph (1) for any fiscal year is $40,000,000, increased by the cumulative rate of inflation since fiscal year 2003.

''Subpart 3—Supports To Improve Results for Children With Disabilities

''SEC. 670. PURPOSES.

''The purposes of this subpart are to ensure that—

''(1) children with disabilities and their parents receive training and information on their rights, responsibilities, and protections under this Act, in order to develop the skills necessary to cooperatively and effectively participate in planning and decision making relating to early intervention, educational, and transitional services;

''(2) parents, teachers, administrators, early intervention personnel, related services personnel, and transition personnel receive coordinated and accessible technical assistance and information to assist them in improving early intervention, educational, and transitional services and results for children with disabilities and their families; and

''(3) appropriate technology and media are researched, developed, and demonstrated, to improve and implement early intervention, educational, and transitional services and results for children with disabilities and their families.

''SEC. 671. PARENT TRAINING AND INFORMATION CENTERS.

''(a) PROGRAM AUTHORIZED.—The Secretary may award grants to, and enter into contracts and cooperative agreements with, parent organizations to support parent training and information centers to carry out activities under this section.

''(b) REQUIRED ACTIVITIES.—Each parent training and information center that receives assistance under this section shall—

''(1) provide training and information that meets the needs of parents of children with disabilities living in the area served by the center, particularly underserved parents and parents of children who may be inappropriately identified, to enable their children with disabilities to—

''(A) meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

''(B) be prepared to lead productive independent adult lives, to the maximum extent possible;

''(2) serve the parents of infants, toddlers, and children with the full range of disabilities described in section 602(3);

''(3) assist parents to—

''(A) better understand the nature of their children's disabilities and their educational, developmental, and transitional needs;

''(B) communicate effectively and work collaboratively with personnel responsible for providing special education, early intervention services, transition services, and related services;

''(C) participate in decisionmaking processes and the development of individualized education programs under part B and individualized family service plans under part C;

''(D) obtain appropriate information about the range, type, and quality of options, programs, services, technologies, and research based practices and interventions, and resources available to assist children with disabilities and their families in school and at home;

''(E) understand the provisions of this Act for the education of, and the provision of early intervention services to, children with disabilities; and

''(F) participate in school reform activities;

''(4) in States where the State elects to contract with the parent training and information center, contract with State educational agencies to provide, consistent with subparagraphs (B) and (D) of section 615(e)(2), individuals who meet with parents to explain the mediation process to the parents;

''(5) assist parents in resolving disputes in the most expeditious and effective way possible, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in section 615(e);

''(6) assist parents and students with disabilities to understand their rights and responsibilities under this Act, including those under section 615(m) on the student's reaching the age of majority;

''(7) assist parents to understand the availability of, and how to effectively use, procedural safeguards under this Act;

''(8) assist parents in understanding, preparing for, and participating in, the process described in section 615(f)(1)(B);

''(9) establish cooperative partnerships with community parent resource centers funded under section 672;

''(10) network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 663, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities described in section 602(3); and

''(11) annually report to the Secretary on—

''(A) the number and demographics of parents to whom the center provided information and training in the most recently concluded fiscal year;

''(B) the effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities; and

''(C) the number of parents served who have resolved disputes through alternative methods of dispute resolution.

''(c) OPTIONAL ACTIVITIES.—A parent training and information center that receives assistance under this section may provide information to teachers and other professionals to assist the teachers and professionals in improving results for children with disabilities.

''(d) APPLICATION REQUIREMENTS.—Each application for assistance under this section shall identify with specificity the special efforts that the parent organization will undertake—

''(1) to ensure that the needs for training and information of underserved parents of children with disabilities in the area to be served are effectively met; and

''(2) to work with community based organizations.

''(e) DISTRIBUTION OF FUNDS.—

''(1) IN GENERAL.—The Secretary shall—

''(A) make at least 1 award to a parent organization in each State for a parent training and information center which is designated as the statewide parent training and information center; or

''(B) in the case of a large State, make awards to multiple parent training and information centers, but only if the centers demonstrate that coordinated services and supports will occur among the multiple centers.

''(2) SELECTION REQUIREMENT.—The Secretary shall select among applications submitted by parent organizations in a State in a manner that ensures the most effective assistance to parents, including parents in urban and rural areas, in the State.

''(f) QUARTERLY REVIEW.—

''(1) MEETINGS.—The board of directors of each parent organization that receives an award under this section shall meet at least once in each calendar quarter to review the activities for which the award was made.

''(2) CONTINUATION AWARD.—When an organization requests a continuation award under this section, the board of directors shall submit to the Secretary a written review of the parent training and information program conducted by the organization during the preceding fiscal year.

''(g) DEFINITION OF PARENT ORGANIZATION.—As used in this section, the term 'parent organization' means a private nonprofit organization (other than an institution of higher education) that—

''(1) has a board of directors—

''(A) the majority of whom are parents of children with disabilities ages birth through 26;

''(B) that includes—

''(i) individuals working in the fields of special education, related services, and early intervention; and

''(ii) individuals with disabilities;

''(C) the parent and professional members of which are broadly representative of the population to be served; and

''(2) has as its mission serving families of children and youth with disabilities who—

''(A) are ages birth through 26; and

''(B) have the full range of disabilities described in section 602(3).

''SEC. 672. COMMUNITY PARENT RESOURCE CENTERS.

''(a) IN GENERAL.—The Secretary may award grants to, and enter into contracts and cooperative agreements with, local parent organizations to support parent training and information centers that will help ensure that underserved parents of children with disabilities, including low income parents, parents of children with limited English proficiency, and parents with disabilities, have the training and information the parents need to enable the parents to participate effectively in helping their children with disabilities—

''(1) to meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

''(2) to be prepared to lead productive independent adult lives, to the maximum extent possible.

''(b) REQUIRED ACTIVITIES.—Each community parent resource center assisted under this section shall—

''(1) provide training and information that meets the training and information needs of parents of children with disabilities proposed to be served by the grant, contract, or cooperative agreement;

''(2) carry out the activities required of parent training and information centers under paragraphs (2) through (9) of section 671(b);

''(3) establish cooperative partnerships with the parent training and information centers funded under section 671; and

''(4) be designed to meet the specific needs of families who experience significant isolation from available sources of information and support.

''(c) DEFINITION.—As used in this section, the term 'local parent organization' means a parent organization, as defined in section 671(g), that—

''(1) has a board of directors the majority of whom are parents of children with disabilities ages birth through 26 from the community to be served; and

''(2) has as its mission serving parents of children with disabilities who—

''(A) are ages birth through 26; and

''(B) have the full range of disabilities described in section 602(3).

''SEC. 673. TECHNICAL ASSISTANCE FOR PARENT TRAINING AND INFORMATION CENTERS.

''(a) IN GENERAL.—The Secretary may make an award to 1 parent organization (as defined in section 671(g)) that receives assistance under section 671 to enable the parent organization to provide technical assistance for developing, assisting, and coordinating parent training and information programs carried out by parent training and information centers receiving assistance under sections 671 and 672.

''(b) AUTHORIZED ACTIVITIES.—The Secretary may provide technical assistance to a parent training and information center under this section in areas such as—

''(1) effective national coordination of parent training efforts, which includes encouraging collaborative efforts among award recipients under sections 671 and 672;

''(2) dissemination of information, scientifically based research, and research based practices and interventions;

''(3) promotion of the use of technology, including universally designed technologies, assistive technology devices, and assistive technology services;

''(4) reaching underserved populations;

''(5) including children with disabilities in general education programs;

''(6) facilitation of transitions from—

''(A) early intervention services to preschool;

''(B) preschool to elementary school;

''(C) elementary school to secondary school; and

''(D) secondary school to postsecondary environments; and

''(7) promotion of alternative methods of dispute resolution, including mediation.

''(c) REGIONAL PARENT CENTERS.—The recipient of the award described in section 673(a) shall establish no fewer than 4 regional centers from the parent training and information centers and community parent resource centers receiving assistance under sections 671 and 672 for the purpose of carrying out the authorized activities described in subsection (b). These regional centers shall be selected on the basis of the center's—

''(1) willingness to be a regional parent center;

''(2) demonstrated expertise in the delivery of required parent training and information center activities described in section 671(b);

''(3) demonstrated capacity to deliver the authorized activities described in subsection (b);

''(4) history of collaboration with other parent training and information centers, community parent resource centers, regional resource centers, clearinghouses, and other projects; and

''(5) geographic location.

''(d) COLLABORATION WITH THE RESOURCE CENTERS.—The recipient of the award described in subsection (a), in conjunction with the regional parent centers described in subsection (c), shall develop collaborative agreements with the geographically appropriate Regional Resource Center to further parent and professional collaboration.

''SEC. 674. TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND UTILIZATION; AND MEDIA SERVICES.

''(a) IN GENERAL.—The Secretary, on a competitive basis, shall award grants to, and enter into contracts and cooperative agreements with, eligible entities to support activities described in subsections (b) and (c).

''(b) TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND USE.—

''(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities to promote the development, demonstration, and use of technology.

''(2) AUTHORIZED ACTIVITIES.—The following activities may be carried out under this subsection:

''(A) Conducting research on and promoting the demonstration and use of innovative, emerging, and universally designed technologies for children with disabilities, by improving the transfer of technology from research and development to practice.

''(B) Supporting research, development, and dissemination of technology with universal design features, so that the technology is accessible to the broadest range of individuals with

disabilities without further modification or adaptation.

''(C) Demonstrating the use of systems to provide parents and teachers with information and training concerning early diagnosis of, intervention for, and effective teaching strategies for, young children with reading disabilities.

''(D) Supporting the use of Internet-based communications for students with cognitive disabilities in order to maximize their academic and functional skills.

''(c) EDUCATIONAL MEDIA SERVICES; OPTIONAL ACTIVITIES.—

''(1) IN GENERAL.—In carrying out this section, the Secretary shall support—

''(A) educational media activities that are designed to be of educational value in the classroom setting to children with disabilities;

''(B) providing video description, open captioning, or closed captioning, that is appropriate for use in the classroom setting, of—

''(i) television programs;

''(ii) videos;

''(iii) other materials, including programs and materials associated with new and emerging technologies, such as CDs, DVDs, video streaming, and other forms of multimedia; or

''(iv) news (but only until September 30, 2006);

''(C) distributing materials described in subparagraphs (A) and (B) through such mechanisms as a loan service; and

''(D) providing free educational materials, including textbooks, in accessible media for visually impaired and print disabled students in elementary schools and secondary schools.

''(2) LIMITATION.—The video description, open captioning, or closed captioning described in paragraph (1)(B) shall only be provided when the description or captioning has not been previously provided by the producer or distributor, or has not been fully funded by other sources.

''(d) APPLICATIONS.—Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2004 through 2009.

''SEC. 675. ACCESSIBILITY OF INSTRUCTIONAL MATERIALS.

''(a) INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARD.—

''(1) ACCESSIBILITY STANDARD.—Not later than 180 days after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall, by rulemaking, promulgate an Instructional Materials Accessibility Standard which shall constitute the technical standards to be used by publishers for the preparation of electronic files for States under section 612(a)(22).

''(2) RELATIONSHIP TO OTHER LAWS.—For purposes of this section:

''(A) AUTHORIZED ENTITY.—Notwithstanding the provisions of section 106 of title 17, United States Code, it is not an infringement of copyright for an authorized entity to reproduce or to distribute copies of the electronic files described in section 612(a)(22)(B), containing the contents of the print instructional materials using the Instructional Materials Accessibility Standard, if such copies are used solely for reproduction or distribution of the contents of such print instructional materials in specialized formats designed exclusively for use by the blind or other persons with print disabilities.

''(B) PUBLISHER.—Notwithstanding the provisions of section of 106 of title 17, United States Code, it is not an infringement of copyright for a publisher to create and distribute copies of the electronic files described in section 612(a)(22)(B), containing the contents of the print instructional materials using the Instructional Material Accessibility Standard, if such copies are used solely for reproduction or distribution of the contents of such print instructional materials in specialized formats designed exclusively for use by the blind or other persons with print disabilities.

''(C) COPIES.—Copies of the electronic files containing the contents of the print instructional materials using the Instructional Materials Accessibility Standard shall be made in compliance with the provisions of section 121(b) of title 17, United States Code, regarding the reproduction and distribution of copyrighted print instructional materials in specialized formats.

''(3) DEFINITIONS.—In this section:

''(A) INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARD.—The term 'Instructional Materials Accessibility Standard' means the technical standards described in paragraph (2), to be used in the preparation of electronic files suitable and used solely for efficient conversion into specialized formats.

''(B) BLIND OR OTHER PERSONS WITH PRINT DISABILITIES.—The term 'blind or other persons with print disabilities' means children served under this Act and who may qualify in accordance with the Act entitled ''An Act to provide books for the adult blind'', approved March 3, 1931 (2 U.S.C. 135a; 46 Stat. 1487) to receive books and other publications produced in specialized formats.

''(C) SPECIALIZED FORMATS.—The term 'specialized formats' has the meaning given the term in section 121(c)(3) of title 17, United States Code, and for the purposes of this section, includes synthesized speech, digital audio, and large print.

''(D) PRINT INSTRUCTIONAL MATERIALS.—The term 'print instructional materials' means printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by a State educational agency or local educational agency for use by pupils in the classroom.

''(E) AUTHORIZED ENTITY.—The term 'authorized entity' has the meaning given the term in section 121(c)(1) of title 17, United States Code.

''(4) APPLICABILITY.—This section shall apply to print instructional materials published and copyrighted after the date on which the final rule establishing the Instructional Materials Accessibility Standard is published in the Federal Register.

''(b) NATIONAL INSTRUCTIONAL MATERIALS ACCESS CENTER.—

''(1) ESTABLISHMENT.—Not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall establish a center, to be known as the National Instructional Materials Access Center, which shall coordinate the acquisition and distribution of print instructional materials prepared in the Instructional Materials Accessibility Standard described in subsection (a)(2).

''(2) RESPONSIBILITIES.—The duties of the National Instructional Materials Access Center are the following:

''(A) To receive and maintain a catalog of print instructional materials made available under section 612(a)(22) and section 613(a)(6).

''(B) To provide authorized entities with access to such print instructional materials, free of charge, in accordance with such terms and procedures as the National Instructional Materials Access Center may prescribe.

''(C) To develop, adopt, and publish procedures to protect against copyright infringement and otherwise to administratively assure compliance with title 17, United States Code, with respect to the print instructional materials provided under section 612(a)(22) and section 613(a)(6).

''(3) CONTRACT AUTHORIZED.—To assist in carrying out paragraph (1), the Secretary shall award, on a competitive basis, a contract renewable on a biennial basis with a nonprofit organization, or with a consortium of such organizations, determined by the Secretary to be best qualified to carry out the responsibilities described in paragraph (2). The contractor shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services.

''(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as may be necessary.

''SEC. 676. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out sections 671, 672, 673, and 663 such sums as may be necessary for each of the fiscal years 2004 through 2009.

''Subpart 4—Interim Alternative Educational Settings, Behavioral Supports, and Whole School Interventions

''SEC. 681. PURPOSE.

''The purpose of this subpart is to authorize resources to foster a safe learning environment that supports academic achievement for all students by improving the quality of interim alternative educational settings, providing more behavioral supports in schools, and supporting whole school interventions.

''SEC. 682. DEFINITION OF ELIGIBLE ENTITY.

''In this subpart, the term 'eligible entity' means—

''(1) a local educational agency; or

''(2) a consortium consisting of a local educational agency and 1 or more of the following entities:

''(A) another local educational agency;

''(B) a community-based organization with a demonstrated record of effectiveness in helping children with disabilities who have behavioral challenges succeed;

''(C) an institution of higher education;

''(D) a mental health provider; or

''(E) an educational service agency.

''SEC. 683. PROGRAM AUTHORIZED.

''The Secretary is authorized to award grants, on a competitive basis, to eligible entities to enable the eligible entities—

''(1) to establish or expand behavioral supports and whole school behavioral interventions by providing for effective, research-based practices, including—

''(A) comprehensive, early screening efforts for students at risk for emotional and behavioral difficulties;

''(B) training for school staff on early identification, prereferral, and referral procedures;

''(C) training for administrators, teachers, related services personnel, behavioral specialists, and other school staff in whole school positive behavioral interventions and supports, behavioral intervention planning, and classroom and student management techniques;

''(D) joint training for administrators, parents, teachers, related services personnel, behavioral specialists, and other school staff on effective strategies for positive behavioral interventions and behavior management strategies that focus on the prevention of behavior problems;

''(E) developing or implementing specific curricula, programs, or interventions aimed at addressing behavioral problems;

''(F) stronger linkages between school-based services and community-based resources, such as community mental health and primary care providers; or

''(G) using behavioral specialists, related services personnel, and other staff necessary to implement behavioral supports; or

''(2) to improve interim alternative educational settings by—

''(A) improving the training of administrators, teachers, related services personnel, behavioral specialists, and other school staff (including ongoing mentoring of new teachers);

''(B) attracting and retaining a high quality, diverse staff;

''(C) providing for on-site counseling services;

''(D) using research-based interventions, curriculum, and practices;

''(E) allowing students to use instructional technology that provides individualized instruction;

''(F) ensuring that the services are fully consistent with the goals of the individual student's IEP;

''(G) promoting effective case management and collaboration among parents, teachers, physicians, related services personnel, behavioral specialists, principals, administrators, and other school staff;

''(H) promoting interagency coordination and coordinated service delivery among schools, juvenile courts, child welfare agencies, community mental health providers, primary care providers, public recreation agencies, and community-based organizations; or

''(I) providing for behavioral specialists to help students transitioning from interim alternative educational settings reintegrate into their regular classrooms.

''SEC. 684. PROGRAM EVALUATIONS.

''(a) REPORT AND EVALUATION.—Each eligible entity receiving a grant under this subpart shall prepare and submit annually to the Secretary a report on the outcomes of the activities assisted under the grant.

''(b) BEST PRACTICES ON WEBSITE.—The Secretary shall make available on the Department's website information for parents, teachers, and school administrators on best practices for interim alternative educational settings, behavior supports, and whole school intervention.

''SEC. 685. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out this subpart $50,000,000 for fiscal year 2004 and such sums as may be necessary for each of the 5 succeeding fiscal years.''.

TITLE II—AMENDMENTS TO THE REHABILITATION ACT OF 1973

SEC. 201. FINDINGS.

Section 2(a) of the Rehabilitation Act of 1973 (29 U.S.C. 701(a)) is amended—

(1) in paragraph (5), by striking ''and'' at the end;

(2) in paragraph (6), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(7) there is a substantial need to improve and expand services for students with disabilities under this Act.''.

SEC. 202. DEFINITIONS.

Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705) is amended—

(1) by redesignating paragraphs (35) through (39) as paragraphs (36), (37), (38), (40), and (41), respectively;

(2) in subparagraph (A)(ii) of paragraph (36) (as redesignated in paragraph (1)), by striking ''paragraph (36)(C)'' and inserting ''paragraph (37)(C)'';

(3) by inserting after paragraph (34) the following:

''(35)(A) The term 'student with a disability' means an individual with a disability who—

''(i) is not younger than 14 and not older than 21;

''(ii) has been determined to be eligible under section 102(a) for assistance under this title; and

''(iii)(I) is eligible for, and is receiving, special education under part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.); or

''(II) is an individual with a disability, for purposes of section 504.

''(B) The term 'students with disabilities' means more than 1 student with a disability.''; and

(4) by inserting after paragraph (38) the following:

''(39) The term 'transition services expansion year' means—

''(A) the first fiscal year for which the amount appropriated under section 100(b) exceeds the amount appropriated under section 100(b) for fiscal year 2004 by not less than $100,000,000; and

''(B) each fiscal year subsequent to that first fiscal year.''.

SEC. 203. STATE PLAN.

(a) ASSESSMENT AND STRATEGIES.—Section 101(a)(15) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(15)) is amended—

(1) in subparagraph (A)(i)—

(A) in subclause (II), by striking ''and'' at the end;

(B) in subclause (III), by adding ''and'' at the end; and

(C) by adding at the end the following:

''(IV) in a transition services expansion year, students with disabilities, including their need for transition services;''; and

(2) in subparagraph (D)—

(A) by redesignating clauses (iii), (iv), and (v) as clauses (iv), (v), and (vi), respectively; and

(B) by inserting after clause (ii) the following:

''(iii) in a transition services expansion year, the methods to be used to improve and expand vocational rehabilitation services for students with disabilities, including the coordination of services designed to facilitate the transition of such students from the receipt of educational services in school to the receipt of vocational rehabilitation services under this title or to post-secondary education or employment;''.

(b) SERVICES FOR STUDENTS WITH DISABILITIES.—Section 101(a) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)) is amended by adding at the end the following:

''(25) SERVICES FOR STUDENTS WITH DISABILITIES.—The State plan for a transition services expansion year shall provide an assurance satisfactory to the Secretary that the State—

''(A) has developed and implemented strategies to address the needs identified in the assessment described in paragraph (15), and achieve the goals and priorities identified by the State, to improve and expand vocational rehabilitation services for students with disabilities on a statewide basis in accordance with paragraph (15); and

''(B) from funds reserved under section 110A, shall carry out programs or activities designed to improve and expand vocational rehabilitation services for students with disabilities that—

''(i) facilitate the transition of the students with disabilities from the receipt of educational services in school, to the receipt of vocational rehabilitation services under this title, including, at a minimum, those services specified in the interagency agreement required in paragraph (11)(D);

''(ii) improve the achievement of post-school goals of students with disabilities, including improving the achievement through participation in meetings regarding individualized education programs developed under section 614 of the Individuals with Disabilities Education Act (20 U.S.C. 1414);

''(iii) provide vocational guidance, career exploration services, and job search skills and strategies and technical assistance to students with disabilities;

''(iv) support the provision of training and technical assistance to State and local educational agency and designated State agency personnel responsible for the planning and provision of services to students with disabilities; and

''(v) support outreach activities to students with disabilities who are eligible for, and need, services under this title.''.

SEC. 204. SCOPE OF SERVICES.

Section 103 of the Rehabilitation Act of 1973 (29 U.S.C. 723) is amended—

(1) in subsection (a), by striking paragraph (15) and inserting the following:

''(15) transition services for students with disabilities, that facilitate the achievement of the employment outcome identified in the individualized plan for employment, including, in a transition services expansion year, services described in clauses (i) through (iii) of section 101(a)(25)(B);''; and

(2) in subsection (b), by striking paragraph (6) and inserting the following:

''(6)(A)(i) Consultation and technical assistance services to assist State and local educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.

''(ii) In a transition services expansion year, training and technical assistance described in section 101(a)(25)(B)(iv).

''(B) In a transition services expansion year, services for groups of individuals with disabilities who meet the requirements of clauses (i) and (iii) of section 7(35)(A), including services described in clauses (i), (ii), (iii), and (v) of section 101(a)(25)(B), to assist in the transition from school to post-school activities.''.

SEC. 205. STANDARDS AND INDICATORS.

Section 106(a) of the Rehabilitation Act of 1973 (29 U.S.C. 726(a)) is amended by striking paragraph (1)(C) and all that follows through paragraph (2) and inserting the following:

''(2) MEASURES.—The standards and indicators shall include outcome and related measures of program performance that—

''(A) facilitate the accomplishment of the purpose and policy of this title;

''(B) to the maximum extent practicable, are consistent with the core indicators of performance, and corresponding State adjusted levels of performance, established under section 136(b) of the Workforce Investment Act of 1998 (29 U.S.C. 2871(b)); and

''(C) include measures of the program's performance with respect to the transition to post-school activities, and achievement of the post-school goals, of students with disabilities served under the program.''.

SEC. 206. RESERVATION FOR EXPANDED TRANSITION SERVICES.

The Rehabilitation Act of 1973 is amended by inserting after section 110 (29 U.S.C. 730) the following:

''SEC. 110A. RESERVATION FOR EXPANDED TRANSITION SERVICES.

''(a) RESERVATION.—From the State allotment under section 110 in a transition services expansion year, each State shall reserve an amount calculated by the Commissioner under subsection (b) to carry out programs and activities under sections 101(a)(25)(B) and 103(b)(6).

''(b) CALCULATION.—The Commissioner shall calculate the amount to be reserved for such programs and activities for a fiscal year by each State by multiplying $50,000,000 by the percentage determined by dividing—

''(1) the amount allotted to that State under section 110 for the prior fiscal year; by

''(2) the total amount allotted to all States under section 110 for that prior fiscal year.''.

SEC. 207. CONFORMING AMENDMENT.

Section 1(b) of the Rehabilitation Act of 1973 is amended by inserting after the item relating to section 110 the following:

''Sec. 110A. Reservation for expanded transition services.''.

TITLE III—NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH

SEC. 301. NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH.

(a) AMENDMENT.—The Education Sciences Reform Act of 2002 (20 U.S.C. 9501 et seq.) is amended—

(1) by redesignating part E as part F; and

(2) by inserting after part D the following:

''PART E—NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH

''SEC. 175. ESTABLISHMENT.

''(a) ESTABLISHMENT.—There is established in the Institute a National Center for Special Education Research.

''(b) MISSION.—The mission of the National Center for Special Education Research (in this part referred to as the 'Special Education Research Center') is—

''(1) to sponsor research to expand knowledge and understanding of the needs of infants, toddlers, and children with disabilities in order to

improve the developmental, educational, and transitional results of such individuals;

''(2) to sponsor research to improve services provided under, and support the implementation of, the Individuals with Disabilities Education Act; and

''(3) to evaluate the implementation and effectiveness of the Individuals with Disabilities Education Act in coordination with the National Center for Education Evaluation and Regional Assistance.

''(c) APPLICABILITY OF EDUCATION SCIENCES REFORM ACT OF 2002.—Parts A and F, and the standards for peer review of applications and for the conduct and evaluation of research under sections 133(a) and 134, respectively, shall apply to the Secretary, the Director, and the Commissioner in carrying out this part.

''SEC. 176. COMMISSIONER FOR SPECIAL EDUCATION RESEARCH.

''The Special Education Research Center shall be headed by a Commissioner for Special Education Research (in this part referred to as 'the Special Education Research Commissioner') who shall have substantial knowledge of the Special Education Research Center's activities, including a high level of expertise in the fields of research, research management, and the education of children with disabilities.

''SEC. 177. DUTIES.

''(a) GENERAL DUTIES.—The Special Education Research Center shall carry out research activities under this part consistent with the mission described in section 175(b), such as activities that—

''(1) improve services provided under the Individuals with Disabilities Education Act in order to improve—

''(A) academic achievement, functional outcomes, and educational results for children with disabilities; and

''(B) developmental outcomes for infants and toddlers;

''(2) identify scientifically based educational practices that support learning and improve academic achievement, functional outcomes, and educational results for all students with disabilities;

''(3) examine the special needs of preschool aged children, infants, and toddlers with disabilities, including factors that may result in developmental delays;

''(4) identify scientifically based related services and interventions that promote participation and progress in the general education curriculum and general education settings;

''(5) improve the alignment, compatibility, and development of valid and reliable assessments, including alternate assessments, as required by section 1111(b) of the Elementary and Secondary Education Act of 1965;

''(6) examine State content standards and alternate assessments for students with significant cognitive impairment in terms of academic achievement, individualized instructional need, appropriate education settings, and improved post-school results;

''(7) examine the educational, developmental, and transitional needs of children with high incidence and low incidence disabilities;

''(8) examine the extent to which overidentification and underidentification of children with disabilities occurs, and the causes thereof;

''(9) improve reading and literacy skills of children with disabilities;

''(10) examine and improve secondary and postsecondary education and transitional outcomes and results for children with disabilities;

''(11) examine methods of early intervention for children with disabilities, including children with multiple or complex developmental delays;

''(12) examine and incorporate universal design concepts in the development of standards, assessments, curricula, and instructional methods as a method to improve educational and transitional results for children with disabilities;

''(13) improve the preparation of personnel, including early intervention personnel, who provide educational and related services to children with disabilities to increase the academic achievement and functional performance of students with disabilities;

''(14) examine the excess costs of educating a child with a disability and expenses associated with high cost special education and related services;

''(15) help parents improve educational results for their children, particularly related to transition issues; and

''(16) address the unique needs of children with significant cognitive disabilities.

''(b) STANDARDS.—The Commissioner of Special Education Research shall ensure that activities assisted under this section—

''(1) conform to high standards of quality, integrity, accuracy, validity, and reliability;

''(2) are carried out in conjunction with the standards for the conduct and evaluation of all research and development established by the National Center for Education Research; and

''(3) are objective, secular, neutral, and nonideological, and are free of partisan political influence, and racial, cultural, gender, regional, or disability bias.

''(c) PLAN.—The Commissioner of Special Education Research shall propose to the Director a research plan, developed in collaboration with the Assistant Secretary for Special Education and Rehabilitative Services, that—

''(1) is consistent with the priorities and mission of the Institute and the mission of the Special Education Research Center;

''(2) is carried out, updated, and modified, as appropriate;

''(3) is consistent with the purpose of the Individuals with Disabilities Education Act;

''(4) contains an appropriate balance across all age ranges and types of children with disabilities;

''(5) provides for research that is objective and uses measurable indicators to assess its progress and results;

''(6) is coordinated with the comprehensive plan developed under section 661 of the Individuals with Disabilities Education Act; and

''(7) provides that the research conducted under part D of the Individuals with Disabilities Education Act is relevant to special education practice and policy.

''(d) GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS.—In carrying out the duties under this section, the Director may award grants to, or enter into contracts or cooperative agreements with, eligible entities.

''(e) APPLICATIONS.—An eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this part shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require.

''(f) DISSEMINATION.—The Special Education Research Center shall—

''(1) synthesize and disseminate, through the National Center for Education Evaluation and Regional Assistance, the findings and results of special education research conducted or supported by the Special Education Research Center; and

''(2) assist the Director in the preparation of a biennial report, as described in section 119.

''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this part such sums as may be necessary for each of fiscal years 2004 through 2009.''.

(b) CONFORMING AMENDMENTS.—

(1) EDUCATION SCIENCES REFORM ACT OF 2002.—The Education Sciences Reform Act of 2002 (20 U.S.C. 9501 et seq.) is amended—

(C) in section 111(b)(1)(A) (20 U.S.C. 9511(b)(1)(A)), by inserting ''and special education'' after ''early childhood education''.

(B) in section 111(c)(3) (20 U.S.C. 9511(c)(3))—

(i) in subparagraph (B), by striking ''and'' after the semicolon;

(ii) in subparagraph (C), by striking the period and inserting ''; and''; and

(iii) by adding at the end the following:

''(D) the National Center for Special Education Research (as described in part E).'';

(C) in section 115(a) (20 U.S.C. 9515(a)), by striking ''including those'' and all that follows through ''such as'' and inserting ''including those associated with the goals and requirements of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), and the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), such as''; and

(D) in section 116(c)(4)(A)(ii) (20 U.S.C. 9516(c)(4)(A)(ii) is amended by inserting ''special education experts,'' after ''early childhood experts,''.

(2) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—Section 1117(a)(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6317(a)(3)) is amended by striking ''part E'' and inserting ''part D''.

(c) TRANSITION PROVISIONS.—

(1) ORDERLY TRANSITION.—Notwithstanding any other provision of law, the Secretary of Education shall take such steps as are necessary to provide for the orderly transition to, and implementation of, part E of the Education Science Reform Act of 2002, as enacted by subsection (a), from research activities carried out under section 672 of the Individuals with Disabilities Education Act (as such section was in effect on the day before the date of enactment of this Act).

(2) CONTINUATION OF AWARDS.—The Secretary of Education shall continue research awards made under section 672 of the Individuals with Disabilities Education Act (as such section was in effect on the day before the date of enactment of this Act) that are in effect on the day before the date of enactment of this Act in accordance with the terms of those awards.

(d) EFFECTIVE DATES.—Notwithstanding any other provision of law—

(1) the amendments made by subsections (a) and (b) of this section shall take effect on October 1, 2004; and

(2) section 672 of the Individuals with Disabilities Education Act (as such section was in effect on the day before the date of enactment of this Act) shall remain in effect through September 30, 2004.

TITLE IV—COMMISSION ON UNIVERSAL DESIGN AND THE ACCESSIBILITY OF CURRICULUM AND INSTRUCTIONAL MATERIALS

SEC. 401. COMMISSION ON UNIVERSAL DESIGN AND THE ACCESSIBILITY OF CURRICULUM AND INSTRUCTIONAL MATERIALS.

(a) ESTABLISHMENT AND PURPOSE.—

(1) ESTABLISHMENT.—There is established a Commission (hereafter in this section referred to as the ''Commission'') to study, evaluate, and make appropriate recommendations to the Congress and to the Secretary on universal design and accessibility of curriculum and instructional materials for use by all children, with a particular focus on children with disabilities, in elementary schools and secondary schools.

(2) PURPOSE.—The purpose of the Commission is—

(A) to survey the issues related to improving access to curriculum and instructional materials for children with disabilities, with and without assistive technologies;

(B) to study the benefits, current or potential costs, and challenges of developing and implementing a standard definition of the term universal design as a means to achieve accessibility of curriculum and instructional materials, and as the Commission determines necessary, to recommend a definition for the term universal design, or other terms, taking into consideration educational objectives, investment of resources, state of technology, and effect on development of curriculum and instructional materials;

(C) to examine issues related to the need for and current availability and accessibility of curriculum and instructional materials for use in elementary schools and secondary schools by children with disabilities, gaps in or conflicts among relevant technical standards, educational quality, availability of instructional materials, technical standards, intellectual property rights, and the economic and technical feasibility of implementing any recommended definitions; and

(D) to provide the Congress and the Secretary, not later than 24 months after the date of enactment of this Act, the report described in subsection (d).

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 21 members, of which—

(A) 3 members shall be appointed by the Majority Leader of the Senate;

(B) 2 members shall be appointed by the Minority Leader of the Senate;

(C) 3 members shall be appointed by the Speaker of the House of Representatives;

(D) 2 members shall be appointed by the Minority Leader of the House;

(E) 8 members shall be appointed by the Secretary including representatives of States, local educational agencies, publishers of instructional material, individuals with disabilities, technical standard setting bodies, and authorized entities as defined in section 121(c)(1) of title 17, United States Code; and

(F) 3 members shall be appointed by the Registrar of Copyrights.

(2) EXPERTISE OF COMMISSIONERS.—All members of the Commission shall be individuals who have been appointed on the basis of technical qualifications, professional expertise, and demonstrated knowledge and shall include at least 4 representatives of each of the following:

(A) publishers of instructional materials, including of textbooks, software, and other print, electronic, or digital curricular materials;

(B) elementary and secondary education, including teachers, special educators, and State and local education officials or administrators;

(C) researchers in the fields of disabilities, technology, and accessible media;

(D) experts in intellectual property rights; and

(E) advocates of children with disabilities, including parents of blind, visually impaired, deaf, hearing impaired, physically challenged, cognitively impaired, or learning disabled, or representatives of organizations that advocate for such children.

(3) DATE.—The appointment of the members of the Commission shall be made not later than 60 days after the date of enactment of this Act.

(4) PERIOD OF APPOINTMENT AND VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(5) INITIAL MEETING.—Not later than 45 days after the date on which all members of the Commission have been appointed, the Commission shall hold the Commission's first meeting.

(6) MEETINGS.—The Commission shall meet at the call of the Chairperson.

(7) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(8) CHAIRPERSON AND VICE CHAIRPERSON.—The Commission shall select a chairperson and vice chairperson from among the members of the Commission.

(c) DUTIES OF THE COMMISSION.—The Commission shall study and make recommendations to Congress and the Secretary regarding—

(1) the purposes of the Commission described in subsection (a)(2);

(2) priority topics for additional research;

(3) the availability and accessibility of curricula and instructional materials, including print, software, CD–ROM, video, and Internet, for use in elementary schools and secondary schools by children with disabilities, including—

(A) the numbers of affected children with disabilities, by grade, age, and type of disability;

(B) the technical and other means by which such materials are made accessible, such as assistive technologies, electronic versions, large print, closed captioning, video description, and Braille, and any conflicts between relevant technical standards by which instructional materials are made accessible;

(C) the steps taken by State and local educational agencies to support accessibility, including through State adoption and procurement policies, the acquisition and integration of assistive technology, and any State and local requirements or standards;

(D) timeliness of receipt of such materials by children with disabilities; and

(E) continued barriers to access to such materials; and

(4) the potential and likely effects of providing accessible or universally designed materials for all students in elementary schools and secondary schools, with a particular focus on children with disabilities, including—

(A) an analysis of the current and potential costs to develop and provide accessible instructional materials, with and without specialized formats, to publishers, States, local educational agencies, schools, and others, broken down by—

(i) type of disability, including physical, sensory, and cognitive disability;

(ii) type of instructional materials, including by grade and by basal and supplemental materials; and

(iii) type of media, including print, electronic, software, web-based, audio, and video; and

(B) an analysis of the effects of any recommended definitions regarding—

(i) the availability and quality of instructional materials for nondisabled students, and innovation in the development and delivery of these materials;

(ii) State learning content standards that are media-, skill-, or pedagogically-based and may therefore be compromised;

(iii) prices of instructional materials and the impact of the definitions on State and local budgets; and

(iv) intellectual property rights in connection with the development, distribution, and use of curriculum and instructional materials.

(d) PUBLIC HEARINGS.—As part of the study conducted under this subsection, the Commission shall hold public hearings, including through the use of the Internet or other technologies, for the purposes referred to in subsection (a).

(e) REPORT.—

(1) INTERIM REPORT.—Not later than 12 months after the establishment of the Commission, the Commission shall provide to the Secretary and Congress an interim report on the Commission's activities during the Commission's first year and any preliminary findings.

(2) FINAL REPORT.—Not later than 24 months after the establishment of the Commission, the Commission shall submit a report to the Secretary and Congress that shall contain—

(A) recommendations determined necessary regarding definitions of the terms described in subsection (a)(2)(B);

(B) recommendations for additional research; and

(C) a detailed statement of the findings and conclusions of the Commission resulting from the study of the issues identified in subsection (a)(2)(C).

(f) POWERS OF THE COMMISSION.—

(1) AUTHORITY OF COMMISSION.—The Commission may hold such hearings, convene and act at such times and places, take such testimony, and receive such evidence, as the Commission considers necessary to carry out the responsibilities of the Commission.

(2) USE OF MAIL.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(3) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(4) COMPENSATION.—Except as provided in paragraph (5), each member of the Commission who is not an officer or employee of the Federal Government shall serve without compensation. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(5) PER DIEM.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(6) EMPLOYMENT AND COMPENSATION OF EMPLOYEES.—Except as otherwise provided in this section and consistent with section 3161 of title 5, United States Code, the Chairperson may appoint, fix the compensation of, and terminate an executive director and such additional employees as may be necessary to enable the Commission to perform the Commission's duties.

(7) DETAILING OF FEDERAL EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(8) TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(g) TERMINATION OF THE COMMISSION.—The Commission shall terminate on the date that is 90 days after the date on which the Commission submits its final report under subsection (e)(2).

(h) AUTHORIZATION OF APPROPRIATIONS.—

(1) AUTHORIZATION.—There are authorized to be appropriated $750,000 for fiscal year 2004, and such sums as necessary for fiscal year 2005 to carry out the provisions of this section.

(2) AVAILABILITY.—Any sums appropriated under the authorization contained in this subsection shall remain available, without fiscal year limitation, until expended.

Mr. GREGG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GREGG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GREGG. Mr. President, I ask unanimous consent that following the opening statements by the two managers, Senator HARKIN be recognized to offer his amendment regarding funding. I further ask that immediately upon the reporting of that amendment, it be temporarily set aside and the I be recognized to offer a first-degree amendment regarding funding; provided further, that there be 2 hours of debate equally divided between the two managers, or their designees, to debate both first-degree amendments concurrently. I ask also that following that debate, the Senate proceed to a vote in relationship to my amendment, to be followed by a vote in relationship to

the Harkin amendment, with no second-degree amendments in order to either amendment.

Finally, I ask unanimous consent that no further amendments relating to funding be in order to the bill, and that there be 2 minutes of debate equally divided between the votes, and that the votes begin at 1:45 p.m.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, I ask the Senator to modify the consent agreement to say that the time from now until 1:45 be equally divided between the two sides. It is more than 2 hours.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. GREGG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I see my friend and colleague from Iowa, who will be offering an extremely important amendment dealing with the funding issue for the special needs education program. As he is gathering his papers, I want to say to our colleagues in the Senate that this legislation represents the best effort of our committee, which is truly bipartisan.

I pay tribute to Senator GREGG, our chairman, for his leadership in helping bring all of the members together on this legislation. We virtually have a unanimous committee recommendation. We have a few public policy issues, which appropriately the Senate will address, and then we will move ahead.

Many times around this institution we wonder how it functions and works. I think recognizing the extraordinary challenges that so many of these children are facing has sort of brought out the best of our Members.

I thank our chairman, and I thank all of my colleagues on my side who took great interest and great involvement in this issue. I will go into greater detail as we go through the process.

I always pay tribute to my friend and colleague from Iowa, Senator HARKIN, who has had a special leadership role in issues involving the disabled and handicapped since the time he has been in the Senate. I always thank him, as well as the rest of our colleagues.

As we move through the course of the morning, we will have a more detailed description of what is in the legislation and the importance of the support of this institution.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I join the senior Senator from Massachusetts. I specifically thank the senior Senator from Massachusetts for his cooperation and the cooperation of the entire committee.

This is a bill that is 90 percent agreed to. There are some public policy issues we are going to debate on the floor, specifically on the process of funding this bill. It is a very strong step forward in the area of addressing the needs of children who have special needs, basically focused on making sure there is less bureaucracy and more care, that teachers have more flexibility and parents have more involvement, and that there is less litigation and more results.

Kids who have special needs, rather than just being put through a process of checking off boxes, are actually given the opportunity to learn, and we have accountability standards for that learning.

It is a very good bill. We will get into more depth on its substance as we move forward. I appreciate the courtesy of the Senator from Iowa for moving expeditiously his amendment, along with one of the amendments I will be offering, one of the primary issues that needs to be addressed on the floor. I look forward to him offering his amendment. I will offer mine, and we will get into the substance of that debate.

Mr. HARKIN. Mr. President, the Individuals with Disabilities Education Act is a landmark civil rights law that has had a powerfully positive impact on millions of Americans.

Before moving to the substance of my remarks, I would like to thank the chairman of our committee, the Senator from New Hampshire, Mr. GREGG, and the ranking member, my friend from Massachusetts, Senator KENNEDY, for their dedicated work on this bill. The reauthorization of a bill of this size is a considerable undertaking, and I want to recognize the excellent work of Annie White of Senator GREGG's staff, and Connie Garner of Senator KENNEDY's staff, along with many other committee staff who have worked so hard on this reauthorization.

Let me take a moment to put the Individuals with Disabilities Act in historical context. IDEA was passed almost three decades ago, in 1975, the year after I was first elected to the House of Representatives. So I have watched the progress of this law since its inception. I am proud of what IDEA has achieved. No question, we have further to go to achieve equal educational opportunity for children with disabilities. But we have made tremendous progress since 1975.

We must not forget that, prior to the early 1970s, children with disabilities were routinely kept out of school. More than 1 million children were excluded entirely from their local public schools, and more than half of all children with disabilities in the United States did not receive appropriate educational services. If they did get an education, it was often in segregated schools or institutional settings.

But in the early 1970s, that began to change. Two landmark cases, PARC v. Commonwealth of Pennsylvania in 1971, and Mills v. Board of Education in 1972 established that children with disabilities had the right to an equal opportunity for education under the fourteenth amendment to the Constitution.

In 1975, Congress wrote IDEA for two reasons. First, we fleshed out the substance and details of what was required to achieve equality for children with disabilities. Congress specified critical protections for parents and children to transform the constitutional requirement into a practical reality throughout the country. While we still have further to go, I believe that we have made major progress since the days when 1 million children were entirely excluded from school. The latest figures available indicate that some 6.6 million children are receiving services under IDEA.

A second important purpose of IDEA was to help States meet their constitutional obligations. And here we have fallen far short of our goals. When IDEA was passed, the Federal Government pledged to help with 40 percent of the excess costs of special education. At the present time, we are funding less than 20 percent of these costs. I will have more to say about this later when I offer an amendment along with my friend and colleague, the senior Senator from Nebraska.

I think it is important to keep fixed in our minds these two historic purposes of IDEA, because these purposes must inform our discussion over the next few days here in the Senate. The protections that we wrote into the law to ensure opportunity for all continue to be critical today. And the need for Federal help to meet states' obligation also continues to be critical to realizing the full promise of this law.

These matters are vitally important because the education that a child receives has a profound impact on his or her future. This is true for all children, whether or not they have disabilities.

IDEA is a critical cornerstone of the Federal Government's commitment to ensuring equality for individuals with disabilities. When we passed the landmark Americans with Disabilities Act in 1990, we said that this Nation's four great goals for individuals with disabilities are equal opportunity, full participation, independent living and economic self-sufficiency. These same goals are referenced in IDEA. Obviously, a quality education is essential to achieving all four of these goals.

These may be broad goals, but they are not abstractions. To the contrary, they have enormous practical, nitty-gritty consequences for individuals with disabilities. They have the power to transform individual lives.

On that score, I want to tell you about my good friend, Danny Piper from Ankeny, IA. Tragically, Danny died in a car accident more than a year ago, but he left behind a legacy of friends, family, and personal achievement.

From an early age, Danny's parents insisted that he be educated with his peers. He was an integral part of his school community, performing in the school play and active in a variety of school activities. Once, after he testified before my subcommittee on the ADA, I asked him how testifying before Congress compared to being in the school play. He answered, ''Not so bad.''

Danny went on to finish high school and get a job. I spent one day with him on the job at Osco drugstore, where he worked everyday. He showed me the ropes—how to correctly stock the shelves, how to load the cardboard box machine to avoid getting hurt, and so on. We had lunch together, too. It was a day I will always cherish.

Danny had what we want for all of our children—a fulfilling life of independence and dignity. He lived with a friend in an apartment. He worked every day. This is what IDEA is all about. It is why I strongly support the protections this law provides—and why it is time for the Federal Government to fully fund the act.

We have a long way to go to ensure that all children have access to a quality education, and the opportunities that come with it. This reauthorization correctly emphasizes enforcement of the act. I thank my friend from Massachusetts for his leadership on this issue. This bill contains provisions that require states to meet compliance benchmarks. It specifies that the Secretary and the States must take action if there is a consistent failure to provide an appropriate education to children with disabilities.

The bill also ensures that a child's individualized education program, known as an IEP, provides services up front to ensure that a child succeeds. So each child will have access to the behavioral health services that will ensure a good experience for the child and his or her classmates. Getting that plan in place in the first place, rather than after any problems occur, is critical to making this law work for everyone.

The bill has several important provisions to assist deaf children get the education that they need to succeed. It specifies that interpreters are a related service required under the act, and it preserves critical access to captioning for deaf and hard-of-hearing students. These provisions are very important to me because, as many of you know, my brother Frank was deaf. These are the kinds of services that would have made a huge difference for Frank. So I am especially proud to support these provisions in the reauthorization.

This bill also maintains all of the early intervention and preschool education programs that get children off on the right foot so they can achieve in school.

As we debate this reauthorization, let's be guided by the vision that IDEA is an investment in children's lives and futures. We are investing money at the front end—with early intervention, with interpreters, with behavioral health and other related services. And the return on that investment is productive, independent, taxpaying citizens. We get individuals who are prepared to go on to higher education, to gainful employment, and to independent living in our communities.

But we have to make investments in order to get the results we want. We have to ensure that schools provide the appropriate education required by the law. And we have to meet our commitment to help local public schools by, at long last, providing them with full Federal funding IDEA. As I said, IDEA was passed in 1975. It has been almost three decades, and we are not even half way toward meeting our original commitment to pay 40 percent of the excess costs of special education.

I will be offering an amendment later with my friend, the senior Senator from Nebraska, to remedy this longstanding failure of the Federal Government. Over the years, we have talked again and again about full funding. I say to my colleagues that its time for us not just to talk the talk, but to walk the walk. It is time to make good on the critical investment of federal funds that we pledged over 30 years ago.

I will have more to say on this later. For now, I conclude by noting that IDEA is about the kind of country we want America to be. We must fully fund the act, and we must renew our commitment to its cornerstone protections. Only then will every child in America have the opportunity not only to dream, but to make his or her dreams a reality.

The PRESIDING OFFICER. The Senator from Iowa.

AMENDMENT NO. 3144

Mr. HARKIN. Mr. President, I send an amendment to the desk on behalf of myself and Senator HAGEL and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for himself, Mr. HAGEL, Mr. KENNEDY, Ms. COLLINS, Mr. JEFFORDS, Mr. COLEMAN, Mrs. CLINTON, Mr. ROBERTS, Ms. MIKULSKI, Mr. DODD, Mr. REED, Ms. STABENOW, Mr. LEVIN, Mr. ROCKEFELLER, Mr. CORZINE, Mr. SCHUMER, Mr. WARNER, and Ms. MURKOWSKI, proposes an amendment numbered 3144.

Mr. HARKIN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To amend part B of the Individuals with Disabilities Education Act to reach full Federal funding of such part in 6 years, and for other purposes)

In section 611 of the Individuals with Disabilities Education Act (as amended by section 101 of the bill) strike subsection (i) and insert the following:

''(i) FUNDING.—

''(1) IN GENERAL.—For the purpose of carrying out this part, other than section 619, there are authorized to be appropriated—

''(A) $12,268,000,000 or the maximum amount available for awarding grants under subsection (a)(2), whichever is lower, for fiscal year 2005, and, there are hereby appropriated $2,200,000,000 for fiscal year 2005, which shall become available for obligation on July 1, 2005 and shall remain available through September 30, 2006, except that if the maximum amount available for awarding grants under subsection (a)(2) is less than $12,268,000,0000, then the amount appropriated in this subparagraph shall be reduced by the difference between $12,268,000,000 and the maximum amount available for awarding grants under subsection (a)(2);

''(B) $14,468,000,000 or the maximum amount available for awarding grants under subsection (a)(2), whichever is lower, for fiscal year 2006, and, there are hereby appropriated $4,400,000,000 for fiscal year 2006, which shall become available for obligation on July 1, 2006 and shall remain available through September 30, 2007, except that if the maximum amount available for awarding grants under subsection (a)(2) is less than $14,468,000,000, then the amount appropriated in this subparagraph shall be reduced by the difference between $14,468,000,000 and the maximum amount available for awarding grants under subsection (a)(2);

''(C) $16,668,000,000 or the maximum amount available for awarding grants under subsection (a)(2), whichever is lower, for fiscal year 2007, and, there are hereby appropriated $6,600,000,000 for fiscal year 2007, which shall become available for obligation on July 1, 2007 and shall remain available through September 30, 2008, except that if the maximum amount available for awarding grants under subsection (a)(2) is less than $16,668,000,000, then the amount appropriated in this subparagraph shall be reduced by the difference between $16,668,000,000 and the maximum amount available for awarding grants under subsection (a)(2);

''(D) $18,868,000,000 or the maximum amount available for awarding grants under subsection (a)(2), whichever is lower, for fiscal year 2008, and, there are hereby appropriated $8,800,000,000 for fiscal year 2008, which shall become available for obligation on July 1, 2008 and shall remain available through September 30, 2009, except that if the maximum amount available for awarding grants under subsection (a)(2) is less than $18,868,000,000, then the amount appropriated in this subparagraph shall be reduced by the difference between $18,868,000,000 and the maximum amount available for awarding grants under subsection (a)(2);

''(E) $21,068,000,000 or the maximum amount available for awarding grants under subsection (a)(2), whichever is lower, for fiscal year 2009, and, there are hereby appropriated $11,000,000,000 for fiscal year 2009, which shall become available for obligation on July 1, 2009 and shall remain available through September 30, 2010, except that if the maximum amount available for awarding grants under subsection (a)(2) is less than $21,068,000,000, then the amount appropriated in this subparagraph shall be reduced by the difference between $21,068,000,000 and the maximum amount available for awarding grants under subsection (a)(2); and

''(F) the maximum amount available for awarding grants under subsection (a)(2) for fiscal year 2010 and each succeeding fiscal year, and, there are hereby appropriated for each such year an amount equal to the maximum amount available for awarding grants under subsection (a)(2) for the fiscal year for which the determination is made minus $10,068,000,000, which shall become available for obligation on July 1 of the fiscal year for which the determination is made and shall remain available through September 30 of the succeeding fiscal year.

''(2) REAUTHORIZATION.—Nothing in this subsection shall be construed to prevent or limit the authority of Congress to reauthorize the provisions of this Act.

AMENDMENT NO. 3145

Mr. GREGG. Mr. President, I ask that my amendment be called up.

The PRESIDING OFFICER. The pending amendment will be set aside. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. GREGG] proposes an amendment numbered 3145.

Mr. GREGG. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To authorize appropriations for part B of the Individuals with Disabilities Education Act)

On page 443, strike lines 3 and 4, and insert the following:

there are authorized to be appropriated—

''(1) $12,358,376,571 for fiscal year 2005;

''(2) $14,648,647,143 for fiscal year 2006;

''(3) $16,938,917,714 for fiscal year 2007;

''(4) $19,229,188,286 for fiscal year 2008;

''(5) $21,519,458,857 for fiscal year 2009;

''(6) $23,809,729,429 for fiscal year 2010;

''(7) $26,100,000,000 for fiscal year 2011; and

''(8) such sums as may be necessary for fiscal year 2012 and each succeeding fiscal year.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I am joined by my colleague from Nebraska, Senator HAGEL, and many others to offer an amendment that will ensure at long last the Congress meets its commitment it made almost 30 years ago. At that time, we told children with disabilities, their families, schools, and States that the Federal Government would pay 40 percent of the extra cost of special education. We have never lived up to that commitment. In fact, we are not even halfway there.

This is really about the credibility of the Congress. It is about the credibility of each and every one of us. We tell our children all the time to keep your promises, do what you say you are going to do. We teach them if they do not follow through, other people will be hurt. Yet the Congress has not kept its word. We have not done what we have told children, parents, schools, and States we would do, and people have been hurt as a result.

People are harmed every time parents of children with disabilities are pitted against parents with children without disabilities for a limited pot of funds. They are harmed every time a family opts not to ask for what their child truly needs because they have been told it costs too much and other children will suffer. They are harmed every time a school district struggles to provide educational opportunities for all its students.

Congress had two purposes when it passed the predecessor to IDEA in 1975. First, we wanted to codify the constitutional obligation to provide education to all children, including those with disabilities. There had been several Federal court cases, including the PARC case in Pennsylvania and the Mills case in DC, that challenged the exclusion of kids with disabilities from public schools. These cases held that if schools do provide for public education of their kids, then they must educate all children. So Congress passed a law, and we spelled out what schools have to do to meet these constitutional obligations.

The other purpose of the law was to provide financial support for the education of children with disabilities. Congress recognized that serving additional students would cost substantially more money, and it committed to paying 40 percent of the excess costs of special education, which is known as the full funding amount.

Almost 30 years later, we are reauthorizing this bill, and I say to my friends and colleagues that we need to think about what we originally wanted to do and promised to do. We wanted to show Federal support for the principle that all children deserve a quality education, and we wanted to help State and local governments meet the costs involved. The amendment of Senator HAGEL and I will help us at long last to achieve these goals.

Recent history leaves no doubt that discretionary increases will not get us to full funding. The charade is over. Educators, parents, children, and State and local government officials all know that we need mandatory increases. Promised increases on the discretionary side will not get us to full funding. They have not worked for 29 years; they will not work now.

If Members of this body are still not convinced that we need mandatory full funding, they only have to look at the past 2 years. This chart shows that, in 2003, President Bush proposed a $1 billion increase for IDEA. The Senate increased it to $2.3 billion. And the final tally was $1.3 billion.

Last year, it was the same story. President Bush wanted a $650 million increase. The Senate went up to $2.2 billion, and we came down to $1.2 billion, actually less of an increase than we had the year before.

Again this year President Bush asked for $1 billion, and we do not know how it will come out next year. We can look at the last 2 years and say probably the same thing will happen again.

The reason is simple, there are a lot of other important education programs that also need money. The President has consistently shortchanged the No Child Left Behind Act, especially title I. There simply has not been enough discretionary money to meet our obligations on IDEA while also funding programs to help schools meet the mandate of the No Child Left Behind Act. So special education funding gets squeezed.

Again, we are on track for a similar situation this year. The President, as I said, has proposed $1 billion for IDEA. The Senate budget resolution includes the same amount. So, according to the Congressional Research Service, we will never reach full funding if we increase IDEA at the rate of $1 billion a year under current law.

Under the revised funding formula in S. 1248, we will not reach full funding until fiscal year 2028, nearly a quarter century from now, 53 years after Congress first committed to that goal and made that promise. A child born today would not see full funding of IDEA during his or her entire education. That is unacceptable.

Fully funding IDEA within 6 years, as we do in our amendment, takes $2.2 billion a year, not $1 billion as the President has proposed.

Where is the additional money from IDEA going to come from this year if we do not use mandatory funding? Do my colleagues want to cut title 1? Do we want to cut afterschool centers? Do we want to cut teacher training? The money simply is not there in the President's budget to find $2.2 billion a year for special education unless we use mandatory funding.

My colleague from Nebraska, Senator HAGEL, and I have been trying to meet this goal for a long time now. We came close once before.

When the No Child Left Behind Act passed the Senate, this body agreed unanimously to mandate increases for IDEA until we reached full funding in 6 years. But strong opposition from the President and the House leadership thwarted the will of the Senate. At that time, we were told in conference to wait until reauthorization of IDEA took place. Well, here we are. We are reauthorizing IDEA.

So again I want to make this point very clear. Two years ago, this Senate unanimously approved mandatory funding for IDEA. It was only taken out in conference. It was taken out saying we have to wait until the reauthorization of IDEA. Well, as I said, we are on the reauthorization of IDEA right now and that is why Senator HAGEL and I and others are proposing this amendment.

We have waited long enough; children with disabilities and their parents have waited long enough; schools have waited long enough and, quite frankly, our property taxpayers have waited long enough.

Back home, I have heard from parents, school administrators, teachers, State legislators, chambers of commerce, taxpayers' associations, and others about the need to fully fund IDEA. I am sure every Senator in this body has heard the same thing from his or her own constituents. These voices are unanimous in support of mandatory full funding because they know that is the only way we are ever going to reach that.

Mandatory funding is also widely supported by all of the national disability and education groups. During this reauthorization, the education and disability communities disagreed on a

lot of issues, but they are unanimous and united on mandatory funding.

This chart shows a list of all of those who are in support. There are 36 organizations that are members of the Consortium of Citizens with Disabilities Education Task Force, plus 38 organizations that are part of the IDEA Funding Coalition.

The National Governors Association also has a clear position supporting mandatory full funding. To quote the joint policy of the NGA and the Council of Chief State School Officers:

Mandatory full funding of the Federal share of IDEA is essential.

They further state:

Congress should do the following: Provide mandatory full funding at the federally committed level of 40 percent of the average per pupil expenditure.

The Governors support mandatory full funding because they know how much it will mean to each of their States. I have a chart that shows how much more each State will get under the amendment Senator HAGEL and I are proposing as compared to what they would get if it is not supported. Again, I am not going to run through every State, but it is here for Senators to look at it if they would like. I urge each of my colleagues to look up their own State.

My own State of Iowa stands to gain $2 billion over 10 years under this amendment, an increase of $460 million over what they would get with the annual $1 billion increases.

I will talk for a minute about the investments IDEA funding pays for. It pays for the teachers who help children learn. It pays for occupational and physical therapy to help children grow stronger. It pays for interpreters and captioning for deaf and hard-of-hearing students, and Braille materials that allow blind children to read their textbooks. It pays for the behavioral health services that allow children with mental health needs to succeed. It pays for assistive technology, for example, software that helps a blind child use the classroom materials, or augmentative communication devices that help kids with cerebral palsy communicate with their teachers and their peers.

IDEA is an investment in children's lives and in their future. We are investing money at the front end with early intervention, with interpreters, with behavioral health and other related services. The return on that investment is productive, independent, taxpaying citizens. We get individuals who are prepared to go on to higher education, to gainful employment, and to independent living in their communities.

The unemployment rate for people with disabilities right now is about 70 percent. That is right, 70 percent. IDEA is critical to ensuring that we bring that rate down and increase the number of individuals with disabilities who are working.

Our House colleague, former Congressman Tony Coelho, always liked to say people with disabilities are the one group that really wants to pay taxes. They want to work. They want to have the opportunity to contribute to our society and economy.

IDEA has also cut down on the number of children who have to live in institutions. Dr. Charlie Lakin of the University of Minnesota estimates $6.5 billion a year is saved on institutional costs by making it possible for children with disabilities to live in their own homes and communities. The true value of this is impossible to measure in dollars. How does one measure the value of keeping a family together?

In closing, when Congress first passed this law in 1975, we created a beacon of hope for children who previously had none. We said to children with disabilities and their parents that all children deserve educational opportunity, all children deserve to take part in the American dream, all children deserve to look forward to having a home and a job when they grow up. To that end, we made a pledge to these children and their parents. We promised the Federal Government would pay its fair share of the costs, up to 40 percent on average per-pupil expense, to ensure this dream becomes a reality.

Today, nearly three decades later, it is time for Congress to make good on that commitment. So I urge my colleagues to vote yes on the amendment offered by Senator HAGEL, this Senator from Iowa, and so many others.

I see my colleague and cosponsor of the amendment, Senator HAGEL. He is a great leader on this issue. I yield to him at this time.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. HAGEL. Mr. President, I thank my colleague, the distinguished Senator from Iowa, for his years of effort and leadership and focus on this issue.

I rise this morning to join with Senator HARKIN in introducing this amendment to S. 1248, the Individuals With Disabilities Education Act, IDEA, reauthorization. Our amendment will provide mandatory increases in funding of $2.2 billion per year to fully fund part B of the IDEA Program over the next 6 years.

This amendment will allow us to reach our Federal funding commitment to IDEA by fiscal year 2010 and fulfill our nearly 30-year-old Federal commitment to the States, our schools, our children with disabilities.

In 1975, Congress guaranteed children with disabilities the right to a free and appropriate public education. This means whatever the cost, States and local school districts are mandated by Federal law to provide necessary services to educate a child with a disability. Congress understood this Federal mandate would be costly. As a result, Congress agreed over 30 years ago to provide States with 40 percent of the cost of educating these children. Unfortunately, States have been bearing the bulk of the costs associated with IDEA for this time. States have upheld their part of the deal. Congress has not. This is why Senator HARKIN and I and others believe mandatory funding is warranted for the IDEA Program.

IDEA is one of the largest unfunded mandates imposed on the States. As a matter of fact, I recall in a speech on the Senate floor earlier this year the junior Senator from Tennessee, the former Governor of Tennessee, Mr. ALEXANDER, talking about unfunded mandates that he dealt with in his 8 years as Governor of Tennessee. He pointed out specifically that IDEA was one of those unfunded mandates.

Everyone in this body has heard from their Governors, school boards, administrators, teachers and parents about the importance of this issue. Unfortunately, instead of making IDEA funding a priority, Congress continues to pass new education programs that require more money, more resources, and more responsibility from the States. So we continue to force down upon the States, more unfunded mandates. Even though the purpose is noble, the cause is right, and we say on the floor of the Congress that we will help, we will provide those resources and those funds—in the case of IDEA, for 30 years we have not done that. We have not fulfilled the statutory commitments that we made to the States and the school districts—and ultimately to our children.

For the past 7 years, I have worked on a bipartisan basis with Senators HARKIN, DODD, KENNEDY, JEFFORDS, WARNER, COLLINS, CHAFEE, SNOWE, COLEMAN, ROBERTS, and others to accomplish this task. Three years ago, as was noted by my distinguished colleague from Iowa, the Senate agreed to an amendment that Senator HARKIN and I offered to the No Child Left Behind Act. The amendment provided mandatory funding for the IDEA program. Unfortunately, this amendment was removed during a House-Senate conference in 2001.

Today we have another opportunity to show the Senate's support for mandatory IDEA funding by passing the Harkin-Hagel amendment. Although we have had great success in increasing IDEA appropriations from $2.3 billion in fiscal year 1996 to $10.1 billion in fiscal year 2004, we still have a long way to go before meeting our total Federal IDEA funding responsibilities. The cost of special education is high. We understand that. But it is the thing that is most important for the parents, the teachers, and the children. By underfunding the Federal Government's portion of IDEA, States and local school districts are forced to pick up the additional costs, adding to their already heavy tax burdens.

Our amendment has nothing to do with expanding the Federal role. It has nothing to do with expanding the Federal role in education. It is about meeting the existing commitments of the Federal Government under the current law.

While I share the same budgetary concerns as others in this body—we all

must share those concerns and act as prudent, wise stewards of the people's money—I remind my colleagues that despite our recent progress on IDEA, we are still only about halfway to meeting our Federal obligation that we made to the people of this country 30 years ago. We are not now meeting those statutory commitments. Although we made budget promises year after year, we continue to fail in meeting our annual discretionary funding goals for IDEA.

Last year the Senate adopted a budget amendment that would have increased IDEA funds by $2.2 billion in fiscal year 2004. Unfortunately, we came up $1 billion short, even though we had passed it in the Senate, by the time we finished the appropriations process. This is just another example of why mandatory funding is absolutely necessary to fulfill the commitment of Congress to IDEA. Meeting our Federal commitment to IDEA would help school districts fund additional education priorities such as facility improvements, teacher salaries, and purchasing upgraded hardware and software for the classroom.

On another point that needs some clarification, the Harkin-Hagel amendment, this amendment that we debate this morning, would not take away the authority of Congress to reauthorize this program. There seems to be some misunderstanding about that issue. In fact, our amendment includes language that states that nothing shall prevent future reauthorizations.

I urge my colleagues to vote today to fulfill America's commitment to IDEA funding. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I yield at least 7 minutes to the Senator from Vermont, my friend and colleague who has spent a great part of his life and career in the Senate on educational issues, and especially on this particular issue. It is important that we hear his voice. I yield 7 minutes—more time if he so desires.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. JEFFORDS. Mr. President, it was many years ago the Senator from Massachusetts and I sat on the committee that designed this bill and passed it with all the expectations of it being fulfilled. But we still are a long ways from that.

I support the bipartisan Harkin-Hagel amendment to S. 1248, the Individuals with Disabilities Education Improvement Act of 2003.

This amendment would fully fund the Federal share of special education within 6 years, and finally meet the commitment that Congress made in 1975 when the original IDEA law was enacted.

And although I am supporting this amendment, I must admit that my emotions are mixed.

That is because we have been trying to accomplish this task for 29 years, and for 29 years we have failed. Quite simply, this should have been done a long time ago, and it pains me that we are still debating this issue.

In 1975 I was a member of the House-Senate conference committee that authored the Education for All Handicapped Children Act.

This came after courts across this country ruled that State and Federal constitutions obliged schools to provide all children with a free and appropriate education.

At that time, we in the Congress enacted a funding schedule for the Federal Government's share IDEA dollars.

We calculated the cost of educating a disabled child to be about twice that of a non-disabled child. Based on that calculation, we committed the Federal Government to pay 40 percent of the national per-pupil expenditure for each disabled child's education.

The schedule was for the Federal Government to pay 5 percent by 1978; 10 percent by 1979; 20 percent by 1980, 30 percent by 1981; and 40 percent by 1982.

Currently, we are not even meeting the 1980 allocation of 20 percent. In fact, we are only providing states with 18.6 percent of the costs. This is a disgrace.

And according to the Congressional Research Service, if we continue increasing funding at a rate of one billion dollars each year, we will never reach our goal of 40 percent set in 1975.

Every dollar that the Federal Government fails to provide must be supplied by the State and local governments, which usually translates to higher property taxes.

For communities that often struggle to pass school budgets, our failure to meet our promise may fuel resentment against families that already have enough to deal with in raising a child with special needs.

In many small towns, such as those in Vermont, Iowa, and Nebraska, a single child with severe disabilities can have a significant impact on a school's budget.

Yet even though the Federal Government has broken its promise year after year, great progress has been made and the States and local school districts deserve a lot of the credit for providing quality education to so many children.

It is long overdue that we here in the Congress stand up to our responsibility to support all of our children, schools and communities.

If 29 years has shown us anything, it is that our children do not benefit from hollow promises.

The underlying bill is a solid piece of bipartisan legislation. There are some compromises on difficult issues such as how children are disciplined. But none of these issues addressed in the bill is as important as the subject of the amendment—fully funding IDEA and treating the annual funding increases as mandatory spending.

Although I am supporting this amendment, I am deeply troubled that some may consider the funding mechanism being proposed here is a gimmick since the current $10 billion Federal allocation will remain as discretionary spending in the language before us. If we are successful in passing this amendment—and I hope we will be—the integrity of the amendment will only be upheld if the current $10 billion continues to be used only for IDEA.

Further, that $10 billion must remain $10 billion and not be reduced and used for non-IDEA programming. As important as it is to vote for this amendment before us, it is equally important to commit to protecting the level of funding.

I urge my colleagues to support the amendment. The time is long overdue for fulfilling our promise.

I have a question for the Senator from Iowa, the sponsor of the amendment.

As we have discussed, the amendment before this body makes IDEA funding increases mandatory. The Senator from Iowa is a member of the Appropriations Committee and a ranking member of the subcommittee that overseas IDEA spending. Is it the understanding of the Senator from Iowa that the current discretionary allocation for IDEA, which is $10 billion, will continue to be dedicated only to IDEA programming and not reduced if this amendment is agreed to?

Mr. HARKIN. Mr. President, if the Senator will yield, I respond by saying to my friend from Vermont that I appreciate his question. I want to assure him that, as he knows, I am committed to fully funding IDEA. This amendment—I know I can speak for my colleague from Nebraska also—presumes that the discretionary rates will remain dedicated to special education, and I am fully confident that will be the case.

I have been on the Appropriations Committee now for 20 years and on the subcommittee that funds IDEA. My experience in 20 years is that it has never been cut. Maybe it has not been added to much, but I have never known anyone to try to cut it. Right now, Senator SPECTER is the chair of that subcommittee. I want to assure the Senator that no one has any intention of cutting IDEA. Those of us on committee would resist that. Again, Senator GREGG is also on the subcommittee, and I assume he doesn't want to cut IDEA either. There has not been a cut in IDEA funding in 25 years. There will not be any now on the discretionary account.

Mr. JEFFORDS. I thank the Senator for that commitment and understanding.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I yield 3 minutes to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington is recognized for 3 minutes.

Mrs. MURRAY. Mr. President, I rise in support of the amendment to fully

fund IDEA offered by Senator HARKIN and Senator HAGEL.

Nearly 30 years ago the Federal Government made a commitment of equal opportunity to our Nation's children with disabilities. With that commitment, we promised that the Federal Government would uphold its end of the bargain and pay 40 percent of the average per-student cost for every special education student. Today, however, the Federal Government is paying less than 19 percent of that cost.

Over the past couple of years, IDEA has received significant increases but, according to the Congressional Research Service, at increases of $1 billion each year, the Federal Government will never fulfill its promise of funding at 40 percent. Further, if annual increases were $1 billion plus inflation, we would not reach the promised level of 40 percent until 2035, more than 30 years from now.

The Harkin-Hagel amendment increases IDEA funding over 8 years by $2 billion per year through mandatory funding. Mandatory funding is what it is going to take because local schools today are already struggling with the requirements of the No Child Left Behind Act, the lack of promised Federal funding, and the dismal financial picture still facing many of our States and local governments. It is going to take real funding through mandatory spending to make up for all of those gaps.

This gap in special education funding, by the way, doesn't just hurt disabled students; it hurts their classmates as well because we are forcing schools to make difficult decisions with regard to which kids get funding. In order to make up for the Federal funding shortfall, many school districts have been forced to take money from their general education budget, which affects every single student. I know we can do better for America's disabled students. Let us not make them wait another 30 years to fully fund this law.

I urge my colleagues to fulfill the promise of IDEA and support the Hagel-Harkin amendment.

Thank you, Mr. President. I yield the floor.

Mr. KENNEDY. Mr. President, we have a number of other speakers. I yield myself 6 minutes.

First of all, I congratulate the Senator from Iowa for his perseverance in ensuring that this issue would be brought to the floor of the Senate so the Senate can have an opportunity to vote on this very important question that makes an enormous difference to hundreds of thousands—millions—of our fellow citizens, primarily the parents but certainly the children who will also be affected. I commend him for his doggedness and perseverance in pursuing what is basically a fundamental civil right.

The holdings by the courts of this country have said under the equal protection laws that these children need to have the kind of necessary and reasonable accommodation they are entitled to under our Federal Constitution; therefore, we have the responsibility to make sure they are going to be protected and they are going to receive these kinds of educational opportunities.

As my good friend from Vermont pointed out, he has made special education one of his real priorities in this institution. Over the course of his very distinguished career, he has added immeasurably to the scope and understanding of the realization of the education for needy children with special needs in this country. But he remembers, as I do, when we were trying to provide—going back to 1965 when we passed the Elementary and Secondary Education Act—some funding for special needs children. Over a period of years, we enhanced that funding to try to provide some help for special needs children. But all of that changed dramatically after we had the court decisions that interpreted the Equal Protection Clause to ensure that we were going to have to make sure children with special needs were going to be able to have educational opportunities.

We passed the IDEA bill. What was the rational here in the U.S. Congress? What was the rational with the President at that particular time? It was a general recognition that to educate a special needs child, it was going to cost effectively double what it costs to normally educate a child in this country. It is going to cost double that—double of that in my State of Massachusetts. It varies slightly from different States, but, nonetheless, we recognized that it was going to be effectively doubled. That was the best estimate. That was the testimony cited. It was the judgment and the decision that the Congress was going to help and assist the States and local communities. We ensure over 80 percent of the funds provided in this program go to the local community. There is some money that can be retained at the State level in terms of training programs and coordination of various services, but this program was driven to the local level to help offset the additional burdens that taxpayers would have in local communities.

As we all know, one of the extraordinary demands we have seen in small and large communities is when a family has a special needs child who takes the extra services. They go to those town meetings and we find out who is going to end up paying for those needs. In my own State, even with the IDEA, it only offsets 8 percent of the education program. We will come back to that later. However, it is only 8 percent. The greatest percent, 50 percent, is raised at the local level in local taxes. So we have services that will be necessary for special needs children, causing particular hardships on small communities because of these additional expenditures.

When we fail in the Senate to provide that 40 percent, so often, particularly now when we have scarce resources, we see the kind of tension that is taking place between parents who have children who do not have disabilities and want to see the educational opportunities enhanced and those who have special needs and want to make sure their children are going to be covered. It brings enormous tension in local communities, neighbors struggling against neighbors.

We made the judgment and decision in 1979 when we passed the first IDEA act. At that time, we were only covering 2 million of the disabled children. Generally, it was considered to be 4.5 million children. The States were covering 2 million children. There were 37 States that had IDEA-type legislation, but by and large, we were not providing help and assistance to these children, even though too often we saw the situation where these children were effectively being warehoused, pushed off into basements, pushed off into attics, pushed off into remote areas.

The idea they were getting a benefit of any education defied the imagination.

We decided we were going to encourage the States, and the way to encourage the States was to indicate that we at the national level were going to be in partnership with the States, and most importantly, in partnership with local communities. That is where this commitment lies, with the local communities, the local towns. They pay the greatest percent of this burden. We were going to work with those local communities to help offset the expenditures.

We made a commitment that it was going to be 40 percent of that additional cost. That is the basis of the argument for the 40 percent—why it is 40 percent and not 50 percent, why it was not 100 percent. We wanted to be a partner. This is what the decision was. That was a decision and a judgment relied on by States and by local communities all across this country. That is a commitment and pledge that has not been kept.

As result of the fact we have not kept that commitment, local communities have been making up the difference and seeing their taxes rise to try to offset the challenges that local communities will face when they have special needs children. That is the issue we are trying to address today.

Today, we know we are fulfilling 19 percent of the challenge. The Congressional Research Service says, under the President's program, the way the administration is going, it would never be reached with increases of $1 billion a year. It will never be reached.

Senator HARKIN and Senator HAGEL have said we have committed ourselves to doing this. We ought to meet our responsibilities and provide these resources which are so necessary and can make such an important difference.

With the legislation before the Senate, with all of the changes—and I will wait to go over those various changes

made in the legislation, that we now will support and the contrast from 1997—we have brought this legislation up to where it can make an extraordinary difference, will make an extraordinary difference for those special needs children.

Now, people can ask, Where are you going to get the resources and where are you going to get the money given the kinds of challenges we are facing?

I just saw on the business page of the Washington Post, on Tuesday, May 4, ''The Federal Deficit Likely to Narrow by $100 Billion.'' That is this year alone. The Harkin amendment would take $2.2 billion out of that $100 billion that they expect this year over the other predictions. That is the responsible way.

I will not take the time now to go through the favorable comments that those in the Treasury and the Budget Committee have made in terms of what they are expecting regarding the windfall. It is a matter of priority. It seems to me, if we will have a $100 billion windfall that will come over the course of the summer, we ought to be able to afford $2.2 billion to meet our responsibilities to local communities all across this country that are trying to meet their responsibilities to educate children who have special needs. That is the issue.

I have great respect for my colleague and friend, the chairman of our committee. I am going to vote in favor of his amendment that will increase the authorization. If we increase the authorization, we are able to get the funding for that program, we would get to that 40 percent over a 7-year period, but, unfortunately, in terms of the authorization with the No Child Left Behind Act, we have seen what is actually appropriated and what is authorized are going in different directions.

It seems to me, if we are serious in trying to meet the needs of special needs children, we have the ability with this legislation, which will make the greatest difference in the world to special needs children in this country, that understands the importance of early intervention, understands the importance of transition, has brought into place changes in terms of the discipline, brings in other kinds of agencies so they will involve themselves. It involves the local school community to a greater extent, with greater flexibility, but still has strong accountability.

We have a very important piece of legislation. This can make an extraordinary difference. I hope our colleagues and friends will pay heed to the opportunities we have with the Harkin-Hagel amendment. It can make a very important difference. This is an obligation we have. We ought to meet the obligations we have made to families across this country. They are being hard pressed and particularly hard pressed now when many of the States are cutting back their support in terms of education funds. The burden is falling increasingly on these families.

We have an opportunity. With this positive news that is coming, we ought to make sure we support the Harkin-Hagel amendment and meet our responsibilities to special needs children.

I withhold the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. GREGG. Mr. President, I yield myself such time as I may need.

Mr. President, first of all, I, once again, thank the members of the committee for assisting in pulling together a bill which is a very positive piece of legislation in the area of special education. We all understand the historical development of special education. It has been outlined quite adequately and well by the Senator from Massachusetts, the fact that for many years these children were put in special rooms or put in the basement and left there to basically be warehoused, for all intents and purposes.

Then, with the passage of the special education law back in 1976, that all changed, and these kids ended up having an opportunity, a shot at decent education, and, where mainstreaming came into play, we tried to get them into the classroom, and to the extent they could not be in the classroom, they would get high-quality care.

I have had a personal involvement in this issue for a long time. I chaired, was the president of, and a member of the board of directors, of a very excellent center for special needs children, which is an educational facility, not a hospital, called the Crotched Mountain Rehabilitation Center, in New Hampshire. I was basically very active in that center for many years, until the mid to late 1980s. So it is an issue that concerns me a lot.

I want to make sure these kids get adequate care and adequate education. This bill makes giant strides toward addressing some of the problems that have evolved over the years relative to special needs students, especially as we attempt to reduce the amount of bureaucracy and paperwork that teachers for special needs children specifically have to handle.

It is estimated that some teachers for special needs children—probably even a majority—spend almost a day and a half of every week essentially doing paperwork to maintain the lesson plans and the planning process and making sure all the different regulatory activity is addressed relative to their jobs, instead of actually being with the child and doing the classroom work that is so important. So this bill tries to address that.

It also tries to address the excessive litigiousness that has occurred over the years relative to special needs children, trying to reduce that, and getting us out of the courtroom and back into the classroom with these kids. It is a very important factor.

It also addresses the question of discipline. This has been a problem. It tries to give teachers and school officials a little more control, significantly more control, in how they manage their classrooms and dealing with children who are, unfortunately, disruptive, but does it without uniquely penalizing a child whose disruption is a function of their problem which they may have which gives them special needs. So I think we reach a balance that is very constructive.

The bill is a positive step forward in trying to make the special education laws more responsive to the outpouring of concerns we heard from school teachers, administrators, and parents across the country, but especially, in my case, from New Hampshire. So we are trying to address and improve the law to make it more efficient and effective.

We focus it now more on accountability. We want to make sure these children learn to the extent they are capable of learning. Rather than just going through a series of checking off boxes because this has been done and that has been done, what we want to know is, are there results? We try to adjust the process to focus on results versus bureaucracy and input. So that is the goal of this bill.

It is a good piece of legislation. It is bipartisan, as has been mentioned. The issues which remain are significant, but they are not the core of the bill. The core of the bill is how it addresses the needs of that child.

One of the major issues, obviously, that remains is how we fund this legislation. This has been a primary concern of mine since I was elected. When I had the good fortune to serve as Governor of New Hampshire, I believed that the single largest unfunded requirement the Federal Government was putting on us, outside of some of the environmental requirements, was this issue of how we paid for special education. I did come here with the intention, and have, I believe, had reasonable impact on getting those dollars up, getting the Federal dollars up, the commitment up. It has been a long and very difficult road, but it has been a road where significant success has been accomplished also.

I do not think we should ignore the fact that we have dramatically increased funding in the special education accounts. In fact, if you look at the special education funding accounts, I believe you will find they are, as a percentage—obviously, not in gross dollars, but as a percentage—the fastest growing funding area in the Federal Government, and have been in that arena for the last 4 years during this President's time, and even prior to that since the Republicans took over the Senate.

I think it is important we refer to some of the history of what was happening, and how we have increased funding in these accounts. First off, in 1996, when we Republicans retook control of the Senate, myself and other Members of the Senate, including Senator LOTT and Senator SPECTER, decided to make it an absolute priority.

In fact, it became S. 1 at that time, the first bill we introduced, that we would increase the funding for special education programs.

We started a process of increasing the commitment to funding to those programs, which was significant. This chart reflects that increase. We have gone from $2.3 billion—and each one of these increases represents very substantive and dramatic increases. By the way, almost $1 billion a year, since 1996, on a compounded basis, has been going into the special education accounts. So we went from $2.3 billion, when we started this aggressiveness—and I would like to think I was one of the initiators of this, as was Senator JEFFORDS at the time—and have now moved it up to $11.3 billion.

As a percentage, in 1996, when we started, the Federal Government was paying maybe 6 percent of the cost of special needs children. Now we are paying about 20 percent of the cost of special needs children.

I think it is very important in the context of the debate to put this in perspective relative to what the commitments made by the Clinton administration were during this time because what happened during this period was that, actually, President Clinton did not send up any budgets which increased special education funding until the last 2 years of his administration. In fact, he was flat-funding special education throughout his administration, for all intents and purposes. It was not until the Republican Senate insisted that dollars be put into special education, and we increased the funding by $1 billion a year, as I mentioned, starting in 1996, that President Clinton actually responded to that, and in the last 2 years of his administration started to put funds into this account.

If you look at it by year, you will notice essentially the Clinton administration's funding levels were basically flat. If you look at our funding, you will see that it increased dramatically during this period. In fact, in gross terms, over the 8 years of the Clinton administration, his commitment to special education was $29 billion. In the first 4 years of the Bush administration, the increase is $38 billion. So just in a period of 4 years, President Bush has dramatically increased—almost by 50 percent—the total increases which were made to special education funding during the 8 years of President Clinton's administration.

This reflects the fact that once the Presidency changed, and President Bush came into office, there was actually even an acceleration of funding into the special education accounts beyond what was occurring when we had a Republican Senate and a Democratic President and the Republican Senate was pushing the issue. Now we had an actual President who was in agreement with accelerating special education funding, and we accelerated that funding rather dramatically.

President Bush, in every budget he has brought forward since becoming President, has proposed an increase of at least $1 billion—and that is a compounded number—so that we have seen this rather dramatic increase in funding from the administration over this period of time which has led to this huge increase—significant increase—which, as I said, is one of the fastest growing percentages in the Federal budget, if not the fastest growing percentage in the Federal budget of funding for any account. And that has occurred in the special education accounts.

In fact, when I looked at Senator HARKIN's chart, I found it interesting that at least he gave credit to the fact that the President was increasing funding $1 billion a year—$1 billion a year; $1 billion on top of $1 billion. That was not enough to reach the goals that we had hoped to reach. But it was those big increases that he was reflecting there. And it is ironic that that would be attacked, that the President would be attacked for only increasing funding $1 billion a year—''only,'' using the term from the other side—only increasing funding $1 billion a year and $1 billion the next year which is $2 billion, and a billion dollars the next year which is $3 billion, that he would be attacked for that. When the Democrats controlled the Senate and the Democrats controlled the Presidency, they flat-funded this account. When President Clinton was President and we controlled the Senate, we had to really pull teeth to get the funding up. Now we have a President who has been actively promoting the expansion of funding in these accounts, aggressively and rather dramatically expanding it, and what do we hear from the other side: You are only doing $3 billion, $1 billion 1 year, $1 billion on top of that, $1 billion the next year. It is a little inconsistent, to say the least, if not a touch hypocritical to make that statement in the context of the last time the budget was actually under their control.

In fact, if you go back to the last time Senator HARKIN was the appropriating chairman—there was a period here where the Democratic Party did control the Senate, while President Bush was President, has been President. During that period Senator HARKIN brought forward an appropriation, when he had control over the appropriations accounts that deal with special education, which did not come anywhere near the number which he now claims should have been funded. He is claiming the funding increase should have been $2.2 billion a year under his own chart. That is what he is saying.

Under his budget, as he brought it out—actually he never brought it at the floor of the Senate. It was passed through committee. They never actually brought a budget to the floor and they never brought an appropriations bill to the floor. Under his appropriations bill as it passed out of his committee, I believe his number was $875 million that he had for an increase in the account. It might have been $1 billion. Whatever it was, it was less than the full funding he now says has to be given or should have been given, even during that time under his own charge, to special education.

So there is a disconnect. When they are in charge, when they control the Presidency, when they control the Senate, they flat-fund special education. When they control the Presidency and we control the Senate, we have to pull teeth to get their President to send up a budget that increases special education. When they control the Senate and we control the Presidency, they send out an appropriations bill which is at least $1 billion less than what they claim we should be doing. There is, to say the least, a disconnect.

The fact is under this President we have seen the fastest growth in special education funding that has occurred in the history of the accounts. We have seen growth in special education funding in 4 years of $38 billion by President Bush as compared with $29 billion over 8 years of the Clinton administration.

I believe when we make the case on this side of the aisle that we are committed to special education funding, that we are doing what we think is reasonable and capable within the context of this budget process—remember, we are running a deficit—to fund special education, where we are giving it the single biggest increases of any account in the Federal Government year after year after year on a percentage basis, that we come to this argument with significant credibility on our commitment to fund special education and fund it aggressively.

That brings us to the substance of the debate on the amendment today. What Senator HARKIN has proposed is we take prospective payments to special education accounts and make them mandatory. Remember, this creates a whole new concept of how we fund things around here. This is a brand new idea—and not a very good one—which suggests we create a new highway where you are going to have discretionary accounts funding the vast majority of the spending, and then you are going to put on top of the discretionary accounts, like a layer cake, a mandatory account. This creates some pretty significant problems.

The first problem it creates is it creates a new mandatory account. Mandatory accounts are not a good idea when you are running a deficit because they basically mean you do not set priorities. We as a government, when you are running a $300 billion deficit, maybe more, $400 billion—according to Senator KENNEDY, we are going to save $100 billion this year, so maybe we are down to $300 billion or we may be at $400 billion—but when you are running this type of deficit, we as a government have some responsibility to our constituents to be responsible and to make choices, to prioritize needs.

We, as the Senate, have historically prioritized special education very highly, at least whenever the Republicans have controlled the Senate. And we have asked for what would amount to a pathway to full funding by 2010. We have put in Senate proposals that have represented that approximately $2.2 billion in annual increases. We have done it the right way. We have, when we have done that, cut other accounts. When we have passed these increases in our budget proposals that have been at $2.2 billion, we have reduced other accounts to offset those increases. That is the priority we should set as a government.

But when you set up a mandatory account, you basically ignore priorities and you essentially say, let's add the money to the deficit, which is exactly what the Senator from Massachusetts is suggesting. That is a different approach. It doesn't happen to be our approach on this side of the aisle.

We think fiscal responsibility requires, especially in a time when we are running a deficit, that you set priorities. We believe we have shown, beyond any question on the facts, with these dramatic increases in special education funding, which we have done under Republican Presidents, under a Republican Senate, that in a competition for funds, special education wins and has won and will continue to win.

So to set up a mandatory account is a mistake, especially when you are running a deficit. It also creates a couple of other problems. One is that under the rules of the Senate, when you set up a mandatory account, you must reduce discretionary accounts dollar for dollar for that mandatory account. That is our budget rule. So as a practical matter, it is very possible that unless we decide to waive that budget item, we will actually end up reducing the discretionary spending that is committed toward special education, the $11 billion, in order to fund the mandatory spending. And we will probably end up or we potentially could end up, because this bill calls for $2 billion of mandatory spending, with a $2 billion reduction in discretionary spending so you would level-fund the mandatory. You would level-fund special education if the budget rules kick in the way they are written.

The practical effect would be there would be no net gain for special education funding, or it would be very limited. So this becomes a bit of an illusory term, when you are using mandatory and you merge it with discretionary accounts. If it were pure mandatory, I guess you could argue the funding would occur. But under our rules, it is not going to be pure mandatory. It is going to be this new hybrid, this layer cake, half mandatory, half discretionary.

The practical implication under our rules is you have to reduce dollar for dollar the discretionary accounts by the mandatory increase. What does that mean? Zero increase for special education, if these rules are applied in their present form.

There is another problem this creates, this new hybrid animal. For example, if we accept the fact the mandatory money is coming through and that the discretionary accounts are not reduced—in other words, say we waive this budget rule—we will create a scenario where the appropriators—of which I happen to be one and am very proud, and we do a wonderful job, but as an appropriator, I will tell you what I am thinking. I am thinking I just got $2 billion I don't have to spend on this discretionary account. I can put it somewhere else. Basically you are not guaranteeing this money at all. What you are doing is you are creating more dollar availability for the appropriator who has that discretionary account to use in some other area.

That is the distinct potential here because there is no—let us call it ''maintenance of effort'' language in this amendment for the Appropriations Committee. So as a practical matter, you don't resolve the problem this way. The only way you resolve the problem is to do it straight up, which is to say we should fund this account on a glidepath toward full funding, which is what the Senate has said.

We should use our appropriations authority and keep that discretion within the appropriations authority to accomplish that. We should set the priorities so that special education gets fully funded. That is what my amendment does. It sets up the authorization levels to allow the Appropriations Committee to proceed down that path.

Why do I think it will occur? Well, primarily because of the history here, which is that when we as Republicans control the Senate—and now we have a Republican President—we are making these huge increases in the special education accounts. So the alternative that we presented here is the more fiscally responsible way to do this. I think it is the more practical way to get to the ends at which we are aimed.

You can throw out this term ''mandatory.'' When you go home to your town meetings, it resonates well. I don't deny that for a second. But it is illusory when it is used in conjunction with the discretionary funding accounts and when used in conjunction with the budget rules as presently structured in the Senate. It literally means nothing. The only thing that is going to accomplish full funding for special education is the willingness of the Senate and the House, hopefully, which has not joined us in the past, to assert the $2.2 billion increase and move down that road and protect ourselves in conference with the House.

To pass the Harkin amendment may make us feel good politically, but it creates bad policy and doesn't accomplish our goals, which is to get full funding of special education. That is why I have put forward this alternative, which I think is a much more constructive approach.

I reserve our time and yield the floor.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Delaware is recognized.

Mr. CARPER. Madam President, I ask to be recognized for 3 minutes.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mr. CARPER. Madam President, as a former Governor for Delaware and chairman of the National Governors Association, for a long time I have supported full funding for IDEA. In fact, when Senator GREGG was Congressman GREGG, we served together in the House, and we talked about full funding for IDEA. We talked about the Government's commitment to 40 percent of the funding for special education and that we weren't coming close to it. Today, we are actually making progress in getting closer to that number. We are about halfway there. We have a good way to go. Senator HARKIN's and Senator HAGEL's amendment will take us where we need to go.

I rise to say I would like to be able to offer an amendment to the Harkin-Hagel amendment, but I cannot do it. Under the unanimous consent agreement, this pay-go amendment is precluded. Since I cannot offer it, I ask unanimous consent that this amendment be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

(Purpose: To pay for mandatory full funding of part B of the Individuals with Disabilities Education Act by restoring the top income tax rate to its pre-2001 level)

At the end add the following:

SEC. ___. RESTORATION OF HIGHEST INCOME TAX RATE TO PRE-2001 LEVEL.

(a) IN GENERAL.—The last column in the table contained in section 1(i)(2) of the Internal Revenue Code of 1986 (relating to reductions in rates after June 30, 2001) is amended by striking ''35.0%'' and inserting ''39.6%''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

Mr. CARPER. Madam President, I printed this amendment for Senator CHAFEE, myself, and Senator FEINGOLD, who have been among the champions for the pay-go principle. I think if things are worth doing, we ought to pay for them. If it is worth investing more money in our efforts in Iraq, we ought to pay for it. If it is worth funding special education, we ought to pay for that. I think that argument goes for both meritorious causes.

The thing about pay-go is that it calls for a 60-vote margin in order to bust the budget and the caps. We used to operate under these guidelines throughout the 1990s, when we went from huge deficits to balancing the budget.

Pay-go lapsed in 2001. We need to restore it. One of the issues being discussed and debated now in the conference on the budget resolution is whether to reestablish the pay-go principle. It ought to be restored and reestablished.

Today, rather than being denied the opportunity to offer this amendment

because of the procedures we are operating under, we would be able to cite the Budget Act pay-go principles and automatically have a 60-vote procedure before us. Having said that, we are operating under a rule that will—in this instance at least—require 60 votes, so that threshold of a 60-vote supermajority will apply even without pay-go.

I will vote for this amendment. I just wish we had the pay-as-you-go principle in place so we would not be denied the opportunity to offer this amendment and we could offer it routinely. That is what I wanted to say today. I especially thank Senator BAUCUS who was in line ahead of me.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Madam President, I ask to speak for 5 minutes in favor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. Madam President, I thank my friend from Delaware. I agree with him. I believe we should have pay-go principles in the Senate. I hope the Budget Committee adopts pay-go. I think it would be a dereliction of duty not to. I also support his view on this amendment.

For the last 10, 15 minutes I have heard a lot of complaints against the Clinton administration, against Democrats, how they have not really helped special education. One can use that argument and point the finger, playing one party against the other. I have all kinds of data that resoundingly refute the allegations made by the chairman of the committee. It is just not accurate. But I will not get into that. That is not why we are here.

We are not here to blame and say who is doing a better job, Republicans or Democrats. People back home don't care two hoots about that. They care about whether we are doing our job as a body. I submit that we are not doing our job with respect to providing the dollars for special education. I don't know about you, Madam President, but when I am in my State, I hear constantly from school districts, school administrators, about how pressed they are and their inability to meet costs and the cost increases.

As you well know, we have in America a system where elementary and secondary education is paid for basically by taxpayer dollars, property taxes. That is what it comes down to. People are stressed, with the economy not doing too well in our States. School levies are not going through. People cannot pay more property taxes to support anything. They would love to support their schools, but they cannot afford it.

Costs for school districts in Montana have gone up over 1,000 percent in the last 20 years; that is for special education and elementary education in general. That is the cost increase. School districts in Montana—and I daresay most school districts across the country—are facing this. What do we do about it?

As you know, Madam President, back in 1975, Congress passed a law—IDEA—regarding special education. What did that law provide? It provided for ramping up 40 percent payment of IDEA, of special education costs. That was the law in 1975. Beginning in 1978, there would be a 5-percent increase; in 1979, 10 percent of the funding; in 1980, 20 percent would be paid; up to 1982 when 40 percent—the full amount—of special education costs would be provided for by Uncle Sam. That was back in 1975 when that statute was passed.

Here we are in 2004, and I think we are only at 18 percent. We have not made good on our promise. We are way off base. So a lot of the data we have heard about a 365-percent increase is misleading. You can do anything with statistics. Those statistics start from a very low base, and I am just telling you what the law is. The law was that back in 1975 we would ramp it up to 40 percent by 1982. That is why it is our failure to do so. We are only at 18 percent; that is all we come up with. With costs going up so much at home, that is why I believe the Harkin approach makes sense. We need mandatory increases up to 2014—not discretionary, because it has been discretionary. And when the President is given discretion what has happened? Virtually nothing.

Sure, we are getting some increases, just a little bit, but it is virtually nothing. Congress always finds a way, Presidents always find a way, not to spend money on education. Other things seemingly are more important.

If we do not pass the Harkin amendment, mark my words, there is no way we are ever going to get up even close to 40 percent. We are not going to get up to 25 percent by the year 2014. It is not going to happen. It is only going to happen if we keep our feet to the fire and force the President and the Congress to come up with the promise that we should fulfill. We should fulfill it because we made that promise.

I ask for an additional 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. That is a promise we made. We should live up to our promise. No. 2, we are coming nowhere near living up to our promise. No. 3, costs are going up dramatically in all our States for special education, and we are not helping address that. And No. 4 is the tremendous importance of education in this country. We are competing worldwide with elementary and high school students in Pusan, Korea, in Czechoslovakia, high schools and elementary schools all around the world. Education is going to be the key to America's economic success in the future. It is going to have to be education. It cannot be anything else.

We need to educate our kids. We ought to set priorities for educating our kids rather than spending money elsewhere.

We have a lot of programs on which I do not think money should be spent. I think most Americans think our priorities are a little askew and that we should spend more on education, helping our kids, than we are thus far.

I heard the argument, well, gee, if it is mandatory, first, that is not necessary. That is the main argument to be made. I have shown how necessary it is.

The second argument I hear is, well, it is illusory, that perhaps the discretionary portion will not be provided. That is a false statement. First, we are talking about the very worst case scenario. The mandatory portion will be provided for. It is possible that the discretionary portion may not be provided for by Congress. That is possible. The very worst possible situation is that we only get the mandatory increase under this amendment, but sure as I am standing here, my colleagues know doggoned well that Congress is not going to provide the discretionary money, too.

We are talking about education, and with the mandatory increase provided for we are certainly going to provide for the discretionary portion, too. This amendment is a no-brainer. It is clear to this Senator this amendment must and should pass, for the sake of our kids. We have a duty on the face of this Earth, I believe a moral obligation, to leave this place in as good a shape or better shape than we found it. Clearly, that includes making sure our kids, special education students, are in as good a shape or better shape than we had when we were being educated, particularly given the competitive forces in the world.

I strongly urge the passage of this amendment.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Madam President, I thank Senator JUDD GREGG for his leadership on this issue. When I came to the Senate some years ago, there was no greater champion for IDEA funding by the Federal Government or improving IDEA than Senator GREGG. He has maintained that and he continues to be an expert, as my colleagues can tell when they hear him speak about it.

We have made tremendous progress since I came to the Senate in funding special education. We have seen the numbers, how much they have increased since 1996, and we will continue to make progress. We have gone from 7 percent of the funding for this education program for our schools around the country to almost 20 percent. We are going to keep on increasing that.

The legislation we have before us today, however, unanimously came out of our HELP Committee, of which I am a member. It was a product of a lot of hard work and hours and hours of discussion. There are a number of provisions in the bill that I would like to see improved and strengthened. Maybe some on the other side think it could

be improved more, but we hammered out this agreement because we need to move this bill forward. We need to increase funding, once again significantly, for IDEA. We need to give more control and make a better commitment to the practical application of the law.

The special education bill was enacted in 1975 with the goal of encouraging schools to mainstream students with disabilities, keep them in the normal classroom where possible and give special treatment where necessary.

States that follow Federal rules receive federal financial assistance, and in 2002, 6.5 million students were served through IDEA. Schools have responded to this challenge positively, and they are expending very large sums of money to meet the goals of this law. In fact, I remember distinctly several years ago the school board superintendent of a county in Vermont testifying that 40 percent of his county's budget for that school system went to the IDEA program.

In recent years, the President and Congress have increased the federal investment in this program. If the President's proposed budget is enacted, IDEA funding will have increased 376 percent since 1996, 8 years ago.

I have been repeatedly told, however, when I travel in my State, and I made this a special project of mine, that this funding is not the only problem. Repeatedly I have been told there are things bigger and more important than funding. One teacher who had been working in special education for many years, who is very bright and has a master's degree, told me: Jeff, we are not looking out for our children. We have lost sight of what is good for the students. What we are doing is filling out paperwork and keeping our sight on the lawyers. It is threatening the integrity of the system, and we are not focusing on how to help each individual child achieve their highest and best skills.

The paperwork procedures are burdensome to a significant degree. I have asked them about it. Too often teachers and principals are faced with a literal maze of regulations and laws that must be met before a disruptive child can be removed from a classroom. Too often school districts are forced to spend thousands of dollars on attorneys and litigation costs that could be avoided if the parties simply sat down and discussed the issues rather than forcing the disputes to court. These problems not only distract our dedicated educators from the core mission of teaching our children, they cause stress and confrontation that can be avoided if common sense were applied.

I have received letters from hundreds of teachers in my State, from parents and educators, who are concerned about the current management of this system. The frustration, the anger, and the compassion in these letters are powerful.

I have also visited schools across the State of Alabama and heard firsthand from educators about the problems the current law creates for students, parents, and teachers. I go into schools and I ask them to tell me what the problems are, what frustrates them the most. Almost universally special education, IDEA, comes up as one of the top examples of a program they believe is micromanaged from Washington, does not allow teachers who love children to be able to have the freedom to help those children in the best way possible. They have told me that problems with the current law are going to drive them out of the profession. They are going to leave the profession over these frustrations. They have dedicated their lives to improving the welfare of disabled children.

A veteran special education teacher wrote me this:

> I consider myself on the front lines of the ongoing battles that take place on a daily basis in our Nation's schools. I strongly believe that the current IDEA law fuels these struggles. The law, though well intended, has become one of the single greatest obstacles that educators face in our fight to provide all of our children with a quality education delivered in a safe environment. I have dedicated my life to helping children with special needs. However, at times my frustration has been so high that I have literally gotten in my car to leave—

Leave the profession, she means—

> but my moral responsibilities to the children I have in my class have kept me there. The law must be reformed now. As my grandmother said, ''right is right and wrong is wrong'' and to enable the current system to continue is just wrong.

Another 32-year special education veteran wrote:

> If IDEA is not revised to be less restrictive and burdensome, we might as well as kiss public education good-bye. If changes are not made, we will have one of the largest teaching shortages on record. In the past I have had 5 to 10 college students coming to me in the spring to apply for positions. This year I have none. Most are fearful of entering the special education field because of the threat of litigation brought about by IDEA.

They are afraid of being sued. The regulations are complex and there are a group of lawyers and specialists in this who descend on the system on a regular basis. So it is time for a change and Congress should be leading the charge for positive change, to make it better.

I have a number of other letters from teachers and students who fear for their safety every day. They feel handcuffed by the current rules and feel overwhelmed with the requirements of the current law. I believe it will be a tragedy if we lose proven, dedicated teachers because of the shortcomings of a Federal law that is not adequately fulfilling its purposes.

I saw a poll recently, I think in the State of Washington, of special education teachers. An astounding number said they did not expect to be in the profession in 5 years. This is the reason that is occurring.

President Bush has recognized the importance of the IDEA law, and the need to bring real reform to the system. In order to get an accurate picture, the President appointed a commission to review the law and provide recommendations. The commission held 13 hearings and meetings throughout the Nation and listened to the concerns and comments of parents and teachers, principals, and so forth. Over 100 expert witnesses and more than 175 parents, teachers, students with disabilities, and others addressed the commission. Hundreds have provided letters and written statements.

The commission distilled this information into a set of principles that were used during the reauthorization process. First, decrease the emphasis on compliance with procedure and increase the emphasis on results. That means decrease paperwork and that kind of thing, and ask whether children are benefitting to the maximum extent by the special efforts we are expending.

Second, simplify the law's burdensome due process requirements, which create inordinate amounts of paperwork, limit the ability of schools to properly discipline children with disabilities for inappropriate behavior, and intensify adversity between parents and schools. This is a big problem. Put two children in a classroom, one a disabled child, that child has substantially greater expectation of not receiving the same discipline as another child for the same offense. Sometimes the disability is totally unconnected to the discipline problem that shows up in a classroom.

A child who sells drugs, for instance. That behavior is very unlikely to be a part or product of the disability and that child should be disciplined as other children where that makes sense, and under the appropriate rules of the school.

Third, reduce misidentification of students, which has fueled growing IDEA costs. Too many students are being placed in IDEA programs who do not need to be there, and that is not good for the children and it is not good for the school system.

Finally, increase the role of parents in determining the most appropriate setting for their child's education.

This legislation does much to achieve those principles. It reflects a balanced approach that, as I said, was voted out of our committee unanimously.

On the question of discipline, that is something I have talked a lot about and our committee has worked on it. We didn't make big changes in the bill that came out of committee. We made some changes. We made some improvements in the law that I think certainly will put us on a more rational basis and will help reduce excessive litigation.

One of the things, for example, is this: Before a lawsuit is filed and a school board has to go to court, they have to be notified specifically of what it is the school is alleged to have done improperly with regard to their child, and the school board has a chance to

correct it. What we are finding is lawsuits have been filed all over the country, schools have been taken to court at great expense, and by the time they finish the litigation not only do they have to pay their own attorneys, not only are their own principals and teachers called out of classrooms to testify and prepare for trial, but they have to pay the costs of the plaintiffs' attorney if one thing they did was wrong. They may make eight allegations, but if they are wrong in any way and are found liable, then they have to pay the child's attorney.

We need to figure out how we can avoid some of this litigation. It is money out of the pocket of the school system. It is money not being spent to educate children but to litigate in court, and sometimes these cases cost hundreds of thousands of dollars in expenses for school systems. Nearly 8 in 10 teachers say there are persistent troublemakers in the school who need to be removed and we have created a system that is so complex and so litigious it is not working and it is driving up costs in an unwise way.

I will offer some more comments for the RECORD, but I will conclude by saying this: Special education is a big program in America today. This Congress, this Senate is increasing funding steadily for this program. We need to continue to do that and need to continue to reach toward that commitment Congress made before I came here to pay 40 percent of that cost. I think we should do that and we should be on the road to that.

However, as Senator GREGG knows—who is the senior member of the Budget Committee also and knows how things work here in reality—this is a weird deal, to mix and match discretionary and mandatory spending. In fact, we are criticized substantially in this body for going toward mandatory spending for too many programs. In fact, most objective observers in Congress believe that has diminished the ability of Congress to set priorities and accomplish good things for our children. We do not need to put this in mandatory spending. We need to continue the steady goals and progress we have made to reach the highest level of funding, reach the full funding we are committed to do.

I believe we can do that. I believe this bill is a tremendous step in the right direction toward that goal. I will continue to work for it.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BAUCUS. On behalf of Senator KENNEDY, I yield 4 minutes to the Senator from New Jersey.

Mr. CORZINE. Madam President, like many of my colleagues I rise in strong support of the Harkin-Hagel amendment to require full funding of IDEA, providing these increases over 6 years on a mandatory basis. It is straightforward. I think it is absolutely necessary. As a number of my colleagues have said, there is nothing that strikes more at the heart of my dialog with my constituents and those who are involved in the educational system than getting to full funding on IDEA. It is absolutely essential.

Before I go into some of the reasons, I also want to say how pleased I am with the work of the committee, for taking up this legislation, structuring it, and moving it forward, and with reform, but also for including some things I think were essential. There are provisions that were added at our request with regard to making funds available to improve programs for autism spectrum disorder, which is a very significantly growing, recognized disability many children are facing. We need to have funding in addressing it, particularly the early childhood elements.

I am also pleased the committee was willing to work with us to clarify parents' rights to represent their children in due process hearings.

I think it makes a huge difference as we go forward in making sure all of our children are represented. But my main point is it is not enough to say we all embrace dealing with special education. This program is drastically underfunded, and it is posing a significant burden on the citizens of my State and across our Nation.

It gets at the heart of the tax question. We put down what I think is a terrific legislative initiative in 1975 to deal with disabilities among children and to improve their educational opportunity. But we also put down an objective that we were going to move to 40 percent of the average funding for each child with disabilities. We are nowhere close. I think it is 18.5 percent or so. We are way behind. That is why it is mandatory to step it up over the next 6 years. It is so important. It is real common sense.

I have to tell you in my home State of New Jersey, school budgets are capped at only 3 percent annual growth per year. When the spending on special education goes up more, we end by accommodating mandates which are required by cutting other costs in our educational system. We set up a horrific dynamic in our local communities. The only other out on that is local property taxes, which at least in my State are the highest in the Nation, and we are already extraordinarily burdened by them. That is true across the country.

It is absolutely essential that we get to full funding. The difference in 2004 versus where we are today and where we would be if we had fully funded 40 percent is almost $300 million—$320 million, $319 million is what we are going to receive, and $641 million is what we would have received if we had full funding. It is a huge difference on the tax base in our community.

I cannot tell you that there is any other issue which generates more heat because it sets neighbor against neighbor in the school districts about how they have to make tough choices, or it forces us to go to the taxpayer and raise local property tax burdens which are already extraordinarily high in my State. But it is also true in other places.

I have an example of a situation in New Jersey where an individual talks about her son whose needs are being addressed in special education but also reflecting what it has translated into not only for her son but to the special education programs and the rising burden on individual property taxes. It is setting up a system of failure and conflict in our communities. That is unacceptable.

We need to accept our responsibility here in Washington to fulfill our pledge and our promise to move to that 40 percent so we don't have these dynamics. It is time it happened.

I fully support and compliment the distinguished Senator from Iowa. I hope my colleagues will support this amendment.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Madam President, we are going to hear a lot of rhetoric today. I want people to know exactly what it is about.

I will be opposing Senator HARKIN's amendment. I will be supporting Senator GREGG's amendment. Senator GREGG's amendment will actually work us toward achieving the goal of full funding for IDEA. It is not a political statement. We have been having this debate for some time. There hasn't been the kind of progress any of us would like to have on it, but there has been steady progress. There has been more steady progress since this President and Senator GREGG have been working on this issue.

During the 8 years President Clinton was in office, the increase in part B funds was $1.4 billion. Under this President—a much shorter time—it has been $3.7 billion. That is reality versus rhetoric.

I want to make a few comments about the bill as a whole because we haven't had a chance to actually debate that. I want to point out how bipartisan the reauthorization was that came out of committee, how well people worked on it, worked on it together, resolved differences and made it possible for it to come to the floor and now to pass the floor in a relatively short time, I hope, so we hopefully can have a conference committee and work out any differences with the House and get this legislation into place.

This reauthorization is past due. I am pleased the Senate has begun consideration of S. 1248, the Individuals With Disabilities Education Improvement Act of 2003. There are few issues as important as the education of our Nation's youth. Making sure all children receive a good education has been a longstanding goal of this body. I am pleased the committee was able to reach unanimous support of the underlying bill, and I hope this body will act

quickly to agree to this important legislation and send it to conference.

Since Congress first began providing State grant funding for the education of disabled students in 1966, the process for ensuring every disabled student receives a free, appropriate public education has been refined and improved from one reauthorization to the next. I believe this legislation is another important step in that process.

While there are many improvements to the law in this legislation, I want to highlight four changes which I feel are most important to my home State of Wyoming.

First, there is an increased emphasis on early identification and intervention. Wyoming currently uses the model that identifies students as disabled once they fall more than two grade levels behind. Many States use the same method, or a method called the IQ discrepancy test. Both of these models tend to limit the positive effects that timely services will have on a student's growth. Unfortunately, States are compelled to use these models because of the requirements that exist in Federal law.

This bill provides for a set-aside of part B funds that can be used for services such as tutoring or other special assistance to students who are at risk of being identified as needing special education. That will help these students meet their potential.

Research by the President's Commission on Special Education and the National Research Council has identified important benefits to providing early educational intervention. They suggest early educational intervention can reduce the number of children referred to special education.

That research also shows students receiving early educational intervention and who are referred to special education frequently require less intensive services.

I believe this is an important step toward ensuring that other disabled students receive the services they need without placing children in the special education programs unnecessarily. By using funds for early intervention services, schools will be able to provide services in a very seamless fashion to students with disabilities or students who may be unnecessarily referred to special education programs.

Second, this legislation addresses the needs of rural States by clearly defining what is a highly qualified teacher. Under the No Child Left Behind Act, which received large bipartisan support in Congress, all teachers in public elementary and secondary schools must meet the highly qualified teacher standard.

In rural States such as Wyoming, many teachers, including special education teachers, are responsible for multiple subjects. In my home State, they are sometimes responsible for multiple grades as well. The legislation we are considering would work hand in hand with the No Child Left Behind Act to help address the concerns of teachers in this challenging position.

This bill requires every disabled child to be taught by a highly qualified teacher, but it also maintains State flexibility to determine what constitutes highly qualified. The only requirement is that special education teachers have an undergraduate degree and be fully certified as special education instructors, and that the students have a chance to be taught by an instructor who is highly qualified in the subject area. The bill does not even require that be the same person.

In many schools, disabled students are placed in classrooms with their non-disabled peers, and they receive instructions from more than one teacher. Students with disabilities would be instructed in the appropriate subject area by a highly qualified teacher who has demonstrated mastery of the subject, but they would also receive support from a teacher who meets the highly qualified standard for special education. It is a very important distinction.

For teachers who are responsible for both the special education and the content area, this legislation preserves the flexibility of the State that was created under No Child Left Behind to define what constitutes a highly qualified teacher.

I continue to be impressed that more than 95 percent of Wyoming teachers meet the highly qualified teacher standard, including its special educators.

This legislation will support the commitment of States such as Wyoming with a 95-percent rate to place a highly qualified teacher in every classroom, whether it is a special education classroom or not.

The third point of the bill, that I want to address is that this legislation makes improvements to the disciplinary system that operates under current law. A concern I have heard from parents and educators is that the discipline of students with disabilities has led to the creation of a two-tier disciplinary system. Students with disabilities are treated differently from their peers because it is required by law.

I don't believe that is in the best interest of these students when we are asking, for academic purposes, that we place them in the least restrictive environment. It is inconsistent to say we would treat disabled students as we treat their peers until they are in need of discipline. Disabled students are able to learn responsibility just like their peers. We should give them a chance to learn the same kind of responsibility we expect of other students.

Many parents I talk with about discipline are concerned that we not allow teachers to discipline disabled students too harshly. I agree. I think everyone agrees. I support the bill we are considering because it preserves protections for disabled students, like the protection that schools must abide by the manifest determination standard, which requires schools to determine if the student's disability led to the behavior—that is a key—if the student's disability led to the behavior.

This bill also preserves the rights of parents to question the school's decision. I also believe this legislation makes significant improvements in permitting teachers and school administrators to properly discipline students with disabilities when a need is identified.

Schools are given a margin of flexibility to remove disabled students from their classroom when a dangerous situation presents itself. The school is still accountable to the parent, however, and must make every effort to return the student to the classroom as soon as possible.

Finally, I wish to highlight the issue of State flexibility. For years, local educational agencies have been permitted to use flexibility with their funding. As the Federal Government increases its commitment to funding special education programs, local districts in most States are able to shift funding into other priorities. Traditionally, their funding has not even been limited in its use to educational purposes.

This flexibility has never benefitted Wyoming. That is because Wyoming has decided to use an alternative financing method for its special education programs.

Instead of the State passing Federal funding on to the local districts, Wyoming retains the bulk of the funding at the State level and reimburses districts for their special education expenses. Part of the reason for this approach is we do not pay for our education with property taxes as most States do. We use mineral taxes, which come from a few spots in the State. This system has worked in Wyoming for several reasons, including the help it provides to shield local districts from the cost of services for severely disabled students.

Some of the districts in Wyoming are so small that a single student with a severe disability would require all of the funding available to that district to be spent on a single student. That would threaten the services to other children with disabilities and subject the district to due process hearings under the law.

Instead, Wyoming has elected to use its allocations under part B of the special education program as reimbursements. Even very small districts can confidently provide services to students with disabilities with the understanding that the State will reimburse them for those services.

Even though the system is much more effective at providing services to students with disabilities, the lack of flexibility in the use of Federal funding has tied the hands of the State's administrators who would like to use the funding for early identification and other educational programs. The irony

is, if Wyoming were to operate their special education programs differently, and less effectively, they would enjoy much more flexibility with their funding. Right now in Wyoming, families of students with disabilities are moving from other States to enroll their children in Wyoming schools because we have done so well at meeting their needs. Even though our programs are among the best in the region—and, I argue, among the best in the country—Wyoming is penalized for doing a good job just because we do it differently than Federal law suggests we do it.

The phrase ''one size fits all'' has been used a lot in the Senate lately on the subject of education. But at the risk of abusing the term, this is a perfect example of a one-size-fits-all program that does not fit Wyoming. If Wyoming were to pursue a less effective model of providing services to students with disabilities, the State could use more flexibility. Instead, because the State decided to use a system that places the needs of the students first, we are denied the same flexibility provided every other State.

The legislation we are considering now would address this concern. It would allow States that are responsible for the largest share of non-Federal special education funding to enjoy more flexibility at the State level. It is important to note that this flexibility is only applied to educational programs so no State can drain funding away from its educational programs for other purposes. The funding has to be used in conjunction with State educational efforts.

This is a critical piece of legislation, and one I feel strongly about retaining both in this legislation and the bill that is produced by the conference process.

Those are the four main points of the actual legislation. That is legislation, again, that we unanimously supported out of the Health, Education, Labor and Pensions Committee—that is no small achievement. It is important we move forward in the process. That is what we are doing now.

Of course, we are debating two amendments, the Harkin amendment and the Gregg amendment, which will each be voted on this afternoon. I will make a few comments in support of the Gregg amendment to fully fund the IDEA program.

According to assumptions in the Senate budget resolution this body passed earlier this year, we will have increased spending by 75 percent from 2001 levels. The Gregg amendment builds on those increases and sets us on a path to reach full funding by 2011. That is a very realistic path, one that we can do, one that we can slightly accelerate. It is not just a statement but something that can happen.

I have heard colleagues comment that we can do anything with statistics. That is a common perception. But if my colleagues would rather look at the real dollars, we spend more now on education than we ever have in this country at the Federal level. Right now, under the assumptions of the fiscal year 2005 budget, we will be at 20 percent of the share of Federal special education. The Gregg amendment would take us to the 40-percent mark in 7 years. That is the mark we have in the original legislation.

I have mentioned, again, that happened in 1966. We are at a higher level now than we have ever been. It is pretty remarkable since it took over 30 years to get to 20 percent, but most of the progress that has occurred has occurred under this President in the past 4 years.

I want to make it clear, we are closer to full funding now than we ever have been in the history of this IDEA program. To get there within 7 years is within reach, but we should not be confused that mandatory spending is the right solution. I can hear the Members who made previous speeches saying: No, no, this is not mandatory. The way I read it, it is mandatory. But even if it were not mandatory, I am not aware of a program, particularly not this program, where we reduced spending. Whatever level we take it to at this moment is where it will stay. Then we will fight to show we are more concerned than anyone else in raising the revenues in the future.

So we need to have a rational, realistic, and regular approach to raising the level of IDEA funding until we can come in compliance with the 40 percent that we promised.

We have made significant progress in the past 4 years toward full funding under the current administration and congressional leadership. There is no reason to assume we will not continue to make significant progress in the near future.

I want to mention again that under the previous President, during his 8 years, we increased part B funding $1.4 billion. Under this President, in 3 years we have increased it $3.7 billion.

I have to point out, under the previous administration we were funding during a surplus. We were funding in period of growth, not a recession. We were not funding during a time of terrorism. We were not funding during a time of war in Afghanistan. We were not funding during a time of war in Iraq. We were funding during a surplus, and we did not meet that 40-percent goal.

Now, when we have severe budget constraints, there is a political statement that says: Give it all to them. And then there is a balanced approach that Senator GREGG has that says: Let's grow it and really get it done and quit making the political statements on it.

We have an opportunity to advance IDEA and to advance the funding on it. I know we will take advantage of both.

I yield the floor and reserve the remainder of the time.

The PRESIDING OFFICER (Mr. HAGEL). Who yields time?

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, how much time remains on each side?

The PRESIDING OFFICER. The Senator from Massachusetts has 17 minutes 40 seconds remaining.

Mr. KENNEDY. How much time is on the other side?

The PRESIDING OFFICER. The other side has 25 minutes 15 seconds.

Mr. KENNEDY. Mr. President, I yield 7 minutes to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I did not hear that. The Senator from Massachusetts yielded me?

The PRESIDING OFFICER. The Senator from Iowa is yielded 7 minutes.

Mr. HARKIN. I thank the Presiding Officer. I did not hear that.

Mr. President, first, I would like to respond to my friend from New Hampshire who was in the Chamber earlier, and maybe some others, who talked about the GOP record. He had a chart that said Republicans have done more any way you slice it, and then went on to say that President Bush is attacked for increasing spending by $1 billion a year.

I want to address that with my friend from New Hampshire in the Chamber. I never attacked President Bush for this. I have not heard anyone on this side attack Republicans or President Bush for this. In the 30 years we have been discussing, amending, and fashioning disability policy in the Senate and the Congress, it has never been a partisan issue. It was not when we first did IDEA. It was not when we did the Americans with Disabilities Act. We may disagree on funding and stuff and how we do it, but I have never known it to be a partisan issue. I have purposely not attacked the President, the Republicans, or anyone else for this. No one on our side has on this point, and we are not attacking anyone.

So I refuse to look upon this as any kind of partisan issue. You can go back and look at who did what when, and all that, but what I want to focus on is the here and now. Where are we now? What did Congress promise? What kind of situation are we in? Let's look at the future.

I am sorry somebody is trying to put this in a partisan framework. It has never been that way. It has always been a bipartisan issue. We ought to continue on that approach. Yes, we can disagree on whether or not it would be discretionary or mandatory, but not on a partisan basis.

I want to talk also about the mix of mandatory and discretionary. There has been some talk that this is some kind of—I heard it said—''weird mix'' of mandatory and discretionary money. We have done that before. We have the childcare block grant. We have safe and stable families. We have some NIH funding. I have come up with this right now. There are probably a lot more programs for which we have both mandatory and discretionary funding.

Also, my friend from New Hampshire said there is some kind of budget rule—I did not get this clear—that means our amendment would result in a reduction in discretionary spending. That is absolutely not so. It is only so if you move money from discretionary to mandatory.

That is not what we are doing. We are adding money over and above discretionary. So there is no cut in any discretionary funding. So what the Senator from New Hampshire says is just not so.

I responded earlier to a question from Senator JEFFORDS that on the discretionary side we have never cut funding for IDEA, and we are not going to do so in the future.

Now, the Gregg amendment before us simply authorizes more money. But we have been doing that for 30 years—30 years—and we are still only at 19 percent of the 40 percent we had promised. The Gregg amendment does not change one thing. It does not change a thing—nothing. Kids, families, and schools will still be sold short.

Now, if anyone wants to know what authorizations mean around here, I would just use a statement from the Senator from New Hampshire that he made last September on a Byrd amendment. The Senator from New Hampshire himself said:

> Now, let's go to another issue, this concept that the authorized level has to be funded. This is a very unusual concept for Congress because for all intents and purposes Congress does not fund anything to the authorized level.

The Senator then went on to say: Authorizations simply are statements of intent, purpose, and good will.

Well, that is exactly what the Gregg amendment is. It is a statement of intent and good will, but it does not do anything. The Senator from New Hampshire himself said we do not fund to authorized levels. And that is all he has done, just raised the authorized level. It does not do one thing. If we want to meet our obligations and fulfill our promise, we have to adopt the Hagel and Harkin amendment to provide for mandatory funding.

Mr. President, let's get off all this talking about money and stuff and shifting it around. Listen to what Julie Reynolds said. She runs the Parent Training and Information Center in Iowa. She said to me that families and kids with disabilities are unfairly blamed for the shortfalls in schools. Parents are told not to ask for what the child needs because it costs too much. Parents are told their children with disabilities take away resources from other kids.

Families with kids with disabilities are not to blame. If there is anyone to blame, it is us in Congress for shirking our responsibilities for 30 years and not meeting that 40-percent level.

I am hopeful the Senate will step to the plate. I repeat, 2 years ago, this Senate unanimously—unanimously—adopted the same amendment that the Senator from Nebraska and I are offering today to provide for full mandatory funding up to that 40-percent level. Unanimously we adopted it. It was cut out in conference, and we were told we should come back when IDEA is reauthorized. Well, reauthorization is here. I hope the Senate will speak again with that same forceful voice.

Mr. President, I yield the floor and reserve the time I may have.

The PRESIDING OFFICER. Who seeks recognition?

Mr. SUNUNU. Mr. President, I ask unanimous consent that I be allowed to yield myself time from the majority side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, I rise in support of the Gregg amendment and in opposition to the Hagel-Harkin amendment.

I begin by commending the leadership of my State's senior Senator, Mr. JUDD GREGG, on this issue. IDEA and special education funding is an issue that has been a hallmark of the leadership provided by Senator GREGG in New Hampshire and across the country.

In New Hampshire we still fund education locally. That is one of the reasons we have had historically such a strong school system. That means people really understand the shortfalls, the problems associated with education funding.

In New Hampshire people have recognized we have not done our job as a Congress and as a nation in funding the original commitment made well over 20 years ago to support IDEA and special education.

Since 1996, we have made enormous steps forward, again, under the leadership of Senator GREGG, Senator JEFFORDS, and others in this body, Congressman CHARLES BASS in the House, working on the Budget Committee, where I was privileged to serve as well. We have increased funding $8.7 billion for IDEA since 1996, increased funding $4.7 billion since 2001. That is the kind of leadership on meeting a funding obligation that had not been seen in this Congress in 20 years under Democratic support. I think that, to use a phrase, is putting our collective money where our mouth is, recognizing that IDEA funding needs to be a priority for American education.

The President's leadership on this issue has been outstanding. Those on the other side of the aisle might not like to admit this, but it is hard to argue with the budgets that President Bush has sent up where IDEA funding is concerned. There have been historic increases year after year since President Bush took office, increases in commitments in funding for special education that put the prior administration's budget requests to shame. That needs to be recognized as well as part of the debate.

We have a lot more work to do. Senator GREGG has outlined the need to continue these funding increases and, in the 2005 budget, that commitment is there, continuing the fight to meet our funding obligations. But putting the spending on autopilot, creating a new area of mandatory funding is not the solution.

Even more to the point, to the Harkin amendment, this new idea where only the increases are mandatory is effectively a shell game, where current funding is left as discretionary, only the increases are mandatory. Under our current budget resolution and the 2005 budget resolution, these mandatory funding increases would require a dollar-for-dollar cut in other discretionary programs, of course, that are not specified in this legislation. That is simply wrong.

Placing funding on autopilot rarely, if ever, is the answer to the problems that we wrestle with in Congress. Even more problematic, this amendment falls short on oversight. Throwing the funding on autopilot removes Congress from its oversight responsibility. Most everyone who has followed the debate on this program recognizes that more needs to be done to make sure the program works better for those parents and children who are truly in need of the program's benefits.

Second, the Harkin amendment enables Congress to avoid setting priorities. That is simply wrong. It enables Congress to put the funding on autopilot, this mandatory spending idea, and then not have to make sometimes very tough but important choices around funding priorities. I ask my colleagues on the other side whether they have ever voted for amendments that actually reallocate appropriations from other programs in the Department of Education or anywhere else in the Labor-Education bill and put it into additional discretionary special education funding, much less offered such an amendment? It is not always an easy vote to take, but it is a vote that I have taken in the House to actually stand up and say: Given a current level of spending, whatever our budget is, I am willing to vote to take funding from one program and put it into special education because we recognize that it is the most important funding priority we could have at the Federal level where education is concerned. I am willing to stand up and take that vote.

I am anxious to see whether the authors of this amendment bring other amendments to the Senate floor in the appropriations process that reallocate those funds. It is always easy to come to the Senate floor with an amendment that adds $2 billion or $3 billion or $4 billion or $5 billion, increasing the deficit without regard. It is a lot tougher to come to the floor with an amendment that moves funding from one area to another and show that we are willing to set priorities and make sometimes difficult choices we are elected to make when we come to serve in the Senate.

I believe putting this spending on autopilot takes us away from that commitment to make tough choices and set priorities. That is why I will not support the Hagel-Harkin amendment and will stand with Senator GREGG and the important work he is trying to do as chairman of our Education and Health Committee.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I understand we have 10 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts has 10 minutes 30 seconds remaining.

Mr. KENNEDY. Mr. President, I yield myself 4 ½ minutes.

I join with my friend and colleague, Senator HARKIN, in making sure that this body understands, and our friends all across the country, that this really isn't a partisan issue. I, quite frankly, commend the fact that we had an increase in IDEA funding, and I give tribute to the Senator from New Hampshire for that increase in funding. It is true that under President Clinton we had the expansion, moving toward smaller class size, afterschool programs. We had enhancement of teacher training and other kinds of factors in terms of the previous administration. But there is no question that there has been an increase in IDEA funding. We grant that.

As Senator HARKIN has pointed out, the issue is what are we going to do in the future. This discussion is really at a rather significant time in our American history because next Monday we celebrate the 50th anniversary of Brown v. Board of Education, one of the most important judgments in terms of knocking down walls of discrimination in our country, recognizing that we were going to knock down the walls of discrimination on the basis of race.

Now for 29 years we knock down the walls of discrimination on special needs children, but we still have not fulfilled the requirement and the opportunity that presents. That is what the Harkin amendment is all about.

Pass the Harkin amendment and we meet that responsibility, and we meet that obligation in 6 years. That is what we do.

I am going to vote for the Gregg amendment that says he will increase the authorization. I am for it. If that is what passes, I will be there with Senator HARKIN and with Senator HAGEL battling to get the increased appropriations, but let's do it right. Why have we held these families up?

I have four books here, a foot and a half tall, with individual life stories that represent families and special needs children who are trying to make it in the United States. The question is, are we going to meet our responsibility? We have from newspaper reports now that we are going to have a bonus of $100 billion this June, $100 billion more. The Harkin amendment says, let's take $2.2 billion of that and commit it to these families right here who are struggling and trying to make it every single day.

Let me read from a typical letter, and it is replicated by the thousands. This is from Carla Leone of Arlington, MS:

> I have a 15-year-old son with Tourette Syndrome and associated disorders who is on an IEP,

—an individual education program—

> as well as a daughter in ''regular'' education. I had to quit my job in order to obtain special education services from the school district for my son—it was a full-time, complex job. First, the school didn't want to identify him as needing an IEP, then there was a several-year battle over what services he needed, and then once they agreed to services, there were a lot of problems with the school failing to provide the services (a common problem with implementation of IEPs).
>
> The basis for the problem is lack of funding, which pits regular education against special education, and gives the school major impetus from keeping the kids from being identified as needing special education . . . and most importantly fund this heretofore unfunded mandate.

That could not be any more clear or compelling. We ought to not only think of the children but of their mothers and fathers. That is what this is about. Certainly, this is a question of priority. We in this country cannot afford to not meet what we committed. This body committed to this. The House of Representatives committed to it. A previous administration committed to help those families all over the country. We are only reaching half of that commitment now.

The Harkin amendment will make sure we meet our responsibilities to all of them. What could be a better opportunity, a better priority? Money isn't everything, Mr. President, but it is an indication of a nation's priorities. That is what we have the opportunity to have in the Senate. That is why I believe the Harkin amendment should be approved.

I withhold the remainder of our time.

Mr. SUNUNU. Mr. President, I yield the Senator from Virginia 6 minutes.

Mr. WARNER. Mr. President, I ask unanimous consent that I may speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

PICTURES OF THE PRISONER ABUSE IN IRAQ

Mr. WARNER. Mr. President, I wish to address my colleagues with regard to the pictures of prisoner abuse in Iraq which will be sent up by the Department of Defense and will be available for all Members to review in room S–407 in 45 minutes.

Bottom line, I urge all Senators to avail themselves of the opportunity to examine this body of evidence. While I have not seen it specifically, it has been described to me. It is, in my judgment, another distasteful, nevertheless factual, part of this tragic incident regarding the allegations and the facts that document abuse by uniformed people of the U.S. Armed Forces against Iraqi prisoners. At 2 p.m., I urge your attendance.

I thank the leadership for their assistance in this matter. Yesterday, I contacted Senator FRIST and suggested that he and I and Senator DASCHLE and Senator LEVIN sit down and make the arrangements regarding these photos, and those arrangements were concluded late yesterday. The pictures will be brought up. They will remain in the custody at all times of the Department of Defense, and then they will be returned to the Department at the conclusion of our meeting.

Speaking just for myself, my guidelines as I look at these pictures are how I am obligated to address my constituents and indeed share my views with colleagues. These are the guideposts I will follow. First, at the hearing of the Armed Services—the first hearing on May 7—with Secretary Rumsfeld and the Chairman of the Joint Chiefs, as chairman, I was privileged to ask the first question. This is my question to General Myers:

> I would anticipate that you have consulted with your colleagues, not only the Joint Chiefs, but particularly in Central Command, and you are making, or have made, or will continue to make an assessment of the possible increase in risk to the men and women of the Armed Forces, the personal increase in risk to them, and indeed their colleagues in the coalition forces, regarding the release of these photos, and this story continues to reflect very deeply on the thinking and actions of other people.

We learned yesterday of the tragic event of the Berg family having lost that individual. You not only have to consider men and women in uniform, but that brave bunch of contractors who are taking a certain amount of risk to help rebuild the infrastructure in Iraq and to assist the men and women in the Armed Forces in carrying out their missions.

General Myers replied very clearly:

> Absolutely, we will. And we should not underestimate that impact.

Further, he said:

> I think we have a lot of troops in Iraq right now, after talking to General Smith and others, that are probably walking with—I mean, they're involved in combat, but they're walking with their head just a bit lower right now because they have to bear the brunt of what their colleagues up in Abu Ghraib did.

That is straight talk. We have had good, straight talk from the Secretary of Defense and all the witnesses in the course of our hearings. I commend the Department of Defense, from the President on down, for the manner in which they are dealing with this situation. That is my principal statement.

Second, we are a nation which operates on the rule of law. The Department of the Army and the Department of Defense are bringing accountability to those who allegedly have perpetrated these situations. That trial process must go forward in such a way that the release of these photos does not adversely impact or jeopardize their rights. It is for that reason that I

simply say to my colleagues that I think we have to be extremely cautious as we finish our work this afternoon, and then fulfill our obligation, in verbalizing—the pictures cannot be copied—our own interpretations and meaning of these photos, so as not to incite anger, in any way further, against our forces or others working in the cause of freedom. That is my view.

Further, I think caution should be used so as not to jeopardize under the Uniform Code of Military Justice and such other laws—and others may be brought to bear in accountability—in any way to jeopardize those trials. This Nation is a nation of laws. We are a strong democracy.

Secretary Rumsfeld, in his opening remarks, said:

> Mr. Chairman, I know you join me today in saying to the world, judge us by our actions, watch how Americans, watch how a democracy deals with wrongdoing and with scandal and the pain of acknowledging and correcting our mistakes and our own weaknesses. And then, after they have seen America in action, then ask those who teach resentment and hatred of America if our behavior doesn't give lie to the falsehood and the slander they speak about our people and about our way of life . . . Ask them if the willingness of Americans to acknowledge their own failures before humanity doesn't light the world as surely as the great ideas and beliefs that made this nation a beacon of hope and liberty for all who strive to be free.

The strength of America will be brought to bear as we address these problems in our military and go about handling this situation under the rule of law and holding those accountable. That shows the strength of a democracy. I think that is very important.

There is a Privacy Act which, in the minds of some lawyers, protects these pictures in a certain way from public disclosure.

So I simply counsel Senators—to the extent the executive branch has a responsibility to deal with future distribution of these pictures—to err on the side of caution. I think it would not be wise at this time to publish them. I believe the time to publish such photos should be during the course of the trials when the prosecution has a right to bring out certain photographs, the defense has a right to go and bring out other photographs, so you will have a balance of interests as to the photographs that are made public. Those trials will be public. At that time, no one could accuse the United States, for whatever reason, having released these photos earlier, of either jeopardizing the trial or trying to influence public opinion. Those procedures would be in accordance with the procedures of the Uniform Code of Military Justice.

Sadness, I know, fills the heart of all Americans regarding this episode in the otherwise very proud history of our military. Going back more than 200 years in our Republic, and looking forward, today 99.99 percent of the men and women in uniform are carrying out their missions in accordance with our finest traditions. They are going into harm's way, taking risks, and performing their missions. We must think of them. That is very much on my mind, and I hope it is in the minds of others as we look at this.

The Berg case has a specific reference to that heinous crime being committed to avenge the treatment of the prisoners in that prison. That is why I think further release at this time of these photographs, indeed, would put on another layer, but basically I don't think it will contribute materially to a further understanding of this tragic problem, to the extent that it overrides the other concerns of the safety of our forces, the safety of the civilian backup infrastructure, and the need for these trials to go forward in such a manner that no one can contest the integrity of the Department of Defense and the Army as they proceed to address this and hold those responsible accountable.

Mr. President, I suggest that the release of this material, which is not before the Senate—I repeat, we do not have custody of the photos—be considered by the executive branch—and perhaps wiser minds than I have a different perspective, but in the end, I counsel all caution as we verbalize our own views and understanding of these pictures, and as the executive branch moves forward with a decision regarding release.

I yield the floor.

Mrs. CLINTON. Mr. President, I rise today in support of the Harkin-Hagel Amendment which will meet the funding promises in the Individuals with Disabilities in Education Act, IDEA.

Almost three decades ago when Congress passed IDEA, this legislative body understood the additional costs that would be associated with providing an appropriate education to children with disabilities. Congress agreed back then that this fiscal responsibility should not fall entirely on the States and local communities. It decided the Federal Government would pick up at least 40 percent of the total cost of educating these children.

This promise was made nearly 30 years ago. Yet Congress has never fulfilled it. The Harkin-Hagel amendment, which has strong bipartisan support, will right this wrong by ensuring the Federal Government provides its fair share of the cost to educate all children with disabilities. That is why I am proud to cosponsor it.

The funds provided by this amendment will ensure that every child with special needs receives a free, appropriate public education. Today, all over New York and the Nation, children with special needs are being shortchanged because schools are wrestling to fulfill the competing demands on their budgets. Deficits are rising and State budgets are shrinking. And the funds provided by these amendments are crucial to ensuring all children receive a world-class education.

The Republican substitute for this amendment keeps funding for IDEA discretionary, which does not guarantee full funding. As we have seen with funding for No Child Left Behind, authorizations are an empty promise with this administration and the Republicans in Congress in control.

According to a report issued by the National Education Association last month, States and schools received only $18.6 billion of the $26.8 billion in Federal money authorized under the law during the last fiscal year. This amount falls significantly short of the total cost to implement No Child Left Behind, which, according to the NEA, will reach $41.8 billion this year. As one example of the high cost of NCLB, the Ohio Department of Education released a study last month estimating that the State will spend about $1.5 billion a year—more than twice as much as it now gets from the Federal Government to fund NCLB. And a recent Phi Delta Kappan article reported that public K–12 spending needs to rise by at least 20 to 35 percent to meet the goals of NCLB—an increase of $85 to $150 billion a year.

We cannot allow IDEA to continue on the same path as NCLB. Mandatory spending is the only way to ensure that Congress will actually fund the real costs associated with meeting these requirements so that our children and their families do not shoulder this burden.

Now more than ever, our school districts desperately need this support as they grapple with deep budget cuts and rising student enrollments. It is unconscionable for Congress to stand by and continue to fail to meet its funding commitments while schools in New York and across the Nation are laying off teachers, cutting critical classes and eliminating academic services.

Let me paint the picture of what is happening in school districts in some school districts in New York.

The Buffalo School district, where 80 percent of students come from families that are at or below the poverty index, is facing a $9.7 million cut in its education budget. To balance its budget, the Buffalo School District has had to lay off approximately 700 school personnel, cut vital services to students, and close down 5 schools this year. These choices will ultimately lower the quality of education for all of the 44,000 students enrolled in Buffalo schools, including the 9,266 students with disabilities.

However, this issue is not about budget cuts. It is about broken promises.

The Harkin-Hagel amendment says simply—the Federal Government's going to keep its word. It ensures that children with disabilities receive the programs and services they need to learn by providing the 40 percent of the cost that was promised back in 1973.

These funds mean children with special needs will achieve at higher levels and transition into the workforce as productive citizens. It guarantees the resources to recruit qualified personnel, provide teacher training and

ongoing professional development and provide supplementary services to effectively educate these children. Schools need actual resources to provide these services, not empty promises.

Before the passage of IDEA, children with disabilities received woefully inadequate schooling or no schooling at all. Each year Congress fails to live up to its commitment to adequately invest in IDEA our schools fall further behind in meeting their special education costs and our parents of children with disabilities have to fight harder to ensure their children receive appropriate educational services.

Children with special needs and their families should not have to shoulder this burden. We must do better by our children and their parents. I therefore urge my colleagues to vote yes on the Harkin-Hagel amendment.

Ms. COLLINS. Mr. President, I am pleased to be a cosponsor of the Harkin-Hagel amendment to fully fund the Federal share of the individuals with Disabilities Education Act. This proposal is long overdue and will help every school district in Maine.

IDEA is based on two fundamental principles: First, that all disabled children are entitled to a free and appropriate public education; and, second, to the maximum extent possible, these children should be educated alongside their nondisabled peers.

To help States achieve these principles, in 1975 Congress authorized funding at 40 percent of the average per pupil expenditure. Unfortunately, this funding level has never been realized, leaving States with insufficient resources and jeopardizing the achievement of IDEA's worthy goals.

In 1996, the year I was first elected to the Senate, the Federal Government provided only $2.3 billion for IDEA funding, about 7 percent of the promised level. Through our efforts in the Senate, IDEA funding has steadily climbed, reaching nearly $10.1 billion in fiscal year 2004, an increase of more than 300 percent. Despite this considerable progress, current IDEA funding still represents only half of the original 40 percent promised by Congress. This is an unfunded mandate that affects every State in the Nation.

Over the years, this shortfall in IDEA funding has placed a tremendous financial strain on communities in providing these services, and in particular, on small rural towns, such as those in Maine. According to recent CRS estimates, if IDEA were fully funded, Maine would receive approximately $104 million in part B funding, an increase of approximately $56 million over current levels.

While the shortfalls affecting Maine and other States are startling, they fail to convey the crushing financial blow which can result to a small community when a medically fragile, high-cost child with special needs locates there.

In these cases, school systems are often forced to cut back in services to all children in an attempt to meet their legal obligations. Unfortunately, this can result in resentment of these special needs children by members of their own community.

During my time in the Senate, I have consistently supported efforts to fully fund IDEA. In 2001, during Senate consideration of No Child Left Behind, I was pleased to join Senators HAGEL and HARKIN in sponsoring another amendment to fully fund IDEA. Although the amendment passed the Senate, unfortunately, it was removed during conference with the House.

After over 2 years of work, we now have before us a bill to reauthorize IDEA. S. 1248 has strong bipartisan support and reflects a bipartisan commitment to make the improvements necessary to ensure better educational services for disabled students.

For example, it contains modifications designed to improve parental involvement, to resolve conflicts more effectively and without litigation, and to reduce unnecessary paperwork. With these reforms in place, it is time for Congress to step up and meet its funding obligations under IDEA.

Our amendment would provide crucial resources necessary to support communities and special education students throughout the country. Specifically, it would provide mandatory funding increases of $2.2 billion each year for the next 6 years to reach full funding by 2010, and then maintain full funding in subsequent years.

I urge my colleagues to join us in support of this amendment. Let's make this the year where we finally make good on the promise to fully fund IDEA.

The PRESIDING OFFICER. Who yields time?

The Senator from Massachusetts.

Mr. KENNEDY. How much time do I have remaining?

The PRESIDING OFFICER. The Senator from Massachusetts has 5½ minutes remaining, and the other side has 9½ minutes remaining.

The Senator from New Hampshire.

Mr. GREGG. Mr. President, I presume the Senator from Iowa wants to close.

Mr. HARKIN. Yes.

Mr. GREGG. I have no problem with that.

We have talked a lot about, and I think debated rather extensively, the issue of what the proper way to fund this bill is. Again, I think our track record on funding is strong and reflects a very deep and aggressive commitment to getting the money that is necessary to address special needs children.

While we are discussing this bill and there is some attention on the bill, I did want to, however, mention—and I know we are going to discuss it later on—this commitment in this bill. There are a couple of items which are very important. The first is the commitment to go to basically an accountability system which looks at what a student learns versus what the procedure may have been to teach them. Rather than checking inputs, we are interested in outputs. We are interested in whether a special needs child is actually improving their academic ability.

This bill changes the focus of how we view the plans that are developed for children. It eliminates the very burdensome and unreasonable 813 procedural checklist that States have to follow in order to be deemed in compliance with IDEA. This type of checklist, in our opinion, was excessive bureaucracy and counterproductive to the basic goal, which is to get a child in the classroom and teach them to the fullness of their capabilities. So I think it makes significant progress in that area.

It also addresses a number of other issues, but specifically the overidentification of children into special needs. This is a real problem, excessive coding of children. It is especially a problem in minority communities where quite often children simply get coded because they do not have the skills when they get to school to be competitive with their peers and make a presentation on an IQ test which is adequate. This bill takes the IQ test and deemphasizes it as a way for coding these children and rather allows a variety of different proposals which came out of an extensive study in this area, the Commission on Excellence in Special Education, to be used for the purposes of deciding whether a child should be moved into the special education classification.

It is critical that we get control over this coding area because in some school systems upwards of 30 percent of the kids are being coded, and this is clearly inappropriate. It means the resources which should be focused on the children who really need assistance are being spread to a lot of kids who maybe are being coded because it is the easiest way to handle them and to move them through the system, not necessarily for their benefit but for the benefit of the administration of the school system. So we have tried to address that issue.

I happen to see that specific issue of overcoding as probably being the biggest problem we have in the whole structure of special education because not only does it mean that resources are spread too thin, but equally important, it means kids end up being stigmatized unfortunately early on with a special education status which affects their educational experience for the rest of their schooling, and that is not good for them if they did not need that sort of assistance.

Thirdly, it basically continues to move the goalpost. It is virtually impossible for us to get the full funding if every time we start to move toward full funding the goalposts of what full funding means get moved down the field further. That is what happens when there is this excessive coding.

So it has a debilitating effect not only relative to the child's experience

but also on the ability of the school system to get the funds where they need to be and also on the basis of how we are going to get enough funds into the school systems to meet our commitments. So this is a big issue. I think it is one that we have tried to address. We obviously have not solved the problem, but we have at least moved down the road toward addressing the issue in a constructive and bipartisan way in this bill.

So with those two points being made, I will reserve the remainder of my time and turn to the Senator from Iowa to close. If the Senator from Iowa is the last speaker, we will simply run the clock until we get to the time for the vote.

Mr. KENNEDY. I yield the remaining time to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. I thank Senator GREGG for his generosity in letting me close the debate. I also thank the Senator from New Hampshire and the Senator from Massachusetts for putting together a good bill. This is a good bill, except for the funding. There is a lot of good in this bill, and the Senator from New Hampshire and the Senator from Massachusetts have worked together, as we all have, to come together with a nonpartisan approach.

As I have said, this is the way we ought to deal with disability issues. We have in our long history, and we have continued that again in this bill, too.

When this Congress passed the Americans with Disabilities Act 14 years ago, we stated four goals. For people with disabilities we wanted equal opportunity, full participation, independent living, and economic self-sufficiency. Those were basically the same goals of the Individuals with Disabilities Education Act. We now see people working more in our society, people with disabilities being employed on jobs, but the basis of it all is education. That is where it starts.

If families with kids with disabilities are not getting the supportive services and the kind of teacher training that is needed to be able to teach kids with disabilities, if they do not have the materials, say, in Braille for kids who are blind, or interpreters for kids who are deaf, or if they do not have some mental health providers who can help kids who have perhaps mental problems in school, then all of the promises of the Americans with Disabilities Act is for naught because these kids will not get the education they need that will give them equal opportunity, full participation, independent living, and economic self-sufficiency.

The occupant of the Chair, my colleague and cosponsor of this amendment, Senator HAGEL, stated in his comments earlier about this being an unfunded mandate. This is one of the largest unfunded mandates that we have in our country. We hear about it all the time from the schools, from the parents, from the school boards. We have mandated that they must provide these services and then we said we are going to provide up to 40 percent. That was 30 years ago, and we are only at 19 percent.

So we have to ask ourselves about our priorities. This is an unfunded mandate. We made a promise; we have not kept the promise. Some say but the Harkin-Hagel amendment will add to the deficit. Well, it will add $2 billion on a budget next year of $2.3 trillion—less than one-tenth of 1 percent. When one looks at the whole national debt of $8 trillion, we are talking about a minuscule amount. For that minuscule amount, it means kids will get the services they need.

It means we will have more Danny Pfiffers, the young man I knew in Iowa who went to school, who was mainstreamed, the manager of his football team, acted in a school play. Danny suffered from Downs Syndrome. He got out of school. He got a job. He lived by himself. He was a taxpayer. This is what we want. It saves our society countless dollars in the long run, but even more important than that it enriches Danny Pfiffer's life, and it will enrich more kids' lives.

We have waited too long to make good on our promise. Now is the time to do it. It has to do with priorities. It has to do with integration. It has to do with all of us living together, sharing and caring about one another. We are all better off as a society when kids with disabilities are educated and mainstreamed in our public schools.

Lastly, the Gregg amendment will be the first vote. I do not see anything wrong with the Gregg amendment. It is authorization as a statement of intent, purpose, and goodwill. To quote my friend from New Hampshire who used the words to describe authorization last year, there is nothing wrong with it.

The Senator from New Hampshire is authorizing more money. That is fine, but it does not add one nickel to this unfunded mandate.

So the Gregg amendment is fine as a statement of purpose and good will and intention, but statements of purpose and intention and good will do not get the funds out to meet our obligation.

We said 30 years ago we would provide up to 40 percent. We are at 19 percent. This is the vote that will say to the families of kids with disabilities, we are going to meet our commitments and fund this unfunded mandate.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. I ask unanimous consent that we now proceed to a vote. I ask for the yeas and nays, and we will yield back the remainder of our time.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. HARKIN. Mr. President, I ask unanimous consent to add Senator PRYOR as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there a sufficient second? There is a sufficient second.

Mr. KENNEDY. Could we ask consent that be for both of the amendments?

The PRESIDING OFFICER. Is there objection pertaining to the yeas and nays on both?

Mr. GREGG. I intend to make a point of order on the second amendment. That will not be of prejudice to us?

The PRESIDING OFFICER. It will not be prejudicial. Without objection, it is so ordered.

The question is on agreeing to the amendment No. 3145. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Pennsylvania (Mr. SANTORUM) is necessarily absent.

Mr. REID. I announce that the Senator from South Carolina (Mr. HOLLINGS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

The PRESIDING OFFICER (Mr. SUNUNU). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 1, as follows:

[Rollcall Vote No. 92 Leg.]

YEAS—96

Akaka	DeWine	Lieberman
Alexander	Dodd	Lincoln
Allard	Dole	Lott
Allen	Domenici	Lugar
Baucus	Dorgan	McCain
Bayh	Durbin	McConnell
Bennett	Edwards	Mikulski
Biden	Ensign	Miller
Bingaman	Enzi	Murkowski
Bond	Feingold	Murray
Boxer	Feinstein	Nelson (FL)
Breaux	Fitzgerald	Nelson (NE)
Brownback	Frist	Pryor
Bunning	Graham (FL)	Reed
Burns	Graham (SC)	Reid
Byrd	Grassley	Roberts
Campbell	Gregg	Rockefeller
Cantwell	Hagel	Sarbanes
Carper	Harkin	Schumer
Chafee	Hatch	Sessions
Chambliss	Hutchison	Shelby
Clinton	Inhofe	Smith
Cochran	Inouye	Snowe
Coleman	Jeffords	Specter
Collins	Johnson	Stabenow
Conrad	Kennedy	Stevens
Cornyn	Kohl	Sununu
Corzine	Kyl	Talent
Craig	Landrieu	Thomas
Crapo	Lautenberg	Voinovich
Daschle	Leahy	Warner
Dayton	Levin	Wyden

NAYS—1

Nickles

NOT VOTING—3

Hollings	Kerry	Santorum

The amendment (No. 3145) was agreed to.

Mr. KENNEDY. I move to reconsider the vote.

Mr. GREGG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3144

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes equally divided prior to a vote on the Harkin amendment, on which the yeas and nays have been ordered.

The Senator from Iowa.

Mr. HARKIN. Mr. President, we just voted—I did, and so many of us—to say

we want to get more money into special education. That is what the Gregg amendment says, that we want to increase authorizations.

Right now, under present law, we can do whatever we want because it authorizes such sums as necessary. The Senator from New Hampshire put in there specific amounts, but it does not add one nickel to special education.

The next amendment, the Hagel and Harkin amendment, does that. It adds real money in mandatory spending, $2.2 billion a year for 6 years to get to that 40-percent level we promised 30 years ago.

This is one of the biggest unfunded mandates we have in our country. It is time that Congress lives up to the promise we made 30 years ago to help fund special education.

I ask for an aye vote on the Harkin-Hagel amendment.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, this Congress and this President have an exceptional track record on increasing funding for special education—over $1 billion a year, on a cumulative basis.

The issue of how you fund special education is a priority, and we have shown a commitment to that priority. It should be done within the context of setting priorities. Putting it into a mandatory account would take it out of the ability of this Congress to have the priority-setting process which is appropriate.

Furthermore, the way this amendment is structured, it might actually end up leading to a cut in discretionary funding in the special education accounts because of the uniqueness of our budget rules.

But, in any event, I make a point of order against the amendment. The pending amendment No. 3144, offered by the Senator from Iowa, increases direct spending in excess of the allocation to the HELP Committee under the most recently adopted budget resolution, H. Con. Res. 91, the concurrent resolution on the budget for fiscal year 2004. Therefore, I raise a point of order against the amendment pursuant to section 302(f) of the Budget Act.

The PRESIDING OFFICER. A point of order is made.

The Senator from Iowa.

Mr. HARKIN. Mr. President, I move to waive the relevant portions of the Budget Act to permit the consideration of my amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been requested.

Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Pennsylvania (Mr. SANTORUM) is necessarily absent.

Mr. REID. I announce that the Senator from South Carolina (Mr. HOLLINGS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 56, nays 41, as follows:

[Rollcall Vote No. 93 Leg.]

YEAS—56

Akaka	Dorgan	McCain
Baucus	Durbin	Mikulski
Bayh	Edwards	Murkowski
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Boxer	Graham (FL)	Nelson (NE)
Breaux	Hagel	Pryor
Byrd	Harkin	Reed
Cantwell	Inouye	Reid
Carper	Jeffords	Roberts
Chafee	Johnson	Rockefeller
Clinton	Kennedy	Sarbanes
Coleman	Kohl	Schumer
Collins	Landrieu	Snowe
Conrad	Lautenberg	Specter
Corzine	Leahy	Stabenow
Daschle	Levin	Warner
Dayton	Lieberman	Wyden
Dodd	Lincoln	

NAYS—41

Alexander	DeWine	Lott
Allard	Dole	Lugar
Allen	Domenici	McConnell
Bennett	Ensign	Miller
Bond	Enzi	Nickles
Brownback	Fitzgerald	Sessions
Bunning	Frist	Shelby
Burns	Graham (SC)	Smith
Campbell	Grassley	Stevens
Chambliss	Gregg	Sununu
Cochran	Hatch	Talent
Cornyn	Hutchison	Thomas
Craig	Inhofe	Voinovich
Crapo	Kyl	

NOT VOTING—3

Hollings	Kerry	Santorum

The PRESIDING OFFICER. On this vote, the yeas are 56, the nays are 41. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The point of order is sustained and the amendment falls.

Mr. GREGG. Mr. President, I move to reconsider the vote.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3146

Mrs. CLINTON. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York [Mrs. CLINTON] proposes an amendment numbered 3146.

Mrs. CLINTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To require the Department of Education to participate in the long-term child development study authorized under the Children's Health Act of 2000)

At the end of the bill, add the following:

TITLE V—MISCELLANEOUS

SEC. 501. AMENDMENT TO CHILDREN'S HEALTH ACT OF 2000.

Section 1004 of the Children's Health Act of 2000 (42 U.S.C. 285g note) is amended—

(1) in subsection (b), by striking ''Agency'' and inserting ''Agency, and the Department of Education''; and

(2) in subsection (c)—

(A) in paragraph (2), by striking ''and'' after the semicolon;

(B) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(4) be conducted in compliance with section 444 of the General Education Provisions Act (20 U.S.C. 1232g), including the requirement of prior parental consent for the disclosure of any education records, except without the use of authority or exceptions granted to authorized representatives of the Secretary of Education for the evaluation of Federally-supported education programs or in connection with the enforcement of the Federal legal requirements that relate to such programs.''.

Mrs. CLINTON. Mr. President, I rise in support of my amendment to the Individuals with Disabilities Education Act that is being considered today. Before I get into the amendment, I thank the chairman and the ranking member of the committee, Senators GREGG and Kennedy, for all their hard work in bringing this bill to the floor. It has been a long and, at times, I know a tedious process.

The issues inherent in this bill are complicated, and I respect the strong effort of both Senators GREGG and KENNEDY to work together in a bipartisan fashion to move the process forward. I also thank their two key staff members, Connie Garner for Senator KENNEDY and Annie White for Senator GREGG, because they have worked extraordinarily hard and diligently to ensure that this legislation, which affects millions of children with disabilities, will be reauthorized and will improve the lives of so many of these children and their families.

I also thank Senators GREGG and KENNEDY for being supportive of this amendment.

My amendment is very simple and straightforward but I think very important. It proposes to make the Department of Education a key partner in the development and execution of the National Children's Study.

The National Children's Study will be the most important study of children with disabilities ever undertaken. It will provide a comprehensive examination of the effects of environmental influences, as well as many other factors affecting growth and development, from birth until age 21. The overarching goal of this study is to give us information to enable us to improve the health and well-being of our children and, in particular, what more can be done to prevent, treat, ameliorate, and cure disabilities.

The National Children's Study was authorized by the Children's Health Act of 2000. All of the key Federal departments with jurisdiction over children's health and welfare, including

the National Institute of Child Health and Human Development, the National Institute of Environmental Health Sciences, the Centers for Disease Control and Prevention, and the Environmental Protection Agency, are sponsors and partners in the completion of this critical study.

It is absolutely essential that these agencies work together, but missing from the list is the Department of Education. Despite the fact that children in our country spend 6 to 8 hours or more in school, the Department of Education is not one of the agencies explicitly included as a participant in the national children's study.

I believe this study has the potential to provide significant value, but it will be missing a critical source of information if the Department of Education is not a full partner.

Two studies that I would remind my colleagues of, that are similar to what we are attempting to do with this national children's study, is the Framingham study that followed a number of people in Framingham, MA, for a very long period of time. From that, we learned all kinds of information about heart attacks, cancers, and other factors that affect our health. Similarly the nurses study which followed several thousand nurses gave us other useful information.

So now we are trying to provide this information, based on very well run studies, to not only parents but practitioners, public officials, and others.

The participation of the Department of Education will ensure that school records can be, with appropriate permission, incorporated into the findings. Why is that important? Because only schools have information about children's educational outcomes, about special education classifications and the special services that children are receiving. Without this critical piece of information, the study would be incomplete.

The Department also needs to be a key player in order to get in on the ground floor of the planning for this study. We need to make sure that the educational component is considered from the very beginning.

It is also possible, through this amendment and the inclusion of the Department of Education, to compare how different States and schools classify children with disabilities. Currently, every State has a different standard for how they classify children with disabilities. That makes it very difficult, if not impossible, for researchers and advocates to compare data on children with disabilities across State lines. It is also very frustrating for parents who may live in one State where their child is classified as special education and eligible for services but because of a job change or other reason for a move, they move to another State where that is no longer the case.

If the national children's study were to collect data directly from schools on children's disabilities and how they are classified, we would have valuable information that I think would be very informative for our States and local school districts, as well as parents and others.

In addition to all of these reasons, the participation of the Department of Education will help us better understand how environmental factors are associated with the development of disabilities in childhood.

Every single day children are exposed to environmental hazards. They are exposed in their homes, neighborhoods, communities, and even in their schools. It is important that we begin to understand how to figure out what it is that we need to prevent in order to deal with the increasing numbers of children classified as in need of special education.

I want to thank a number of groups that have supported this amendment, including the Council for Exceptional Children, and Easter Seals, the National Education Association, the Parents Support Network of New York, the Children and Adults with Attention Deficit/Hyperactivity Disorder, National Arc, the Council for Occupational Therapists, the Learning Disabilities Association of America, and the Consortium for Citizens with Disabilities, which is a national disability organization that is a coalition of 100 groups.

I ask unanimous consent that the letters of support on behalf of this amendment be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE AMERICAN OCCUPATIONAL THERAPY ASSOCIATION, INC.,
Bethesda, MD, April 22, 2004.

Hon. HILLARY RODHAM CLINTON,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR CLINTON: the American Occupational Therapy Association (AOTA) is writing in support of your amendment to S. 1248 that would expand the federal agency participants in the National Children's Study. Authorized by the Children's Health Act of 2000 (Pub. L. 106–310), this longitudinal study will investigate the effects of environmental influences on the health and development of children. Your amendment would add the U.S. Department of Education as a participating agency in the study.

AOTA agrees that there is a need for a long term comprehensive examination of children's health, development and well-being. Occupational therapists have long recognized the influence of the environmental context on children's ability to participate in everyday activities, or occupations, at school, at home and in the community. In fact, this is one of the hallmarks of occupational therapy.

AOTA believes with you that the study should include relevant data about children's learning and educational experiences and how that learning is affected by environmental factors. Without including education and educational outcomes in the comprehensive study, children's ''development'' cannot be fully and completely assessed. The addition of the Department of Education and its various areas of expertise will enable the study to develop a more accurate view of the child and provide for the inclusion of valuable school-based data that is already available from our Nation's schools.

Thank you for introducing this important modification to the National Children's Study. Please do not hesitate to let us know if we can provide any additional assistance.

Sincerely,

CHRISTINA METZLER,
Director, Federal Affairs Department.

COUNCIL FOR EXCEPTIONAL CHILDREN,
Arlington, VA, May 11, 2004.

Hon. HILLARY RODHAM CLINTON,
U.S. Senate, Russell Senate Office Building, Room 476, Washington, DC.

DEAR SENATOR CLINTON: The Council for Exceptional Children (CEC) is the largest professional organization of teachers, administrators, parents, and others concerned with the education of children with disabilities, giftedness, or both. CEC supports your amendment to S. 1248, the Individuals with Disabilities Education Act to include the Department of Education as one of the participants in the National Children's Study. As you know, the Children's Health Act of 2000 (Pub. L. 106–310) authorized the study of environmental influences on the health and development of children.

The National Children's Study will provide the most comprehensive examination to date of the effects of environmental influences on the health and development of children, from birth until age 21, across the United States. The overarching goal of the study is to improve the health and well-being of all children, although children with disabilities will be a special focus of the investigation. The National Children's Study will be one of, if not the, richest resources for answering questions related to children with disabilities' health and development and will form the basis of child health guidance, interventions, and policy for generations to come. Yet schools, where children spend more time than any place other than their homes, are not integrated into this investigation. It is important that the Department of Education participate in this study. CEC recommends that assurances be in place that provide for sufficient resources for the Department of Education to participate in the study.

Thank you for championing this important addition to the National Children's Study. For more information, please contact me at *debz@cec.sped.org*; 703–264–9406 or Dan Blair, Senior Director for Public Policy at *danb@cec.sped.org*; 703–264–9403.

Sincerely,

DEBORAH A. ZIEGLER,
Associate Executive Director, Policy and Communication Services.

COALITION FOR EQUITY IN SPECIAL EDUCATION,
Washington, DC, May 10, 2004.

Members of the U.S. Senate:

DEAR SENATOR: We write to you on behalf of our coalition of private and religious school-affiliated organizations to urge members of the Senate to support S. 1248—the reauthorization of the Individuals with Disabilities Education Act (IDEA) as it is considered on the floor this week. Because IDEA impacts elementary and secondary schools, completing work on it is essential to ensure implementation in the next school year.

All schools that serve learning disabled and other children with disabilities have a strong stake in the reauthorization of IDEA and we are very pleased that we have worked with Senators of both political parties to strengthen IDEA to better meet the special education needs of children enrolled by their parents in our schools. While issues of importance to our communities still exist, we are most eager to have Congress complete action

on this legislation so that it may be signed by the President and its benefit to our communities implemented in the next school year. Thus, we urge you to support S. 1248's final passage as well as the appointment of conferees and the immediate convening of a conference committee.

As you are aware, a unanimous consent agreement limiting the number of amendments to be offered on S. 1248 has already been entered into. We hope you will take this major step toward better serving America's special needs children this year. Many thanks for all of your work on behalf of America's children, including children attending private and religious schools.

REV. WILLIAM F. DAVIS, OSFS,
Deputy Secretary for Schools, U.S. Conference of Catholic Bishops.
NATHAN DIAMENT,
Director, Institute for Public Affairs, Union of Orthodox Jewish Congregations.

APRIL 7, 2004.

Hon. HILLARY RODHAM CLINTON,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR CLINTON: Children & Adults with Attention-Deficit/Hyperactivity Disorder (CHADD) is writing to support your efforts to provide an amendment to the Individuals with Diabetes Education Act (IDEA) that will expand the participants in the National Children's Study. The Children's Health Act of 2000 (Pub. L. 106–310) authorized the study of environmental influences on the health and development of children. The Amendment would add the U.S. Department of Education as one of the participating organizations in the study. CHADD supports this amendment.

CHADD is intimately involved in the area of the relationship of children's health and their educational outcomes. The Centers for Disease Control and Prevention (CDC) funded CHADD's National Resource Center on AD/HD that was established to both be the national clearinghouse for science-based information on AD/HD and encourage and disseminate research on AD/HD's prevalence and treatment. The linkage between health and learning is of paramount importance to both this aspect of our mission and most other aspects as well. A May 2002 CDC Study (CDC Vital and Health Statistics) documented that over 50 percent of the children with AD/HD had a co-occurring learning disability. Without including education and educational outcomes in the comprehensive study, children's ''development'' cannot be fully assessed.

The outline of the National Children's Study represents a very expansive view of ''environmental influences'' and these must include these found within the school and related areas. The inclusion of the Department of Education and its various areas of expertise will enable the study to take a much more complete view of the child and provide for the inclusion of valuable school-based data that is already provided from the Nations schools.

Thank you for introducing this import modification to the National Children's Study.

Further information on this issue is available from Stephen Spector, CHADD's Director of Public Policy who can be reached at 301–306–7070, extension 109.

Respectfully submitted,
E. CLARKE ROSS, D.P.A.,
Chief Executive Officer.

Mrs. CLINTON. Over the last several years, I have become even more concerned about how the environment affects a child's health and cognitive development. I think we have a lot of work to do to understand this and then to act on it. We know that 25 years of research and experience with developmental disabilities has demonstrated the increasing threat that these disabilities pose to our children's learning and also to the costs and expenses borne by families, school districts, and other public agencies around our country.

Since 1977, enrollment in special education programs for children with learning disabilities has doubled, and 12 million children under the age of 18 are now diagnosed with a developmental learning or behavioral disability. Now, obviously some of that is due to our greater understanding and our willingness to admit that these kinds of disabilities exist, but there are other reasons as well.

A National Academy of Sciences study suggests that 28 percent of developmental disabilities are caused by environmental hazards. A recent study in the New England Journal of Medicine showed that even low levels of lead exposure can reduce a child's IQ by as much as 7.4 points. For many children, this literally could mean the difference between being developmentally disabled or not.

According to a General Accounting Office study, almost half of all children in our country attend schools with at least one unsatisfactory environmental condition. I have seen a lot of those in my own travels. I have seen horrible mold conditions. I have seen exposed dust and building materials. I have seen schools that were built over toxic waste dumps. It goes on and on.

We also know that one of the most prevalent environmental health problems is poor indoor air quality. According to recent studies, that is present in nearly half of our 115,000 schools. Almost a quarter of these schools have inadequate heating, ventilation, and air-conditioning systems, and about 21,000 have faulty roofs.

Now, poor indoor air quality severely aggravates allergies, asthma, and other infections and respiratory diseases. It is something we know more and more about but actually still have a lot of work to do.

I have worked to address these problems through legislation that crosses different jurisdictional lines. I introduced the act to prevent developmental disabilities in education, which has evolved into the amendment we have before us today. I have strongly supported the 12 centers for children's environmental health and disease prevention research funded by our Government because they are focusing on issues that are so critically important, such as studying the potential environmental causes of autism, a condition that we know is increasing.

We are looking at new ways of researching, identifying, treating, and ultimately preventing autism and other diseases that may or may not have an environmental link. We just do not know enough yet.

Similarly, I have proposed a general health tracking bill that would coordinate pollution and contamination data with disease data so we can learn more about the possible links between the two. I am not one who thinks there are as many different problems as one can imagine depending upon the environmental condition, but I think common sense tells us that there are a good number of them. Right now we do not know which. We cannot give good information to parents about how best to protect their children.

In the No Child Left Behind Act, a provision that I championed called the Healthy, High-Performance Schools Program was adopted. That would assist States in creating and disseminating information and technical assistance to our neediest schools to help them improve indoor air quality and energy efficiency, and we know it can make a difference.

In Greenwich, NY, a school renovation project left cement and construction dust all over the buildings, fiberglass exposed in the library, paint fumes in the elementary classrooms, heavy equipment and jackhammers outside, and electric wires and pipes exposed. In another New York school, a parent of an asthmatic child was so upset by the child's repeated absences because of being exposed to the toxic chemicals that were used in the installation of a gym floor.

These are just two of the multitude of examples that argue for us learning more about what we are doing inside our schools to perhaps better control these problems so that, if we cannot eliminate them, certainly the information will help us to decrease the health problems from which these children suffer.

I hope this amendment will be a real encouragement for the National Children's Study because it is one of the most important research studies we can undertake in our country.

As I said, the Framingham Heart Study, which has been going on now for 50 years, has yielded remarkable advances in the prevention of heart disease. The Nurses Health Study that began in 1976 has given women invaluable information about how to protect our health. The National Children's Study is the same. It will give us so much help, trying to figure out what we should do in the public health arena in our schools and in our homes.

I am hopeful we will fully fund this National Children's Study because it is important that we begin the hard work of getting answers to many of the questions my constituents ask me.

We need an additional $15 million for this study to be carried out. These are critical funds. I hope we will be able to appropriate them. This amendment will enable the study to take advantage of the expertise in the Department

of Education and particularly zero in on the needs of children with disabilities.

I thank my colleagues for their support. I appreciate their strong advocacy on behalf of this reauthorization of the bill and in particular this amendment.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, the amendment would call for the inclusion of the United States Department of Education in a consortium of Federal agencies that are working on a study regarding environmental influences on children's health and development, which may result in developmental disorders in these children.

This consortium, which is to be headed by the Director of the National Institute of Child Health and Human Development, also includes the Centers for Disease Control and Prevention and the Environmental Protection Agency.

This amendment ensures that, should any collection of information from the study involve student education records, parents must provide prior consent before the information is released. This ensures compliance with the Family Educational Rights and Privacy Act of 1974) (20 U.S.C. 1232g) (FERPA) and comports with the federal policy of preserving parental consent.

Quite simply, information in records maintained by schools about individual children should not be accessible by the CDC, or Federal agencies, or their contractors without the knowledge and prior consent of those children's parents.

We appreciate the amendment of the Senator from New York. It is constructive and positive and we are willing to accept it.

I ask unanimous consent that the amendment of the Senator from New York be agreed to.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 3146) was agreed to.

Mrs. CLINTON. Mr. President, I move to reconsider the vote.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, I will take a moment to thank the Senator from New York for offering this amendment. She is quite right. This longitudinal study that will be done with regard to children's health will be the most important work outside the Academy of Sciences' work that will be done on the development of children's brains and what early intervention means, in terms of their educational capabilities.

There are a lot of different factors such as bus fumes, asbestos in the schools, lead paint in the playgrounds, let alone lead paint in the walls. There are a series of different issues regarding mental health and a wide range of different areas affecting children and children's health.

The fact the Department of Education was not included was a major oversight. The amendment of the Senator from New York addresses that. It is very welcome. It will make that study a much more comprehensive and accurate reflection of where children are in our society. I thank her for offering it.

We all know that what happens during a child's early years can mean the difference between lifelong success and lifelong struggle. Good nutrition, a nurturing home, a healthy and safe neighborhood, and countless other factors provide children with the foundation from which they grow into a productive adulthood.

But for too many children, the basic elements of a healthy start are missing. Children whose environments are lacking or even dangerous are at much higher risk of developing disabilities—disabilities that can be prevented if we understand more about the factors at play. That is why the Children's Health Act of 2000, and its study on child development, is so important.

But, as the Senator from New York has pointed out, the study has a major flaw. It is incomplete because the Department of Education is not included as a partner and school experiences are not examined. This study cannot put together the puzzle of child development when this crucial piece of every child's life is missing. The Senator from New York's amendment puts the final piece into place.

Including the Department of Education in this study is just common sense. School is a child's primary environment outside the home. From early childhood through adolescence, children spend a majority of their day in a classroom.

In fact, the school environment may be even more important for children with disabilities. Most disabilities are diagnosed in school, and most special education services are provided there. What happens for disabled children in schools has a tremendous lasting effect.

The Department of Education has data to share with the study's other partners that is critical to capturing every aspect of disabled children's development. When this data is being shared, the amendment is careful to protect children's educational privacy rights.

The more we know about how a child's environment impacts developmental disorders, the more we can do to prevent them and ensure that all children grow to be healthy adults. This study, and the Department of Education's participation in it, will provide us with important information for years to come.

I applaud the Senator from New York for her advocacy on this issue and on so many other issues concerning the health of our Nation's children. I urge my colleagues to support this amendment.

The PRESIDING OFFICER. The Senator from New Hampshire.

AMENDMENT NO. 3147

Mr. GREGG. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. GREGG], for himself, Mr. ENZI and Mr. GRASSLEY, proposes an amendment numbered 3147.

Mr. GREGG. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To provide for attorneys' fees)

On page 558, strike lines 7 through 12, and insert the following:

''(B) AWARD OF ATTORNEYS' FEES.—

''(i) IN GENERAL.—In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs—

''(I) to a prevailing party who is the parent of a child with a disability;

''(II) 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; or

''(III) to 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 or to cause unnecessary delay or needless increase in the cost of litigation.

''(ii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to affect section 432 of the District of Columbia Appropriations Act, 2004.

Mr. GRASSLEY. Mr. President, I rise in support of the Gregg amendment to provide a little more equity to school districts in the often overly litigious world of special education.

Currently, IDEA only allows parents who are prevailing parties to collect attorney's fees. Even if the school district prevails in court, it must pay its attorneys out of its own budget. Under the Gregg amendment, this would still be the case in vast majority of cases.

The Gregg amendment does not cap attorney's fees allowed under IDEA and it is not even a straight ''loser pays'' provision.

The Gregg amendment simply provides that State or local education agencies may be awarded attorney's fees, at the judges discretion, only in those very limited cases where the parent's case is—''frivolous, unreasonable, or without foundation, or the parent continued to litigate even after it became clear that the case was frivolous'' or—if the parent's complaint was ''presented for any improper purpose.''

This is a very strict standard and is based on existing laws and precedents.

This strikes me as a very limited, reasonable amendment.

I should mention that in Iowa, we do not have a great many due process hearings and they rarely go to court. In fact, Iowa is a model of dispute resolution in the area of special education. It also helps that Iowa schools generally provide an excellent education to all students.

However, I have heard from many Iowa educators that the Federal IDEA law is too litigious. School districts often find themselves at a disadvantage when trying to prove that they have done right by a child. School districts find that it is usually easier and cheaper to give in to parents' demands rather than to go to court, even if school officials are convinced they have acted properly.

I am not suggesting we tip the scales the other way so that parents of disabled children are less able to advocate for the education they feel their children need.

The standard in the Gregg amendment is strict enough that it would still be to the advantage of school districts to settle all but the most egregious, frivolous complaints.

This amendment would not discourage any parent from pursuing any legitimate complaint, even if the parent might ultimately lose the case.

Parents must be able to defend the right of their child to a free, appropriate public education, even in court if necessary. However, frivolous due process complaints under IDEA abuse the rights of parents and hurt children.

When a school district must spend money to defend against frivolous cases, it drains funds away from needed services for other disabled children.

This amendment also protects parents from unscrupulous attorneys who would prey on parents when they are most vulnerable by encouraging them to litigate or prolong litigation in order to collect fees.

The law should protect children, not the pockets of trial lawyers.

Again, this amendment would in no way limit or discourage parents from pursuing legitimate complaints against a school district if they feel their child's school has not provided a free, appropriate public education. It would simply give school districts a little relief from abuses of the due process rights found in IDEA and ensure that our taxpayer dollars go toward educating children, not lining the pockets of unscrupulous trial lawyers.

Mr. GREGG. Mr. President, IDEA currently allows only parents who are ''prevailing parties'' in disputes to collect attorney's fees, in the court's discretion. The law does not permit school districts that prevail in a case to recover their attorney's fees. In most cases, this is the right policy, as we do no want to discourage parents from seeking redress when they believe their child is not getting what is promised under IDEA.

However, there are sometimes cases where the parent's case was frivolous, unreasonable, or without foundation, or the parent continued to litigate the case even after it became clear that the case was frivolous. Or, there are sometimes situations where a parent or their attorney files a number of complaints and requests for due process hearings, triggering the school district to spring into action to prepare for the hearing. The parent subsequently drops the complaint, but the school has spent considerable time and money preparing for the hearing; a closer look at the facts reveals that the complaints were not filed for any proper purpose, but instead were done to harass or retaliate against the school district.

In these limited instances, school districts should be able to recover their attorney's fees.

This amendment makes such a change to the law. The amendment provides that a court, in its discretion, may award reasonable attorney's fees to a school district if the parent's complaint or subsequent cause of action is frivolous, unreasonable, or without foundation, or the parent continued to litigate after it clearly became so, or was presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

The legal standards in this amendment are not new concepts, but are based upon well-established laws.

The first part of the amendment comes from the U.S. Supreme Court case of Christiansburg Garment Co. v. EEOC 1978, which involved an employment discrimination claim under title vii of the civil rights act of 1964. Christiansburg held that a plaintiff which brings an action that is frivolous, unreasonable, or without foundation may be held liable for the prevailing defendant's attorney's fees. It is fair to apply this same standard in IDEA. In fact, a 1985 senate labor and human resources committee report on the predecessor of idea stated the committee's intent

> to adopt the policy of christiansburg garment company v. eeoc, which is that a party which brings an action that is 'frivolous, unreasonable, or without foundation' may be held liable for the prevailing defendant's attorney fees.

It is important to note that this is a very high standard and prevailing defendants are rarely able to meet it and obtain a reimbursement of their attorney's fees. The Supreme Court has said: to award attorney fees to defendants in a civil rights suit, the plaintiff's action must be meritless in the sense that it is groundless or without foundation; the fact that plaintiff may ultimately lose his case is not in itself sufficient justification for fee award.

Finally, case law directs courts to consider the financial resources of the plaintiff in awarding attorney's fees to a prevailing defendant.

The second provision in the amendment—that relates to bringing lawsuits for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation—comes from another well-established Federal law: Federal Rule of Civil Procedure 11.

In interpreting this language from Rule 11, courts must apply an objective standard of reasonableness to the facts of the case.

Let me give you some examples of frivolous or improper lawsuits, where the school districts had no recourse.

In *DeLeon Indepen. Sch. Dist.* v. *Seth B.*, 4:CV–00–1770–Y (N.D. Tex. 2001), a school district asked for injunctive relief against a parent who had filed seven requests for due process hearings over the course of 2 years. The school district asserted that the parent required the school district to convene at least 20 IEP meetings during that time, and claimed that the parent had abused her entitlements under IDEA by filing repeated requests for hearings and later canceling or refusing to attend. The school district further alleged that it had spent over $154,000 in attorney's fees and costs to defend the parents' filings. The court held that the IDEA law did not give the court subject matter jurisdiction to provide the school's requested relief.

We heard from a small district with an annual budget of $10,000,000. At the end of the 2001 school year an IEP student graduated and failed to pass an exam for entrance into a postsecondary trade school. The parents sued the district demanding among other things $1 million in lost future wages because the school had allegedly failed to address his learning needs sufficiently for him to get into the trade school. The district believed that it followed all legal requirements properly for full parent cooperation and agreement during the child's years in school. A decision was made to settle for $140,000 spread over four years partially in fear of consequences if a court battle ended in favor of the parents. A demand of one million dollars would have the effect putting the district into a negative fund balances and the risk of no longer being able to function.

A director of pupil personnel with special education responsibility reports:

> Next month I will go to Federal court with an attorney who is seeking fees for a recent Due Process Hearing. The District prevailed on 100 percent of the issues, not even a hand slap was given to the District. Why are we going to Federal Court? Because the attorney wants fees and the only way he can get them is threaten Federal court and hope we settle the fees versus the cost of Federal court.

She described the situation as blackmail.

One principal says:

> Attorneys that drag out a hearing for weeks, do so because once the attorney fees equal the post of the placement, the case gets resolved. I was involved in a case 9 years ago in which an aggressive attorney insisted on a 10 day evidentiary hearing. When it was clear the hearing officer had no control over the hearing, the district caved to the parents' position and wrote a settlement agreement.

But the worst example of egregious conduct comes from a suburban school

district with over 33,000 students and 1,600 teachers. I will come to that in a minute.

Mr. President, we need to have a mechanism to protect schools in the rare instances in which the complaint filed against them is frivolous, or when litigation is being used to harass or retaliate against the school district.

This amendment is fair and reasonable. It would apply established legal principles and standards to protect defendants from burdensome litigation having no legal or factual basis.

The intent of this amendment is not to discourage parents from using the procedural safeguards under IDEA to bring complaints against school districts. And I don't believe this amendment will do that.

However, other Federal attorney fee statutes—(e.g., title vii of the civil rights act and section 1983 claims)—allow prevailing defendants to ask for attorneys' fees in egregious instances. Why can't we allow for the same mechanism under IDEA?

We want Government dollars targeted for IDEA to go to special education services for children with disabilities—not for school districts to pay attorney's fees to defend themselves in frivolous law suits.

This amendment will not chill representation—it does not put a new dollar limit on attorney's fees. Rather, this amendment is intended to give school districts some relief in those rare situations where a parent has abused their due process rights.

Let me tell you about the most egregious example of frivolous, groundless behavior against a school.

I know of a suburban school district with over 33,000 students and 1,600 teachers. Noted for excellence, student performance, and distinguished programs, this district has received local, State, and national recognition.

Within this district, ''Mrs. X,'' as I will call her for privacy reasons, has two children attending the schools in the district: a high school-age son, identified as a special education student, and a middle school regular education daughter.

In May of 1998, the district settled a playground injury claim brought by Mrs. X resulting from her daughter's fall from monkey bars. That incident has been followed by the most egregious and long-standing abuse of every form of complaint, fair hearing, and litigation processes.

In summary, Mrs. X has filed complaints with the office of civil rights, tort liability suits, and multiple district internal personnel complaints—ranging from senior district personnel ''dishonesty'' to a substitute teacher leaving the door open in her son's room. Mrs. X currently has six suits filed in Federal Court against the district—the Board of Education Trustees, the Assistant Superintendent, the Executive Director of Special Education, the Program Specialist, the Director of Special Education, the Deputy Superintendent, the Superintendent, the Attorney retained by the district; nine hearing officers; the U.S. Department of Education Office for Civil Rights, Region IX; and the California Department of Education Superintendent of Schools.

As difficult and vexatious as these proceedings may be, by far the most expensive and draining of all of Mrs. X's actions are those resulting from her rights under the IDEA. Since June 1998, she has filed 15 complaints and fair hearing requests. These demands are accompanied by a daily barrage of letters, faxes, and telephone voice messages left for various District employees. Because of IDEA requirements, these need a timely response.

The District has spent $195,000 on attorney's fees to defend against these cases.

In November 2001, the District office began a log these communications so that the level of harassment and disruptions to the organization could be documented. Since that time, 828 communications have been sent to District personnel, representing well over 2,440 pages.

Currently, one of the District's program specialists devotes the majority of her time handling the issues generated by this one parent. This detracts from the District's ability to deal with the urgent and legitimate special education needs of students and parents.

Here is the list of the due process filings by Mrs. X. I ask unanimous consent it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Case No. 1 filed: June 30, 1998. Issue(s): Denial of FAPE 1997–98. Resolution: Settled by agreement at mediation.

Case No. 2 filed: December 26, 1998. Issue(s): Untimely IEP. Resolution: Settled by mediated agreement at the hearing by hearing officer.

Case No. 3 filed: March 28, 1999. Issue(s): Denial of FAPE 1997–98 and 1998–99. Resolution: District prevailed on all issues on hearing officer determination.

Case No. 4 filed: February 10, 2000. Issue(s): Denial of FAPE by placement at certain school. Resolution: District Prevailed on all issues on hearing officer determination.

Case No. 5 filed: August 23, 2000. Issue(s): Denial of FAPE by placement at certain school. Resolution: Settled by mediated agreement at hearing, by hearing officer.

Case No. 6 filed: April 2, 2001. Issue(s): Denial of FAPE 2000–2001. Resolution: District prevailed on all issues except occupational therapy assessment, on hearing officer determination.

Case No. 7 filed: November 5, 2001. Issues(s): Placement, services, goals for 2001–2002. Resolution: Settled by mediated agreement at hearing.

Case No. 8 filed: May 7, 2002. Issue(s): Denial of FAPE for 8th grade year (2001–2002). Resolution: Withdrawn by parent.

Case No. 9 filed: May 29, 2002. Issue(s): Eight issues concerning FAPE in 2001–2002. Resolution: Dismissed in its entirety by hearing officer.

Case No. 10 filed: July 24, 2002. Issue(s): FAPE for 2002–2003 and assessment in occupational therapy and physical therapy. Resolution: District prevailed on all issues but occupational therapy goal inclusion, on hearing officer determination.

Case No. 11 filed: February 24, 2003. Issue(s): Denial of FAPE at January 17, 2003 IEP meeting. Resolution: District prevailed on all issues on hearing officer determination.

Case No. 12 filed: March 3, 2003. Issue(s): Timeliness of District's functional analysis assessment. Resolution: Dismissed in its entirety by hearing officer.

Case No. 13 filed: August 27, 2003. Issue(s): Denial of FAPE by failing to allow communication with WHS. Resolution: District prevailed on hearing officer determination.

Case No. 14 filed: September 5, 2003. Issue(s): District denied special ed. eligibility. Resolution: Withdrawn by parent before hearing.

Case No. 15 filed: January 16, 2004. Issue(s): Author of vision therapy goals on 9/18/02 IEP. Resolution: Dismissed in its entirety by hearing officer.

Mr. GREGG. Through all this IDEA litigation, the school district has never been able to collect its attorney's fees in defending any of these cases.

And because there is no disincentive or negative consequences of filing complaint after complaint, making call after call, flooding the district with thousands of pages of documents, Mrs. X has continued her actions against the district.

Now, we know that this example is the rare exception—however, we need to do something to help protect schools against frivolous, egregious behavior, which drains resources away from providing special education and related services to children with disabilities.

The District writes:

> The purpose of IDEA is to protect the interests of special education students. It would be in this interest to guard against the egregious and vexatious behavior of a very small minority of parents whose actions negatively impact the ability of a school district to provide service to all special education students.

Mr. President, that is exactly what this amendment is designed to do.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I rise today in support of this amendment because no one wants to see our courts abused by frivolous cases and everyone wants to see less IDEA litigation.

While I can support preventing abuses of our legal system, I cannot stand by and listen to a debate that unfairly characterizes the majority of parents and the majority of attorneys as eager to sue schools. This could not be further from the truth—and the record needs to be set straight.

No parent wants to have confrontation with their child's school. Despite what has been said on the Senate floor today, every parent would rather be a partner in their children's education instead of an adversary. However, there are times that a parent has no choice but to right for their disabled child's educational rights. There are times when a school's violation of the law is so extreme, or when a school refuses over and over to do the right thing, that a parent's only recourse is to seek help from the legal system.

Parents facing this challenge need the help of attorneys who can represent the best interests of their child. But for too many low- and middle-income families the cost of an attorney is simply out of reach. That is why the IDEA requires schools that violate the law to pay the legal fees of parents. Without these provisions, the cost of an attorney to advocate for a disabled child's educational rights can mean a family must sacrifice another child's college education or even their home.

For example, the Hannagan family from Florida has been seeking an appropriate education for their disabled daughter for 5 years. They owe $90,000 in legal fees and have had to get a second mortgage on their home, mortgage their parent's home, and use up all of their credit cards.

Or take the Bonney family from Missouri who also had to fight to guarantee their disabled son's right to an appropriate education. Even though they asked to go to mediation instead of court, the school refused. As a result, they have had to mortgage three properties—two of which had already been paid off—in order to cover $100,000 in legal fees.

The IDEA give parents a fighting chance to get the education their children need without bankrupting the family.

Schools claim that, because IDEA helps families in this way, they are being overrun by IDEA lawsuits and costs. But the reality is different from the rhetoric.

The vast majority of IDEA parents do not file cases, and the vast majority of schools are not being sued. National data showing that IDEA litigation is extremely rare. A 2003 GAO study shows that nationally there were only 5 due process hearings per 10,000 special education students. A 2003 Department of Education national study shows that 94 percent of districts had no dispute cases go to due process hearings. But some will argue that a single lawsuit is one too many because IDEA cases are extraordinarily expensive. Again—this is not true.

The national data on the cost of solving IDEA problems paints a very different picture. According to a Department of Education study, only a fraction of IDEA funds are spent on solving problems. In 2000, $50 billion of State, Federal, and local funds were spent on special education. Only .3 percent of that total went to school expenses for mediation, due process hearings, and court cases. With over 6 million students served by IDEA, the cost of dispute resolution was only $24 per student nationally.

Mr. President, I have listened to the debate today. I have listened while supporters of this amendment describe rapid attorneys waiting to pounce on schools. You would think that high-priced attorneys are lined up around the block to take schools to court. This simply is not true.

Most parents don't have access to any attorney, or must rely on low-cost legal aid. And data from surveys shows that even this help is in short supply.

Mr. President, 55 percent of the States lack sufficient low-cost or free attorney services in their State. Only 686 low-cost or free attorneys regularly take IDEA cases. This is about 1 attorney for every 10,000 special education students. Eight States have 5 or fewer attorneys in the entire State. One State had no free or low-cost attorneys in the entire State who take IDEA cases with so few attorneys available to help parents, families face two grave and unpleasant choices: represent their child in due process alone or allow the school to continue violating their child's rights.

Those parents who have the courage to go it alone face schools that are well represented. State data shows that in 2003 schools were much more likely to bring an attorney to a hearing than parents were. In California, parents had attorneys only 21 percent of the time while schools had attorneys 42 percent of the time. In Missouri, parents had attorneys only 60 percent of the time while schools had attorneys 87 percent of the time. In Connecticut, parents had attorneys only 65 percent of the time while schools had attorneys 95 percent of the time. In Illinois, parents had attorneys only 35 percent of the time while schools had attorneys 91 percent of the time. In New York, parents had attorneys only 31 percent of the time while schools had attorneys 100 percent of the time.

How can anyone look at this data and say that schools are at a disadvantage in the legal system? How can anyone look at this data and say that parents and their attorneys are the problem? It is parents who continue to be at a disadvantage when it comes to the IDEA.

For example, Sheila, the mother of a disabled child from Oklahoma, wrote me about her fight for her son's right to an appropriate education. Her case took 3½ years because the school district hired not one but four attorneys to fight her. The district subpoenaed dozens of witnesses in order to question her integrity, instead of focusing on the real issue: how to help this severely autistic child as he grew older and his needs became more serious.

I want nothing more than to reduce IDEA due process and spare families and schools the toll it takes on them. I agree that the ideal number of IDEA cases would be zero, and the ideal cost of IDEA litigation would be zero dollars because every dollar that goes to a parent's or school's attorney is a dollar that does not go to a classroom. So I can support this amendment to deter bad cases that waste time and money.

But I cannot agree with anyone who says that litigation is the result of demanding parents or greedy lawyers. It is not a result of IDEA attorney's fee provisions. Litigation is a direct result of a school's failure to comply with the law. So long as schools continue to fail disabled students, parents will continue to be the enforcers of the law. This amendment cannot change that.

The real solution to the so-called IDEA litigation problem is to hold schools accountable for providing every disabled child with an appropriate education. This bill delivers meaningful enforcement for the first time in the history of the IDEA and this will go further to reduce litigation than any change to attorney's fees. Anyone who supports this amendment—anyone who supports reducing IDEA litigation—should also support stronger enforcement.

Instead of focusing the debate on parents and their attorneys, I urge my colleagues to focus on fulfilling the promise of an appropriate education made by the Congress nearly 30 years ago.

I thank the Senator for working with us on this issue. It is enormously important. I think we have worked out a very satisfactory solution. I thank the Senator and hope the Senate will accept the amendment.

Mrs. HUTCHISON. Mr. President, I commend the Senator from New Hampshire for his work on the Individuals with Disabilities Education Act, IDEA, reauthorization bill. In particular, I appreciate his amendment to address the issue of attorneys' fees. I agree wholeheartedly that every child should be adequately represented, but we must ensure people do not take advantage of the system. As a member, and former chairman, of the DC Appropriations Subcommittee, I became aware of how the District of Columbia Public Schools has experienced large numbers of lawsuits filed against it under IDEA and had to pay millions in attorneys' fees.

In an effort to keep these expenditures under control, the District of Columbia Appropriations Acts for fiscal years 1999, 2000 and 2001 limited the amount of appropriated funds that could be paid to prevailing parties for attorneys' fees. However, in fiscal year 2002 these caps were lifted. It quickly became clear this was a mistake.

After lifting the cap, the number of special education related administrative hearings increased in one year by 20 percent. In 2002, the city received 2,750 hearing requests, up from 1,500 3 years earlier. The backlog of assessments increased significantly and the backlog of hearings tripled. Attorneys' fees as a percentage of total special education spending tripled to almost 6 percent, increasing by $10 million in 1 year.

The problem in DC was uniquely egregious. There are numerous instances in which DC had to pay outrageous sums. In one case a lawyer charged $43,500 for a case that was settled and never actually went to a hearing. On other occasions when the case was settled prior to a hearing ever being held, lawyers charged as much as $22,000. Some firms apparently have split one case into multiple hearings, rather than addressing them in a single complaint, in order to generate excess fees. In addition, the DC Auditor issued a report in May 2003, on legal fees paid

in relation to special education and concluded that certain law firms had relationships with advocacy groups that appear to have been unethical or illegal.

Clearly, some people have been using a system intended to help children in need of special education assistance for their personal gain. The rule that allows parents to receive payment to cover attorneys' fees when they win is intended to ensure parents who may not have the means can get representation. It is not intended to be a cash cow for attorneys, soaking up money that would otherwise be spent on educating children.

Mr. GREGG. Will the Senator yield?

Mrs. HUTCHISON. I am happy to yield.

Mr. GREGG. It is clear something was wrong, because DC has accounted for 40 percent of all IDEA administrative due process hearing requests in the country but has less than one-quarter of a percent of the U.S. population. During 2000–2002, DC public schools received 7,883 due process hearing requests, more than the entire State of California, and the vast majority of hearings have been for procedural and implementation issues, which often could be handled outside of the hearing process.

Mrs. HUTCHISON. I thank the Senator. The Federal Government has a particular interest in this issue for DC because of its constitutional responsibility to oversee the Nation's Capital and because it provides approximately twice as much in education funding, in percentage terms, for DC as for the country overall.

In FY2003, we reinstated attorney fee caps, and they have been successful in curbing the problem. In FY03, DCPS saved $4.4 million, or 30 percent, due to the attorneys' fees cap. Based on those savings, DCPS was able to create 550 new classroom seats at 50 schools during the 2003–2004 school year to serve children with special needs, including children with autism, students who are hearing or vision impaired, mentally retarded, learning disabled or emotionally disabled, and early childhood special education students. The conflicts of interests between attorneys and companies providing special education services also appear to have ended as a result of this law.

FY04 savings from the cap can again be reinvested into capacity building. In the 2004–2005 school year, DCPS expects to create 450 additional classroom seats with the savings.

While the changes made by Senator GREGG's amendment make good sense for most of the country, I believe in extreme circumstances, such as in DC caps may be necessary. That is why I supported clarifying in the amendment that the measures for which I have fought so hard with the support of the school board president to protect DC are not intended to be replaced by this provision.

Mr. GREGG. I thank the Senator from Texas for her work on this issue. I agree that the District of Columbia is a unique situation and understand it has required unusual actions to ensure the rights under the IDEA law are not abused.

Mr. ENZI. Mr. President, I rise in support of the amendment offered by Senator GREGG on attorney's fees. I am concerned about the effect frivolous lawsuits are having on the ability of our schools to provide services to special education students. Schools with limited resources, particularly small or rural schools, are especially vulnerable to the financial impact a frivolous complaint can have on scarce resources and limited funds.

I believe an important part of the debate on this amendment should focus on the practical impact that frivolous complaints have on the provision of services to students with disabilities.

When Federal funding was originally established for services to students with disabilities it was meant to be used for services, not for legal fees. I believe that is still the case. Unfortunately, some frivolous lawsuits against schools are having the effect of diverting funds from necessary services.

There are documented cases where schools have spent hundreds of thousands of dollars battling frivolous complaints that were filed under IDEA. As my colleague from New Hampshire has pointed out, there is one instance of a school spending $154,000 over a 2-year period to address seven complaints from the same parent. Another school spent $195,000 on complaints from one parent.

In Wyoming, $154,000 is more than some school district's entire special education administrative budget. It is very difficult to imagine successfully providing services to children with disabilities when faced with this kind of legal obligation to defend frivolous lawsuits.

The piece of the puzzle that get overlooked is that school districts do not have unlimited funds. If a school district spends $154,000 on legal fees defending a frivolous lawsuit, that is $154,000 that does not get spent on educational purposes.

I do not want to leave anyone with the impression that I think all complaints filed under IDEA are frivolous. We are talking about a very small minority of complaints, probably less than 1 percent.

Still, even though the number of frivolous complaints may not be significant to the big picture, but the cost to schools can be very significant.

A second major point I would like to make is that frivolous complaints undermine the effort of Congress to ''fully fund'' IDEA.

The issue of ''full funding'' for IDEA has received a lot of attention and we have been discussing it on the floor in this body as it relates to the underlying bill. I have never understood ''full funding'' to mean that the Federal Government should fully fund the legal fees for schools to resolve complaints under IDEA.

The ''full funding'' of IDEA that I am familiar with is the Federal goal of providing 40 percent of the cost of special education services to students. No one that I hear speaking of full funding talks about lawsuits, they talk about services to children.

Unfortunately, schools do not have the luxury of ignoring complaints, however frivolous they may be. They must assume that every complaint filed with be upheld and prepare accordingly. That diverts funds from other educational services.

Once the complaint is filed, the school must find a way to pay for the legal services it will require, and local education funding is the only pool of resources available to school districts.

This means local education will suffer when a frivolous lawsuit is filed, because the school will have to divert funds away from other priorities, even special education services, to pay for the cost of resolving the complaint.

This body should not overlook the fact that frivolous lawsuits are diverting limited resources away from services, eroding the effect of increased Federal appropriations.

This amendment would create a simple protection to defend schools from frivolous lawsuits and help retain Federal funds in proper streams to provide services for disabled students.

Parents filing legitimate complaints would not be liable for attorney's fees. The standard set by this amendment is higher than the standard currently followed by the courts in civil rights cases.

Some will argue that this amendment infringes on the rights of parents to pursue a complaint against a school district. That is not the case at all. This amendment simply provides a means for school districts to avoid the unnecessary costs of defending themselves from a frivolous lawsuit.

Legitimate complaints under IDEA would not be affected. Even complaints that could be considered marginally frivolous would not be affected. Only those complaints that meet a high standard of frivolity would be met with approved sanctions by the courts.

I believe this is a reasonable approach to an important issue and one that the Senate should be able to accept without objection.

Mr. GREGG. I ask unanimous consent that the amendment be agreed to.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 3147) was agreed to.

Mr. GREGG. Mr. President, I move to reconsider the vote.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GREGG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Washington.

AMENDMENT NO. 3148

Mrs. MURRAY. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mrs. MURRAY], for herself, Mr. DEWINE, and Mr. FEINGOLD, proposes an amendment numbered 3148.

Mrs. MURRAY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mrs. MURRAY. Mr. President, I rise this afternoon to offer a bipartisan amendment with Senators DEWINE and FEINGOLD to ensure that our country's most vulnerable disabled students can reach their full potential.

Today the Senate is discussing the IDEA, the Individuals With Disabilities Education Act. It is a bill that is based on the American principle of equal opportunity. IDEA recognizes that students have a civil right to a free, appropriate public education even if they have special needs that require additional resources. We still have a long way to go to meet the Federal Government's promise to fund 40 percent of special education, and we are working on that challenge.

In the meantime, we need to address the unique needs facing three groups of disabled students, and I am honored to join with Senators DEWINE and FEINGOLD in offering this bipartisan amendment.

Our amendment makes small but very important changes to IDEA to ensure that disabled students who are homeless or who live in foster homes or who have their education disrupted because of their family's military service get the help they need. I thank the following organizations for their help and support of this amendment: The National Association for the Education of Homeless Children and Youth, the Military Family Education Coalition, STOMP, the Specialized Training of Military Parents, the National Association of Federally Impacted Schools, Children's Defense Fund, the National Education Association, the National PTA, the National Court Appointed Special Advocates Association, the Council for Exceptional Children, and the Consortium for Citizens with Disabilities Education Task Force.

The consortium represents more than 70 national disability organizations, including the American Occupational Authority Association, the ARC, United Cerebral Palsy Association, Easter Seals, the Higher Education Consortium for Special Education and Teacher Education Division, and the Children and Adults with Attention-Deficit/Hyperactivity Disorder Association.

All of those organizations understand the challenges facing our most vulnerable children, and all of them support this bipartisan amendment.

Congress has a long and proud tradition of supporting and protecting educational opportunities for our most vulnerable young people. It is what we did when we passed the Elementary and Secondary Education Act in 1965. It is what we did when we created Head Start. And it is what we did when we started giving out Pell grants. It is time for us to step up once again and make the changes needed to make IDEA work for homeless and foster children with disabilities and children with disabilities in military families.

I take just a minute to describe the special challenges facing these children and how our amendment will help them. Let me start with foster children. Today in America there are nearly 500,000 children in foster care. Thirty percent of them are in special education. We know foster children often do not function as well in school because of their experiences. Foster children have usually been separated from their biological families because of child abuse or neglect. That can leave both emotional and physical marks for life. Given the shortage of foster parents in our country, children in foster care are often shuttled between many different homes and schools.

One young man shared with me his story of living in more than 100 homes throughout his childhood. Often, every new home means enrolling in a new school. And every new school means starting over again and getting the support and services they need.

In addition to frequent absences and transfers, foster children often do not have parents to advocate for their educational needs. Almost every parent whose child has a disability will tell you that their role as advocate for their child directly impacts the quality of the education their child receives. Without a parent to advocate for them, foster children can languish for years with unrecognized disabilities or insufficient services to help them succeed in school. These experiences can leave children in foster care without the education and support to lead functional, productive lives.

I will share the true story of two foster children in New York City who need the help this amendment provides. Eric and his sister Joanna have been in foster care for 6 years. They have been in four different foster homes and each home was in a different borough. Each time they moved to a new home they were taken out of school in the middle of the school year. Frequently, they were not reenrolled in their new schools for weeks or months, and their records were not transferred from school to school.

Both Eric and Joanna have learning disabilities. Each time they arrived in a new school, the teachers did not know they needed special education services. So over the years, Eric and Joanna missed months of school and have only occasionally received needed services.

Upon their last move to a foster home in Queens, Eric's new high school refused to enroll him because he was 16 and he had no credits. The Advocates for Children assisted Eric and Joanna's case worker in enrolling both students in school after they had been out of school for 3 months. Their advocates also secured records from 2 years ago that show that Eric had obtained 10 credits and passed a regent's exam. Because their records were never transferred, Eric had been placed in the ninth grade for the third time. Eric's current guidance counselor was informed at school and Eric's records are being transferred.

Our amendment helps disabled foster children such as Eric and Joanna by ensuring that their records follow them from school to school quickly and that they have an advocate who is on their side in developing an education plan.

Let me turn to another group of students our amendment will help. Homeless children in our country also face significant hurdles to succeed in school, and these hurdles are higher for homeless children who have disabilities. The Urban Institute estimates that 1.35 million children experience homelessness each year. A high proportion of homeless children with disabilities also need special education services. Yet many have trouble getting the help they need. Children experiencing homelessness are diagnosed with learning disabilities at twice the rate of other children. They suffer from emotional or behavioral problems that interfere with learning at almost three times the rate of other children. These mental and emotional difficulties often begin at birth as infants who are homeless have higher rates of low birthweight and need special care immediately after birth, four times as often as other children.

Like other children and youth surviving in extreme poverty, homeless children and youth face appalling living conditions. Many of these horrific conditions directly contribute to physical, mental, and emotional disabilities.

For example, students experiencing homelessness often suffer from poor nutrition, inadequate health care, higher rates of other health problems, and severe emotional stress related to conditions of extreme poverty and instability.

Unfortunately, even though homeless children suffer from disabilities at a disproportionate rate, children who are homeless are underserved by special education programs. A recent study of children in homeless shelters in Los Angeles found that while 45 percent of the children met the criteria for special education evaluation, only 22 percent had ever received special education testing or placement.

In 2000, 50 percent of States reporting data to the U.S. Department of Education reported that students in homeless situations had difficulties accessing special education programs.

Children who experience homelessness desperately need stability in their lives. But they cannot stay in the same school or even the same district long enough for the individualized education plan to be developed and implemented.

In addition, like foster children, some homeless youth have no legal guardian to watch out for their educational needs and to advocate for their special interests or their best interests. I share the story of a young girl in Virginia our amendment would help. She is a 13-year-old girl. Her mother fled domestic violence. Over the course of 2 years they moved to temporary living situations in several school districts. The girl suffered extreme trauma and was hospitalized on two occasions. The hospital evaluations clearly show that she qualified for special education, and her mother had requested special education services from several school districts. However, because they moved around, no school ever completed the evaluation process. Each successive school started the process from the very beginning. Even when the girl attended a single school for several months, the school did not complete the evaluation process. Instead, it chose to wait it out until the family moved again.

Finally, the girl's mother found a special education attorney to take on her case.

Our amendment would help students like her by ensuring that homeless students have continuous educational services no matter how many times they are forced to move.

Finally, I turn to a third group of disabled students whose special circumstances are often overlooked. Children in military families often experience disruptions in their education because they move frequently. According to the Military Child Education Coalition, 13 percent of children in military families receive special education services or other special support. Further, children in military families move an average of every 2 to 3 years. That translates into attending six to nine schools from kindergarten until high school graduation. Children with disabilities in these highly mobile families need consistent services so they do not fall further behind each time they move.

Especially in times of war, and when parents are serving our country on extended tours of duty, children in military families need support and stability in their lives and in their education.

I would like to share some of the words I received from military families across the country who support my amendment. I received a letter from Natalie Cyphers of McGuire Air Force Base in New Jersey. Natalie writes:

> Thank you for your consideration of military families with special needs children. My husband is active duty Air Force and we have a 14-year-old with mild cognitive deficiency. I find one of the hardest parts of our son's education occurs every time we move.
>
> It is difficult to implement the current IEP and often the educators do not realize the importance of continuity for our children.
>
> Any assistance in these situations would be helpful to all of us.

That is from Natalie Cyphers at McGuire Air Force Base in New Jersey.

I also received a letter from Kristina Rice of Boise, ID. Kristina is a parent of a disabled child and a case manager for children with disabilities. She wrote:

> The members of highly-mobile military families who suffer most educationally are children with disabilities as transitions are more difficult, and levels of service vary greatly from state to state.
>
> Evaluation processes are cumbersome, expensive and time-consuming, and the children being served do not have the time to wait while new teachers and service providers try to re-create a picture of their needs and re-determine eligibility.
>
> Once several months have gone by without adequate services, a child may regress so far that he or she can lose a whole school year. [The] suggestions in this amendment are practical, fair, and necessary.
>
> Military families already sacrifice enough to serve our country. They do not need the added burden of delayed services for their children.

That is from Kristina Rice, of Boise, ID.

These stories reflect just a few of the many disabled students who this amendment will help.

So, again, specifically, our amendment will help students who change schools or school districts by ensuring that all students receive continued special education services when they transfer schools.

Our amendment ensures that records are transferred quickly so students do not waste critical time.

Our amendment increases opportunities for early evaluation and intervention for homeless and foster infants and toddlers with disabilities, and for children with disabilities in military families.

Our amendment also ensures that these vulnerable children are represented on the State policy committees that decide their future.

In addition, our amendment expands the definition of ''parent'' to include relatives or other caregivers who are equipped to make sound decisions in a child's best interest when there is no biological parent available to do so. Finally, our amendment improves the coordination of services and information so educational and social services agencies can work together more efficiently to help these students.

As we reauthorize IDEA, we have an obligation to pay extra attention to these children and to provide the resources and support they need. The real test of how we treat children in America is measured in how we treat the most vulnerable among us. This amendment gives us a chance to do the right thing.

I urge the Senate to join with more than 70 national disability, military family, foster, homeless, and education organizations in supporting the bipartisan Murray-DeWine amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thank my friend and colleague from Washington for her attention to this issue that can make a major difference to many families with special needs children, recognizing the increased mobility of our population, and, most particularly, the needs of those in the military who are moving through the school systems in different parts of our Nation in increasing numbers, and also giving special focus and attention to the too many Americans and American families who are homeless and have some special needs.

So I rise in support of this amendment because it will ensure that the disabled children who change schools will continue to get the services they need.

America is increasingly a mobile society. The demands of our economy and shifts in our culture mean Americans will move to new communities during their lives. Today, it is unlikely that a child will stay in the same school district or even the State, for that matter, throughout their school years.

Families and schools do all they can to make the transition easier for children when they move from place to place, but many children still have a difficult adjustment to make in their new home and school. This is especially true for students with disabilities.

Disabled children are extremely likely to have problems when they leave one school for another. Sometimes they have difficulty with change because of their disability, but more often it is because their new school does not provide them with the services they need. Because each State and school district does things differently, disabled students who move often wait months for their new school to provide them with special education.

In the life of a disabled child—in the life of any child—missing a few days, let alone a few months, of instruction is a huge loss. Many disabled children actually lose skills they have already gained when they go without the services they need for any length of time. These children are already struggling in school and fall further and further behind.

Imagine what it is like, then, for a disabled child with a parent serving in the military. Imagine what it is like for a disabled child who is homeless or in foster care. It is one step forward and two steps back every time they change schools.

The amendment offered by the Senator from Washington will help solve this problem by guaranteeing that disabled students who move do not have to wait. It guarantees that disabled students do not go without special education during the time it takes for the

school and the parents to decide how best to meet the child's needs.

Will this be difficult for some schools to do? Certainly. Every school does it differently, and the flexibility in this amendment recognizes this fact. There will be times that a student moves to a district that is not ready to provide all of the services he or she needs. But a disabled child's education—a disabled child's future—should not suffer because the school needs time to get prepared.

As the Senator from Washington has explained, this amendment also makes numerous changes to the IDEA that will improve special education for disabled children who are homeless or in foster care. Although children who are homeless are four times more likely to have delayed development than other children, they have a more difficult time accessing special education. These children are truly more vulnerable. They are the vulnerable of the vulnerable. I applaud the Senator for her tireless efforts on their behalf.

This amendment will make it easier for schools to provide disabled homeless and foster children with the services they need, and will smooth the transition for all disabled children who move to new schools.

Mr. President, this recognizes the reality; that is, we are in a mobile society. Children are moving. Families are moving. In a bill that is dealing with special needs children, not to recognize that issue would be an omission. I think the Senator has made some excellent recommendations.

We still have some work to do in terms of working through this issue, but it does seem to me that she has identified an extremely important area of need, and one to which we should attend. So I thank her for bringing it to the attention of the Senate.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, we have agreed to accept this amendment. I ask unanimous consent that the amendment be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment is agreed to.

The amendment (No. 3148) was agreed to.

Mr. GREGG. I move to reconsider the vote.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GREGG. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PHOTOS OF IRAQI PRISONER ABUSE

Mr. WARNER. Mr. President, at 2 o'clock today, the Department of Defense delivered to S–407 material relating to the issue of mistreatment by Americans in uniform and perhaps others under contract against the prisoners in a prison in Iraq. Several hundred of these photos have been shown to a large group of Senators.

The Department of Defense prepared a document as guidance for Senators as to how hopefully they will handle their knowledge of these photos as they relate their responsibilities to their constituents and others in giving their views.

I ask unanimous consent to print in the RECORD a letter Senator LEVIN and I, in our capacity as chairman and ranking member of the Armed Services Committee, wrote to the Department of Defense with regard to the transmission of these documents.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, May 11, 2004.

Hon. DONALD H. RUMSFELD,
Secretary of Defense,
Pentagon, Washington, DC.

DEAR MR. SECRETARY: We request the Department of Defense provide the Committee on Armed Services an opportunity to review the photos and videos regarding the abuse of prisoners at Abu Ghraib prison in Iraq. Further, it is our intent to extend this opportunity to all Members of the United States Senate.

These materials should be brought to the Senate for review, but will remain under the control of the Defense Department. At no time will the Committee, the Senate, or any Member or employee thereof, take custody of, or assume responsibility for, these materials. A Defense Department official will return these materials to the Pentagon after the materials have been reviewed by Members, subject to our subsequent recall if necessary.

Committee staff will coordinate the details of this request directly with your office.

Sincerely,

CARL LEVIN,
Ranking Member.
JOHN W. WARNER,
Chairman.

Mr. WARNER. Mr. President, I would like to read the material that was provided to Senators. It is entitled ''White Paper For Persons Who Have Viewed The Detainee Abuse Photos.''

The Privacy Act prohibits the disclosure of ''any record which is contained in a system of records'' to ''any person or to another agency,'' except with ''prior written consent of the individual to whom the record pertains.'' 5 U.S.C. Section 552a(b). The statute applies only to records about U.S. citizens or permanent resident aliens (''U.S. nationals'').

The Iraqi detainee abuse photos and videos . . .

—we saw some video—

were collected by and are maintained in the files of the military criminal investigative organization in the [Department of Defense]. The photos are subject to the Privacy Act to the extent they disclose the identities of U.S. nationals.

Any release of the photos to persons outside the [Department of Defense] (with very limited exceptions concerning releases to Congress and certain Executive Branch officials) would risk liability under the Privacy Act.

That liability in this sentence is to the Department of Defense. I ask unanimous consent to print in the RECORD the pertinent sections of the Privacy Act.

(b) CONDITIONS OF DISCLOSURE.—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

Mr. WARNER. There are certain exceptions as it relates to the Congress of the United States. Senators should read this and draw their own conclusions from it.

Any description of the photos (or any particular photo) that would reveal the identity of a U.S. national depicted in the photos would also risk liability under the Privacy Act.

To the extent that any description of the photos is offered at all, it should be limited to generic statements about the conduct depicted in the photos without any reference that would tend to reveal the identity of any U.S. national involved in the conduct photographed.

The disclosure of photographs or detainees could constitute a violation of the Geneva Conventions, which provide that such persons shall be protected ''against insults and public curiosity.''

As I stated earlier today, speaking for myself, I believe very strongly these photographs should not be made public. That is not a decision that is up to the Senate or the Congress but to other authorities in the executive branch. I believe it could possibly endanger the men and women of the Armed Forces as they are serving valiantly and at great risk, not only in Iraq and Afghanistan but other areas of the world.

Secondly, this Nation is founded on the rule of law. We are proceeding—I say we, the Department of Defense, and they are to be commended—carefully within the rule of law as it relates to this evidence and the trials which will be forthcoming of those who will be brought to justice by virtue of the Uniform Code of Military Justice. At those trials, they will be public. At those trials, such portions of these photos as a prosecutor deems necessary can be released and put into the public domain. As well, the defense counsel, likewise, through discovery can determine such photos that might in some way enhance the defense in that case. It is not as if there will be no public disclosure. It is the time and the circumstances under which that disclosure is made.

Again, the credibility of the country is being examined in connection with these tragic incidents that have taken place, tragic incidents against a background of 99.99 percent of the men and women of the U.S. military performing

all over the world at this very minute at personal risk but in the cause of freedom, to protect this Nation and our allies. I firmly believe the guidelines are out there certainly for colleagues. I have given you my best counsel on this. Here are the rules prescribed by the Department. I think it is in the best interest that we all, in a very calm, collected manner, continue to address this issue.

The Committee on Armed Services has concluded two hearings. At this moment the Committee on Intelligence, of which I am also a member, is conducting a hearing. Speaking for the Senate, and I believe the House, the proper oversight is being administered. The Appropriations Committee likewise addressed this issue in some context today. The Government of our Nation, the executive and the legislative branch together—I find total cooperation with the Department of Defense—is doing the best we know how to protect the interests of our Nation and protect the men and women of the Armed Forces and protect all others in this set of very tragic circumstances.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I thank the Senator from Virginia for his extraordinary leadership in the Senate, especially with the extremely difficult issues in our country today. We are very fortunate to have him as chairman of the Armed Services Committee.

Mr. WARNER. Mr. President, I thank my good friend and colleague. I am privileged also to serve on his committee.

Mr. GREGG. We are fortunate to have him on our committee also. That is an extra plus. But his leadership on issues protecting our Nation is second to none.

AMENDMENT NO. 3149

Mr. GREGG. Mr. President, I send to the desk an amendment on behalf of Senator SANTORUM.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New Hampshire [Mr. GREGG], for Mr. SANTORUM, proposes an amendment numbered 3149.

Mr. GREGG. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To provide for a paperwork reduction demonstration)

Amend section 609 of the Individuals with Disabilities Education Act, as amended by section 101 of the bill, to read as follows:

"SEC. 609. PAPERWORK REDUCTION.

''(a) REPORT TO CONGRESS.—The Comptroller General shall conduct a review of Federal, State, and local requirements relating to the education of children with disabilities to determine which requirements result in excessive paperwork completion burdens for teachers, related services providers, and school administrators, and shall report to Congress not later than 18 months after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003 regarding such review along with strategic proposals for reducing the paperwork burdens on teachers.

''(b) PAPERWORK REDUCTION DEMONSTRATION.—

''(1) PILOT PROGRAM.—

''(A) PURPOSE.—The purpose of this subsection is to provide an opportunity for States to identify ways to reduce paperwork burdens and other administrative duties that are directly associated with the requirements of this Act, 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.

''(B) AUTHORIZATION.—

''(i) IN GENERAL.—In order to carry out the purpose of this subsection, the Secretary is authorized to grant waivers of statutory requirements of, or regulatory requirements relating to, this part for a period of time not to exceed 4 years with respect to not more than 20 States based on proposals submitted by States to reduce excessive paperwork and noninstructional time burdens that do not assist in improving educational and functional results for children with disabilities.

''(ii) EXCEPTION.—The Secretary shall not waive any statutory requirements of, or regulatory requirements relating to, applicable civil rights requirements.

''(iii) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to—

''(I) affect the right of a child with a disability to receive a free appropriate public education under this part; and

''(II) permit a State or local educational agency to waive procedural safeguards under section 615.

''(C) PROPOSAL.—

''(i) IN GENERAL.—A State desiring to participate in the program under this subsection shall submit a proposal to the Secretary at such time and in such manner as the Secretary may reasonably require.

''(ii) CONTENT.—The proposal shall include—

''(I) a list of any statutory requirements of, or regulatory requirements relating to, this part that the State desires the Secretary to waive or change, in whole or in part; and

''(II) a list of any State requirements that the State proposes to waive or change, in whole or in part, to carry out a waiver granted to the State by the Secretary.

''(D) TERMINATION OF WAIVER.—The Secretary shall terminate a State's waiver under this subsection if the Secretary determines that the State—

''(i) has failed to make satisfactory progress in meeting the indicators described in section 616; or

''(ii) has failed to appropriately implement its waiver.

''(2) REPORT.—Beginning 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall include in the annual report to Congress submitted pursuant to section 426 of the Department of Education Organization Act information related to the effectiveness of waivers granted under paragraph (1), including any specific recommendations for broader implementation of such waivers, in—

''(A) reducing—

''(i) the paperwork burden on teachers, principals, administrators, and related service providers; and

''(ii) noninstructional time spent by teachers in complying with this part;

''(B) enhancing longer-term educational planning;

''(C) improving positive outcomes for children with disabilities;

''(D) promoting collaboration between IEP Team members; and

''(E) ensuring satisfaction of family members.

Mr. GREGG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GREGG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GREGG. Mr. President, I ask unanimous consent that immediately following morning business on Thursday, May 13, the Senate resume consideration of the pending IDEA bill and there then be 30 minutes equally divided with respect to the pending Santorum amendment No. 3149; provided further that there be one relevant second-degree amendment in order to the amendment and it be offered by Senator BINGAMAN; further, that the amendment be limited to the same time limitation of the first degree. I further ask unanimous consent that the only other amendment in order be a Gregg-Kennedy managers' amendment to be agreed upon by both managers.

I further ask consent that following disposition of the above amendments there be an additional 20 minutes of debate equally divided between the two managers for closing remarks, and following that time the provisions of the previous order remain in effect.

The PRESIDING OFFICER (Mr. CORNYN). Is there objection? Without objection, it is so ordered.

The Senator from Nevada.

Mr. REID. While the distinguished Senator from New Hampshire is on the floor, we could finish this bill before noon if things worked out right. I say, through the Chair to my friend, I spoke yesterday to the senior Senator from New Mexico, Mr. DOMENICI. He is interested, as are a number of other Senators, in moving forward on the mental health parity legislation. This may be the window that we can do that, and I say that because what we have been waiting on is a proposed amendment dealing with the scope of that matter from the distinguished chairman of the HELP Committee. I ask my friend if he has an idea when that might be ready because that is all that is holding up going to our legislation, as I understand it.

Mr. GREGG. Mr. President, I have tried to be very cooperative with the Senator from New Mexico and certainly he has tried to be cooperative with me. This has been an issue that has involved not only our body but the House and the White House. I have actually agreed that this language not go through our committee, which I think is a very generous act on our part, not

having it to mark up in committee and allowing it to move directly to the floor. Of course, before we can draft our amendment we actually have to see the language of the Senator from New Mexico. We have not seen it.

As soon as we get his language, we will be able to probably put together our amendment. The understanding is we are going to move promptly at that time because I understand Senator DOMENICI wants this moved, and I respect him. He certainly has made a huge commitment in this area and I want to try to expedite it and be constructive in this initiative.

Mr. REID. As with all things in life, communication is everything, and I think this communication has been most helpful. I will do everything I can to get the distinguished chairman a copy of the proposed amendment as soon as possible. As I said, this would be an opportunity to do that. As I said last night in closing, this will have been a good week for us. We have been able to finish the FSC bill. We are going to be able to finish this IDEA legislation tomorrow, and if we can do the mental health parity, that would be three very important pieces of legislation in 1 week. For us in the Senate, that says a lot.

Mr. GREGG. Mr. President, if we could add the confirmation of some of the judges who have been waiting for months, that would make this a good week.

Mr. REID. Mr. President, I say in response to my friend, we have confirmed 173. I think we are in a position to do more. Although there are some negotiations going on dealing with recess appointments, as soon as that matter is resolved—and I think it can be with a matter of a phone call from the White House—we could move forward and set up votes on maybe not all the judges but a lot of them.

Mr. GREGG. Unless there is further business, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Ms. LANDRIEU. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. COLLINS). Without objection, it is so ordered.

Ms. LANDRIEU. Mr. President, I will speak on the underlying bill for 15 minutes.

I wanted to take this opportunity to come to the floor and speak for a minute about the important subject of education and, in particular, special education, which we refer to around here as IDEA. We authorize this very important piece of legislation every 5 or 6 years. In the midst of all that is going on with Iraq and with our debate over tax policy regarding the economy, some would not consider this the most important issue before us. But for our students, our families, and for our educators, in particular, it is a very important issue.

I say on the eve of our commemorating the 50th anniversary of the Brown v. Board of Education decision, it is appropriate that we would spend a couple of days in the Senate and in Congress speaking about an issue that really does affect millions of our families. I know people in Louisiana are very concerned about special education.

I commend the chairman and the ranking member for bringing us a bill that, in the midst of all of this rancorous debate and gridlock—some of it, from my perspective, deserved because there are some things that our side doesn't want to move forward, so we appropriately stop those actions. Nonetheless, in the midst of all of this, we should take some time to work in a bipartisan way to move the agenda of special education and make some very needed improvements. I also commend the administration and the commission that worked very hard to try to outline for us a focus regarding special education. Some of the findings of the recent study that was concluded are worth repeating. They were mentioned earlier on the floor.

I want to say again how important I think the work of this commission was when they noted that we as a Congress, as the educational leaders, should focus more on student outcomes. We have been, since we created this provision of the law in 1975, in my mind—and I think the Chair shares this opinion—too much focused on the process of making sure that each of our special needs students and their families and schools were following things step by step, paper trail by paper trail, and taking our eyes off the outcomes. What do we want these students, who are called special needs students—but they are just students who need special attention. Every student needs special attention, and some students because of where they start, with challenges or disabilities, need extra attention. I know that is true in Louisiana.

We have been, for these 30 years or so, too wrapped up in the process and not focused on the outcome. Are we, in fact, teaching children to read at grade level? Are we, in fact, intervening in the case of gross neglect or abuse to make sure that the proper outcome is that the abuse and neglect is stopped and children are placed in an environment that is more suitable to their needs, or are we focused on process, such as if the pink slip was turned in on time to match the yellow slip, or if the money was appropriately recorded. I am proud that study is moving up toward outcome and results.

I also want to say that the study has been good about suggesting to us—and this bill outlines some of the new thoughts—that we should be focused on prevention. Yes, we want to identify our students who need special attention, but if we could put in place better teaching techniques, early intervention strategies that would prevent young children from being labeled as special education, not only would that be better for the student, it would be better for the parents, the school districts, and it would also save the taxpayers some money. Today, taxpayers would like to save money where and when they can.

The third finding I thought worth noting was that we should begin to embrace more fully the concept that we only have one educational system for all of our children. We don't have, and should not have, a two-tiered system or separate system—one for ''regular'' children and one for ''special needs'' children. They are all our children. They all need special attention. But special education, or IDEA, is to give added resources—we, in Louisiana, call that ''lagniappe,'' a little extra—to a certain group of students who might need it because of their physical or emotional or mental circumstance.

Those are the three very important findings of the commission. I commend our leadership for helping us to focus on that. Let us not focus so much on the process, let us focus on the outcomes. Are we succeeding with these children? Let us not just continue to label children as the need arises, but let's focus on preventing the labeling at the earliest stage. Let us stop talking about two separate systems and realize that we are talking about one system and embrace that notion.

There are four other short points I want to make regarding the underlying bill and, in general, they are positive comments.

There has been great concern in Louisiana about the issue of discipline in our schools, and I think rightfully so. We want to support our teachers and our administrators. We want to empower them to make good choices about maintaining an atmosphere of discipline in a school so all children can learn.

If 1, 2, or 3 children are disruptive—it only takes 1—but if 1 child is disruptive in a classroom, it wrecks the opportunity for those other 25, 20, 18, 15—whatever the number is—children to learn, and it robs them of an opportunity to have a full and productive day.

Because our laws have been perhaps not as carefully written as possible, maybe our regulations have been too onerous, and perhaps some court decisions have led us to a place where in America today—and I know in Louisiana because my teachers and superintendents tell me: Senator, we are afraid to discipline a child. We are afraid of a lawsuit. Or we don't know where to stand on this issue.

As an example, as hard to believe as this is—and I am going to submit for the RECORD information to document it—we actually had an incident a couple years ago where two students—I know those listening will find this hard to believe—actually burned down a school, and because they were labeled

special education children, the actions taken against them were not what you and I would think would be appropriate in that they were basically allowed to go to a temporary school because they burned down the original school. People of that community did not think they could take appropriate action because they were prevented by some Federal law or regulation.

I am happy to say, in large measure that discipline issue is addressed in this bill. That is why I am happy to support it. We can now, under this new bill, suspend or expel a child with no questions asked and no hearings necessary for bombs, guns, drugs, or bodily injury to another student or a teacher. Then for issues that are not as clear as bombs, guns, drugs, and bodily injury to a student or teacher, there is a more streamlined process that does not get everybody tied up in legal knots and provides discipline in the classroom, in the hallways, in the gym, and in other places in the school environment so that learning can take place. I commend this leadership.

Perhaps we do not go as far as I would have liked on this issue. I know the Senator from Alabama, Mr. SESSIONS, and I have talked about even going further than this bill. But at least this is a step in the right direction to return discipline and empower our teachers to take appropriate actions.

Let me be quick to say, we do not want any child who is suffering from a physical injury or disability, particularly if a child is deaf or visually impaired, to suffer in any inappropriate way by disciplines that might come. But it has gotten out of hand in the sense that our regulations have tied the hands of our principals, superintendents, and teachers. We have addressed that situation.

On the labeling issue, we have made some progress. I am going to put up a chart in a few moments to show that we have a long way to go.

One of the other issues is funding. This bill gives us a new authorization level. It does not give us a funding level. This is where I want to express some disappointment.

We just had a vote to authorize this bill at $13.5 billion for 2002, $16 billion for 2003, $18.5 billion for 2004, and $20.5 billion for 2005. But the numbers appropriated are $20 million for 2002, 11.69 for 2003, 12.34 for 2004, and 13.3 for 2005.

There is a difference between authorized levels and appropriated levels. For No Child Left Behind and IDEA, authorized levels are promised levels. Authorized levels are what we promise to fund; appropriated levels are actually what we do.

For today, this is a serious issue, and there is a serious differential. If we were truly funding IDEA the way we promised when we initially created it and the way we continue to promise each time we authorize it, Louisiana, just our State, would be getting an additional $240 million a year.

With 15 percent of our total population labeled as ''special education,'' and with one out of every four children in poverty and with two out of three African-American children in poverty in our State, this $240 million would go a long way to helping us correct the inequities, to close the achievement gap, and to provide a quality education for all of our children.

When we add the shortfall in IDEA with the shortfall in No Child Left Behind, it comes to an astonishing $440 million shortfall for Louisiana alone. I have not calculated the shortfall for Maine. I am sure the Presiding Officer, because she is a leader in this issue, is familiar with what that number would be. For the large States, such as California, Florida, and Texas, it would have to be millions of dollars short because Louisiana, with only 4 percent of the Nation's population, is short $450 million.

With $440 million, we could do a lot better job helping every child in Louisiana learn to read at an early age and live up to the call of the special education report that says an ounce of prevention is worth a pound of cure. If we could prevent the labeling and teach children to read at age 6, 7, or 8, it would go a long way to preventing the labeling of ''special education.''

Let me go to this chart that will show my point. There are almost 3 million children who are identified around the country as special education children. I am almost getting uncomfortable using that term because the more we use it, the more people get the idea that these children are damaged goods, that there is something wrong with these children. They have special needs. I think it was the Senator from Maryland, Ms. MIKULSKI, who said it so beautifully: That might be true, but what these children really need is special attention.

I give my daughter special attention every night. I read to her for almost 30 minutes, and I try to do it every night. She needs special attention, and I try to provide that because she is at a critical stage of learning to read.

Most of these children who are in special education, as you can see, the vast majority of them, have speech or language disabilities. That is not to say there is something wrong with their God-given, innate intelligence. There is nothing wrong with the way God made their brain or fashioned it. He actually did a magnificent job. But we have not done our job as they grow to be little humans teaching them speech or language. So they come to school underprepared. Not mentally retarded, not visually impaired, not deaf, not autistic, but they just have difficulty speaking and with language.

Madam President, as you know, we are learning so much about the early brain development of children from 0 to 3. We understand how critical it is as parents raising our own children to look directly in the eyes of a child, to speak with clear diction, to actually show them how to speak and to talk to children, and to have a conversation with them, even if they are unable to speak but just hearing the language.

So many of our children from poor and disadvantaged backgrounds and some children from actually wealthier backgrounds who are neglected, but in large measure from poor and disadvantaged backgrounds, come to school not hearing the language properly, not having been spoken to in a direct way. So they start out at a tremendous disadvantage.

In criticism of this administration and our actions here, if we would put our money where our mouth is and start funding early childhood education, which could be done through either funding No Child Left Behind fully so States have choices about where to spend their money—in large measure, they could spend it on early childhood education—or fully funding IDEA, we could eliminate 80 percent of the children because we could catch their speech or language earlier with effective programs.

How do I know this? Because we are doing it in Louisiana. Our superintendent, even being short of Federal dollars, even after the years we promised to give the money and we have not, has taken the bull by the horns with our Governor and our board of elementary and secondary education and with State dollars are creating what we call Louisiana Four, LA Four.

We are trying to identify every 4-year-old in our State who needs help, who wants help. It is voluntary. Children are not forced to go to school at 4 years old, but for the parents who do want to enroll their child in a quality education, with parental involvement, we are providing our own State money. Just think what we could do with $440 million. The results are astonishing.

Children who are taught to read at the earliest ages and given the basics of phonics and language avoid being labeled as special education. So then we could focus our attention on those children who really are challenged by things that, in large measure, are out of our control.

The jury is still out on autism. We are not sure what causes autism. We do not believe, with all the studies I have read, that it is anything that is caused by human activity or inactivity. It seems to be a brain malfunctioning or a nerve malfunctioning. As I said, we are not clear yet on the research. Such a small percentage of the children who are in special education are autistic and that is an appropriate place for them to be, because autistic children have real special needs. It takes skill to educate and deal with them.

Deafness and blindness, obviously, bring their own challenges.

Traumatic brain injury, our children are sometimes in accidents, sometimes it is a birth defect, but we can hardly even see this graph because it is such a small percentage of children.

If we could take care of children coming to school unprepared, which is

in our power to do, if we could take care of speech and language impairment, and if we would properly diagnosis mental retardation—and I am convinced, because I have seen studies that indicate we are not accurately identifying or overidentifying children who are mentally retarded, in other words saying they are mentally retarded but they are not really; we are just testing them in that way or making that judgment when really they have been grossly neglected and abused and their IQ is perfectly fine. Our testing measures are just not what they need to be. If we could take care of speech or language ability, which is in our control, we would dramatically reduce the number of children who would need this special intervention and therefore do a better job of educating them, reducing labeling, reducing the cost to the taxpayer, and making our children and their families much more satisfied. We would not be labeling them and putting that moniker on their back for their life.

When children are labeled and told they are special education, most children receive that as there is something wrong with them. They lower their own expectations for themselves.

I will conclude on a couple of points. I guess having low expectations from your parents is very difficult to deal with. If one has a notion about themselves and their parents did not go to college or they did not finish high school, they set low expectations. Also, having low expectations from one's teachers is difficult, but the most difficult expectation to overcome is if someone has low expectations of themselves. That is almost impossible to overcome.

When we put labels on our children unnecessarily at an early age, thinking we are helping them but we are actually hurting them, those children lower their own expectations for themselves. That is very damaging to them and to our society.

So let us do a better job of intervening early. The best way to do that is to better use the funding we have and to demand of ourselves full funding for special education and No Child Left Behind.

The final point I wish to mention is this bill again focuses on outcomes. Leave No Child Behind also attempts to focus on outcomes. That is where we have to stay the course.

There are some who are suggesting that testing is too high stakes. Well, I say to them that life is a pretty high stakes game and nothing we do is worth doing if it cannot be measured.

All action that we undertake, in almost every aspect of our life, is measurable. So schools, in their outcomes, in their processes, can be measured. We are on the road and let us stay the course. Of course, it would be helpful, and I think imperative, that we fund these efforts.

In conclusion, we have made great progress with this bill. We have taken some good steps in the area of stronger discipline. We are trying to address the discrepancy in funding, although we are still short in this effort. We still are overlabeling our children when early prevention would do so much.

I thank the Members for allowing me to speak on behalf of the thousands of teachers in Louisiana and our families that are greatly concerned. We see some hope in this underlying legislation that we are moving in the right direction.

I yield the floor.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. REID. Madam President, whenever I hear the distinguished Senator from Louisiana speak, I think of the wonderful weekend I had in New Orleans. We were working with her on some projects. She wanted me to look at some projects that were funded in the Energy and Water Subcommittee that I have had the pleasure of chairing and being the ranking member on over the years. I have been in New Orleans on other occasions to be a tourist, but this was the first time I had ever gone there to work.

I had wanted to see New Orleans for years. One of the things I told the Senator I wanted to see was these great pumps. New Orleans is below sea level, and to keep it dry their pumps go 24 hours a day. They are big pumps. I had read an article in the Smithsonian Magazine about these old, old pumps that had not been changed since before the turn of the century that still keep New Orleans dry.

So I had the pleasure of going there and seeing something that I wanted to see. The place where these big old pumps were was as clean as a restaurant.

We then went to a big lake where I was——

Ms. LANDRIEU. Lake Pontchartrain.

Mr. REID. Yes, Lake Pontchartrain, and I was so educated. For decades, they had been taking the shells from crustaceans out of the bottom of that lake and using them to pave roads around the city of New Orleans. They finally stopped as a matter of law, but in my mind I could not imagine there could be that many shells. Anyway, it was a wonderful trip.

It was highlighted by my trip to Senator LANDRIEU's childhood home. We took a vehicle there. They were doing a lot of construction in the area. Her mother and father live in the same home that she and I think 9 of her 10 siblings were raised. She was raised in quite a small home, and the famous Moon Landrieu, who had served as mayor of New Orleans and cabinet secretary, was there making and cooking candy.

My payoff for going to New Orleans was I got candy from the great Moon Landrieu that I took home to my wife. Of course, one could see in the Landrieus the pride for their famous daughter. Last year she gave a speech that is one of the finest speeches I have ever heard. It was not long after that that I sent a copy of her speech on the Senate floor to her mom and dad. The next time I saw them, you could just see the pride they have telling me about the speech Senator LANDRIEU had given. They were so proud of her.

So any time I hear her speak, I cannot take out of my mind from where she came and what a great contribution she makes to the Senate.

Ms. LANDRIEU. If the Senator will yield for a moment, I thank the Senator for those kind remarks. The Senator is invited to come back any time for that famous Moon Landrieu peanut brittle. I am motivated to speak on the floor about this particular subject because in our household our parents helped to educate nine of us on a shoestring budget. It became such a passion of mine, as I could see how that has helped each of us to go forward in our lives and to see what it had done for my father and mother. They both came from families where only one grandparent had gone to college. In my father's case, neither of his parents even went to high school. So when I come to the floor—I know you graduated from that large school of yours, with eight in the graduating class—you can appreciate the importance of the work regarding education, fighting hard to make sure every family is like the Landrieu family or Reid family—at least having a chance for a good education.

If we write good laws and policies, it happens. If we don't, it doesn't.

I thank the Senator for those comments and I am happy to share my few thoughts about the underlying bill.

Mr. CORZINE. Mr. President, I will take a few minutes to talk about an epidemic that affects not only children in my home state of New Jersey, but 1 in 250 children across the Nation—autism spectrum disorder (ASD). I have been working closely with groups such as Parents of Autistic Children and the New Jersey Center for Outreach and Community Services for the Autism Community (NJCOSAC) to address the staggering number of children who have been diagnosed with ASD. In fact, I introduced legislation, the TEACH Act, S. 1422, which highlights the needs of autistic children by bringing more qualified teachers into the classroom, helping families receive the support and services they need for their children, and helping ensure vocational programs to assist people with autism transition from school to work are functioning as intended.

With autism diagnoses skyrocketing, we must continue to make every effort to expand the quality and accessibility of treatments for children with ASD. That is why I am happy to report that some provisions of the TEACH Act have been included in the Senate reauthorization of IDEA, S. 1248. S. 1248 contains provisions making funds available to develop and improve programs using cutting-edge research in order to provide in-service training to

schools and personnel who teach children with ASD. These funds will ensure quality professional development for special education teachers through the use of scientifically based research on the treatment of autism.

With the demand for services grossly outpacing the supply of specially trained teachers and therapists, these provisions are critical to increasing the number of special education teachers qualified to teach children diagnosed with ASD. Expanding access to treatment, especially at an early age, is essential to improving the outcomes for children affected by ASD.

I thank Connie Garner and the entire HELP Committee for their assistance in getting this important language in the bill. I look forward to continuing to work with my colleagues and the autism community to ensure that all children with ASD have access to early intervention by quality teachers trained in providing the most effective treatments.

Mr. President, I also wish to mention a small but important part of this IDEA reauthorization that is crucial to parents of children with disabilities. I have had the privilege of working closely with Maura Collinsgru and the Parent Information Center of New Jersey to ensure the rights of parents to represent their children in due process hearings without an attorney. I am happy to report that S. 1248 includes language clarifying this right so that parents can be effective advocates for their children.

I would like to mention one New Jersey case in particular that highlights the issue of parental rights in due process hearings. In Collinsgru V. Palmra Board of Education, Robert and Maura Collinsgru were denied the right to represent their son, Francis Robert and Maura Collinsgru were denied the right to represent their son, Francis Collinsgru, during due process hearings. Far from an isolated case, the decision could have broad implications that could be detrimental to families of children with disabilities.

As we know, parents' access to attorneys is already very limited. Not only are there very few attorneys willing to take IDEA cases, but there are even fewer who actually specialize in IDEA. Moreover, of those attorneys who do specialize in IDEA, most are already overloaded with cases. Finally, the cost of many of these attorneys is prohibitively expensive, especially for parents who are caring for a disabled child. Attorney's fees are an extra cost that they often cannot afford. With so few available attorneys, therefore, it is essential that parents have the right to stand up for their children in court when faced with an injustice in the system.

I would like to take this time to thank Connie Garner for the HELP Committee for her help in getting this language included in the bill. Her efforts have made it possible for parents to retain their right to due process and help their children receive the services they deserve.

LEGISLATIVE COMPROMISE

Mr. REID. One of my favorite stories is a story about David Selznik, the great movie producer. He is the man who produced the movie ''Gone With The Wind.'' As he had made the movie, at that time they had in Hollywood something called the Hays Commission. It was in effect a committee of censorship. They looked at the movie and made a determination that he would have to strike from the movie the words, ''Frankly, my dear, I don't give a damn.'' But Selznik thought that was an important part of his movie and he would not back down. So they were at loggerheads. Would the movie be able to go forward? Because without the Hays Commission stamp of approval, the movie could not go forward. So they made a compromise. They said: We will compromise this. You can go ahead, you can keep those words, ''Frankly, my dear, I don't give a damn,'' but if you keep that in the movie you are going to be assessed a fine of $15,000, and $15,000 was a lot of money then, even as it is now. But Selznik agreed to pay that. And that, of course, is one of the most memorable lines in the history of Hollywood.

The reason I mention that is Selznik and the Hays Commission realized that in life there is a time to fight and a time to compromise. The compromise worked out well in this instance.

Compromise, in our business, being legislators, should not be a dirty word. Legislation is the art of compromise, the art of building consensus.

Gerald Ford, whom I met when I was a young Lieutenant Governor and he was Vice President of the United States, was such a nice man. When I did meet him, the first big shot I met, shaking his hand, he sent me an autographed picture. My two little children at the time, when the picture came in, drew all over this picture as if it were a coloring book. But we got the colors off of it as much as we could. It was always smudged. I still have that picture.

Anyway, that is off the subject. But Gerald Ford was so nice—what a nice man. The reason I mention Gerald Ford today is because he said something I believe so strongly. He said, ''Compromise is the oil that makes governments go.'' I believe that. I see the Presiding Officer here—she, on a number of occasions, has been the key person in allowing us to get things done because she has been willing to compromise, in effect, break from the pack and say this is what I need to do.

None of us should compromise our principles, but we should be willing to work together, to seek solutions we can live with for the good of the country. I have been in Congress now more than two decades and I have learned the way you get legislation done in this Congress and in the Senate specifically is when people work together and are willing to compromise.

I have had the good fortune in the years I have been a legislator to have, on the State level and on the Federal level, legislation I have produced that is now law. But there is not a single piece of legislation I have ever written that is as I wrote it. It has all been changed. That is what you have to do to get things done. If people are—and I use this term, not in the true sense of the word—so principled they are not willing to get anything changed, they are not going to get anything done very often.

I know that to be a legislator you have to be willing to compromise. There are some who say this is not right. Some say you have a majority, you should always be able to get your way. Our Founding Fathers didn't believe that. The majority, you see, doesn't need a Constitution to protect them. The majority can get what they want wherever they are. The Constitution of the United States was written to protect minorities. Our Founding Fathers created a government of checks and balances. They wanted the majority to have power, but not all of it.

That is why, for example, we have an electoral college system. The electoral college system creates some unfairness in the minds of people. The result of the last Presidential election is the person who got fewer votes is now President of the United States. But that is our system and the system is so embedded in our minds and our consciences that following that very bitter election, where there was a dispute in Florida that was decided by the U.S. Supreme Court—following that election, which was decided by the Supreme Court, there wasn't any civil unrest. There were no riots, no tires burned, no windows broken in buildings. It was decided by virtue of the fact that we have a Constitution.

In the electoral college system, the person who gets the most votes doesn't always win. Why? Because we have to take care of small States, States such as Maine and Nevada.

The Senate was also designed to protect the rights of the minority. I was talking to my friend Senator ENZI, the Senator from the State of Wyoming. I said: MIKE, how is Wyoming doing populationwise? Is it growing? He said: No, we still can't break 500,000.

But, you see, MIKE ENZI, from a State that has fewer than 500,000 people, has the same power as a Senator from the State of Nevada which has 2.3 or 2.4 million people. MIKE ENZI has the same power as someone from the State of California which I think has 34 million people, or some large number such as that. MIKE ENZI has the same power as DIANNE FEINSTEIN and BARBARA BOXER by virtue of the fact that we have a constitutional system that gives a Senator that power.

One Senator has tremendous power. We have heard of the famous holds.

You can have something come to the Senate and a Senator can individually call and say, you know, I am not going to let this move. You are not going to get unanimous consent on this. I stop it.

That is why it takes 60 votes, not 51, not 50, not 59—60 votes to cut off debate, a so-called filibuster.

I realize the party I represent has 49 Senators in the Senate. The majority has 51. There was a time, just a short time ago, when it was 50–50, and had it not been for the untimely death of Paul Wellstone it would be 50–50 now.

So we have a Senate that is so closely divided now, by the smallest of margins, but we all represent this country. Democrats, 49 of us, 51 Republicans, we all represent approaching 300 million people in addition to what we are obligated to do to represent our individual States.

While we recognize the right of the majority to set the agenda, we on the minority side also believe the rights of the minority shouldn't be trampled. That means not excluding us from conference committees.

David Broder, a long-time syndicated columnist who is nonpartisan and fair, recently wrote about the exclusion of Democrats from conference committees in Congress this year. He wrote:

> These conferences are no longer the representative bodies they once were. Under the current Republican control of the House and Senate, Democrats are routinely excluded from the discussions after the ceremonial opening day. The real negotiations involve only top Republicans in Congress and representatives of the White House.

These conference committees have not only disregarded the views of Democratic Senators, but they have disregarded the views of the Senate itself.

On a number of issues, conferees appointed by the Senate leadership have gone against the will of this body.

Am I making things up? No. Let us talk about a few of them.

Media ownership: What is this all about? The decision was made in legislative session that you couldn't have more than a certain percentage of ownership of a media market by votes on both sides—House and Senate. In fact, when it went to the full committee when we were included in these meetings at that time, the full conference voted to maintain the position we had in the Senate. The conference committee was ended, and sure enough we get on the Senate floor and they have taken that out because the White House told them to. That has never been done before.

Another example, overtime pay. This was an issue where the administration wanted to change the way overtime is paid in this country. It affects 8 million people. On this side, we said it shouldn't be done. We voted accordingly and were joined by friends on the other side of the aisle. The House voted by a large majority to have their conferees do what the Senate did on this vote. On the floor, it was stripped from the conference.

Pensions: Senator DASCHLE agreed to allow the conference to go forward. Of course, that didn't turn out as well as it was represented it would. That doesn't mean that everything should have gone exactly the way it came out of here. Of course not. But that is an example of what is happening in conferences.

Another example is an amendment we agreed to that said when you are buying meat you should know from where it comes. People are entitled to know that. Where is the beef that you are eating coming from? Both bodies said, yes, that is a great idea. In conference, it was taken from the bill.

The Senate voted for these things and the conferees disregarded the votes of the Senate—not individual Senators, they disregarded the voice of the American people. That is whom we represent.

We have to be able to work together for the good of the American people. That is what the people want us to do.

We have done very well this week. We were able to pass the FSC bill. It was a struggle. We got votes on overtime, on unemployment compensation, and we passed this most important bill. Tomorrow, we are going to pass the IDEA legislation which is very important. I hope tomorrow we can also get to the mental health parity legislation. It is my understanding that Senator DOMENICI has given his legislation to the chairman of the HELP Committee. Senator GREGG has that now, and hopefully we are in a position to have an agreement to work on this legislation in the near future.

We have to work together for the good of the people. I understand that being in the majority confers power, but with that power comes the responsibility to make sure the views of Senators are respected and the rights of the minority are not trampled.

We all have a responsibility to work together. But I believe those who control the agenda have the greatest duty to seek compromise and consensus. That is part of leadership. You have to know when to reach out and meet people at least halfway.

I think what we have heard around here far too often is obstructionism. I hope no one is deliberately trying to obstruct the business of our country. I don't think that is the case, but without compromise the Senate simply doesn't function.

President Gerald Ford—this nice man—was right. Compromise is the oil that keeps government running. But I believe that today our government needs an oil change and maybe even a lube job. We have to look under the hood and make the proper adjustments to get the engine running smoothly again in the Senate.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

On October 7, 2001, in Palm Spring, CA, Eric Bridge told police he was robbed and beaten unconscious by four men who chased him from a downtown bar after accusing him of being gay and hurling anti-gay slurs at him. Bridge was treated for cuts and bruises at a local medical center and released. The victim said he was not gay but believes he was targeted based on perception.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. By passing this legislation and changing current law, we can change hearts and minds as well.

THE JUMPSTART OUR BUSINESS STRENGTH (JOBS) ACT

Mrs. FEINSTEIN. Mr. President, I rise in favor of the Jumpstart Our Business Strength (JOBS) Act.

This is far from a perfect bill.

But without this legislation, U.S. companies will face increasing tariffs as a result of a World Trade Organization ruling that determined that significant portions of our Federal tax code ran counter to international trade laws.

Additionally, I voted for it because on balance it provides important tax relief for California businesses and labor protections for California workers.

This bill will: effectively provide a 3 percent tax cut for manufacturers; give manufacturers a 50 percent tax credit for the cost of adding jobs; extend the research tax credit through 2005; protect hundreds of thousands of workers from cuts in Federal overtime protections; prevent the Federal Government from spending taxpayer dollars on contracts with companies that use foreign labor when there are domestic alternatives; provide a tax credit for companies which produce energy by using underbrush and other potentially hazardous fuels found in our forests; provide a tax credit for consumers who buy hybrid vehicles; and protect the California film industry and the jobs it creates.

Since January 2001, California has lost 350,000 manufacturing sector jobs.

A 3 percent tax cut for manufacturers, coupled with a 50 percent tax credit for the cost of adding new jobs, will help us create more jobs in California.

The research tax credit will also help California, potentially more than any

other State. Productivity growth in recent years has been driven by the combination of new technology and investments in capital goods, research and development, workers, and public infrastructure.

To continue this pattern of growth, the focus must now be on providing incentives to companies that invest, innovate, and create the new capital and knowledge that drive the U.S. economy.

Since its enactment in 1981, the research tax credit has provided a powerful and effective incentive for firms to increase research spending.

The tax credit lowers the cost of conducting research in the United States.

This credit makes a real difference in the amount of research undertaken and jobs created in the U.S.

I also support the Harkin amendment which was adopted as part of this legislation. This amendment will prevent the White House from implementing changes in existing overtime laws that reduce the number of workers protected by labor laws.

Last year the White House proposed redefining the job descriptions of millions of workers, thereby eliminating their right to Federal overtime protection.

After many in this chamber raised serious concerns over such a change, the administration released final rules that made a significant, yet insufficient, change to those draft rules.

Unless we act, these rules will take effect later this year.

If the Department of Labor's own numbers are correct, then more the 117,000 individuals could lose overtime protection. If they are wrong, it could be millions.

These rule changes would wipe out overtime pay protections and increase work hours. In California alone, several hundred thousand workers could lose their Federal overtime protection. However, State law will continue to protect most workers from the most harmful effects of this rule change.

But, some public employees and many in the film industry won't be so lucky.

Although most workers in California will maintain their right to overtime through protections granted by State law, the rule change represents a movement in the wrong direction when it comes to protecting working families.

I also support provisions in the bill that will prevent the Federal Government from spending taxpayer money on contracts that use labor located outside of the United States.

Although our Nation has entered a period of economic recovery with significant productivity gains in the last several quarters—it is clear that a great deal of this productivity comes from two things: 1. downsizing of employees, and 2. outsourcing—turning to foreign labor in foreign countries.

In the past decade, General Electric sent 10,000 information services jobs to India; Electronic Data Systems exported 13,800 jobs to several nations; Microsoft spent $100 million on a new call center in the Philippines; and Citigroup and Bank of America both sent software development jobs to India.

And while corporate earnings are up and the stock market remains high, we are continuing to lose service sector and manufacturing jobs.

I realize that many firms benefit greatly from outsourcing, but it damages the long term health of our communities unless we vigorously support new job growth.

We must give companies incentives to keep jobs here, and we must ensure that taxpayer money is not used to subsidize outsourcing.

This legislation will also help protect our environment by providing tax credits that encourage companies to produce energy by using underbrush and other hazardous fuels from our forests.

By providing an incentive to companies to remove these hazardous fuels from our forests, we will reduce the chance of forest fires in the western United States and provide much needed energy to this region of the Nation.

Additionally, this bill contains tax credits directly to consumers who purchase hybrid vehicles. These vehicles reduce air pollution and cut ozone in California.

Having said this, however, I recognize that there are significant problems with this bill.

For instance, it is clear that multinational corporations are not paying their fair share of taxes.

This bill allows companies to bring foreign-earned profits back into the United States at a greatly reduced tax rate—reduced from the current 35 percent to 5.25 percent. This is half as much as the lowest personal tax rate paid by individuals—10 percent.

Under an amendment which I sponsored with Senator BREAUX, companies would have been allowed to bring foreign-earned profits back to this country at the reduced 5.25 percent rate provided that they use those repatriated profits for activities that promote job growth or benefit employees.

Sadly, a lobbying effort by large multinational companies helped to defeat that amendment.

What is disturbing about this provision is that an unconscionable number of American companies are taking advantage of loopholes in U.S. tax law and paying no taxes.

According to a recent Government Accounting Office report, entitled ''Comparison of the Reported Tax Liabilities of Foreign and U.S. Controlled Corporations, 1996–2000'', 61 percent of U.S.-controlled corporations and 71 percent of foreign-owned corporations operating in the U.S. reported no tax liability during the period studied.

This means that approximately two-thirds of all companies operating in the U.S. paid absolutely no corporate income taxes between 1996 and 2000.

This is stunning.

Corporate tax receipts used to account for a much greater percentage of Federal revenues than they currently do.

According to the Brookings Institution, in 1945, income taxes from corporations accounted for 35.4 percent of Federal receipts. In 1970, income taxes from corporations accounted for only 17 percent of Federal revenues.

Today, however, corporate income taxes account for only 7.8 percent of Federal revenues.

This means that corporations are paying a smaller percentage of taxes than they have in the past five decades.

We have got to change the way we tax corporations in America. We have got to provide incentives to encourage corporate responsibility.

Corporations have got to worry about more than just the bottom line. They have got to become good corporate citizens. Unfortunately, this bill does not do enough to encourage that kind of corporate responsibility.

Going forward, I will seek to return balance to our tax system.

The middle class is being squeezed, while multi-nationals continue to outsource jobs and receive tax breaks for doing it.

Nevertheless, I will vote to protect California workers by helping to foster an environment where manufacturers can hire again. I will support research and development in our labs and factories. And, I will support protecting overtime protections for California citizens.

This is by no means a perfect bill.

But taken as a whole, I believe it is worthy of passage.

SUPPORT OF THE MCCAIN AMENDMENT TO S. 1637

Mr. FEINGOLD. Mr. President, I would like to express my support for the amendment offered by the senior Senator from Arizona, Mr. MCCAIN, to strike the energy tax title from the Foreign Sales Corporation bill. I recognize the need for a comprehensive energy policy and incentives for alternative energy development. I also believe that the tax package offered by the Senator from Iowa and the Senator from Montana was more balanced than the energy tax title from the H.R. 6. energy conference report. However, I am disappointed that the energy tax title in the FSC/ETI bill did not extend these tax credits in a more fiscally responsible way.

I support many of the tax credits in this legislation, such as extension of the wind energy producer credit. The wind energy tax credit is an important step in the continued effort to increase our energy security and to decrease our reliance on carbon-based energy sources. Wisconsin has a lot to offer in this area. I support tradeable tax credits for rural cooperatives, and the other provisions that would specifically benefit rural cooperatives and

small renewable fuel producers. I also support many of the other provisions that increase energy efficiency and promote renewable fuels and alternative energy sources.

The energy tax title as written, however, will cost from $15–20 billion dollars. The oil and gas incentive section would cost taxpayers $6.5 billion and allows companies to deduct the costs of mineral exploration and marginal oil wells. The nuclear power incentives total $1 billion, and the so-called ''clean coal'' incentive is $2.2 billion. In addition to these credits to mature industries, the ''non-conventional fuel credit'' that supports the synfuels industry and coalbed methane industry would cost the taxpayers an additional $2.5 billion. According to a Time magazine article entitled ''The Great Energy Scam,'' some plants merely spray newly mined coal with diesel fuel or pine-tar resin to qualify for the synfuel tax credit. We also need to consider the detrimental environmental impacts of these tax breaks. A proposed coalbed methane project in Wyoming, for example, could draw on 1 billion gallons of groundwater a day and would benefit from this provision.

I remain committed to supporting legislation to encourage alternative energy research and production. In terms of overall energy policy, I believe we must develop cleaner, more efficient energy sources and promote conservation. We need a comprehensive energy policy, but it must be balanced and fiscally responsible. I believe that we can meet these goals, but unfortunately, this energy tax title falls short of that goal. Therefore, I support the McCain amendment to strike it from the bill.

PROPOSED 90-DAY DELAY IN FEC RULEMAKING

Mr. MCCAIN. Mr. President, I am joined on the floor today by my good friend from Wisconsin, Senator FEINGOLD, to speak briefly about a recent recommendation by the general counsel of the Federal Election Commission, FEC, to delay the 527 rulemaking another 90 days. Additionally, we would like to express support for an excellent bipartisan proposal by two members of the FEC to resolve the issue of 527 groups spending illegal soft money to influence Federal elections. As my colleagues know, the problem of 527 groups raising and spending soft money has somehow become a very contentious and partisan issue. That is unfortunate, because it need not be, and the Toner/Thomas proposal proves the point.

As my colleagues know, the general counsel of the FEC made a recommendation yesterday to delay the 527 rulemaking which the commission is to rule on tomorrow. This is a terrible idea. There is simply no reason for the commission to continue fiddling while Rome burns. The commissioners need to decide the 527 issue tomorrow, on schedule, without more pointless delays. Everyday, 527 groups whose purpose is to influence the presidential election are breaking the law. They are spending millions of dollars in soft money to influence Federal elections in plain violation of the Federal Election Campaign Act of 1974, which the commission has failed to enforce for a generation. And these groups are now using the FEC inaction to blow a hole in the soft money ban upheld by the Supreme Court.

In the middle of an election cycle, the FEC is considering taking a pass on the most critical issue on its plate. If they do, it will be just one more example of the agency's utter inability to enforce election law. My colleague, TRENT LOTT, recently said he was considering hearings on FEC reform, and if this absurd delay happens, I think we may be talking about hearings sooner rather than later. The FEC is responsible for the start of soft money in the first place. They must not get away with it again.

This is particularly galling because the main reason the general counsel office gives for its delay—the size and complexity of the rulemaking, and the possible impact on 501(c) organizations—is a canard. There is an excellent, bipartisan proposal on the table from Commissioners Toner and Thomas that would deal with the 527s in a simple, straightforward way. With their proposal, the commission has the perfect opportunity to prove they can uphold the election laws that were passed by Congress more than 25 years ago, signed by the President, and upheld by the Supreme Court. It may sound a little odd to be excited at the prospect of a Federal agency properly upholding existing law, but in the case of the FEC, it would be something of a new phenomenon.

There is absolutely nothing in the general counsel's rationale for delaying action here that justifies refusing to act now to fix the FEC's absurd allocation regulations that are being used to spend 98 percent soft money to influence the presidential election. The general counsel's recommendation provides no excuse for failing to act tomorrow on the portion of the Toner/Thomas proposal that would fix the allocation rules and correct the FEC's mistake in adopting them, a mistake made clear by the Supreme Court decision McConnell v. FEC. The only conclusion that can be reached if action to correct the allocation rules is rejected by the FEC is that the commission wants to protect and license the illegal use by 527 groups of soft money to finance partisan voter mobilization efforts to influence the 2004 presidential election.

The bipartisan proposal by Commissioner Michael Toner, a Republican, and Commissioner Scott Thomas, a Democrat provides a clear, effective and immediate solution to the soft money problems that have arisen with these 527 groups. The FEC is supposed to meet tomorrow to consider this proposal, and I strongly urge them to adopt the proposal and seize this opportunity to enforce the law.

First, I note that their proposal would explicitly apply only to 527 political committees, and not to 501(c) nonprofit groups, which should take care of the concerns of those in the nonprofit community that the FEC would overreach, and affect their own important work. That is simply no longer an issue, and the commission can act tomorrow, rather than waiting around until a more convenient moment to enforce the law.

The Toner/Thomas proposal deals with what we believe to be the two main problems with the 527 groups. First, their plan would fix the commission's absurd allocation rules, which control the mix of soft and hard money these groups can spend. Under the current rules, 527s can simply claim that they're involved in both Federal and State elections, even though they're obviously and admittedly clearly working for the sole purpose of defeating or electing a presidential candidate. That claim, and the absurd FEC rules that currently exist, has led one such 527 group to use 98 percent soft money for their partisan vote mobilization activities to influence the presidential election and only 2 percent hard money. That is an obvious circumvention of the longstanding Federal Election Campaign Act, FECA, as well as the new ban on soft money in Federal elections, and a hole in the dike that absolutely must be plugged.

The Toner/Thomas plan would deal with this by simply requiring groups involved in partisan voter mobilization activities in Federal elections to use a minimum of 50 percent hard money to pay for those activities. that straightforward, easy to understand rule will have the effect of substantially limiting the amount of soft money a 527 group can use on these activities, and I believe it is an effective way to deal with the problem at this time.

The second issue the two commissioners' plan would address is the use of soft money by these 527 groups to run attack ads attacking and promoting presidential candidates. These groups are claiming that they are exempt from the normal Federal rules prohibiting the use of soft money to fund such ads because they are not political committees under FEC rules. In essence, these political organizations are claiming that as long as their ads do not use words like ''vote for'' or ''vote against,'' they can spend as much soft money as they please attacking and promoting Federal candidates.

That argument is simply absurd, even though the FEC's failure to properly enforce the law has allowed it to gain currency over the years. In order to qualify for their 527 tax status, these organizations have to meet the IRS test of being groups that are ''organized and operated primarily'' to influence elections. And under the Federal

Election Campaign Act, which has been around since 1974, groups that have a primary purpose of influencing Federal elections and raise or spend $1,000 to do so have to register as political committees and comply with Federal campaign finance laws. 527 political groups have sprung up in this election with the clear and sole purpose of influencing the presidential election. Under existing laws and Supreme Court rulings these groups can run whatever ads they want—but they have to register as Federal political committees and they do have to abide by the same Federal campaign finance rules as all other political committees and candidates have to play by, and pay for those ads with hard money.

The Toner/Thomas proposal clears up this issue by correctly deeming any organization operating as a political group under section 527 of the tax code to have a ''major purpose'' of influencing Federal elections, unless the group falls within certain specified exemptions. This common-sense approach simply corrects the FEC failure to properly interpret the law in the past as it applies to 527 groups. It makes it clear that 527 political groups that have a major purpose to influence Federal elections and spend more than $1,000 to influence a Federal election have to comply with Federal campaign finance rules, regardless of whether their communications contain express advocacy.

Again, we have a golden opportunity here to fix an emerging problem before it gets out of hand. The Commission should take this rare opportunity to show they can do their job in a bipartisan way. They should approve the Toner/Thomas proposal on Thursday.

Mr. FEINGOLD. Mr. President, like Senator MCCAIN, I see this rulemaking on 527s quite simply as a test of the FEC's willingness to enforce the law. As we have noted many times, the Supreme Court in the McConnell v. FEC decision concluded that the FEC improperly interpreted federal election law and allowed the growth of the soft money loophole that made necessary our 7-year reform effort.

We have been watching the agency closely since the Bipartisan Campaign Reform Act was signed into law in March 2002, looking for signs that it will not repeat its past mistakes. For the most part, we have been sorely disappointed. The announcement yesterday that the FEC general counsel's office wants the commission to delay action on the rulemaking for 90 days is the latest example of this agency's failure to carry out its responsibilities.

It is important to remember that the issues the FEC has been considering recently arise not under the Bipartisan Campaign Reform Act that we passed a few short years ago, but rather under the Federal Election Campaign Act of 1974. The question of whether an organization is a political committee subject to the Federal election laws is sometimes a complicated question, but it is not a new one.

The McConnell decision made it clear that the FEC's previous approach, which was to allow 527s to avoid registering as political committees if they didn't use ''express advocacy,'' was wrong. The FEC needs to enforce the law so that groups whose major purpose is to influence Federal elections are subject to the Federal election laws.

I believe that when an organization tells the IRS that its primary purpose is to influence candidate elections in order to qualify for 527 status, it should not in most cases be able to turn around and tell the FEC that its major purpose is not to influence elections. To me, that just doesn't make sense.

It is unfortunate that the FEC initially approached this issue in a way that frightened legislative advocacy groups into thinking that they might become political committees and have to completely change their fundraising and operations. It is also unfortunate that the nonprofit community in opposing the erroneous FEC proposals took the position that nothing should be done about 527s that are very much involved in election activities but are seeking to operate outside of the election laws.

Senator MCCAIN and I, working with Representatives SHAYS and MEEHAN, our reform partners in the House, filed comments with the FEC arguing that there are narrow and targeted things that the FEC should do to protect the integrity of the election laws, without affecting legitimate 501(c)s. A bipartisan proposal announced recently by Commissioners Michael Toner and Scott Thomas takes this approach.

The Toner-Thomas proposal addresses only 527 organizations. It does not change the regulations that apply to 501(c)s. In addition, the proposal would change the allocation rules that apply to 527s that have both a Federal and a nonfederal account. It simply cannot be a correct interpretation of the law that an organization that has publicly declared that it will carry out partisan voter mobilization activities in battleground states this fall can use 98 percent soft money to pay for those activities. The Toner-Thomas proposal would require that at least half of the expenditures on these activities come from a hard money account. That certainly makes sense given that the groups themselves proclaim that their purpose is to influence the presidential election.

But now, the FEC's general counsel has proposed that the FEC delay its vote on the rulemaking for 90 days. This will only assure that the FEC will do nothing about 527s until after the 2004 elections. That is not an acceptable result. It is crucial that the FEC act now. It should adopt the Toner-Thomas proposal, but at the very least, it should modify the allocation rules applicable to 527s doing voter mobilization. There is absolutely no reason to postpone action on that issue.

I hope that some day it will not be a cause for celebration when the agency charged with enforcing the election laws look like it might actually do its job. Unfortunately, the FEC has not been an effective agency, and this latest proposed delay only confirms that it may not be up to the task that Congress has given it. Senator MCCAIN and I have introduced legislation to replace the FEC with a very different regulatory agency. I was pleased to read this week that the chairman of the Rules Committee agrees that the Senate should take a very hard look at the FEC and consider legislation to fundamentally change it.

For now, however, we will be watching closely to see how the FEC deals with the challenge of the 527s. I once again commend the Senator from Arizona for his dedication to this cause.

HEALTH CARE AND THE UNINSURED

Mr.VOINOVICH. Mr. President, I rise to speak today about the dilemma this Nation is facing regarding access to quality, affordable health care. Next to the economy, it is the greatest domestic challenge facing our Nation. In fact, the rising cost of health care is a major part of what is hurting our competitiveness in the global marketplace.

Throughout my career in public service, health care has been one of my top legislative priorities. Unfortunately, despite increased spending on public and private health care programs, millions of Americans are without health care coverage. Although, my State of Ohio has one of the lowest percentages of uninsured.

The statistics are overwhelming. For the fourth year in a row, health care spending grew faster than the rest of the U.S. economy in 2003. The average cost of family coverage was $9,018, with employees covering 27 percent, or $2,412, of the cost. During that same period of time, the average family's contribution to their health insurance increased 16 percent.

Total spending on health care is now approximately $1.6 trillion or $5,440 for every man, woman and child in the United States, which translates into almost 15 percent of our GDP—the largest share ever.

If we look at this in an international context, the statistics become even more glaring. Per capita health care spending in the United States continues to exceed other nations. In its May 2004 issue, ''Health Affairs'' reports that the Swiss spent only 68 percent as much as the United States per capita on health care in 2001. Even more troubling, Canada spent as little as 57 percent as much as the U.S. Both nations have a lower number of uninsured citizens than the United States.

Despite all the spending some 44 million Americans—15 percent of the population—had no health insurance at some point last year. This number has increased steadily. In 2000, that number

was 39.8 million. In 2002 it was 43.6 million. In 2 years, the country added almost four million uninsured individuals.

Just this week, the Cincinnati Enquirer told the story of Yolanda Webb, who left her Hamilton County, OH, job to begin her own cosmetic business. However, after opening her own shop, she realized that due to a chronic condition she was diagnosed with 20 years ago, a health insurance policy would cost her $800 a month. Unfortunately, this is an expense she can not afford and as a result, Ms. Webb is one of the 200,000 people in just the greater Cincinnati area that lives without health insurance coverage.

In addition, with increased costs, employers are facing difficult options. A poll of over 3,200 employers conducted by the Kaiser Family Foundation indicates that 56 percent of large firms increased employees' share of health costs in 2001. I have consistently heard from employers throughout Ohio that they want to continue to offer health insurance for their employees, but it hurts their ability to be competitive in the global market.

In light of these startling statistics, I was eager to join my colleagues on the Senate Republican Health Care Task Force to provide some solutions for dealing with these trends.

I have been in this situation before. As Governor of Ohio, I had to work creatively to expand coverage and deal with increasing health care costs for a growing number of uninsured Ohioans. I am happy to report that we were able to make some progress toward reducing the number of uninsured during my time as the head of the State by negotiating with the state unions to move to managed care; by controlling Medicaid costs to the point where from 1995 to 1998, due to good stewardship and management, Ohio ended up underspending on Medicaid without harming families; and implementing the S–CHIP program to provide coverage for uninsured children. In fact, I recently learned from the Cuyahoga Commissioners that in our county, 98 percent of eligible children are currently enrolled in this program.

Learning from this experience, I was especially encouraged by Senator FRIST and Senator GREGG's commitment to solving the national health care crisis and applaud their decision to form the Senate task force to explore the issue. I am convinced that my colleagues and I have been able to identify some very viable and immediate solutions for reversing the trend of the growing uninsured and for dealing with the rapid increase in the cost of quality health care coverage.

We can make this a reality by addressing the underlying factors that are contributing to dramatic increase in health care costs and the subsequent reduction in access to quality care. I have worked hard in the past on this issue, and am pleased that the package the task force released this week addresses the biggest factors driving health care costs.

The first is medical lawsuit reform. I have been concerned about this issue for quite some time—in fact, since my days as Governor of Ohio. I wish we had the outpouring of support for medical liability reform six years ago that I see now. In 1996, I essentially had to pull teeth in the Ohio Legislature to pass my tort reform bill.

I signed it into law in October 1996. Three years later, the Ohio Supreme Court ruled it unconstitutional, and if that law had withstood the Supreme Court's scrutiny, Ohioans wouldn't be facing the medical access problems they are facing today: doctors leaving their practice, patients unable to receive the care they need and costs of health insurance going through the roof.

Continuing down this path, during my time in the Senate, I worked with the American Tort Reform Association to produce a study that captured the impact of this crisis on Ohio's economy. In Ohio, the litigation crisis costs every Ohioan $636 per year, and every Ohio family of four $2,544 per year. These are alarming numbers! In these economic times, families can not afford to pay $2,500 for the lawsuit abuse of a few individuals.

The Medical Liability Monitor ranked Ohio among the top five States for premium increases in 2002. OHIC Insurance Co., among the largest medical liability insurers in the State, reports that average premiums for Ohio doctors have doubled over the last 3 years.

In a very real sense, I have heard from young physicians in Ohio who tell me they are considering relocating to a place where the ability to practice medicine is better and the liability situation is more stable. A friend of mine shared with me a letter from an OB–GYN in Dublin, OH, who had decided to retire from his practice. He wrote the following to his patients:

> On June 17, 2003, I received my professional liability insurance rate quote for the upcoming year, and it is 64% higher than last year's rate. I have seen my premiums almost triple during the past two years, despite never having had a single penny paid out on my behalf in twenty seven years as a physician. Even worse, during this time the insurance company has reduced the amount of coverage that I can purchase from $5 million to only $1 million, while jury verdicts have skyrocketed, often exceeding $3–4 million. If I were to purchase this policy, I would be putting all of my family's personal assets at risk every time that I delivered a baby or performed surgery. I refuse to do that.
>
> I have therefore decided to retire from private practice on July 31, 2003, the final day of my current liability insurance policy. This is not a decision that I take lightly, but unfortunately it has become necessary. For many of you, I have been part of your life for years. I have delivered your babies, and helped you through some of life's most difficult challenges. It has truly been an honor.''

And for those of my colleagues who think medical liability reform is a State issue, I would ask them to read a letter, which I submitted for the record on February 24, 2004, and see how the medical liability crisis transcends State lines—particularly my friends from the neighboring state of West Virginia. Our Ohio physicians, who practice along the border, are feeling the effects of their proximity to West Virginia and its favorable plaintiff's verdicts. They are feeling these effects in their increasing insurance premiums. And unfortunately, Ohio's physicians are not alone.

And it is not only doctors crossing State borders to find better insurance rates—it is patients as well. Citizens living along the thousands of miles of State borders very often obtain their medical care across that line. Federal action is appropriate and critically necessary. Even more so because this crisis affects Federal health care programs, including Medicare and Medicaid.

Overall, the cost of this crisis to the economy is quite staggering. There is evidence that physicians are now practicing medicine ''defensively'' in order to protect themselves from lawsuits. In fact, a March 3, 2003 report by the Department of Health and Human Services calculated the practice of defensive medicine costs the United States a total of between $70–126 billion a year and estimates that the cost for the Federal Government alone is between $35 and $56 billion.

As a cosponsor of the HEALTH Act, the Patients First Act, The Healthy Mothers and Babies Access to Care Act, and the Pregnancy and Trauma Care Access Protection Act, I will continue to work with my colleagues to find a way strike a delicate balance between the rights of aggrieved parties to bring lawsuits and receive rapid and fair compensation and the rights of society to be protected against frivolous lawsuits and outrageous rewards for non-economic damages that are disproportionate to compensating the injured and made at the expense of society as a whole.

We can no longer allow unchecked, excessive litigation to continue to drive up the cost of health care and limit access for so many Americans.

Beyond medical lawsuit reform, the task force has identified another way to limit the rapid increase in health care costs, that is to reduce regulations and paperwork requirements that burden out nation's health care providers.

Whether due to Federal privacy regulations or insurance requirements, this is an important issue to providers in Ohio. Last November, I visited a small hospital in the southern part of my State, Marietta Memorial Hospital, to discuss health care reform. At this meeting, I spent some time discussing the administrative process the hospital was required to follow in order to treat the patients that come through their doors each day.

The hospital provided me with a binder full of paperwork that was completed, in this case, for a total hip replacement procedure on an elderly patient. As you can see, Mr. President, this 72 page binder is full of more than 50 forms that either the hospital or the patient and their family were required to complete, some time multiple times, in order to for the patient to receive treatment.

This is a big enough challenge for large hospital groups, but for small providers like Marietta Memorial with just 204 beds and 90 physicians, this paperwork and regulatory demand can be crippling.

For this reason, I worked with the task force to include in our reform package ways to limit bureaucratic demands. We believe that this could save our Nation approximately $47 billion without risking patient safety, privacy or the quality of health care.

In addition, the task force found that there were ways to increase hospital's and provider's use of technology to lower their costs and eliminate duplicative test and procedures. Fortunately, President Bush has taken a huge step forward in this area and has created a new position at the Department of Health and Human Services to coordinate the Nation's health information technology efforts. I am pleased that Secretary Thompson recognized the importance of and the immediate need to develop standards that help to create electronic medical records and other technology efforts.

I have no doubt these standards when implemented will help improve quality and cost efficiency of care and will eventually help hospitals, especially smaller hospitals like Marietta Memorial, reduce duplicative costs and services to their patients and improve the quality of the care they can provide.

These are only some of the ways we can act immediately to put an end to the increase in health care costs and reduce the number of Americans that find themselves without quality health care coverage.

However, these are steps that will only provide interim relief.

Like I said, health care reform has always been one of my top priorities and I have been studying this issue for some time. In the past 2 years, I have met with experts and other interested parties to get the full picture of the state of health care in the United States and learn about possible efforts for reform. I have discussed reform proposals with individuals as diverse as former Ohio Congressman Bill Gradison to John Sweeney, President of the AFLCIO to Dr. Donald Palmisano, President of the American Medical Association, to Stuart Butler with the Heritage Foundation.

And over the past year and a half, I have been traveling throughout my State of Ohio and have held 14 roundtables to specifically discuss health care reform with employers and employees, business and labor leaders, the uninsured and the underinsured.

In fact, in Ohio I have even formed my own health care task force made up of representatives from physician and other provider groups, small and large employers, labor, policy experts, and others who have an interest in reforming our current health care environment. Together we have analyzed a variety of popular health care reform proposals to increase access to health insurance coverage. And what I have heard even from my most conservative friends—is that this health care system is broken.

People are telling me we need to think about plowing new ground. I agree and believe we have to reevaluate the way we are spending the $1.6 trillion that is dedicated to health care in this county. We need to look at the big picture and determine how we can realign our system to more efficiently provide quality health care that maintains choices and responsibility for consumers.

This, of course, will not happen overnight and, as a result, I am encouraged by and supportive of some of the interim and immediate solutions proposed by the Senate Task Force. My colleagues and I have taken a step in the right direction toward identifying immediate changes that will bring down the prices people are paying for their health care today, help those who have insurance retain it at reasonable rates, and expand access to affordable insurance for those who are currently uninsured and underinsured.

Should I have the opportunity to serve my fellow Ohioans for an additional 6 years, reforming our Nation's health care system will be my highest priority.

ASSISTANCE TO FIREFIGHTERS ACT

Mr. ROCKEFELLER. Mr. President, I am proud today to cosponsor S. 2411, the Assistance to Firefighters Act of 2004. This legislation, introduced by my colleagues Senators DODD and DEWINE, would reauthorize the FIRE Act grant program through 2010, as well as make a number of improvements to the existing program. This legislation will improve the ability of firefighters across to the country to do their jobs more safely and effectively.

Four years ago, I was proud to be an original cosponsor of the Firefighter Investment and Response Enhancement (FIRE) Act, which has generated nearly $2 billion in grants since the program was enacted. It has provided critical dollars enabling fire departments to pay for the purchase of new equipment, to better train their personnel, and to establish fire prevention campaigns. Although this is a notable step forward, in West Virginia, and throughout the country, fire departments remain seriously underfunded. I hope my colleagues will agree that much more needs to be done before we can feel comfortable about the level of preparedness of our firefighters.

In West Virginia, almost every single one of our approximately 460 fire departments is undermanned and without the necessary equipment they need to do their jobs. I worry, as I'm sure many of my colleagues do, that communities could find themselves in the unacceptable position of being ill-prepared to respond to an emergency. Very few towns and cities in West Virginia can afford to hire and train more firefighters, or to purchase new firefighting equipment without additional Federal assistance.

I will bet most of my colleagues would be surprised at the number of volunteers who currently make up the majority of our Nation's fire service. Volunteers compose nearly 75 percent of all firefighters nationwide. That percentage is much higher in rural States like West Virginia, where 95 percent of our firefighting personnel are volunteers. We rely on firefighters in most communities to assist us not only to put out fires, but also in cases of natural disasters, car accidents, hazardous material spills, and this mostly volunteer fire service would be called upon to respond to any acts of terrorism that might occur. Additional firefighters are needed, as well as an immediate infusion of new and better equipment so that they can do their jobs more effectively. Currently there are not enough portable radios or breathing apparatus equipment, and many departments lack the resources needed for proper vehicle maintenance. Reauthorizing the FIRE Act grant program will allow fire departments to hire more full-time personnel and further alleviate the costs of maintaining up-to-date equipment and training.

After 4 years, there are many facets of the program that need updating to reflect the learning process both Congress and the Fire Service we have undergone. This bill would make several improvements to the existing law that reflect the changing nature of the world we live in today and acknowledge that there are better and more efficient ways to administer the program. The measure would align the FIRE Act with new standards in Federal emergency management put in place since the creation of the Department of Homeland Security. It also lowers the matching funds requirement by a third for fire departments serving communities of 50,000 residents, and cut requirements in half for communities of 20,000 people or fewer, in order to lessen current budget strains. It would also open up funding to nonprofit Emergency Medical Service units not affiliated with fire departments. Right now, only EMS units attached to fire departments are eligible for funding. This provision in particular will improve the safety and security of West Virginians, where many of our EJMS units are independent of the local fire department.

I agree with the statements that have been made by virtually every Member of Congress that the world we

live in today sits in stark contrast to that of the one we knew prior to the tragedies of September 11, 2001. Probably no group knows this better than the dedicated firefighters who place themselves in harm's way every time they respond to a call. Fortunately, we have an opportunity here to demonstrate that we recognize the importance of the work these firefighters do, and help them to protect us by quickly enacting this bill.

The Assistance to Firefighters Act of 2004 would translate directly into saved lives and will increase the safety of West Virginians and Americans in communities across this country. I encourage my colleagues to join me in supporting this important legislation.

MUTUAL FUND REFORM ACT OF 2004

Mr. MCCAIN. Mr. President, I am pleased to join my colleague from Illinois, Senator FITZGERALD, and several other members of the Senate in sponsoring S. 2059, the Mutual Fund Reform Act of 2004.

Mutual funds traditionally have been seen as safe havens for long-term investments. This perception of mutual funds as secure investment vehicles has certainly contributed to the industry's grow. Two decades ago, the mutual fund industry was relatively small; only a small percentage of Americans invested in mutual funds, and the assets of the industry were $115 billion. Today, the mutual fund industry has $7.5 trillion in assets, over 90 million investors, and more than 10,000 funds.

Unfortunately, as the industry has grown, some mutual fund managers and boards of directors have ignored their most basic role as fiduciaries. Recent State and Federal investigations have revealed trading irregularities at several of funds, including many that are well known. These scandals have shed light on the disregard shown by many mutual fund managers and directors for the individuals who invest their hard-earned money in mutual funds. They have also drawn attention to inflated mutual fund fees that often are not in the best interests of mutual fund shareholders and too frequently are not properly disclosed to such shareholders.

The Mutual Fund Reform Act would improve the integrity of the mutual fund industry by restoring investors' trust in the mutual fund managers and boards that are responsible for investing much of our citizens' household, college, and retirement savings. Most importantly, the act would strengthen the governance of mutual funds by, among other things, ensuring that mutual fund company boards would be truly independent and empowered. In addition, the act would establish disclosure requirements designed to provide mutual fund investors with a clearer picture of fund management and fund fees.

I thank Senator FITZGERALD for introducing this important bill, and I urge my colleagues to support this legislation in order to further encourage investor confidence in the mutual fund industry and in our capital markets.

ADDITIONAL STATEMENTS

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

WHY WE'RE IN IRAQ

Mr. HOLLINGS. Mr. President, I recently wrote a guest column on ''Why We're in Iraq'' for The State in Columbia, SC. I want to share it with my colleagues, and ask that the May 7 article be printed in the RECORD.

The article follows.

''WHY WE'RE IN IRAQ''

(By Ernest F. Hollings)

With 760 dead in Iraq and more than 3,000 maimed for life, folks continue to argue over why we are in Iraq—and how to get out.

Now everyone knows what was not the cause of this war. Even President Bush acknowledges that Saddam Hussein had nothing to do with 9/11. Listing the 45 countries where al Qaeda was operating on Sept. 11 (70 cells in the United States), the State Department did not list Iraq.

Richard Clarke, in ''Against All Enemies,'' tells how the United States had not received any threat of terrorism for 10 years from Saddam at the time of our invasion. On page 231, John McLaughlin of the CIA verifies this to Paul Wolfowitz. In 1993 President Clinton responded to Saddam's attempt on the life of President George Herbert Walker Bush by putting a missile down Saddam's intelligence headquarters in Baghdad. Not a big kill, but Saddam got the message: Monkey around with the United States and a missile lands on his head.

Of course there were no weapons of mass destruction. Israel's intelligence, Mossad, knows what's going on in Iraq. It is the best. It has to know; Israel's survival depends on knowing. Israel long since would have taken us to the weapons of mass destruction if there were any, or if they had been removed. With Iraq no threat, why invade a sovereign country? The answer: President Bush's policy to secure Israel.

Led by Richard Perle, Paul Wolfowitz and Charles Krauthammer, for years there has been a domino school of thought that the way to guarantee Israel's security is to spread democracy in the area. Wolfowitz wrote: ''The United States may not be able to lead countries through the door of democracy, but where that door is locked shut by a totalitarian deadbolt, American power may be the only way to open it up.'' And on another occasion: Iraq as ''the first Arab democracy . . . would cast a very large shadow, starting with Syria and Iran but across the whole Arab world.''

Three weeks before invasion President Bush stated: ''A new regime in Iraq would serve as a dramatic and inspiring example for freedom for other nations in the region.''

Every president since 1947 has made a futile attempt to help Israel negotiate peace. But no leadership has surfaced among the Palestinians that can make a binding agreement. President Bush realized his chances at negotiation were no better. He came to office imbued with one thought—re-election. Bush felt tax cuts would hold his crowd together and spreading democracy in the Mideast to secure Israel would take the Jewish vote from the Democrats.

You don't come to town and announce your Israel policy is to invade Iraq. But George W. Bush, as stated by former Secretary Paul O'Neill and others, started laying the groundwork to invade Iraq days after inauguration. And, without any Iraq connection to 9/11, within weeks he had the Pentagon outlining a plan to invade Iraq. He was determined.

President Bush thought taking Iraq would be easy. Wolfowitz said it would take only seven days. Cheney believed we would be greeted as liberators. But Cheney's man, Ahmed Chalabi, made a mess of the de-Baathification of Iraq by dismissing Republican Guard leadership and Sunni leaders, who soon joined with the insurgents.

Worst of all, we tried to secure Iraq with too few troops. In 1966 in South Vietnam with a population of 16.5 million, Gen. William C. Westmoreland with 535,000 U.S. troops was still asking for more. In Iraq with a population of 24.6 million, Gen. John Abizaid with only 135,000 troops can barely secure the troops, much less the country. If the troops are there to fight, they are too few. If there to die, they are too many.

To secure Iraq we need more troops at least 100,000 more. The only way to get the United Nations back in Iraq is to make the country secure. Once back, the French, Germans and others will join with the United Nations to take over.

With President Bush's domino policy in the Mideast gone awry, he keeps shouting ''War on Terror.'' Terrorism is a method, not a war. We don't call the Crimean War, with the Charge of the Light Brigade, the Cavalry War. Or World War II the Blitzkrieg War. There is terrorism in Ireland against the Brits. There is terrorism in India and in Pakistan. In the Mideast, terrorism is a separate problem to be defeated by diplomacy and negotiation, not militarily.

Here, might does not make right—right makes might. Acting militarily, we have created more terrorism than we have eliminated.

BOYD STEWART: IN MEMORIUM

● Mrs. BOXER. Mr. President, I honor and share with my colleagues the memory of a very special man, Boyd Stewart of Marin County, who died April 17, 2004. He was 101 years old.

Boyd Stewart was born at the Old Cottage Hospital in San Rafael in 1903. He grew up in a time when students rode horses to school. His family ran a cattle ranch in Nicasio and then moved it to Olema while Boyd was growing up. After 3 years at Stanford University, he came back to the ranch when his father passed away and managed it for the rest of his adult life.

Boyd Stewart deeply felt the need to preserve open space for future generations, and he knew it could be done in a way that was compatible with agriculture. He was instrumental in the creation of Point Reyes National Seashore and the Golden Gate National Recreation Area. Concerned about the loss of farmland to urban development, in the 1960s he advocated the controversial idea that the Federal Government buy West Marin ranches for inclusion in the park and lease them back to the ranchers. His family's ranch transferred ownership to the National Park Service in 1970.. For decades he remained committed to his

convictions, often in the face of opposition from powerful forces.

Mr. Stewart served as a leading member of the Marin County Farm Bureau for more than 80 years. He also sat on the boards of the West Marin Chamber of Commerce and the Marin Humane Society. A cattle rancher by profession, he was given the Marin Humane Society's Humane Man of the Century award. Two years ago, Boyd Stewart was honored with the California Excellence in Range Management Award, along with his daughter, Jo Ann Stewart, and his granddaughter, Amanda Wisby, who continue to run the Stewart family ranch today.

Boyd was a dynamic figure in West Marin. My staff and I always knew we could call on him for invaluable information and sound advice. He was the leading expert on West Marin agriculture, to whom agriculture commissioners turned for advice and information. His presence and his accomplishments in preserving Marin open space were greater than any other single person in Marin County in the last century. He was also a deeply-loved member of the Marin community and a wonderful, unique man with a clear mind and steady presence who will be deeply missed. We take comfort in knowing that countless future generations will benefit from his courage, his vision and his leadership. ●

CONGRATULATIONS TO KEVIN CONWAY

● Mr. BUNNING. Mr. President, I pay tribute and congratulate Kevin Conway of Lexington, KY, on his reception of the Star of Life Award given to him by the American Ambulance Association.

Mr. Conway has dedicated himself to the emergency response community of Lexington. As an employee of Rural/Metro Ambulance, Mr. Conway has made a difference in people's lives. However, what has set him apart has been his initiative as operations manager to turn Rural/Metro Ambulance into a State-recognized paramedic and CPR education facility. Mr. Conway also represents or works with many different local and State government EMS organizations. Prior to his work at Rural/Metro Ambulance, Mr. Conway was an Army Ranger. After his completion of active duty, he joined the Army Reserve as a senior drill sergeant.

The citizens of Kentucky are fortunate to have the leadership of Kevin Conway. His example of dedication, hard work, and compassion should be an inspiration to all throughout the Commonwealth. He has my most sincere appreciation for this work, and I look forward to his continued service to Kentucky.●

CHEMISTS WORKING COOPERATIVELY

● Mr. DURBIN. Mr. President, I rise today to share with my colleagues news of a truly historic conference of Middle Eastern chemists held December 6 through 11, 2003, in Malta. Chemists from Egypt, Iran, Israel, Jordan, Kuwait, Lebanon, the Palestinian Authority, Saudi Arabia, Turkey, and United Arab Emirates gathered in Malta to attend the conference, which was entitled: ''Frontiers of Chemical Sciences: Research and Education in the Middle East.'' The conference was chaired by Dr. Zafra Lerman of Columbia College Chicago. The purpose of the conference was to bring scientists from Middle Eastern countries together under the same roof to work on different issues of common concern.

The Malta Conference was a phenomenal success. The multinational exchange of ideas and information led to the creation of new partnerships in the areas of science and education. The conference was so effective that all the participants involved agreed upon the need for a second conference, tentatively scheduled for 2005.

The Malta Conference permitted participating scientists to address important scientific issues pertinent to the future of the Middle East, but it did more than that. All areas within the Middle East were represented, demonstrating there are some issues that can bring everyone together around a common goal of improving our world and society. This meeting reinforced the fact that the advancement of scientific research and education are vital forces for all nations of the world, and it demonstrated that science and education can help nations that are distrustful of each other to reach across borders and work cooperatively to address common concerns.

The conference chairperson, Dr. Lerman, is the distinguished Professor of Science and Public Policy and head of the Institute for Science Education and Science Communication at Columbia College Chicago. Dr. Lerman received her Ph.D. in chemistry from the Weizmann Institute of Science in Israel. She founded and chaired the Department of Science and Mathematics at Columbia College, where she developed an innovative approach to teaching science to non-science majors which received international recognition. Dr. Lerman is active professionally with national and international associations in the fields of science, science education, and scientific freedom and human rights. For 15 years, she has chaired the national American Chemical Society Subcommittee on Scientific Freedom and Human Rights. She also serves as Vice-Chair for Chemistry for the Board of the Committee of Concerned Scientists and chairs the International Activities Committee of the American Chemical Society, in addition to numerous other positions.

Dr. Lerman has received the Presidential Award for Excellence in Science, Mathematics, and Engineering Mentoring and is a 1998 Kilby Award Laureate for extraordinary contributions to society through science, technology, invention, innovation, and education. In February 2001, she was elected a Fellow of the American Association for the Advancement of Science.

I hope my colleagues will join me in congratulating Dr. Lerman and the organizers and delegates of the conference for their superb work. This event serves as a shining example of the progress available to nations that make the effort to promote understanding and cooperation.

I ask that Dr. Lerman's summary of the conference be printed in the RECORD.

The summary follows.

SUMMARY OF MALTA CONFERENCE

From 6 to 11 December, 2003, chemists from Egypt, Iran, Israel, Jordan, Kuwait, Lebanon, Palestinian Authorities, Saudi Arabia, Turkey, and United Arab Emirates gathered in Malta to attend the conference ''Frontiers of Chemical Sciences: Research and Education in the Middle East.''

The success of this conference tells us that science and scientific research are not just methods of improving the human condition but can also be ways of crossing illusive national and political barriers that bar effective collaboration among neighbors. The invited participants included presidents of universities, members of the respective countries' national academies of science, and a former minister of science. By engaging a stunning array of world-class scientists from the Middle East, as well as selected scientists from England, France, Germany, South Africa, Taiwan, and the U.S., the resulting discussion broadly enriched our understanding of specific scientific issues important to the area's future. The fact that all segments of the Middle East were represented suggests that there are fundamental scientific issues that connect us all.

Six Nobel Laureates served as working group leaders on subjects of common interest to Middle Eastern countries. The subjects of these working groups included: ''Environment, Water and Renewable Energy,'' ''Research and New Methodologies in Science Education,'' ''Cultural Heritage and Preservation of Antiquities,'' ''The Use of the Synchrotron to Facilitate Research in the Middle East (SESAME Project),'' among others. Participants committed themselves to continue working together after the conference via e-mail and through smaller regional meetings. Among suggestions offered for future topics were: nanotechnology, computational chemistry, and solar energy.

All participants wrote that the conference organization was excellent, that the conference exceeded their expectations, and that the opportunity to work with the Nobel laureates was especially appreciated and it led to stimulating and informed discussion. 100% of the participants felt that a second conference, probably in 2005, would be needed. All indicated that they would want to attend and that they would recommend it to their colleagues. Most expressed willingness to participate in the organization of such an event.

A joint proposal between Israeli and Palestinian participants in the Malta conference was written on water purification and submitted to USAID–MERC.

One of the conference working groups, which concentrated on the synchrotron being built in Jordan (supported by UNESCO) for all the Middle East scientists, raised the urgent need for scientists trained in the use of a synchrotron. Dr. Yuan T. Lee, the Nobel Laureate who is science advisor to

the President of Taiwan, offered during the conference three full scholarships for scientists from the Middle East to spend a year learning to use the synchrotron in Taiwan. An agreement is already signed, and the selection of the three Middle Eastern scientists is in progress.

The President of the Technion (Israel Institute of Technology) offered to provide three full Technion scholarships for any interested student from an Arabic country.

A group of Palestinian participants met in February with their Israeli colleagues in the Weizmann Institute of Science. As a result, an agreement was signed for Palestinian students to study for MSc and PhD at the Weizmann Institute of Science; a committee is now working on financial arrangements needed to run the program.

One of the Israeli participants has been invited to present a lecture in Egypt. All the Egyptian participants expressed their interest in attending his lecture; some extended additional invitations for him to visit and present seminars at their institutions.

Dr. Roald Hoffmann, one of the American Nobel laureates, offered to run an intensive workshop in a Middle East location for graduate students from all the participating countries. This idea was accepted quite favorably by the participants; the location is now being discussed.

Ultimately, all the participants agreed that science is, indeed, a shared language between them all, and that the things they have in common are more numerous than the differences that separate them. The desire among the participants to continue the collaborations and to meet again is proof that the conference succeeded in overcoming barriers heretofore perceived as insurmountable.●

TRIBUTE TO SISTER JEANNE O'LAUGHLIN

● Mr. NELSON of Florida. Mr. President, I honor a wonderful leader and inspirational person, Sister Jeanne O'Laughlin. Sister Jeanne is retiring as President of Barry University in Miami Shores, FL, after more than 20 years as its president and more than 50 years as an educator. Under her tenure the student population at Barry more than quadrupled and became co-ed and diverse, the budget grew tenfold, the campus added 38 new buildings and Barry became the fourth largest private university in Florida.

But, Sister Jeanne is more than just a president or professor, she is a fixture of the Miami community, a tireless advocate for the indigent and less fortunate and a prolific fundraiser. She has been honored by the Pope and selected for Presidential Commissions. She was the first female member of the Orange Bowl Committee and the Non-Group, chaired the Victory Foundation for the Homeless, the Miami Coalition for a Safe and Drug-Free Community, the Religious Task Force for We Will Rebuild and the Miami Blue-Ribbon Aviation Panel. And in the name of Barry University she would take on any challenge or bet even if it meant singing and dancing.

When important decisions or events were happening in Miami she was there. Many will remember that she rescued three Chinese women from political prosecution and pushed for 14 months for their political asylum request to be accepted.

Her tireless devotion to Barry, her infectious spirit and devotion to making the world a better place one good deed at a time, make Sister Jeanne a truly remarkable person. I am honored to know her.●

DUPONT DELISLE

● Mr. LOTT. Mr. President, this month DuPont Chemical and the people of the Mississippi Gulf Coast region together celebrate the 25th anniversary of the DuPont Chemical Plant in DeLisle, MS. DuPont began manufacturing in DeLisle in 1979 and in 1991 underwent an expansion. The plant now employs over 1,000 people who are residents of both Mississippi and Louisiana. These employees are the No. 1 reason the plant has achieved some very impressive production rates. In fact, its high productivity levels have made the DuPont DeLisle plant the second largest titanium dioxide producing plant in the world. This is truly cause for the plant's employees, management and all local residents to be proud.

The plant's success over the past 25 years is directly attributable to the partnership between DuPont DeLisle and the city of DeLisle, the Mississippi gulf coast region, and the State of Mississippi. The local community and State maintain a strong interest in supporting the plant and ensuring its continued success, while the plant and its employees work to give back to and improve the local community. For example, over the years DuPont DeLisle and its employees have worked in cooperation with the Mississippi Gulf Coast Community College to offer extensive on-site operator training in electrical, machine shop, and computer skills. In addition, employees have conducted American Red Cross blood drives and United Way campaigns, donated equipment to local schools and fire departments, and participated in State and local organizations that are focused on improving Mississippi's workforce.

In addition to their work in the community, the plant's employees have strived to make it the best. As a result, the plant today is the top performer in its business group organization. DuPont DeLisle also work 4 times more safely than comparable industrial plants in the chemical industry using OSHA measurements. In fact, in October 2003, DuPont DeLisle employees exceeded their previous all-time safety record and early this year completed a full year without a single injury requiring medical treatment. These are truly significant accomplishments by employees who are obviously dedicated and committed to their employees' safety.

As one can see, DuPont in DeLisle has been good for the Mississippi economy by creating and sustaining high paying technical jobs. For the past 25 years, Mississippi has been proud to call itself home to this plant and we look forward to our continued partnership for the next 25 years. Congratulations to DuPont DeLisle and its local and State partners on this most noteworthy anniversary.●

MESSAGE FROM THE HOUSE

At 11:48 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 4299. An act to designate the facility of the United States Postal Service located at 410 South Jackson Road in Edinburg, Texas, as the ''Dr. Miguel A. Nevarez Post Office Building''.

H.R. 3939. An act to redesignate the facility of the United States Postal Service located at 14–24 Abbott Road in Fair Lawn, New Jersey, as the ''Mary Ann Collura Post Office Building''.

H.R. 2523. An act to designate the United States courthouse located at 125 Bull Street in Savannah, Georgia, as the ''Tomochichi United States Courthouse''.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 389. Concurrent resolution authorizing the use of the Capitol Grounds for the D.C. Special Olympics Law Enforcement Torch Run.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 2523. An act to designate the United States courthouse located at 125 Bull Street in Savannah, Georgia, as the ''Tomochichi United States Courthouse''; to the Committee on Environment and Public Works.

H.R. 3939. An act to redesignate the facility of the United States Postal Service located at 14–24 Abbott Road in Fair Lawn, New Jersey, as the ''Mary Ann Collura Post Office Building''; to the Committee on Governmental Affairs.

H.R. 4299. An act to designate the facility of the United States Postal Service located at 410 South Jackson Road in Edinburg, Texas, as the ''Dr. Miguel A. Nevarez Post Office Building''; to the Committee on Governmental Affairs.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–7498. A communication from the Secretary of the Senate, transmitting, pursuant to law, the report of the receipts and expenditures of the Senate for the period October 1, 2003 through March 31, 2004; ordered to lie on the table.

EC–7499. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Decrease of the Commercial Trip Limit for Atlantic Group Spanish Mackerel

off the Florida East Coast'' received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7500. A communication from the Deputy Assistant Administrator, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Final Rule to Revise Regulations Requiring Seabird Avoidance Measures in the Hook-and-Line Groundfish Fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI) and Gulf of Alaska (GOA) and in the Pacific Halibut Fishery in the U.S. Convention Waters Off Alaska'' received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7501. A communication from the Assistant Administrator for Fisheries, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Final Rule to Implement 2004 Harvest Specifications for Gulf of Alaska Groundfish'' (ID111703E) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7502. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Fishery Closure; Prohibiting Directed Fishing for Pollock in Statistical Area 620 of the Gulf of Alaska (GOA)'' (ID031504A) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7503. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled ''Regulated Navigation Area: [CGD09–03–287], Regulated Navigation Area; USCG Station Port Huron, Port Huron, Michigan, Lake Huron'' (RIN1625–AA11) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7504. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations (Including 2 Regulations): [CGD11–03–006], [CGD07–03–166]'' (RIN1625–AA09) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7505. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations: [CGD01–03–025], Coast Guard Fire Island, Fire Island, NY'' (RIN1625–AA00) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7506. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations (Including 5 Regulations): [CGD01–04–040], [COTP Memphis 04–002], [CGD09–04–012], [CGD01–04–035], [CGD05–04–081]'' (RIN1625–AA00) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7507. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations (Including 6 Regulations): [CGD08–04–017], [CGD01–04–039], [CGD07–04–021], [CGD08–04–016], [CGD13–04–004], [CGD07–04–019]'' (RIN1625–AA09) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7508. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled ''Update of Rules on Aids to Navigation Affecting Buoys, Sound Signals, International Rules at Sea, Communications Procedures, and Large Navigational Buoys, [USCG–2001–10714]'' (RIN1625–AA34) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7509. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Bombardier Model Otter DHC–3 Airplanes Doc. No. 2000–CE–73'' (RIN2120–AA64) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7510. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Burkhardt Grob Luft-Und Raumfhart GmbH & Co. KG Models G103, Twin Astir, G103 Twin II, G103 Twin III Acro, and G103 Twin III Sailplanes; Doc. No. 2003–CE–61'' (RIN2120–AA64) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7511. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes; Doc. No. 2001–NM–288'' (RIN2120–AA64) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7512. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Schempp-Hirth Flugzeugbau GmbH Models Ventus–2a, Ventus–2b, Discus–2a, and Discus–2b Sailplanes; Doc. No. 2003–CE–59'' (RIN2120–AA64) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7513. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Glasflugel Models Mosquito and Club Libelle 20 Sailplanes; Doc. No. 2003–CE–62'' (RIN2120–AA64) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7514. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Goodrich Avionics Systems, Inc. TAWS8000 Terrain Awareness Warning System Doc. No. 2003–CE–47'' (RIN2120–AA64) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7515. A communication from the Chairman, Office of Proceedings, Surface Transportation Board, transmitting, pursuant to law, the report of a rule entitled ''Electronic Filing Option for Certain Documents'' (STB Ex. Parte No. 651) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7516. A communication from the Acting Assistant Secretary for Communications and Information, National Telecommunications and Information Administration, transmitting, pursuant to law, a report relative to the Administration's actions relating to third generation wireless devices; to the Committee on Commerce, Science, and Transportation.

EC–7517. A communication from the Assistant Secretary for Export Administration, Bureau of Industry and Security, transmitting, pursuant to law, the report of a rule entitled ''Removal of 'National Security' Controls From, and Imposition of 'Regional Stability' Controls on, Certain Items on the Commerce Control List'' (RIN0694–AC54) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7518. A communication from the Acting Director, National Institute of Standards and Technology, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Small Grants Programs; Availability of Funds'' (RIN0693–ZA54) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7519. A communication from the Acting Under Secretary and Acting Director, Patent and Trademark Office, transmitting, pursuant to law, the report of a rule entitled ''Revision of Patent Term Extension and Patent Term Adjustment Provisions'' (RIN0651–AB71) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7520. A communication from the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Addition of Aruba, Democratic Republic of the Congo, East Timor, and Netherlands Antilles to the Export Administration Regulations'' (RIN0694–AC83) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7521. A communication from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled ''Performance Period Limitations'' (RIN2700–AC94) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7522. A communication from the Secretary of Homeland Security, transmitting, pursuant to law, a report relative to the immunity of a private responder from liability for criminal and civil penalties for the incidental take of a protected species while carrying out oil spill response actions; to the Committee on Commerce, Science, and Transportation.

EC–7523. A communication from the Administrator, Environmental Protection Agency, transmitting, pursuant to law, a report relative to the Agency's negative disbursements for the Clean Water Act during fiscal years 1998, 1999, and 2000; to the Committee on Environment and Public Works.

EC–7524. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, a report relative to emergency response plans for small and medium community water systems; to the Committee on Environment and Public Works.

EC–7525. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, a report relative to the award of grants for drinking water security; to the Committee on Environment and Public Works.

EC–7526. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, a report entitled ''Local Limits Development Guidance''; to the Committee on Environment and Public Works.

EC–7527. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, a report entitled ''Operating Rules and Guidelines for State/Regional CWA Recognition Awards Managers''; to the Committee on Environment and Public Works.

EC–7528. A communication from the Assistant Secretary for Civil Works, Department of the Army, transmitting, pursuant to law,

a report relative to the construction of ecosystem restoration and recreation improvements along the Wolf River, Memphis, Tennessee; to the Committee on Environment and Public Works.

EC–7529. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Appeals Settlement Guidelines: Losses Reported from Inflated Basis Assets from Leasing Stripping Transaction'' (UIL9226.01–00) received on May 10, 2004; to the Committee on Finance.

EC–7530. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Application of Section 265(a) to Corporate Groups with Broker Members'' (Rev. Rul. 2004–47) received on May 10, 2004; to the Committee on Finance.

EC–7531. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Capital Gain Dividends of RICs and REITs'' (Notice 2004–39) received on May 10, 2004; to the Committee on Finance.

EC–7532. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Revision to Qualified Amended Return Regulations'' (Notice 2004–38) received on May 10, 2004; to the Committee on Finance.

EC–7533. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Deduction for Interest on Qualified Education Loans'' (TD9125) received on May 10, 2004; to the Committee on Finance.

EC–7534. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Son of Boss Settlement Initiative'' (Ann. 2004–46) received on May 10, 2004; to the Committee on Finance.

EC–7535. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Section 704(b) and Capital Account Revaluations'' (RIN1545–BB10) received on May 10, 2004; to the Committee on Finance.

EC–7536. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Use of Statistical Sampling Under 274(n)'' (Rev. Proc. 2004–29) received on May 10, 2004; to the Committee on Finance.

EC–7537. A communication from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of major defense equipment sold commercially under a contract in the amount of $14,000,000 to Israel; to the Committee on Foreign Relations.

EC–7538. A communication from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of major defense articles or defense services sold commercially under a contract in the amount of $100,000,000 to Japan; to the Committee on Foreign Relations.

EC–7539. A communication from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of major defense articles or defense services sold commercially under a contract in the amount of $50,000,000 to the Republic of Korea; to the Committee on Foreign Relations.

EC–7540. A communication from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of major defense articles or defense services sold commercially under a contract in the amount of $100,000,000 to Australia; to the Committee on Foreign Relations.

EC–7541. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the report of the texts and background statements of international agreements other than treaties; to the Committee on Foreign Relations.

EC–7542. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to an agreement with the Republic of the Marshall Islands on subsidiary Fiscal Procedures and Federal Programs and Services Agreements; to the Committee on Foreign Relations.

EC–7543. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to the President's determination and exercising of a waiver authority with regard to the prohibition on military assistance provided for in section 2007(a) of the American Servicemembers' Protection Act of 2002; to the Committee on Foreign Relations.

EC–7544. A communication from the Director, Office of the Federal Register, transmitting, pursuant to law, the report of a rule entitled ''Price Changes to Federal Register Publications'' (RIN3095–AB35) received on May 5, 2004; to the Committee on Governmental Affairs.

EC–7545. A communication from the Chairman, Federal Maritime Commission, transmitting, pursuant to law, the Commission's Annual Program Performance Report covering Fiscal Year 2003; to the Committee on Governmental Affairs.

EC–7546. A communication from the Senior Vice President, Potomac Electric Power Company, transmitting, pursuant to law, the Balance Sheet of Potomac Electric Power Company; to the Committee on Governmental Affairs.

EC–7547. A communication from the Secretary of Transportation, transmitting, pursuant to law, the Department of Transportation's Report on Management Decisions and Final Actions on Office of Inspector General Audit Recommendations for the period ending September 30, 2003; to the Committee on Governmental Affairs.

EC–7548. A communication from the Chief Financial Officer, Office of the Secretary of Transportation, transmitting, pursuant to law, a report relative to the Department of Transportation's Performance and Accountability Report for Fiscal Year 2003.

EC–7549. A communication from the Administrator, Environmental Protection Agency, transmitting the report of the Office of Inspector General for the period from April 1, 2003 through September 30, 2003; to the Committee on Governmental Affairs.

EC–7550. A communication from the Director, Division for Strategic Human Resources Policy, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees'' (RIN3206–AJ77) received on May 10, 2004; to the Committee on Governmental Affairs.

EC–7551. A communication from the Inspector General, Department of Defense, transmitting, pursuant to law, the report of the Office of Inspector General inventory of commercial and inherently governmental activities for fiscal year 2003; to the Committee on Governmental Affairs.

EC–7552. A communication from the Chairman, Federal Mine Safety and Health Review Commission, transmitting, pursuant to law, the Commission's Program Performance Report for Fiscal Year 2003; to the Committee on Governmental Affairs.

EC–7553. A communication from the Director, National Science Foundation, transmitting, the Foundation's Fiscal Year 2003 Management and Performance Highlights; to the Committee on Governmental Affairs.

EC–7554. A communication from the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, transmitting, pursuant to law, a report entitled ''Managing Information Collection—Information Collection Budget of the United States Government''; to the Committee on Governmental Affairs.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. WARNER for the Committee on Armed Services.

*William A. Chatfield, of Texas, to be Director of Selective Service.

*Jerald S. Paul, of Florida, to be Principal Deputy Administrator, National Nuclear Security Administration.

*Mark Falcoff, of Califronia, to be a Member of the National Security Education Board for a term of four years.

*Dionel M. Aviles, of Maryland, to be Under Secretary of the Navy.

*Tina Westby Jonas, of Virginia, to be Under Secretary of Defense (Comptroller).

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. BOND (for himself and Mr. TALENT):

S. 2412. To expand Parents as Teachers programs and other programs of early childhood home visitation, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BINGAMAN (for himself, Mrs. LINCOLN, Mr. DASCHLE, Mr. LAUTENBERG, Ms. STABENOW, Mr. KENNEDY, and Mrs. CLINTON):

S. 2413. A bill to amend title XVIII of the Social Security Act to provide for the automatic enrollment of medicaid beneficiaries for prescription drug benefits under part D of such title, and for other purposes; to the Committee on Finance.

By Mr. GRAHAM of South Carolina (for himself and Mr. DORGAN):

S. 2414. A bill to establish a commission to review Federal inmate work opportunities; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. CAMPBELL (for himself, Mr. DURBIN, Mr. BOND, Mr. HOLLINGS, Mr. KERRY, Mr. BUNNING, Mr. BIDEN, Mrs. MURRAY, Mrs. LINCOLN, Ms. LANDRIEU, Mr. GRASSLEY, Mr. DOMENICI, Ms. COLLINS, Mr. BURNS, Mr. INHOFE, Mr. TALENT, Mr. BENNETT, Mr. JOHNSON, Mr. LUGAR, Ms. CANTWELL, Mr. CRAPO, Mr. DASCHLE, Mr. DAYTON, Mr. CORZINE, Mr. KENNEDY, Mrs. FEINSTEIN, Mr. COCHRAN, Mr. SMITH, Mr. FEINGOLD, Mr. ALLEN, Mr. INOUYE, Mr. ENZI, Mr. LIEBERMAN, Mr. WYDEN, and Mr. DODD):

S. Res. 357. A resolution designating the week of August 8 through August 14, 2004, as ''National Health Center Week''; to the Committee on the Judiciary.

By Mr. DASCHLE (for himself, Mr. GRAHAM of Florida, Mr. KENNEDY, Ms. STABENOW, Mr. KERRY, Mr. DURBIN, Mr. CORZINE, Mr. LAUTENBERG, Mrs. MURRAY, Mr. INOUYE, Mr. DAYTON, Mr. JOHNSON, Mr. LEVIN, Mr. WYDEN, Mr. EDWARDS, Mrs. BOXER, Mr. FEINGOLD, Mr. JEFFORDS, Mr. BINGAMAN, and Mr. LEAHY):

S. Res. 358. A resolution expressing the sense of the Senate that no later than December 31, 2006, legislation should be enacted to provide every individual in the United States with the opportunity to purchase health insurance coverage that is the same as, or is better than, the health insurance coverage available to members of Congress, at the same or lower rates; to the Committee on Health, Education, Labor, and Pensions.

By Mr. COLEMAN:

S. Res. 359. A resolution designating the week of April 11 through April 17, 2004, as ''Free Enterprise Education Week''; considered and agreed to.

By Mr. LIEBERMAN:

S. Con. Res. 107. A concurrent resolution; considered and agreed to.

By Mr. LIEBERMAN (for himself, Mrs. LINCOLN, and Mr. WYDEN):

S. Con. Res. 108. A concurrent resolution supporting the goals and ideals of Tinnitus Awareness Week; considered and agreed to.

ADDITIONAL COSPONSORS

S. 983

At the request of Mr. CHAFEE, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 983, a bill to amend the Public Health Service Act to authorize the Director of the National Institute of Environmental Health Sciences to make grants for the development and operation of research centers regarding environmental factors that may be related to the etiology of breast cancer.

S. 985

At the request of Mr. DODD, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 985, a bill to amend the Federal Law Enforcement Pay Reform Act of 1990 to adjust the percentage differentials payable to Federal law enforcement officers in certain high-cost areas, and for other purposes.

S. 1036

At the request of Mr. ALLARD, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 1036, a bill to provide for a multi-agency cooperative effort to encourage further research regarding the causes of chronic wasting disease and methods to control the further spread of the disease in deer and elk herds, to monitor the incidence of the disease, to support State efforts to control the disease, and for other purposes.

S. 1420

At the request of Mr. CRAIG, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 1420, a bill to establish terms and conditions for use of certain Federal land by outfitters and to facilitate public opportunities for the recreational use and enjoyment of such land.

S. 1645

At the request of Mr. CRAIG, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 1645, a bill to provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H–2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers, and for other purposes.

S. 1726

At the request of Mr. ALEXANDER, the names of the Senator from New York (Mrs. CLINTON) and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of S. 1726, a bill to reduce the preterm labor and delivery and the risk of pregnancy-related deaths and complications due to pregnancy, and to reduce infant mortality caused by prematurity.

S. 1734

At the request of Mrs. LINCOLN, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 1734, a bill to amend titles XIX and XXI of the Social Security Act to provide States with the option to expand or add coverage of pregnant women under the medicaid and State children's health insurance programs, and for other purposes.

S. 1755

At the request of Mr. LEAHY, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 1755, a bill to amend the Richard B. Russell National School Lunch Act to provide grants to support farm-to-cafeteria projects.

S. 1792

At the request of Mr. DOMENICI, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 1792, a bill to amend the Internal Revenue Code of 1986 to provide the same capital gains treatment for art and collectibles as for other investment property and to provide that a deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor.

S. 1867

At the request of Mr. JEFFORDS, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 1867, a bill to amend the Solid Waste Disposal Act to encourage greater recycling of certain beverage containers through the use of deposit refund incentives.

S. 1909

At the request of Mr. COCHRAN, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 1909, a bill to amend the Public Health Service Act to improve stroke prevention, diagnosis, treatment, and rehabilitation.

S. 1934

At the request of Mr. NICKLES, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 1934, a bill to establish an Office of Intercountry Adoptions within the Department of State, and to reform United States laws governing intercountry adoptions.

S. 2062

At the request of Mr. GRASSLEY, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 2062, a bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

S. 2212

At the request of Ms. COLLINS, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 2212, a bill to amend title VII of the Tariff Act of 1930 to provide that the provisions relating to countervailing duties apply to nonmarket economy countries.

S. 2237

At the request of Mr. LEAHY, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S. 2237, a bill to amend chapter 5 of title 17, United States Code, to authorize civil copyright enforcement by the Attorney General, and for other purposes.

S. 2275

At the request of Ms. MIKULSKI, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2275, a bill to amend the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) to provide for homeland security assistance for high-risk nonprofit organizations, and for other purposes.

S. 2318

At the request of Ms. COLLINS, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 2318, a bill to expand upon the Department of Defense Energy Efficiency Program required by section 317 of the National Defense Authorization Act of 2002 by authorizing the Secretary of Defense to enter into energy savings performance contracts, and for other purposes.

S. 2351

At the request of Ms. COLLINS, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 2351, a bill to establish a Federal Interagency Committee on Emergency Medical Services and a Federal Interagency Committee on Emergency Medical Services Advisory Council, and for other purposes.

S. 2363

At the request of Mr. HATCH, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S. 2363, a bill to revise and extend the Boys and Girls Clubs of America.

S. 2376

At the request of Mr. BUNNING, the names of the Senator from Illinois (Mr. FITZGERALD), the Senator from Pennsylvania (Mr. SANTORUM) and the Senator from Georgia (Mr. CHAMBLISS) were added as cosponsors of S. 2376, a bill to amend the Internal Revenue Code of 1986 to repeal the scheduled restrictions in the child tax credit, marriage penalty relief, and 10 percent rate bracket, and for other purposes.

S. RES. 349

At the request of Mr. KENNEDY, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. Res. 349, a resolution recognizing and honoring May 17, 2004, as the 50th anniversary of the Supreme Court decision in Brown v. Board of Education of Topeka.

AMENDMENT NO. 3114

At the request of Ms. CANTWELL, the names of the Senator from Massachusetts (Mr. KENNEDY), the Senator from Maryland (Mr. SARBANES), the Senator from New Jersey (Mr. CORZINE) and the Senator from New York (Mrs. CLINTON) were added as cosponsors of amendment No. 3114 proposed to S. 1637 , a bill to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

AMENDMENT NO. 3123

At the request of Ms. LANDRIEU, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of amendment No. 3123 proposed to S. 1637, a bill to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BINGAMAN (for himself, Mrs. LINCOLN, Mr. DASCHLE, Mr. LAUTENBERG, Ms. STABENOW, Mr. KENNEDY, and Mrs. CLINTON):

S. 2413. A bill to amend title XVIII of the Social Security Act to provide for the automatic enrollment of medicaid beneficiaries for prescription drug benefits under part D of such title, and for other purposes; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, today I am introducing legislation entitled the ''Medicare Assurance of Rx Transitional Assistance Act of 2004'' with Senators LINCOLN, DASCHLE, LAUTENBERG, STABENOW, KENNEDY, and CLINTON. The bill would assure that all 700,000 low-income seniors and people with disabilities who are currently enrolled in a Medicare Savings Program (MSP) receive the $600 in transitional assistance in 2005 and 2006 available to them through passage of last year's Medicare prescription drug bill.

On April 2, 2004, I wrote a letter with 10 other senators to Health and Human Services Department Secretary Tommy Thompson urging his department to automatically enroll all MSP beneficiaries, which are those low-income people currently enrolled in State Medicaid programs to assist them with Medicare out-of-pocket expenses, into a Medicare drug discount card in order to receive the $600 subsidy available under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA).

In light of the fact that there is growing evidence that the savings offered via the drug discount card may be either minimal or illusory, the only clear benefit is the $600 in transitional assistance that is offered to individuals whose income is less than $12,569 this year or to married couples whose income is less than $16,862. For those MSP beneficiaries who do not have prescription drug coverage, they clearly meet the income criteria under the act and their automatic enrollment is the only way to assure that they will receive the $600 subsidy that was intended for them.

When the prescription drug bill was passed, the administration claimed that they would enroll 65 percent of those eligible for the $600 in transitional assistance into the drug discount card. According to the Centers for Medicare and Medicaid Services, or CMS, the agency expects a total of 5 million of the 7 million eligible to enroll, including 29,000 of the estimated 45,000 in New Mexico who would be eligible. Under CMS's assumptions, these beneficiaries would save a total of $5 billion nationally and $35 million in New Mexico over the 2-year period.

Unfortunately, due to a poor advertising campaign which has been criticized by the General Accounting Office where ads have run in Capitol Hill newspapers such as Roll Call and The Hill, which are not normally subscribed to by low-income senior citizens or people with disabilities, very few people even know the $600 subsidy exists. According to a recent national survey by the Kaiser Family Foundation, only 18 percent of senior citizens are aware that the low-income transitional assistance program was included in the Medicare prescription drug bill. It is hard to believe that 65 percent of those eligible will enroll when less than one-fifth of them even know it exists.

Fortunately, CMS has already laid the groundwork for auto-enrollment, as just two weeks ago the agency issued guidance for how state pharmacy assistance programs, or SPAPs, can automatically enroll their members who have income below 135 percent of poverty in the low-income assistance. Second, CMS created a standardized enrollment form for low-income assistance to be accepted by all companies offering Medicare drug discount cards. Now, CMS can take a third step to automatically enroll MSP members who do not have prescription drug coverage.

Although I believe CMS has the authority to take this third step on its own, the legislation I am introducing today would clarify and ensure low-income seniors and people with disabilities receive the transitional assistance promised them by the Administration and Congress. As the Medicare Rights Center asks, ''Given their definite eligibility and clear need for help to pay for their prescription drugs, why not save these people and the government the hassle of application and automatically enroll them?''

Some in CMS have argued that this might somehow limit the ''choice'' of a low-income Medicare beneficiary. this stated concern is inaccurate, however. As the Medicare Rights Center adds, ''Nothing would prevent members of MSPs from voluntarily enrolling in the low-income assistance and picking a drug discount card before automatic enrollment began. Even once enrolled in the transitional assistance, individuals would enjoy access to the same broad range of prescription drugs, since the $600 in annual assistance is not limited to the medicines on any specific card's formulary.''

As for the value of having the ''choice'' of choosing among the 73 competing drug cards, that is far less valuable than insuring that people get the $600 subsidy. According to a story in this morning's New York Times entitled ''73 Options for Medicare Plan Fuel Chaos, Not Prescriptions,'' that highlights that for many retirees the plethora of discount cards is complicated, overwhelming, and not too helpful. Florence Daniels, an 85 year-old retired engineer, says she cannot use the government website to compare drug costs because she cannot afford a computer. She said, ''I'm trying to absorb all the information, but it's ridiculous. Not just ridiculous, it's scary. If there was a single card and it was administered by Medicare, and it got the cost of drugs down—wonderful, marvelous. But with these cards, the only thing we know is that we'll have to pay money to other people to administer what we can get and can't get.''

The interim final rule made available on December 10, 2003, describes a process where low-income Medicare beneficiaries will have to apply for assistance with one of the newly established drug discount cards. There are a number of low-income seniors and people with disabilities that are very sick, have cognitive and mental illnesses, and do not have access to or comfort with the Internet. Many will wrongly slip through the cracks and fail to get the $600 subsidy that they could benefit from unless we act.

In such cases, if an individual has not enrolled for whatever reason, it begs the question as to what ''choice'' automatic enrollment would take away at that point? Many low-income seniors or the disabled will not even be aware of the drug cards or the $600 subsidy for which they qualify.

As a result, by mid-August, either CMS or the states should take the affirmative step of automatically enrolling them into the program. If we fail to assist them in this manner, what is really lost is not ''choice'' but the $1,200 in real prescription drug assistance that they qualify for and could receive. As a Kaiser Family Foundation study last year indicated, Medicare beneficiaries with no drug coverage were nearly three times more likely than people with drug coverage to forego needed prescription drugs.

While CMS has estimated that 65 percent of the eligible low-income beneficiaries will sign up, that goal will not be met unless some proactive steps are taken. Our goal should be to leave none of our Nation's low-income seniors and people with disabilities behind. Anything less should be considered unacceptable.

While some of the proponents of the drug discount card have been critical of those that have questioned whether the drug discount card offers real discounts, they needlessly have tried to make this a partisan issue when it is not. There are legitimate and important public policy questions as to how effective the prescription drug discount card will be.

However, no matter whether you think the card offers real savings or not, everybody should be able to agree on the point that the $600 subsidy should be provided to as many low-income Medicare beneficiaries as possible.

As a result, I once again call upon the Administration to take this important step itself. If it fails to do so, I hope that congressional leadership will see fit to move this legislation as quickly as possible. There is over $1 billion in prescription drug assistance for many of our Nation's most vulnerable citizens at stake.

I ask unanimous consent that the text of the April 2, 2004, letter to Secretary Thompson, today's New York Times article I cited in my statement, and the text of the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, April 2, 2004.

Hon. TOMMY THOMPSON,
Secretary, Department of Health and Human Services, Washington, DC.

DEAR MR. SECRETARY: As the Administration prepared to implement the new prescription drug card, we urge CMS to use a combination of provisions in the new Medicare prescription drug law to make an immediate, major and dramatic improvement in the level of help for low-income Medicare beneficiaries.

Specifically, we urge you to use the authority in the new law to automatically enroll all current Medicare Savings Program (MSP) beneficiaries (QMB, SLMB, and QI–1 individuals) in the transitional assistance and special transitional assistance programs, thus making these individuals automatically eligible for the $600 per year in low-income discount card assistance without requiring a separate time-consuming and inefficient enrollment process. Under this proposal, the current MSP beneficiaries would be told about the new discount cards serving their area and asked to make a selection by mailing a postcard back. If the MSP beneficiary does not make a selection, they can be assigned at random to a plan serving their area.

Despite years of work and millions of dollars spent on outreach, the level of participation in the MSP programs is very low. The millions of eligible low-income Medicare beneficiaries who are not enrolled in the MSP program miss out on the Part A and Part B deductible, co-pay, and premium assistance provided by these MSP programs. In 2004, this assistance is worth a minimum of $799 and for Qualified Medicare Beneficiaries who live on incomes under 100 percent of the poverty level, it can easily be worth much more than that.

The interim final rule made available on December 10, 2003, describes a system where low-income Medicare beneficiaries will have to apply for assistance with one of the new endorsed discount card companies. This is a population of seniors and people with disabilities that is often very sick, that often has cognitive and mental illnesses, and that often does not have access to or comfort with the Internet. In short, it is a very difficult population to reach out to and enroll in a new program.

By automatically enrolling the MSP population, about 700,000 individuals will be immediately enrolled. The millions of dollars in outreach, education, and paperwork expenses thus saved can be used to target and outreach to: (1) those eligible beneficiaries not currently in the MSP programs; and (2) to the 2.5 million low-income who live on incomes below 135 percent of poverty but who do not qualify for MSP. Hopefully, when those eligible for the MSP who are not currently enrolled are signing up for the prescription drug discount card program, they can also be enrolled in the MSP.

Mr. Secretary, you have estimated that 65 percent of the eligible beneficiaries will sign up for the low-income assistance. You goal should be to leave none of our nation's low-income seniors and people with disabilities behind. Anything less should be considered unacceptable.

Thank you for your consideration of this important request.

Sincerely,

Jeff Bingaman, John F. Kerry, Joseph I. Lieberman, Debbie Stabenow, Charles E. Schumer, Tom Harkin, Blanche L. Lincoln, Ron Wyden, Christopher J. Dodd, Hillary Rodham Clinton, Barbara A. Mikulski.

[From the New York Times, May 12, 2004]

73 OPTIONS FOR MEDICARE PLAN FUEL CHAOS, NOT PRESCRIPTIONS

(By John Leland)

When Mildred Fruhling and her husband lost their prescription drug coverage in 2001, they suddenly faced drug bills of $7,000 a year. Mrs. Fruhling, now 76, began scrambling to find discounts on the Internet, by mail order, from Canada and through free samples from her doctors.

''It's the only way I can continue to have some ease in my retirement,'' she said.

Last week, when the federal government rolled out a new discount drug program, Mrs. Fruhling studied her options with the same thoroughness. What she found, she said, was confusion: 73 competing drug discounts cards, each providing different savings on different medications, and all subject to change.

''I personally feel I can do better on my own,'' she said. But she added, ''At this point, I don't think anyone can make an evaluation.''

Even before they go into effect on June 1, the cards—which are approved by Medicare but offered by various companies and organizations—have been the subject of heated political debate, and AARP advertising campaign about how confusing they are and anxious speculation from those they are supposed to help. Among retirees of different income groups interviewed last week, the initial reaction was incomprehension.

''Even the person who came to explain it to us didn't understand it,'' said Mary Shen, 77, at the Whittaker Senior Center on Manhattan's Lower East Side. ''It's not fair to expect seniors, who have enough difficulties already, to have to figure this out.''

Shirley Brauner, 75, pushed a metal walker through the center's lunchroom. ''All I've got to say is they confuse the elderly, including me,'' she said. ''I'm furious. They're taking advantage of the seniors. How can the seniors understand it?''

The prescription drug discount cards are a prelude to the Medicare Prescription Drug, Improvement and Modernization Act, which will provide broad drug coverage starting in 2006. The federal government projects that 7.3 million of Medicare's 41 million participants will sign up for the cards.

Those who wish to do so, however, face the daunting task of choosing the right card.

''What it's like is a bunch of confusion,'' said Katharine Roberts, 77, who said she had not been to a movie in six years, in part because of her drug expenses. ''You might find you really need three cards, and you can only choose one.''

The cards are a 19-month stopgap measure to provide discounts of 10 percent to 25 percent for Medicare participants who have no other prescription drug coverage. In addition, low-income participants are eligible for subsidies of $600 a year.

The Department of Health and Human Services approved 28 companies or organizations to issue cards; among them are AARP, insurance companies and health maintenance organizations. Cards cost up to $30 a year. Each card provides different discounts on different drugs, and is accepted by different pharmacies. Participants can choose only one.

To help people sort through the options, Medicare and a company called DestinationRx set up a database on its Web site, medicare.gov, that lists the prices charged under various plans for whatever medications a user types in. People can get similar help by telephone at 1–800–

MEDICAR. But some providers complained that the prices on the site were inaccurate, and some cards are not listed at all.

For many retirees, it is too much.

''I'm 85, do I have to go through this nonsense?'' asked Florence Daniels, a retired engineer who said she received less than $1,000 a month from Social Security, of which she paid $179 a month for supplemental medical insurance. She gets drugs through a New York State program, which provides any prescription for $20 or less. To make ends meet and afford her drugs, she said she bought used clothing and put off buying new glasses. Some of her friends travel by bus to Canada to buy drugs; others do without, she said.

Ms. Daniels did not use the government Web site to compare drug cards, in part because she cannot afford a computer. ''I'm trying to absorb all the information, but it's ridiculous,'' she said. ''Not just ridiculous, it's scary. If there was a single card and it was administered by Medicare, and it got the cost of drugs down—wonderful, marvelous. But with these cards, the only thing we know is that we'll have to pay money to other people to administer what we can get and can't get.''

The discount program, which is financed largely by the cards' sponsors, reflects the Bush administration's desire to open Medicare to market principles without allowing participants to import drugs from other countries, which many Democrats favored.

Mark B. McClellan, an administrator at the Center for Medicare and Medicaid Services, said the complexity of the plan encouraged competition. ''We're seeing more plans offering better benefits,'' he said, estimating that people will be able to save 15 percent or more using the cards.

But the complexity of choices will keep many people away from the program, said Marilyn Moon, director of health at the American Institutes for Research, a nonprofit research organization in Washington.

Often, the discount provided by the cards is not as good as what people can get from existing state programs, union plans or consumer groups, said Robert M. Hayes, president of the Medicare Rights Center, a nonprofit organization that helps individuals with Medicare problems.

Sydney Bild, 81, a retired doctor in Chicago, compared the discount cards with the prices he paid ordering his drugs by mail from Canada. Dr. Bild pays $4,000 to $5,000 a year for five medications. When he checked the government Web site, he said the best plans were about 50 percent to 60 percent higher than what he was paying.

But Dr. Bild said his main objection to the new plans was that companies could change prices on drugs, or change the drugs covered. Medicare requires plans to cover only one drug in each of 209 common categories. Consumers can change cards only once a year. Committing to a card is ''like love—it's a something thing,'' Dr. Bild said. ''What if I chose one? They could drop my drugs two weeks later.''

Companies began soliciting customers for their discount drug cards last week. When the first pamphlets arrived at Beverly Lowy's home in New York City, Ms. Lowy said, she looked at them carefully. She does not have drug coverage and last year spent about $3,000 on prescription drugs. But the more brochures she reads, Ms. Lowy said, the less clear things became.

''You really have to be a rocket scientists,'' Ms. Lowy, 71, said. ''It takes time, energy, and you don't even save money. I thought, 'This one is offering this, this one is offering that.' Finally I decided this isn't for me.''

At the Leonard Covello Senior Center in East Harlem, the new cards seemed opaque. Ramon Velez, 72, a retired taxi driver, said he had watched AARP advertisements in which people read the dense language on the federal Medicare bill.

''I was laughing at the people in the ads, but it's true,'' Mr. Velez said. ''Everyone's confused.''

Mr. Velez received $763 a month from Social Security, and often skips his psoriasis medication because he cannot afford the $45 co-payment under this Blue Cross/Blue Shield plan. He wondered if the new drug cards could save him money.

''But it's very confusing,'' he said. ''I'd go to the Social Security office to ask about the cards, but I don't think they'd know.''

Alejandro Sierra, 67, a retired barber, paced around the center's pool table. Mr. Sierra takes six medications for diabetes and complications from cataracts and colon cancer, and sometimes skips a medication because he cannot afford it.

''I'm interested in the cards,'' he said. ''But I can't figure it out on the computer, because I can't see.''

Carlos Lopez, the director of the center, said the cards had so far produced little but anxiety. Mr. Lopez asked participants to bring any applications to him before signing them, and warned them about people selling phony cards.

''They're not nervous, but concerned,'' he said. ''They feel, why now? Why do I suddenly need a card for medications?''

S. 2413

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medicare Assurance of Rx Transitional Assistance Act of 2004''.

SEC. 2. AUTOMATIC ENROLLMENT OF MEDICAID BENEFICIARIES ELIGIBLE FOR MEDICARE PRESCRIPTION DRUG BENEFITS.

(a) AUTOMATIC ENROLLMENT OF BENEFICIARIES RECEIVING MEDICAL ASSISTANCE FOR MEDICARE COST-SHARING UNDER MEDICAID.—Section 1860D–14(a)(3)(B)(v) (42 U.S.C. 1395w–114(a)(3)(B)(v)) is amended to read as follows:

''(v) TREATMENT OF MEDICAID BENEFICIARIES.—Subject to subparagraph (F), the Secretary shall provide that part D eligible individuals who are—

''(I) full-benefit dual eligible individuals (as defined in section 1935(c)(6)) or who are recipients of supplemental security income benefits under title XVI shall be treated as subsidy eligible individuals described in paragraph (1); and

''(II) not described in subclause (I), but who are determined for purposes of the State plan under title XIX to be eligible for medical assistance under clause (i), (iii), or (iv) of section 1902(a)(10)(E), shall be treated as being determined to be subsidy eligible individuals described in paragraph (1).''.

(b) ASSURANCE OF TRANSITIONAL ASSISTANCE UNDER DRUG DISCOUNT CARD PROGRAM.—

(1) IN GENERAL.—Section 1860D–31(b)(2)(A) of the Social Security Act (42 U.S.C. 1395w–141(b)(2)(A)) is amended by adding at the end the following new sentence: ''Subject to subparagraph (B), each discount card eligible individual who is described in section 1860D–14(a)(3)(B)(v) shall be considered to be a transitional assistance eligible individual.''.

(2) AUTOMATIC ENROLLMENT OF MEDICAID BENEFICIARIES.—Section 1860D–31(c)(1) of the Social Security Act (42 U.S.C. 1395w–141(c)(1)) is amended by adding at the end the following new subparagraph:

''(F) AUTOMATIC ENROLLMENT OF CERTAIN BENEFICIARIES.—

''(i) IN GENERAL.—Subject to clause (ii), the Secretary shall—

''(I) enroll each discount card eligible individual who is described in section 1860D–14(a)(3)(B)(v), but who has not enrolled in an endorsed discount card program as of August 15, 2004, in an endorsed discount card program selected by the Secretary that serves residents of the State in which the individual resides; and

''(II) notwithstanding paragraphs (2) and (3) of subsection (f), automatically determine that such individual is a transitional assistance eligible individual (including whether such individual is a special transitional assistance eligible individual) without requiring any self-certification or subjecting such individual to any verification under such paragraphs.

''(ii) OPT-OUT.—The Secretary shall not enroll an individual under clause (i) if the individual notifies the Secretary that such individual does not wish to be enrolled and be determined to be a transitional assistance eligible individual under such clause before the individual is so enrolled.''.

(3) NOTICE OF ELIGIBILITY FOR TRANSITIONAL ASSISTANCE.—Section 1860D–31(d) of the Social Security Act (42 U.S.C. 1395w–141(d)) is amended by adding at the end the following new paragraph:

''(4) NOTICE OF ELIGIBILITY TO MEDICAID BENEFICIARIES.—Not later than July 15, 2004, each State or the Secretary (at the option of each State) shall mail to each discount card eligible individual who is described in section 1860D–14(a)(3)(B)(v), but who has not enrolled in an endorsed discount card program as of July 1, 2004, a notice stating that—

''(A) such individual is eligible to enroll in an endorsed discount card program and to receive transitional assistance under subsection (g);

''(B) if such individual does not enroll before August 15, 2004, such individual will automatically enrolled in an endorsed discount card program selected by the Secretary unless the individual notifies the Secretary that such individual does not wish to be so enrolled;

''(C) if the individual is enrolled in an endorsed discount card program during 2004, the individual will be permitted to change enrollment under subsection (c)(1)(C)(ii) for 2005; and

''(D) there is no obligation to use the endorsed discount card program or transitional assistance when purchasing prescription drugs.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2071).

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 357—DESIGNATING THE WEEK OF AUGUST 8 THROUGH AUGUST 14, 2004, AS ''NATIONAL HEALTH CENTER WEEK''

Mr. CAMPBELL (for himself, Mr. DURBIN, Mr. BOND, Mr. HOLLINGS, Mr. KERRY, Mr. BUNNING, Mr. BIDEN, Mrs. MURRAY, Mrs. LINCOLN, Ms. LANDRIEU, Mr. GRASSLEY, Mr. DOMENICI, Ms. COLLINS, Mr. BURNS, Mr. INHOFE, Mr. TALENT, Mr. BENNETT, Mr. JOHNSON, Mr. LUGAR, Ms. CANTWELL, Mr. CRAPO, Mr. DASCHLE, Mr. DAYTON, Mr. CORZINE, Mr. KENNEDY, Mrs. FEINSTEIN, Mr.

COCHRAN, Mr. SMITH, Mr. FEINGOLD, Mr. ALLEN, Mr. INOUYE, Mr. ENZI, Mr. LIEBERMAN, Mr. WYDEN, and Mr. DODD) submitted the following resolution; which was referred to the Committee on the Judiciary:

Whereas community, migrant, public housing, and homeless health centers are nonprofit, community owned and operated health providers and are vital to the Nation's communities;

Whereas there are more than 1,000 such health centers serving 15,000,000 people in over 3,500 communities in every State and territory, spanning urban and rural communities in all 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands;

Whereas these health centers have provided cost-effective, high-quality health care to the Nation's poor and medically underserved (including the working poor, the uninsured, and many high-risk and vulnerable populations), acting as a vital safety net in the Nation's health delivery system, meeting escalating health needs, and reducing health disparities;

Whereas these health centers provide care to individuals in the United States who would otherwise lack access to health care, including 1 of every 8 uninsured individuals, 1 of every 9 Medicaid beneficiaries, 1 of every 7 people of color, and 1 of every 9 rural Americans;

Whereas these health centers and other innovative programs in primary and preventive care reach out to over 621,000 homeless individuals and more than 709,000 migrant and seasonal farm workers;

Whereas these health centers make health care responsive and cost effective by integrating the delivery of primary care with aggressive outreach, patient education, translation, and enabling support services;

Whereas these health centers increase the use of preventive health services such as immunizations, Pap smears, mammograms, and glaucoma screenings;

Whereas in communities served by these health centers, infant mortality rates have been reduced between 10 and 40 percent;

Whereas these health centers are built by community initiative;

Whereas Federal grants provide seed money that empowers communities to find partners and resources and to recruit doctors and needed health professionals;

Whereas Federal grants on average form 25 percent of such a health center's budget, with the remainder provided by State and local governments, Medicare, Medicaid, private contributions, private insurance, and patient fees;

Whereas these health centers are community oriented and patient focused;

Whereas these health centers tailor their services to fit the special needs and priorities of communities, working together with schools, businesses, churches, community organizations, foundations, and State and local governments;

Whereas these health centers contribute to the health and well-being of their communities by keeping children healthy and in school and helping adults remain productive and on the job;

Whereas these health centers engage citizen participation and provide jobs for over 70,000 community residents; and

Whereas designating the week of August 8 through August 14, 2004, as ''National Health Center Week'' would raise awareness of the health services provided by health centers: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of August 8 through August 14, 2004, as ''National Health Center Week''; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe the week with appropriate ceremonies and activities.

Mr. CAMPBELL. Mr. President, today I am submitting a resolution declaring the week of August 8, 2004, as a National Health Center Week dedicated to raising awareness of health services provided by community, migrant, public housing, and homeless health centers. I am pleased to be joined in this effort by Senator DURBIN and 31 of our colleagues.

The resolution expresses the sense of Congress that these health centers contribute to the health and well-being of their communities by keeping children healthy and in school and helping adults remain productive and on the job.

The resolution also recognizes health centers for providing cost-effective, high-quality health care to the Nation's poor and medically underserved, and by acting as a vital safety net in the Nation's health delivery system. These nonprofit, community-based centers are performing a vital service to our country's more vulnerable populations and they are to be commended for their efforts.

Health centers throughout the country have a 30-year history of success. Studies continue to show that the centers effectively and efficiently improve our Nation's health.

Last year, the community health centers in my State of Colorado provided care to 372,000 patients, and 41 percent of those patients were children under the age of 19. Of the patients seen in Colorado in 2003, 45 percent had no health insurance, 30 percent were Medicaid recipients and 87 percent had family incomes less than $36,200 a year for a family of four. Community health centers are truly America's healthcare safety net.

I believe it is important that we support and honor this nationwide network of community based providers. That is why I urge my colleagues to act quickly on this legislation. Let's show our community health center network that we value its significant contribution to the health of our citizens by declaring the week of August 8, 2004, a National Health Center Week.

SENATE RESOLUTION 358—EXPRESSING THE SENSE OF THE SENATE THAT NO LATER THAN DECEMBER 31, 2006, LEGISLATION SHOULD BE ENACTED TO PROVIDE EVERY INDIVIDUAL IN THE UNITED STATES WITH THE OPPORTUNITY TO PURCHASE HEALTH INSURANCE COVERAGE THAT IS THE SAME AS, OR IS BETTER THAN, THE HEALTH INSURANCE COVERAGE AVAILABLE TO MEMBERS OF CONGRESS, AT THE SAME OR LOWER RATES

Mr. DASCHLE (for himself, Mr. GRAHAM of Florida, Mr. KENNEDY, Ms. STABENOW, Mr. KERRY, Mr. DURBIN, Mr. CORZINE, Mr. LAUTENBERG, Mrs. MURRAY, Mr. INOUYE, Mr. DAYTON, Mr. JOHNSON, Mr. LEVIN, Mr. WYDEN, Mr. EDWARDS, Mrs. BOXER, Mr. FEINGOLD, Mr. JEFFORDS, Mr. BINGAMAN, and Mr. LEAHY) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 358

Whereas the number of uninsured people in the United States has grown to 43,600,000, an increase of 3,800,000 since 2000;

Whereas nearly 20 percent of uninsured Americans are children;

Whereas 8 out of 10 uninsured people in the United States come from working families;

Whereas members of racial and ethnic minority groups at all income levels are more likely to be uninsured than their white counterparts;

Whereas the United States is the only major industrialized country that does not guarantee health care to all of its citizens;

Whereas the United States has the highest health care spending per capita, but consistently scores near the bottom in infant mortality and life expectancy when compared with other developed, high-income countries;

Whereas those without insurance are more likely to go without necessary medical care and preventive services;

Whereas millions of Americans who have insurance coverage are underinsured;

Whereas the Institute of Medicine has estimated that the lost economic value of uninsurance is between $65,000,000,000 and $130,000,000,000 each year, and the Kaiser Family Foundation has concluded that uninsured Americans could incur nearly $41,000,000,000 in health care treatment in 2004;

Whereas the financial consequences of uninsurance are disastrous for families, as demonstrated by a recent study that found medical problems were a factor in 45 percent of all non-business bankruptcy filings;

Whereas employer-based insurance premiums grew 13.9 percent between 2002 and 2003, the third consecutive year of double-digit increases;

Whereas a recent study by the Commonwealth Fund concluded that small employers that provide health insurance to their employees pay more but receive less for their money while suffering faster increases in premiums and steeper jumps in deductibles than large firms;

Whereas public programs such as medicare, medicaid, the State Children's Health Insurance Program, the Indian Health Service, the Veterans Health Administration, and TRICARE, play a critical role in providing coverage for millions of Americans, but are often underfunded;

Whereas the market for individual insurance policies is extremely expensive and allows for discrimination based on health status, age, and gender; and

Whereas members of Congress and their families have the opportunity to select among many benefit choices and to purchase high quality, group health insurance coverage at reasonable rates: Now, therefore, be it

Resolved, That it is the sense of the Senate that no later than December 31, 2006, legislation should be enacted to provide every individual in the United States with the opportunity to purchase health insurance coverage that is the same as, or is better than, the health insurance coverage available to members of Congress, at the same or lower rates.

SENATE RESOLUTION 359—DESIGNATING THE WEEK OF APRIL 11 THROUGH APRIL 17, 2004, AS ''FREE ENTERPRISE EDUCATION WEEK''

Mr. COLEMAN submitted the following resolution; which was considered and agreed to:

S. RES. 359

Whereas the United States values the free enterprise system as its basic economic system;

Whereas the elementary schools and secondary schools of the United States should strive to educate their students about the importance of the free enterprise system;

Whereas an understanding of the free market system by the youth of the United States is necessary to the United States' long-term economic growth;

Whereas companies, student organizations, and teachers in the United States are willing and able to participate in educating young people about free markets and opportunities; and

Whereas many organizations, such as Students in Free Enterprise, have developed programs to teach and encourage entrepreneurship among students: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of April 11 through April 17, 2004, as ''Free Enterprise Education Week'';

(2) encourages schools and businesses in the United States to educate students about the free enterprise system; and

(3) requests that the President issue a proclamation calling on the people of the United States and interested groups to observe the week with appropriate ceremonies, activities, and programs.

SENATE CONCURRENT RESOLUTION 107

Mr. LIEBERMAN submitted the following concurrent resolution; which was considered and agreed to:

Whereas Congress hosted the first American Association for the Advancement of Science (AAAS) Congressional Science and Engineering Fellows in 1973;

Whereas the AAAS Congressional Science and Engineering Fellowship Program was the first to provide an opportunity for Ph.D.-level scientists and engineers to learn about the policymaking process while bolstering the technical expertise available to members of Congress and their staff;

Whereas members of Congress hold the AAAS Congressional Science and Engineering Fellowship Program in high regard for the substantial contributions that AAAS Congressional Science and Engineering Fellows have made, serving both in personal offices and on committee staff;

Whereas Congress is increasingly involved in public policy issues of a scientific and technical nature, and recognizes the need to develop additional in-house expertise in the areas of science and engineering;

Whereas more than 800 individuals have held AAAS Congressional Science and Engineering Fellowships since 1973;

Whereas the AAAS Congressional Science and Engineering Fellows represent the full range of physical, biological, and social sciences and all fields of engineering;

Whereas the AAAS Congressional Science and Engineering Fellows bring to Congress new insights and ideas, extensive knowledge, and perspectives from a variety of disciplines;

Whereas the AAAS Congressional Science and Engineering Fellows learn about legislative, oversight, and investigative activities through assignments that offer a wide array of responsibilities;

Whereas AAAS Congressional Science and Engineering Fellowships provide an opportunity for scientists and engineers to transition into careers in government service; and

Whereas many former AAAS Congressional Science and Engineering Fellows return to their disciplines and share knowledge with students and peers to encourage more scientists and engineers to participate in informing government processes: Now, therefore be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) recognizes the significance of the 30th anniversary of the American Association for the Advancement of Science Congressional Science and Engineering Fellowship Program;

(2) acknowledges the value of over 30 years of participation in the legislative process by the AAAS Congressional Science and Engineering Fellows; and

(3) reaffirms its commitment to support the use of science in governmental decisionmaking through the AAAS Congressional Science and Engineering Fellowship Program.

SENATE CONCURRENT RESOLUTION 108—SUPPORTING THE GOALS AND IDEALS OF TINNITUS AWARENESS WEEK

Mr. LIEBERMAN (for himself, Mrs. LINCOLN, and Mr. WYDEN) submitted the following concurrent resolution; which was considered and agreed to:

Whereas 50,000,000 individuals in the United States have experienced tinnitus, the perception of noises or ringing in the ears and head when no external sound source is present;

Whereas 12,000,000 individuals in the United States experience tinnitus to an incessant and debilitating degree, such that the sounds in their ears and heads never abate, forcing them to seek assistance from a health care professional;

Whereas tinnitus is frequently caused by exposure to loud noises in the workplace, where an estimated 30,000,000 individuals in the United States are exposed to injurious levels of noise each day, and where noise-induced hearing loss is the most common occupational injury;

Whereas tinnitus is also caused by exposure to loud noises in recreational settings, where levels of sound can reach traumatic levels, and where individuals frequently are not aware that temporary ringing in the ears can become permanent after continued exposure to loud levels of sound;

Whereas in many cases, simply wearing proper hearing protection would protect individuals from damaging their hearing;

Whereas many individuals with tinnitus are told that the only solution to their condition is to learn to live with it, even though treatments for tinnitus are available that can help reduce the stress of the incessant ringing and increase the coping skills and quality of life for individuals who experience this condition; and

Whereas the American Tinnitus Association has designated the week beginning May 15, 2004, as the first National Tinnitus Awareness Week, in order to raise public awareness and to further its mission to silence tinnitus through education, advocacy, research, and support: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) supports the goals and ideals of National Tinnitus Awareness Week, as designated by the American Tinnitus Association;

(2) encourages interested groups and affected persons to promote public awareness of tinnitus, the dangers of loud noise, and the importance of hearing protection for all individuals; and

(3) commits to continuing its support of innovative hearing health research through the National Institutes of Health, particularly through the National Institute on Deafness and Other Communication Disorders, so that treatments for tinnitus can be refined and a cure for tinnitus can be discovered.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3144. Mr. HARKIN (for himself, Mr. HAGEL, Mr. KENNEDY, Ms. COLLINS, Mr. JEFFORDS, Mr. COLEMAN, Mrs. CLINTON, Mr. ROBERTS, Ms. MIKULSKI, Mr. DODD, Mr. REED, Ms. STABENOW, Mr. LEVIN, Mr. ROCKEFELLER, Mr. CORZINE, Mr. SCHUMER, Mr. WARNER, Ms. MURKOWSKI, Mr. JOHNSON, Mrs. LINCOLN, and Mr. PRYOR) proposed an amendment to the bill S. 1248, to reauthorize the Individuals with Disabilities Education Act, and for other purposes.

SA 3145. Mr. GREGG proposed an amendment to the bill S. 1248, supra.

SA 3146. Mrs. CLINTON proposed an amendment to the bill S. 1248, supra.

SA 3147. Mr. GREGG (for himself, Mr. ENZI, and Mr. GRASSLEY) proposed an amendment to the bill S. 1248, supra.

SA 3148. Mrs. MURRAY (for herself, Mr. DEWINE, and Mr . FEINGOLD) proposed an amendment to the bill S. 1248, supra.

SA 3149. Mr. GREGG (for Mr. SANTORUM) proposed an amendment to the bill S. 1248, supra.

TEXT OF AMENDMENTS

SA 3144. Mr. HARKIN (for himself, Mr. HAGEL, Mr. KENNEDY, Ms. COLLINS, Mr. JEFFORDS, Mr. COLEMAN, Mrs. CLINTON, Mr. ROBERTS, Ms. MIKULSKI, Mr. DODD, Mr. REED, Ms. STABENOW, Mr. LEVIN, Mr. ROCKEFELLER, Mr. CORZINE, Mr. SCHUMER, Mr. WARNER, Ms. MURKOWSKI, Mr. JOHNSON, Mrs. LINCOLN, and Mr. PRYOR) proposed an amendment to the bill S. 1248, to reauthorize the Individuals with Disabilities Education Act, and for other purposes; as follows:

In section 611 of the Individuals with Disabilities Education Act (as amended by section 101 of the bill) strike subsection (i) and insert the following:

''(i) FUNDING.—

''(1) IN GENERAL.—For the purpose of carrying out this part, other than section 619, there are authorized to be appropriated—

''(A) $12,268,000,000 or the maximum amount available for awarding grants under subsection (a)(2), whichever is lower, for fiscal year 2005, and, there are hereby appropriated $2,200,000,000 for fiscal year 2005, which shall become available for obligation on July 1, 2005 and shall remain available through September 30, 2006, except that if the maximum amount available for awarding grants under subsection (a)(2) is less than $12,268,000,0000, then the amount appropriated in this subparagraph shall be reduced by the difference between $12,268,000,000 and the maximum amount available for awarding grants under subsection (a)(2);

''(B) $14,468,000,000 or the maximum amount available for awarding grants under subsection (a)(2), whichever is lower, for fiscal year 2006, and, there are hereby appropriated $4,400,000,000 for fiscal year 2006,

which shall become available for obligation on July 1, 2006 and shall remain available through September 30, 2007, except that if the maximum amount available for awarding grants under subsection (a)(2) is less than $14,468,000,000, then the amount appropriated in this subparagraph shall be reduced by the difference between $14,468,000,000 and the maximum amount available for awarding grants under subsection (a)(2);

''(C) $16,668,000,000 or the maximum amount available for awarding grants under subsection (a)(2), whichever is lower, for fiscal year 2007, and, there are hereby appropriated $6,600,000,000 for fiscal year 2007, which shall become available for obligation on July 1, 2007 and shall remain available through September 30, 2008, except that if the maximum amount available for awarding grants under subsection (a)(2) is less than $16,668,000,000, then the amount appropriated in this subparagraph shall be reduced by the difference between $16,668,000,000 and the maximum amount available for awarding grants under subsection (a)(2);

''(D) $18,868,000,000 or the maximum amount available for awarding grants under subsection (a)(2), whichever is lower, for fiscal year 2008, and, there are hereby appropriated $8,800,000,000 for fiscal year 2008, which shall become available for obligation on July 1, 2008 and shall remain available through September 30, 2009, except that if the maximum amount available for awarding grants under subsection (a)(2) is less than $18,868,000,000, then the amount appropriated in this subparagraph shall be reduced by the difference between $18,868,000,000 and the maximum amount available for awarding grants under subsection (a)(2);

''(E) $21,068,000,000 or the maximum amount available for awarding grants under subsection (a)(2), whichever is lower, for fiscal year 2009, and, there are hereby appropriated $11,000,000,000 for fiscal year 2009, which shall become available for obligation on July 1, 2009 and shall remain available through September 30, 2010, except that if the maximum amount available for awarding grants under subsection (a)(2) is less than $21,068,000,000, then the amount appropriated in this subparagraph shall be reduced by the difference between $21,068,000,000 and the maximum amount available for awarding grants under subsection (a)(2); and

''(F) the maximum amount available for awarding grants under subsection (a)(2) for fiscal year 2010 and each succeeding fiscal year, and, there are hereby appropriated for each such year an amount equal to the maximum amount available for awarding grants under subsection (a)(2) for the fiscal year for which the determination is made minus $10,068,000,000, which shall become available for obligation on July 1 of the fiscal year for which the determination is made and shall remain available through September 30 of the succeeding fiscal year.

''(2) REAUTHORIZATION.—Nothing in this subsection shall be construed to prevent or limit the authority of Congress to reauthorize the provisions of this Act.

SA 3145. Mr. GREGG proposed an amendment to the bill S. 1248, to reauthorize the Individuals with Disabilities Education Act, and for other purposes; as follows:

On page 443, strike lines 3 and 4, and insert the following:

there are authorized to be appropriated—

''(1) $12,358,376,571 for fiscal year 2005;

''(2) $14,648,647,143 for fiscal year 2006;

''(3) $16,938,917,714 for fiscal year 2007;

''(4) $19,229,188,286 for fiscal year 2008;

''(5) $21,519,458,857 for fiscal year 2009;

''(6) $23,809,729,429 for fiscal year 2010;

''(7) $26,100,000,000 for fiscal year 2011; and

''(8) such sums as may be necessary for fiscal year 2012 and each succeeding fiscal year.

SA 3146. Mrs. CLINTON proposed an amendment to the bill S. 1248, to reauthorize the Individuals with Disabilities Education Act, and for other purposes; as follows:

At the end of the bill, add the following:

TITLE V—MISCELLANEOUS

SEC. 501. AMENDMENT TO CHILDREN'S HEALTH ACT OF 2000.

Section 1004 of the Children's Health Act of 2000 (42 U.S.C. 285g note) is amended—

(1) in subsection (b), by striking ''Agency'' and inserting ''Agency, and the Department of Education''; and

(2) in subsection (c)—

(A) in paragraph (2), by striking ''and'' after the semicolon;

(B) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(4) be conducted in compliance with section 444 of the General Education Provisions Act (20 U.S.C. 1232g), including the requirement of prior parental consent for the disclosure of any education records, except without the use of authority or exceptions granted to authorized representatives of the Secretary of Education for the evaluation of Federally-supported education programs or in connection with the enforcement of the Federal legal requirements that relate to such programs.''.

SA 3147. Mr. GREGG (for himself, Mr. ENZI, and Mr. GRASSLEY) proposed an amendment to the bill S. 1248, to reauthorize the Individuals with Disabilities Education Act, and for other purposes; as follows:

On page 558, strike lines 7 through 12, and insert the following:

''(B) AWARD OF ATTORNEYS' FEES.—

''(i) IN GENERAL.—In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs—

''(I) to a prevailing party who is the parent of a child with a disability;

''(II) 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; or

''(III) to 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 or to cause unnecessary delay or needless increase in the cost of litigation.

''(ii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to affect section 432 of the District of Columbia Appropriations Act, 2004.

SA 3148. Mrs. MURRAY (for herself, Mr. DEWINE, and Mr. FEINGOLD) proposed an amendment to the bill S. 1248, to reauthorize the Individuals with Disabilities Education Act, and for other purposes; as follows:

In section 602 of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), strike paragraph (22) and insert the following:

''(22) PARENT.—

''(A) IN GENERAL.—The term 'parent'—

''(i) means—

''(I) a natural or adoptive parent of a child;

''(II) a guardian (but not the State if the child is a ward of the State);

''(III) 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; or

''(IV) except as used in sections 615(b)(2) and 639(a)(5), an individual assigned under either of those sections to be a surrogate parent; and

''(ii) in the case of a homeless child who is not in the physical custody of a parent or guardian, includes a related or unrelated adult with whom the child is living or other adult jointly designated by the child and the local educational agency liaison for homeless children and youths (designated pursuant to section 722(g)(1)(J)(ii) of the McKinney-Vento Homeless Assistance Act), in addition to other individuals permitted by law.

''(B) FOSTER PARENT.—Unless State law prohibits a foster parent from acting as a parent, the term 'parent' includes a foster parent if—

''(i) the natural or adoptive parents' authority to make educational decisions on the child's behalf has been extinguished under State law; and

''(ii) the foster parent—

''(I) has an ongoing, long-term parental relationship with the child;

''(II) is willing to make the educational decisions required of parents under this Act; and

''(III) has no interest that would conflict with the interests of the child.

In section 602 of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(34) CHILD WITH A DISABILITY IN A MILITARY FAMILY.—The term 'child with a disability in a military family' means a child with a disability who has a parent who is a member of the Armed Forces, including a member of the National Guard or Reserves.

''(35) HOMELESS CHILDREN.—The term 'homeless children' has the meaning given the term 'homeless children and youths' in section 725 of the McKinney-Vento Homeless Assistance Act.

''(36) WARD OF THE STATE.—The term 'ward of the State' means a child who, as defined by the State where the child resides, is a foster child, a ward of the State or is in the custody of a public child welfare agency.

In section 612(a)(3)(A) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), strike ''disabilities attending'' and insert ''disabilities who are homeless children or are wards of the State and children with disabilities attending''.

In section 612(a)(20)(B)(i) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), strike the semicolon at the end and insert '', including not less than 1 foster parent of a child with disabilities who is a ward of the State, not less than 1 grandparent or other relative who is acting in the place of a natural or adoptive parent, and not less than 1 representative of children with disabilities in military families;''.

In section 612(a)(20)(B)(v) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), strike the semicolon at the end and insert '', including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act;''.

In section 612(a)(20)(B) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(xi) representatives from the State child welfare agency; and

''(xii) a representative of wards of the State who are in foster care, such as an attorney for children in foster care, a guardian ad litem, a court appointed special advocate, or a judge.

In section 614(a)(1)(D) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), after clause (iii) insert the following:

''(iv) EXCEPTION FOR WARDS OF THE STATE.—The agency shall not be required to obtain an informed consent from the parents of a child for an initial evaluation to determine whether the child is a child with a disability if such child is a ward of the State and is not residing with the child's parent and consent has been given by an individual who has appropriate knowledge of the child's educational needs, including the judge appointed to the child's case or the child's attorney, guardian ad litem, or court appointed special advocate.

In section 614(b)(3) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(D) assessments of children with disabilities, including homeless children with disabilities who are wards of the State, and children with disabilities in Military families, who transfer from 1 school district to another school district in the same academic year, are—

''(i) coordinated with such children's prior and subsequent schools as necessary to ensure timely completion of full evaluations; and

''(ii) completed within time limits—

''(I) established for all students by Federal law or State plans; and

''(II) that computes the commencement of time from the date on which such children are first referred for assessments in any local educational agency.

In section 614(d)(1)(B) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(viii) if the child is a ward of the State, another individual with appropriate knowledge of the child's educational needs, such as a foster parent, a relative with whom the child lives who acts as a parent to the child, an attorney for the child, a guardian ad litem, a court appointed special advocate, a judge, or an education surrogate.

In section 614(d)(2) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(C) PROGRAM FOR CHILDREN WHO TRANSFER SCHOOL DISTRICTS.—

''(i) IN GENERAL.—In the case of a child with a disability, including a homeless child with a disability or a child with a disability who is a ward of the state, or a child with a disability in a military family, who transfers school districts within the same academic year, who enrolls in a new school and who had an IEP that was in effect in the same or another State, the local educational agency, State educational agency, or other State agency, as the case may be, shall immediately provide such child with a free appropriate public education, including comparable services identified in the previously held IEP and in consultation with the parents until such time as the local educational agency, State educational agency, or other State agency, as the case may be, adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

''(ii) TRANSMITTAL OF RECORDS.—To facilitate the transition for a child described in clause (i), the new school in which the child enrolls shall immediately request the child's records from the previous schools in which the child was enrolled and the previous schools in which the child was enrolled shall immediately transmit to the new school, upon such request, the IEP and supporting documents and any other records relating to the provision of special education or related services to the child.

In section 614(e) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following: ''Decisions regarding the educational placement of a child with a disability who is a homeless child shall comply with the requirements described under section 722(g)(3) of the McKinney-Vento Homeless Assistance Act.''.

In section 615(a) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), insert '', including children with disabilities who are wards of the State,'' after ''children with disabilities''.

In section 615(b)(2) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), strike ''or the child is a ward of the State'' and insert ''the child is a ward of the State, or the child is a homeless child who is not in the physical custody of a parent or guardian''.

In section 615(b)(2) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), insert ''in accordance with subsection (o)'' after ''surrogate for the parents''.

In section 615(b)(7)(A)(ii)(I) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), strike ''residence of the child,'' and insert ''residence of the child (or available contact information in the case of a homeless child),''.

In section 615(b) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(10) procedures to protect the rights of the child whenever the child is a ward of the State, including procedures that preserve the rights of the natural or adoptive parent to make the decisions required of parents under this Act (unless such rights have been extinguished under State law) but that permit a child who is represented in juvenile court by an attorney, guardian ad litem, or another individual, to have such attorney, guardian ad litem, or other individual present in any meetings, mediation proceedings, or hearings provided under this Act.

In section 615(l) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), strike ''disabilities,'' and insert ''disabilities, or under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act or parts B and E of title IV of the Social Security Act,''.

In section 615 of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(o) SURROGATE PARENT.—

''(1) ASSIGNMENT.—The assignment of a surrogate under subsection (b)(2) shall take place not more than 30 days after either of the following takes place:

''(A) The child is referred to the local educational agency for an initial evaluation to determine if the child is a child with a disability.

''(B) There is a determination made by the agency that the child needs a surrogate parent because the child's parent cannot be identified, the child becomes a ward of the State, or, despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child.

''(2) REQUIREMENTS OF SURROGATE.—An individual may not be assigned to act as a surrogate for the parents under subsection (b)(2) unless the individual—

''(A) signs a written form agreeing to make the educational decisions required of parents under this Act;

''(B)(i) has the knowledge and skills necessary to ensure adequate representation of the child; or

''(ii) agrees to be trained as an educational surrogate; and

''(C) has no interests that would conflict with the interests of the child.

''(3) FOSTER PARENT AS SURROGATE.—A foster parent of a child may be assigned to act as a surrogate for the parents of such child under subsection (b)(2) if the foster parent—

''(A) has an ongoing, long-term parental relationship with the child;

''(B) agrees to make the educational decisions required of parents under this Act;

''(C) agrees to be trained as an educational surrogate; and

''(D) has no interest that would conflict with the interests of the child.

In section 631(a)(5) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), insert '', and infants and toddlers in foster care'' after ''rural children''.

In section 634(1) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), insert '', infants or toddlers with disabilities who are homeless children, infants or toddlers with disabilities who are wards of the State, and infants or toddlers with disabilities who have a parent who is a member of the Armed Forces, including a member of the National Guard or Reserves'' after ''located in the State''.

In section 635(a)(6) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), strike ''hospitals and physicians'' and insert ''hospitals, physicians, homeless family shelters, medicaid and State child health insurance program enrollment offices, health and mental health clinics, public schools in low-income areas serving low-income children, staff in State and local child welfare agencies, judges, and base commanders or their designees''.

In section 635(a) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(17) A procedure to ensure that early intervention services and evaluations are available to infants or toddlers with disabilities who are—

''(A) homeless children; and

''(B) wards of the State or in foster care, or both.

In section 635 of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(c) CONSTRUCTION.—Nothing in subsection (a)(5) shall be construed to alter the responsibility of a State under title XIX of the Social Security Act with respect to early and periodic screening, diagnostic, and treatment services (as defined in section 1905(r) of such Act).

In section 637(a) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(11) a description of policies and procedures to ensure that infants or toddlers with disabilities who are homeless children and their families and infants or toddlers with disabilities who are wards of the State have access to multidisciplinary evaluations and early intervention services.

In section 637(b)(7) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), strike ''low-income, and rural families'' and insert ''low-income, homeless, and rural families and children

with disabilities who are wards of the State''.

In section 641(b)(1)(A) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), strike the period at the end and insert '', not less than one other member shall be a foster parent of a child with a disability, not less than one other member shall be a grandparent or other relative acting in the place of a natural or adoptive parent of a child with a disability, and not less than 1 other member shall be a representative of children with disabilities in military families.''.

In section 641(b)(1) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(K) OFFICE OF THE COORDINATOR OF EDUCATION OF HOMELESS CHILDREN AND YOUTH.—Not less than 1 representative designated by the Office of Coordinator for Education of Homeless Children and Youths.

''(L) STATE CHILD WELFARE AGENCY.—Not less than 1 representative from the State child welfare agency responsible for foster care.

''(M) REPRESENTATIVE OF FOSTER CHILDREN.—Not less than 1 individual who represents the interests of children in foster care and understands such children's education needs, such as an attorney for children in foster care, a guardian ad litem, a court appointed special advocate, a judge, or an education surrogate for children in foster care.

In section 661(d)(3) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(K) children with disabilities served by local educational agencies that receive payments under title VIII of the Elementary and Secondary Education Act of 1965;

''(L) children with disabilities who are homeless children or children with disabilities who are wards of the State;

In section 661(d) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(8) projects that provide training in educational advocacy to individuals with responsibility for the needs of wards of the State, including foster parents, grandparents and other relatives acting in the place of a natural or adoptive parent, attorneys for children in foster care, guardians ad litem, court appointed special advocates, judges, education surrogates, and children's caseworkers.

SA 3149. Mr. GREGG (for Mr. SANTORUM) proposed an amendment to the bill S. 1248, to reauthorize the Individuals with Disabilities Education Act, and for other purposes; as follows:

Amend section 609 of the Individuals with Disabilities Education Act, as amended by section 101 of the bill, to read as follows:

''SEC. 609. PAPERWORK REDUCTION.

''(a) REPORT TO CONGRESS.—The Comptroller General shall conduct a review of Federal, State, and local requirements relating to the education of children with disabilities to determine which requirements result in excessive paperwork completion burdens for teachers, related services providers, and school administrators, and shall report to Congress not later than 18 months after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003 regarding such review along with strategic proposals for reducing the paperwork burdens on teachers.

''(b) PAPERWORK REDUCTION DEMONSTRATION.—

''(1) PILOT PROGRAM.—

''(A) PURPOSE.—The purpose of this subsection is to provide an opportunity for States to identify ways to reduce paperwork burdens and other administrative duties that are directly associated with the requirements of this Act, 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.

''(B) AUTHORIZATION.—

''(i) IN GENERAL.—In order to carry out the purpose of this subsection, the Secretary is authorized to grant waivers of statutory requirements of, or regulatory requirements relating to, this part for a period of time not to exceed 4 years with respect to not more than 20 States based on proposals submitted by States to reduce excessive paperwork and noninstructional time burdens that do not assist in improving educational and functional results for children with disabilities.

''(ii) EXCEPTION.—The Secretary shall not waive any statutory requirements of, or regulatory requirements relating to, applicable civil rights requirements.

''(iii) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to—

''(I) affect the right of a child with a disability to receive a free appropriate public education under this part; and

''(II) permit a State or local educational agency to waive procedural safeguards under section 615.

''(C) PROPOSAL.—

''(i) IN GENERAL.—A State desiring to participate in the program under this subsection shall submit a proposal to the Secretary at such time and in such manner as the Secretary may reasonably require.

''(ii) CONTENT.—The proposal shall include—

''(I) a list of any statutory requirements of, or regulatory requirements relating to, this part that the State desires the Secretary to waive or change, in whole or in part; and

''(II) a list of any State requirements that the State proposes to waive or change, in whole or in part, to carry out a waiver granted to the State by the Secretary.

''(D) TERMINATION OF WAIVER.—The Secretary shall terminate a State's waiver under this subsection if the Secretary determines that the State—

''(i) has failed to make satisfactory progress in meeting the indicators described in section 616; or

''(ii) has failed to appropriately implement its waiver.

''(2) REPORT.—Beginning 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall include in the annual report to Congress submitted pursuant to section 426 of the Department of Education Organization Act information related to the effectiveness of waivers granted under paragraph (1), including any specific recommendations for broader implementation of such waivers, in—

''(A) reducing—

''(i) the paperwork burden on teachers, principals, administrators, and related service providers; and

''(ii) noninstructional time spent by teachers in complying with this part;

''(B) enhancing longer-term educational planning;

''(C) improving positive outcomes for children with disabilities;

''(D) promoting collaboration between IEP Team members; and

''(E) ensuring satisfaction of family members.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, May 12, 2004, at 9:30 a.m. on Telecommunications Policy Review: A View from Industry.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to hold a full committee hearing to examine the environmental regulatory framework affecting oil refining and gasoline policy. The hearing is to be held Wednesday, May 12, 2004 at 9:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, May 12, 2004 at 9:30 a.m. to hold a hearing on Afghanistan—Continuing Challenges.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Wednesday, May 12, 2004, at 10 a.m. for a hearing titled ''Bogus Degrees and Unmet Expectations: Are Taxpayer Dollars Subsidizing Diploma Mills?'' (Day Two).

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, May 12, 2004, at 10 a.m. in Room 485 of the Russell Senate Office Building to conduct a hearing on S. 1715, the Department of Interior Tribal Self-Governance Act of 2003.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Wednesday, May 12, 2004 at 2:00 p.m. on ''The Satellite Home Viewer Extension Act'' in the Dirksen Senate Office Building Room 226.

Panel I: David O. Carson, General Counsel, U.S. Library of Congress Copyright Office, Washington, DC; Charles W. Ergen, Founder and Chairman, EchoStar Communications Corporation, Littlewood, CO; Bruce T. Reese, President and Chief Executive Officer, Bonneville International Corporation, Salt Lake City, UT; Eddy W. Hartenstein, Vice Chairman and Board

Member, The DIRECTV Group, In., El Segundo, CA; Fritz Attaway, Executive Vice President and Washington General Counsel, Motion Picture Association of America, Inc., Washington, DC; John King, President and Chief Executive Officer, Vermont Public Television, Colchester, VT.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. GREGG. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on May 12, 2004 at 2:30 p.m. to hold a closed hearing on intelligence matters.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. CORNYN. I ask unanimous consent that Meredith Mino, a member of my staff who does not currently have floor privileges, be admitted to the floor for the duration of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GREGG. Mr. President, I ask unanimous consent that Christian Weeks and Elizabeth Jordan, interns on my staff, have access to the floor during consideration of S. 1248.

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. KENNEDY. Mr. President, I ask unanimous consent that Jeremy Buzzell and Sandra Licon, detailees on my staff, be granted floor privileges for the duration of the debate on S. 1248, the Individuals with Disabilities Education Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I ask unanimous consent that a fellow in Senator REED's office, Erica Swanson, be granted the privilege of the floor during debate on S. 1248.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. CLINTON. Mr. President, I ask unanimous consent for Tori Brescoll, a fellow in my office, to have access to the floor during the consideration of S. 1248.

The PRESIDING OFFICER. Without objection, it is so ordered.

AUTHORIZING USE OF THE CAPITOL GROUNDS FOR THE NATIONAL PEACE OFFICERS' MEMORIAL SERVICE

Mr. FRIST. Mr. President, I ask unanimous consent that the Rules Committee be discharged from further consideration of H. Con. Res 388 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will state the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 388) authorizing the use of the Capitol grounds for the National Peace Officers' Memorial Service.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, and the motion to reconsider be laid upon the table, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 388) was agreed to.

AUTHORIZING USE OF THE CAPITOL GROUNDS FOR THE DC SPECIAL OLYMPICS LAW ENFORCEMENT TORCH RUN

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 389, which is at the desk.

The PRESIDING OFFICER. The clerk will state the concurrent resolution by title.

A concurrent resolution (H. Con. Res 389) authorizing the use of the Capitol grounds for the DC Special Olympics Law Enforcement Torch Run.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, and the motion to reconsider be laid upon the table, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 389) was agreed to.

FREE ENTERPRISE EDUCATION WEEK

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 359, which was submitted earlier today by Senator COLEMAN.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 359) designating the week of April 11 through April 17, 2004, as ''Free Enterprise Education Week''.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 359) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 359

Whereas the United States values the free enterprise system as its basic economic system;

Whereas the elementary schools and secondary schools of the United States should strive to educate their students about the importance of the free enterprise system;

Whereas an understanding of the free market system by the youth of the United States is necessary to the United States' long-term economic growth;

Whereas companies, student organizations, and teachers in the United States are willing and able to participate in educating young people about free markets and opportunities; and

Whereas many organizations, such as Students in Free Enterprise, have developed programs to teach and encourage entrepreneurship among students: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of April 11 through April 17, 2004, as ''Free Enterprise Education Week'';

(2) encourages schools and businesses in the United States to educate students about the free enterprise system; and

(3) requests that the President issue a proclamation calling on the people of the United States and interested groups to observe the week with appropriate ceremonies, activities, and programs.

30TH ANNIVERSARY OF THE AMERICAN ASSOCIATION FOR THE ADVANCEMENT OF SCIENCE

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Con. Res. 107, which was submitted earlier today by Senator LIEBERMAN.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 107) recognizing the significance of the 30th anniversary of the American Association for the Advancement of Science, Congressional Science and Engineering Fellowship Program, and reaffirming the commitment of Congress to support the use of science in governmental decision-making through such program.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the concurrent resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (S. Con. Res. 107) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. CON. RES. 107

Whereas Congress hosted the first American Association for the Advancement of

Science (AAAS) Congressional Science and Engineering Fellows in 1973;

Whereas the AAAS Congressional Science and Engineering Fellowship Program was the first to provide an opportunity for Ph.D.-level scientists and engineers to learn about the policymaking process while bolstering the technical expertise available to members of Congress and their staff;

Whereas members of Congress hold the AAAS Congressional Science and Engineering Fellowship Program in high regard for the substantial contributions that AAAS Congressional Science and Engineering Fellows have made, serving both in personal offices and on committee staff;

Whereas Congress is increasingly involved in public policy issues of a scientific and technical nature, and recognizes the need to develop additional in-house expertise in the areas of science and engineering;

Whereas more than 800 individuals have held AAAS Congressional Science and Engineering Fellowships since 1973;

Whereas the AAAS Congressional Science and Engineering Fellows represent the full range of physical, biological, and social sciences and all fields of engineering;

Whereas the AAAS Congressional Science and Engineering Fellows bring to Congress new insights and ideas, extensive knowledge, and perspectives from a variety of disciplines;

Whereas the AAAS Congressional Science and Engineering Fellows learn about legislative, oversight, and investigative activities through assignments that offer a wide array of responsibilities;

Whereas AAAS Congressional Science and Engineering Fellowships provide an opportunity for scientists and engineers to transition into careers in government service; and

Whereas many former AAAS Congressional Science and Engineering Fellows return to their disciplines and share knowledge with students and peers to encourage more scientists and engineers to participate in informing government processes: Now, therefore be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) recognizes the significance of the 30th anniversary of the American Association for the Advancement of Science Congressional Science and Engineering Fellowship Program;

(2) acknowledges the value of over 30 years of participation in the legislative process by the AAAS Congressional Science and Engineering Fellows; and

(3) reaffirms its commitment to support the use of science in governmental decisionmaking through the AAAS Congressional Science and Engineering Fellowship Program.

TINNITUS AWARENESS WEEK

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Con. Res. 108, which was submitted earlier today by Senator LIEBERMAN.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 108) supporting the goals and ideals of Tinnitus Awareness Week.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the concurrent resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (S. Con. Res. 108) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. CON. RES. 108

Whereas 50,000,000 individuals in the United States have experienced tinnitus, the perception of noises or ringing in the ears and head when no external sound source is present;

Whereas 12,000,000 individuals in the United States experience tinnitus to an incessant and debilitating degree, such that the sounds in their ears and heads never abate, forcing them to seek assistance from a health care professional;

Whereas tinnitus is frequently caused by exposure to loud noises in the workplace, where an estimated 30,000,000 individuals in the United States are exposed to injurious levels of noise each day, and where noise-induced hearing loss is the most common occupational injury;

Whereas tinnitus is also caused by exposure to loud noises in recreational settings, where levels of sound can reach traumatic levels, and where individuals frequently are not aware that temporary ringing in the ears can become permanent after continued exposure to loud levels of sound;

Whereas in many cases, simply wearing proper hearing protection would protect individuals from damaging their hearing;

Whereas many individuals with tinnitus are told that the only solution to their condition is to learn to live with it, even though treatments for tinnitus are available that can help reduce the stress of the incessant ringing and increase the coping skills and quality of life for individuals who experience this condition; and

Whereas the American Tinnitus Association has designated the week beginning May 15, 2004, as the first National Tinnitus Awareness Week, in order to raise public awareness and to further its mission to silence tinnitus through education, advocacy, research, and support: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) supports the goals and ideals of National Tinnitus Awareness Week, as designated by the American Tinnitus Association;

(2) encourages interested groups and affected persons to promote public awareness of tinnitus, the dangers of loud noise, and the importance of hearing protection for all individuals; and

(3) commits to continuing its support of innovative hearing health research through the National Institutes of Health, particularly through the National Institute on Deafness and Other Communication Disorders, so that treatments for tinnitus can be refined and a cure for tinnitus can be discovered.

ORDERS FOR THURSDAY, MAY 13, 2004

Mr. FRIST. I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., on Thursday, May 13. I further ask that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period for morning business for up to 60 minutes, with the first half under the control of the Democratic leader or his designee and the second half hour under the control of the majority leader or his designee; provided that following morning business, the Senate resume consideration of S. 1248, the IDEA reauthorization bill, as provided under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Mr. President, tomorrow following morning business, the Senate will resume consideration of the Individuals with Disabilities Education Act reauthorization bill. Earlier today, we secured an agreement for finishing the IDEA bill tomorrow.

There is one outstanding issue that may require a vote or two, but it is also possible that the language will be worked out.

We, therefore, expect a vote on passage of the IDEA reauthorization bill by around 12 to 12:30 tomorrow. Additional votes are anticipated tomorrow as the Senate may consider other Legislative or Executive Calendar items that can be cleared for action.

We have a number of Members working on a range of issues, including bioshield and the mental health parity bill. I have repeated our desire to move some of the pending nominations. That is a priority that we must begin to address as well.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:31 p.m., adjourned until Thursday, May 13, 2004, at 9:30 a.m.