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Individuals with Disabilities Education
Improvement Act of 2004
Compared to IDEA '97

Document 3 (Sections 613-614)
20 U.S.C. §§ 1413-1414

DRAFT

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

IDEA 2004 Compared to IDEA '97
20 U.S.C. §1413 (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 ~~demonstrates~~submits a plan that provides assurances to the satisfaction of the State educational agency that ~~it~~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;

((I) 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~~ADJUSTMENT TO LOCAL FISCAL EFFORT IN CERTAIN FISCAL YEARS.--

(i) ~~Notwithstanding~~AMOUNTS IN EXCESS.--Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which ~~amounts appropriated to carry out section 611 exceeds \$4,100,000,000,~~the allocation received by a local educational

agency under section 611(f) exceeds the amount the local educational agency received for the previous fiscal year, the local educational agency may treat as local funds, for the purpose of such clauses, up to 20~~reduce the level of expenditures otherwise required by subparagraph (A)(iii) by not more than 50~~ percent of the amount of funds it receives under this part that exceeds the amount it received under this part for the previous fiscal year.

~~(ii) Notwithstanding such excess.~~

(ii) USE OF AMOUNTS TO CARRY OUT ACTIVITIES UNDER ESEA.--If a local educational agency exercises the authority under clause (i), the agency shall use an amount of local funds equal to the reduction in expenditures under clause (i) to carry out activities authorized under the Elementary and Secondary Education Act of 1965.

(iii) STATE PROHIBITION.--Notwithstanding clause (i), if a State educational agency determines that a local educational agency is ~~not meeting~~unable to establish and maintain programs of free appropriate public education that meet the requirements of this part subsection (a) or the State educational agency has taken action against the local educational agency under section 616, the State educational agency may~~shall~~ prohibit the local educational agency from ~~treating funds received under this part as local funds~~reducing the level of expenditures under clause (i) for any fiscal year, only if it is authorized to do so by the State ~~constitution or a State statute~~that fiscal year.

(iv) SPECIAL RULE.--The amount of funds expended by a local educational agency under subsection (f) shall count toward the maximum amount of expenditures such local educational agency may reduce under clause (i).

(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

(I) the number of children with disabilities in the jurisdiction of that agency.

(3) PERSONNEL DEVELOPMENT.--The local educational ~~agency--~~

~~(A) agency~~ shall ensure that all personnel necessary to carry out this part are appropriately and adequately prepared, ~~consistent with~~subject to the requirements of section 65312(e)(3)(D); and

~~(B) to the extent such agency determines appropriate, shall contribute to and use the comprehensive system of personnel development of the State established under section 612(a)(14)a)(14) and section 2122 of the Elementary and Secondary Education Act of 1965.~~

(4) PERMISSIVE USE OF FUNDS USE OF FUNDS.--

(A) USES.--Notwithstanding paragraph (2)(A) or section 612(a)(187)(B) (relating to commingled funds), funds provided to the local educational agency under this part may be used for the following activities:

(A*j*) 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 ~~one~~ or more nondisabled children benefit from such services.

(B*ii*) ~~INTEGRATED AND COORDINATED~~ EARLY INTERVENING SERVICES SYSTEM.--To develop and implement a ~~fully integrated and coordinated~~, early intervening educational services system in accordance with subsection (f).

(iii) HIGH COST EDUCATION AND RELATED SERVICES.--To establish and implement cost or risk sharing funds, consortia, or cooperatives for the local educational agency itself, or for local educational agencies working in a consortium of which the local educational agency is a part, to pay for high cost special education and related services.

(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 ~~schools~~charter schools--

(i) on the same basis as the local educational agency provides funds to the local educational agency's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and

(ii) at the same time as the agency distributes other Federal funds to the agency's other public schools, consistent with the State's charter school law.

(6) PURCHASE OF INSTRUCTIONAL MATERIALS.--

(A) IN GENERAL.--Not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, a local educational agency that chooses to coordinate with the National Instructional Materials Access Center, when purchasing print instructional materials, shall acquire the print instructional materials in the same manner as it provides those funds to its other schools.

~~(and subject to the same conditions as a State educational agency acquires print instructional materials under section 612(a)(23).~~

(B) RIGHTS OF LOCAL EDUCATIONAL AGENCY.--Nothing in this paragraph shall be construed to require a local educational agency to coordinate with the National Instructional Materials Access Center. If a local educational agency chooses not to coordinate with the National Instructional Materials Access Center, the local educational agency shall provide an assurance to the State educational agency that the local

educational agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(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 (165) and (176) of section 612(a), information relating to the performance of children with disabilities participating in programs carried out under this part.

(78) 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 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 Amendments of 1997~~2004~~, 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 ~~it~~the local educational agency submits to the State educational agency such modifications as the local educational agency ~~deems~~determines necessary.

(3) MODIFICATIONS REQUIRED BY STATE EDUCATIONAL AGENCY.--If, after the effective date of the Individuals with Disabilities Education Improvement Act Amendments of 1997~~2004~~, the provisions of this ~~Act~~title are amended (or the regulations developed to carry out this ~~Act~~title are amended), ~~or~~ there is a new interpretation of this ~~Act~~title 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 ~~would~~will be ineligible under this section because the local educational agency ~~would~~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 ~~it~~the charter school is explicitly permitted to do so under the State's charter school ~~statute~~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(~~g~~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) ~~COORDINATED~~ EARLY INTERVENING SERVICES SYSTEM.--

(1) IN GENERAL.--A local educational agency may not use more than 515 percent of the amount such agency receives under this part for any fiscal year, *less any amount reduced by the agency pursuant to subsection (a)(2)(C), if any*, in combination with other amounts (which ~~shall~~ may include amounts other than education funds), to develop and implement a ~~coordinated services system designed to improve results for children and families, including children with disabilities and their families~~ coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

(2) ACTIVITIES.--In implementing a ~~coordinated, early intervening services system~~ under this subsection, a local educational agency may carry out activities that include--

(A) ~~improving the effectiveness and efficiency of service delivery, including developing strategies that promote accountability for results;~~

~~(B) service coordination and case management that facilitates the linkage of individualized education programs~~ 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 instruction and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

~~(B) providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.~~

~~(3) CONSTRUCTION.--Nothing in this subsection shall be construed to limit or create a right to a free appropriate public education under this part and individualized family service plans under part C with individualized service plans under multiple Federal and State programs, such as title I of the Rehabilitation Act of 1973 (vocational rehabilitation), title XIX of the Social Security Act (Medicaid), and title XVI of the Social Security Act (supplemental security income);~~

~~(C) developing and implementing interagency financing strategies for the provision of education, health, mental health, and social services, including transition services.~~

~~(4) REPORTING.--Each local educational agency that develops and maintains coordinated, early intervening services under this subsection shall annually report to the State educational agency on--~~

~~(A) the number of students served under this subsection; and~~

~~(B) the number of students served under this subsection who subsequently receive special education and related services under this Act; and~~

~~(D) interagency personnel development for individuals working on coordinated services.~~

~~(3) title during the preceding 2-year period.~~

~~(5) COORDINATION WITH CERTAIN PROJECTS UNDER ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.--If a local educational agency is carrying out a coordinated services project under title XI of--Funds made available to carry out this~~

subsection may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under, the Elementary and Secondary Education Act of 1965 and a coordinated services project under this part in the same schools, such agency shall use amounts under this subsection in accordance with the requirements of that title.

~~(g) SCHOOL-BASED IMPROVEMENT PLAN.--~~

~~(1) IN GENERAL.--~~Each local educational agency may, in accordance with paragraph (2), ~~use if such funds are used to supplement, and not supplant,~~ funds made available under this part to permit a public school within the jurisdiction of the local educational agency to design, implement, and evaluate a school-based improvement plan that is consistent with the purposes described in section 651(b) and that is designed to improve educational and transitional results for all children with disabilities and, as appropriate, for other children consistent with subparagraphs (A) and (B) of subsection (a)(4) in that public school.

~~(2) AUTHORITY.--~~

~~(A) IN GENERAL.--~~ A State educational agency may grant authority to a local educational agency to permit a public school described in paragraph (1) (through a school-based standing panel established under paragraph (4)(B)) to design, implement, and evaluate a school-based improvement plan described in paragraph (1) for a period not to exceed 3 years.

~~(B) RESPONSIBILITY OF LOCAL EDUCATIONAL AGENCY.--~~ If a State educational agency grants the authority described in subparagraph (A), a local educational agency that is granted such authority shall have the sole responsibility of oversight of all activities relating to the design, implementation, and evaluation of any school-based improvement plan that a public school is permitted to design the Elementary and Secondary Education Act of 1965 for the activities and services assisted under this subsection.

~~(3) PLAN REQUIREMENTS.--~~ A school-based improvement plan described in paragraph (1) shall--

~~(A) be designed to be consistent with the purposes described in section 651(b) and to improve educational and transitional results for all children with disabilities and, as appropriate, for other children consistent with subparagraphs (A) and (B) of subsection (a)(4), who attend the school for which the plan is designed and implemented;~~

~~(B) be designed, evaluated, and, as appropriate, implemented by a school-based standing panel established in accordance with paragraph (4)(B);~~

~~(C) include goals and measurable indicators to assess the progress of the public school in meeting such goals; and~~

~~(D) ensure that all children with disabilities receive the services described in the individualized education programs of such children.~~

~~(4) RESPONSIBILITIES OF THE LOCAL EDUCATIONAL AGENCY.--~~ A local educational agency that is granted authority under paragraph (2) to permit a public school to design, implement, and evaluate a school-based improvement plan shall--

~~(A) select each school under the jurisdiction of such agency that is eligible to design, implement, and evaluate such a plan;~~

~~(B) require each school selected under subparagraph (A), in accordance with criteria established by such local educational agency under subparagraph (C), to establish a school-based standing panel to carry out the duties described in paragraph (3)(B);~~

~~(C) establish--~~

- ~~(i) criteria that shall be used by such local educational agency in the selection of an eligible school under subparagraph (A);~~
 - ~~(ii) criteria that shall be used by a public school selected under subparagraph (A) in the establishment of a school-based standing panel to carry out the duties described in paragraph (3)(B) and that shall ensure that the membership of such panel reflects the diversity of the community in which the public school is located and includes, at a minimum—~~
 - ~~(I) parents of children with disabilities who attend such public school, including parents of children with disabilities from unserved and underserved populations, as appropriate;~~
 - ~~((I) special education and general education teachers of such public school;~~
 - ~~(III) special education and general education administrators, or the designee of such administrators, of such public school; and~~
 - ~~(IV) related services providers who are responsible for providing services to the children with disabilities who attend such public school; and~~
 - ~~(iii) criteria that shall be used by such local educational agency with respect to the distribution of funds under this part to carry out this subsection;~~
 - ~~(D) disseminate the criteria established under subparagraph (C) to local school district personnel and local parent organizations within the jurisdiction of such local educational agency;~~
 - ~~(E) require a public school that desires to design, implement, and evaluate a school-based improvement plan to submit an application at such time, in such manner, and accompanied by such information as such local educational agency shall reasonably require; and~~
 - ~~(F) establish procedures for approval by such local educational agency of a school-based improvement plan designed under this subsection.~~
- ~~(5) LIMITATION. — A school-based improvement plan described in paragraph (1) may be submitted to a local educational agency for approval only if a consensus with respect to any matter relating to the design, implementation, or evaluation of the goals of such plan is reached by the school-based standing panel that designed such plan.~~
- ~~(6) ADDITIONAL REQUIREMENTS.—~~
- ~~(A) PARENTAL INVOLVEMENT. — In carrying out the requirements of this subsection, a local educational agency shall ensure that the parents of children with disabilities are involved in the design, evaluation, and, where appropriate, implementation of school-based improvement plans in accordance with this subsection.~~
 - ~~(B) PLAN APPROVAL. — A local educational agency may approve a school-based improvement plan of a public school within the jurisdiction of such agency for a period of 3 years, if—~~
 - ~~(i) the approval is consistent with the policies, procedures, and practices established by such local educational agency and in accordance with this subsection; and~~
 - ~~(ii) a majority of parents of children who are members of the school-based standing panel, and a majority of other members of the school-based standing panel, that designed such plan agree in writing to such plan.~~
- ~~(7) EXTENSION OF PLAN. — If a public school within the jurisdiction of a local educational agency meets the applicable requirements and criteria described in paragraphs (3) and (4) at~~

~~the expiration of the 3-year approval period described in paragraph (6)(B), such agency may approve a school-based improvement plan of such school for an additional 3-year period.~~
(hg) 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 local educational agency or State 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 ~~one~~one or more local educational agencies in order to establish and maintain such programs;- or

(D) has ~~one~~one or more children with disabilities who can best be served by a regional or State program or ~~service-delivery~~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 educational agency considers appropriate.- Such education and services shall be provided in accordance with this part.

(ih) STATE AGENCY ELIGIBILITY.--Any State agency that desires to receive a subgrant for any fiscal year under section 611(~~gf~~) 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.

(ij) 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 non-disabled 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 ~~one~~one school to another, the transmission of any of the child's records ~~must~~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) ADJUSTMENT TO STATE FISCAL EFFORT IN CERTAIN FISCAL YEARS.--For any fiscal year for which the allotment received by a State under section 611 exceeds the amount

the State received for the previous fiscal year and if the State in school year 2003-2004 or any subsequent school year pays or reimburses all local educational agencies within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services, the State educational agency, notwithstanding paragraphs (17) and (18) of section 612(a) and section 612(b), may reduce the level of expenditures from State sources for the education of children with disabilities by not more than 50 percent of the amount of such excess.

(2) PROHIBITION.--Notwithstanding paragraph (1), 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, or that the State needs assistance, intervention, or substantial intervention under section 616(d)(2)(A), the Secretary shall prohibit the State educational agency from exercising the authority in paragraph (1).

(3) EDUCATION ACTIVITIES.--If a State educational agency exercises the authority under paragraph (1), the agency shall use funds from State sources, in an amount equal to the amount of the reduction under paragraph (1), to support activities authorized under the Elementary and Secondary Education Act of 1965 or to support need based student or teacher higher education programs.

(4) REPORT.--For each fiscal year for which a State educational agency exercises the authority under paragraph (1), the State educational agency shall report to the Secretary the amount of expenditures reduced pursuant to such paragraph and the activities that were funded pursuant to paragraph (3).

(5) LIMITATION.--Notwithstanding paragraph (1), a State educational agency may not reduce the level of expenditures described in paragraph (1) if any local educational agency in the State would, as a result of such reduction, receive less than 100 percent of the amount necessary to ensure that all children with disabilities served by the local educational agency receive a free appropriate public education from the combination of Federal funds received under this title and State funds received from the State educational agency.

20 U.S.C. §1414 (SEC. 614)
EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED
EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.

(a) EVALUATIONS, PARENTAL CONSENT, 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.--

(i) IN GENERAL.--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)); ~~and~~ (ii) within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe; and

(II) to determine the educational needs of such child.

(ii) EXCEPTION.--*The relevant timeframe in clause (i)(I) shall not apply to a local educational agency if--*

(I) a child enrolls in a school served by the local educational agency after the relevant timeframe in clause (i)(I) has begun and prior to a determination by the child's previous local educational agency as to whether the child is a child with a disability (as defined in section 602), but only if the subsequent local educational agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent local educational agency agree to a specific time when the evaluation will be completed; or

(II) the parent of a child repeatedly fails or refuses to produce the child for the evaluation.

(D) PARENTAL CONSENT.--

(i) IN GENERAL.--

(I) CONSENT FOR INITIAL EVALUATION.--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 602(3)(B)~~ shall obtain an informed consent from the parent of such child before conducting 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 CONSENT FOR SERVICES.--*An agency that is responsible for making a free appropriate public education available to a child with a disability*

under this part shall seek to obtain informed consent from the parent of such child before providing special education and related services to the child.

(ii) ABSENCE OF CONSENT.--

(I) FOR INITIAL EVALUATION.--If the parents of such child ~~refuse~~ does not provide consent for the evaluation, the agency may continue to pursue an evaluation an initial evaluation under clause (i)(I), or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the child by utilizing the mediation and due process procedures under described in section 615, except to the extent inconsistent with State law relating to such parental consent.

(II) FOR SERVICES.--If the parent of such child refuses to consent to services under clause (i)(II), the local educational agency shall not provide special education and related services to the child by utilizing the procedures described in section 615.

(III) EFFECT ON AGENCY OBLIGATIONS.--If the parent of such child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent--

(aa) 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 such child with the special education and related services for which the local educational agency requests such consent; and

(bb) the local educational agency shall not be required to convene an IEP meeting or develop an IEP under this section for the child for the special education and related services for which the local educational agency requests such consent.

(iii) CONSENT FOR WARDS OF THE STATE.--

(I) IN GENERAL.--If the child is a ward of the State and is not residing with the child's parent, the agency shall make reasonable efforts to obtain the informed consent from the parent (as defined in section 602) of the child for an initial evaluation to determine whether the child is a child with a disability.

(II) EXCEPTION.--The agency shall not be required to obtain informed consent from the parent of a child for an initial evaluation to determine whether the child is a child with a disability if--

(aa) despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;

(bb) the rights of the parents of the child have been terminated in accordance with State law; or

(cc) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(E) RULE OF CONSTRUCTION.--The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

(2) REEVALUATIONS.--

(A) IN GENERAL.--A local educational agency shall ensure that a reevaluation of each child with a disability is conducted--(A) if conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years; and (B) 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 frequently 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-~~and~~, developmental, *and academic* information, including information provided by the parent, that may assist in ~~determining~~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 education 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~~assessments 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;~~and~~
- (ii) are provided and administered in the child's native language or other mode of communication, unless it is clearly and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to do so; ~~and (B) any standardized tests that are given to the child—~~ (i) have been validated for the specific purpose for which they are used; ~~(i)so provide or administer;~~
 - (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~~assessments;
- ~~(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; and~~
- (D) assessments of children with disabilities who transfer from 1 school district to another school district in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(4) DETERMINATION OF ELIGIBILITY AND EDUCATIONAL NEED.--Upon completion of ~~the~~ administration of ~~tests~~assessments and other evaluation ~~materials—~~measures—

- (A) the determination of whether the child is a child with a disability as defined in section 602(3) and the educational needs of the child 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 ~~will~~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~~is--

- (A) lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act of 1965);
- (B) lack of instruction in ~~reading~~math; or
- ~~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, 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~~including--

(i) evaluations and information provided by the parents of the child;

(ii) current ~~classroom-based~~ classroom-based, local, or State assessments, and classroom-based observations; and

(iii) observations by teachers and related services providers-~~observation~~; 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~~is a ~~particular category of~~child with a disability, as ~~described~~defined in section 602(3), and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;

(ii) the present levels of ~~performance~~academic achievement and ~~educational~~related developmental 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 education curriculum.

(2) SOURCE OF DATA.--The local educational agency shall administer such ~~tests~~assessments and other evaluation ~~materials~~measures 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)(~~ED~~), 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 it 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 continues to be a child with a disability and to determine the child's educational needs, the local educational agency--

(A) shall notify the child's parents of--

(i) that determination and the reasons for ~~it~~the determination; and

(ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs; and

(B) shall not be required to conduct such an assessment unless requested to 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 due 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--~~ In this title:

(A) INDIVIDUALIZED EDUCATION PROGRAM.--

(i) IN GENERAL.--The term ~~individualized~~ individualized education program' or IEP '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 ~~educational~~ academic achievement and functional performance, including--

(aa) how the child's disability affects the child's involvement and progress in the general education curriculum; ~~or~~

(bb) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; ~~it and~~

(cc) for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(II) a statement of measurable annual goals, including ~~benchmarks or short-term objectives~~ academic and functional goals, ~~related~~ designed to--

(aa) ~~meeting~~ 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 education curriculum; and

(bb) ~~meeting~~ 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;

~~;~~ and ~~[(d)(1)(A) (viii) a statement of-- (I) how the child's progress toward the annual goals described in clause (ii) will be measured; and (II) how the child's parents will be regularly informed (by such means as periodic report cards), at least as often as parents are informed of their nondisabled child's progress, of-- (aa) their child's progress toward the annual goals described in clause (ii); and (bb) the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.~~

(IV) a statement of the special education and related services and supplementary aids and services, *based on peer-reviewed research to the extent practicable*, 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 *education* curriculum in accordance with ~~clause~~*subclause* (~~1~~) 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~~*subparagraph*;
(*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 ~~clause~~*subclause* (~~iii~~*IV*)(*cc*);
(VI)(*aa*) a statement of any individual ~~modifications in the administration of State or~~*appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and* districtwide assessments ~~of student achievement that are needed in order for the child to participate in such assessment; and (II)~~*consistent with section 612(a)(16)(A); and*;
(*bb*) if the IEP Team determines that the child ~~will not participate in~~*shall take an alternate assessment on* a particular State or districtwide assessment of student achievement ~~(or part of such an assessment)~~, 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 at age not later than the first IEP to be in effect when the child is 1416, and updated annually, a statement of 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 service needs of the child under the applicable components of the child's IEP that focuses on the child's services (including courses of study (such as participation in advanced placement courses or a vocational education program); (II) beginning at age 16 (or younger, if determined appropriate by the IEP Team), a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages;~~

~~and (III) beginning at least one~~ needed to assist the child in reaching those goals;
and

(cc) beginning not later than 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of ~~his or her~~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~~ individualized education program team' or IEP IEP Team' means a group of individuals composed of--

- (i) the parents of a child with a disability;
- (ii) ~~at least one~~not less than 1 regular education teacher of such child (if the child is, or may be, participating in the regular education environment);
- (iii) ~~at least one~~not less than 1 special education teacher, or where appropriate, ~~at least one~~not less than 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 education 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 the member's area of the curriculum or related services is not 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, in writing to the parent and the IEP Team, 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.

(D) IEP TEAM TRANSITION.--In the case of a child who was previously served under part C, an invitation to the initial IEP meeting shall, at the request of the parent, be sent to the part C service coordinator or other representatives of the part C system to assist with the smooth transition of services.

(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~~the agency's 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~~the IEP Team shall consider the individualized family service plan that contains the material described in section 636, and that is developed in accordance with this section, and the individualized family service plan 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.

(C) PROGRAM FOR CHILDREN WHO TRANSFER SCHOOL DISTRICTS.--

(i) IN GENERAL.--

(I) TRANSFER WITHIN THE SAME STATE.--In the case of a child with a disability 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 State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

(II) TRANSFER OUTSIDE STATE.--In the case of a child with a disability 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 another State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency conducts an evaluation pursuant to subsection (a)(1), if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law.

(ii) TRANSMITTAL OF RECORDS.--To facilitate the transition for a child described in clause (i)--

(I) the new school in which the child enrolls shall take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled, pursuant to section 99.31(a)(2) of title 34, Code of Federal Regulations; and

(II) the previous school in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new school.

(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 ~~and~~;
- (ii) the concerns of the parents for enhancing the education of their child; and
- (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 ~~his or her~~ the child's learning or that of others, consider, ~~when appropriate, strategies, including the use of~~ positive behavioral interventions, ~~strategies,~~ 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, 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;
- (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~~ needs assistive technology devices and services.

(C) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION

TEACHER.--~~The~~ 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 reevaluation meetings for the child and other IEP Team meetings for the child.

(F) AMENDMENTS.--Changes to the IEP may be made either by the entire IEP Team or, as provided in subparagraph (D), by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.

(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 *frequently* than annually, to determine whether the annual goals for the child are being achieved; and

(ii) revises the IEP as appropriate to address--

(I) any lack of expected progress toward the annual goals and in the general *education* 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.--~~The~~ A regular education teacher of the child, as a member of the IEP Team, shall, ~~to the extent appropriate~~ *consistent with paragraph (1)(C)*, participate in the review and revision of the IEP of the child.

(5) MULTI-YEAR IEP DEMONSTRATION.--

(A) PILOT PROGRAM.--

(i) PURPOSE.--The purpose of this paragraph is to provide an opportunity for States to allow parents and local educational agencies the opportunity for long-term planning by offering the option of developing a comprehensive multi-year IEP, not to exceed 3 years, that is designed to coincide with the natural transition points for the child.

(ii) AUTHORIZATION.--In order to carry out the purpose of this paragraph, the Secretary is authorized to approve not more than 15 proposals from States to carry out the activity described in clause (i).

(iii) PROPOSAL.--

(I) IN GENERAL.--A State desiring to participate in the program under this paragraph 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--

(aa) assurances that the development of a multi-year IEP under this paragraph is optional for parents;

(bb) assurances that the parent is required to provide informed consent before a comprehensive multi-year IEP is developed;

(cc) a list of required elements for each multi-year IEP, including--

(aa) measurable goals pursuant to paragraph (1)(A)(i)(II), coinciding with natural transition points for the child, that will enable the child to be involved in and make progress in the general education curriculum and that will meet the child's other needs that result from the child's disability; and

(bb) measurable annual goals for determining progress toward meeting the goals described in subitem (AA); and

(dd) a description of the process for the review and revision of each multi-year IEP, including--

(aa) a review by the IEP Team of the child's multi-year IEP at each of the child's natural transition points;

- (bb) in years other than a child's natural transition points, an annual review of the child's IEP to determine the child's current levels of progress and whether the annual goals for the child are being achieved, and a requirement to amend the IEP, as appropriate, to enable the child to continue to meet the measurable goals set out in the IEP;
- (cc) if the IEP Team determines on the basis of a review that the child is not making sufficient progress toward the goals described in the multi-year IEP, a requirement that the local educational agency shall ensure that the IEP Team carries out a more thorough review of the IEP in accordance with paragraph (4) within 30 calendar days; and
- (dd) at the request of the parent, a requirement that the IEP Team shall conduct a review of the child's multi-year IEP rather than or subsequent to an annual review.
- (B) REPORT.--Beginning 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall submit an annual report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate regarding the effectiveness of the program under this paragraph and any specific recommendations for broader implementation of such program, including--
- (i) 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;
- (ii) enhancing longer-term educational planning;
- (iii) improving positive outcomes for children with disabilities;
- (iv) promoting collaboration between IEP Team members; and
- (v) ensuring satisfaction of family members.
- (C) DEFINITION.--In this paragraph, the term 'natural transition points' means those periods that are close in time to the transition of a child with a disability from preschool to elementary grades, from elementary grades to middle or junior high school grades, from middle or junior high school grades to secondary school grades, and from secondary school grades to post-secondary activities, but in no case a period longer than 3 years.
- (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)(~~vii~~)(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~~ IEP.
- (7) CHILDREN WITH DISABILITIES IN ADULT PRISONS.--**
- (A) IN GENERAL.--**The following requirements ~~do~~ 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)(17~~6~~) and paragraph-(1)(A)(~~vi~~)-of this subsection(VI) (relating to participation of children with disabilities in general assessments).
- (ii) The requirements of subclauses ~~items~~ (Iaa) and (Hbb) of paragraph (1)(A)(~~vii~~)-of this subsection(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~~such children's age, before ~~they~~such children 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)~~paragraph (1)(A) if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

~~(e) CONSTRUCTION.--Nothing in this section shall be construed to require the IEP Team to include information under one component of a child's IEP that is already contained under another component of such IEP.~~

(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, section 615(e), and section 615(f)(1)(B), and carrying out administrative matters under section 615 (such as scheduling, exchange of witness lists, and status conferences), 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.