

MISSISSIPPI POLICIES FOR IMPLEMENTATION OF

THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2004

P.L. 108-446

State law and State Board of Education requirements that are not required by federal law are highlighted. Where state law (Mississippi Code, 1972 Annotated) or state policies are more restrictive than federal statute, local education agencies must comply with state requirements. Mississippi Policies and Procedures for Implementation of IDEA97 will serve as guidance for implementation of the policies herein, and will be referenced as Policy Guidance.

SEC. 602. DEFINITIONS.

Except as otherwise provided, in this title:

(1) ASSISTIVE TECHNOLOGY DEVICE-

(A) IN GENERAL- 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

(B) EXCEPTION- The term does not include a medical device that is surgically implanted, or the replacement of such device.

(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 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 (referred to in this title 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 SUBJECTS- The term `core academic subjects' has the meaning given the term in section 9101 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, including a public elementary charter 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;

`(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-

`(A) IN GENERAL- For any special education teacher, the term 'highly qualified' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965, except that such term also--

`(i) includes the requirements described in subparagraph (B); and

`(ii) includes the option for teachers to meet the requirements of section 9101 of such Act by meeting the requirements of subparagraph (C) or (D).

`(B) REQUIREMENTS FOR SPECIAL EDUCATION TEACHERS- When used with respect to any public elementary school or secondary school special education teacher teaching in a State, such term means that--

`(i) the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to 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 special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

`(iii) the teacher holds at least a bachelor's degree.

`(C) SPECIAL EDUCATION TEACHERS TEACHING TO ALTERNATE ACHIEVEMENT STANDARDS- When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, such term means the teacher, whether new or not new to the profession, may either--

`(i) meet the applicable requirements of section 9101 of such Act for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

`(ii) meet the requirements of subparagraph (B) or (C) of section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

`(D) SPECIAL EDUCATION TEACHERS TEACHING MULTIPLE SUBJECTS- When used with respect to a special education teacher who teaches 2 or more core academic subjects exclusively to children with disabilities, such term means that the teacher may either--

`(i) meet the applicable requirements of section 9101 of the Elementary and Secondary Education Act of 1965 for any elementary, middle, or secondary school teacher who is new or not new to the profession;

`(ii) in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or

`(iii) in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects, not later than 2 years after the date of employment.

`(E) RULE OF CONSTRUCTION- Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular State educational agency or local educational agency employee to be highly qualified.

`(F) DEFINITION FOR PURPOSES OF THE ESEA- A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965.

`(11) 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 (42 U.S.C. 11434a).

`(12) INDIAN- The term `Indian' means an individual who is a member of an Indian tribe.

`(13) 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 (43 U.S.C. 1601 et seq.)).

`(14) INDIVIDUALIZED EDUCATION PROGRAM; IEP- 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).

`(15) INDIVIDUALIZED FAMILY SERVICE PLAN- The term `individualized family service plan' has the meaning given the term in section 636.

`(16) INFANT OR TODDLER WITH A DISABILITY- The term `infant or toddler with a disability' has the meaning given the term in section 632.

`(17) INSTITUTION OF HIGHER EDUCATION- The term `institution of higher education'--

`(A) has the meaning given the term in section 101 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.

`(18) LIMITED ENGLISH PROFICIENT- The term `limited English proficient' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965.

`(19) LOCAL EDUCATIONAL AGENCY-

`(A) IN GENERAL- 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) EDUCATIONAL SERVICE AGENCIES AND OTHER PUBLIC INSTITUTIONS OR AGENCIES- The term includes--

`(i) an educational service agency; and

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

`(20) NATIVE LANGUAGE- The term `native language', when used with respect to an individual who is limited English proficient, 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.

`(21) 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.

`(23) PARENT- The term `parent' means--

`(A) a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent);

`(B) a guardian (but not the State if the child is a ward of the State);

`(C) 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

`(D) 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.

`(24) PARENT ORGANIZATION- The term `parent organization' has the meaning given the term in section 671(g).

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

`(26) RELATED SERVICES-

`(A) IN GENERAL- 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 nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, 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.

`(B) EXCEPTION- The term does not include a medical device that is surgically implanted, or the replacement of such device.

`(27) SECONDARY SCHOOL- The term `secondary school' means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

`(28) SECRETARY- The term `Secretary' means the Secretary of Education.

`(29) 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

§ 37-23-133. Definitions.

Words and terms, unless otherwise defined below, when used in Sections 37-23-1 through 37-23-159 shall be defined in the same manner as those words and terms used in the Individuals with Disabilities Education Act 1997 Amendments (IDEA), Family Educational Rights and Privacy Act, applicable federal regulations and relevant court cases:

(a) "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 the functional capabilities of children with disabilities.

(b) "Assistive technology service" means any service that directly assists a student with a disability in the selection

acquisition or use of an assistive technology device. The term includes:

(i) The evaluation of the needs of a student with a disability, including a functional evaluation of the student in his or her customary environment;

(ii) Purchasing, leasing or otherwise providing for the acquisition of assistive technology devices by students with disabilities;

(iii) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing assistive devices;

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

(v) Training or technical assistance for a student with a disability or, if appropriate, that student's family; and

(vi) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers or other individuals who may provide services to, employ, or are otherwise substantially involved in the major life functions of students with disabilities.

(c) "Consent" means agreement in writing from the parent of a child with a disability pertaining to the activities as required under IDEA and the Family Educational Rights and Privacy Act. Local educational agencies shall ensure that the parent:

(i) Has been fully informed of all information relevant to the activity for which consent is required;

(ii) Understands the activity for which consent is requested; and

(iii) Understands that the granting of consent is voluntary and may be revoked at any time prior to the time the activity is conducted.

(d) "Free appropriate public education" means special education and related services provided by local educational agencies that:

(i) Have been provided at public expense, under public supervision and direction, and without charge;

(ii) Meet the standards of the State Department of Education;

(iii) Include an appropriate preschool, elementary, or secondary school education; and

(iv) Are provided in conformity with the individualized education program required under IDEA, applicable federal and state regulations and relevant court cases.

(e) "Individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with the requirements under IDEA, applicable federal and state regulations and relevant court cases.

(f) "Least restrictive environment" means to the maximum extent appropriate, children with disabilities, 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.

(g) "Parent" means a person who is legally responsible for a child's welfare or acting for the child in the absence of the legally responsible person. Parent may also mean a natural parent, a guardian, or a surrogate parent.

(h) "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, 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.

(i) "Special education" means specially designed instruction provided by local educational agencies, at no cost to parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. This term also includes instruction in physical education.

(j) "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 the least restrictive environment requirements under IDEA, applicable federal regulations and relevant court cases.

(k) "Transition services" means a coordinated set of activities for a student with a disability that:

(i) Is designed within an outcome-oriented process, which promotes 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;

(ii) Is based upon the individual student's needs, taking into account the student's preferences and interests;

(iii) 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.

§ 37-23-5. Administration of program of education for exceptional children.

Except as otherwise provided in Laws, 1999, Chapter 582, the State Department of Education is empowered to foster inspect, approve and administer a program of education for exceptional children. The State Department of Education shall make the necessary rules and regulations in keeping with the provision of Sections 37-23-1 through 37-23-9 and applicable federal laws and regulations which are not in conflict with Mississippi law for its proper administration and shall employ such personnel as may be necessary to administer such program.

The department shall require that the program of education for exceptional children be designed to provide individualized appropriate special education and related services that enable a child to reach his or her appropriate and uniquely designed goals for success.

§ 37-23-1. Purpose of §§ 37-23-1 through 37-23-159; design of programs and services; accountability system.

The purpose of Sections 37-23-1 through 37-23-159 is to mandate free appropriate public educational services and equipment for exceptional children in the age range three (3) through twenty (20) for whom the regular school programs are not adequate and to provide, on a permissive basis, a free appropriate public education, as a part of the state's early intervention system in accordance with regulations developed in collaboration with the agency designated as "lead agency" under Part C of the Individuals with Disabilities Education Act. The portion of the regulations developed in collaboration with the lead agency which are necessary to implement the programs under the authority of the State Board of Education shall be presented to the State Board of Education for adoption. This specifically includes, but shall not be limited to, provision for day schools for the deaf and blind of an age under six (6) years, where early training is in accordance with the most advanced and best approved scientific methods of instruction, always taking into consideration the best interests of the child and his improvement at a time during which he is most susceptible of improvement. Educational programs to exceptional children under the age of three (3) years shall be eligible for minimum program funds as defined in Sections 37-23-3 and 37-19-5. The educational programs and services provided for exceptional children in Sections 37-23-1 through 37-23-15, 37-23-31 through 37-23-35, 37-23-61 through 37-23-75 and 37-23-77 shall be designed to provide individualized appropriate special education and related services that enable a child to reach his or her appropriate and uniquely designed goals for success. The State Board of Education shall establish an accountability system for special education programs and students with disabilities. The system shall establish accountability standards for services provided to improve the educational skills designed to prepare children for life after their years in school. These standards shall be a part of the accreditation system and shall be implemented before July 1, 1996. The State Department of Education shall establish goals for the performance of children with disabilities that will promote the purpose of IDEA and are consistent, to the maximum extent appropriate, with other goals and standards for children established by the State Department of Education. Performance indicators used to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates shall be developed. Every two (2) years, the progress toward meeting the established performance goals shall be reported to the public.

PART B--ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

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; 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 who are homeless children or are wards of the State and 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 title 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.

PLACEMENT

Each child's educational placement, including preschool children, is determined at least once a year; this placement will be based on the IEP of that child and determined by the IEP Committee. Federal law requires students with disabilities to be educated "to the maximum extent appropriate in the regular education classroom." While, education in a regular classroom may not meet the needs of all students with disabilities, there is a strong preference in favor of educating students with disabilities in regular classrooms. As placement decisions are made, the following general principles will be considered:

- A. The child's placement is as close to his/her home as possible.**
- B. The child attends the school he would attend if he/she did not have a disability, unless the IEP requires some other arrangement.**
- C. The placement shall not produce harm to the child that cannot be addressed through supplementary aids and services.**
- D. The child is not removed from education in age appropriate regular classrooms solely because of needed modifications in the general curriculum or the failure to provide supplementary aids and services.**

Additionally, to ensure that students with disabilities are educated to the maximum extent possible in regular classroom settings LEAs must consider the following two-part test.

- 1. The district must examine whether steps have been taken to accommodate the child with a disability in regular education by considering the following factors:**
 - A. LEAs are required to make a broad and genuine effort to first provide supplementary aids and services in regular education and to modify the regular education curriculum for students with disabilities. The efforts by the LEAs cannot be mere token gestures. Although regular education teachers are not required to devote all or most of their time to one disabled student, the requirement to provide supplementary aids/services in regular education may include a teaching assistant or aide who may minimize any burdens on teachers. LEAs are not required to modify the regular education program beyond recognition or to the extent that the disabled student is not required to learn any of the skills normally taught in regular education.**
 - B. LEAs must consider the specific education benefit the student will receive from regular education. This inquiry necessarily will focus on the student's ability to grasp the essential elements of the regular education curriculum. Students with disabilities thus need not perform on the same level, or grasp all of the elements of the curriculum in order to benefit from regular education. LEAs are required to allow**

disabled students to participate in regular education even though some of these students may not benefit as much as students without disabilities. Students with disabilities' access to regular education cannot be based on a student's ability to perform on par with students without disabilities. If the student's individual needs make inclusion in regular education appropriate, that student should not be denied access to regular education simply because their educational achievement lags behind that of his classmates. However, LEAs are not obligated to place in regular education every child with a disability without regard for whether the regular classroom provides an appropriate education.

- C. LEAs must also look beyond the educational benefit a child may receive in regular education. LEAs must consider the overall educational experience of the student in regular education, balancing the benefits of regular and special education for each individual child. LEAs must remember that academic achievement is not the only benefit that is derived from educating students with disabilities in regular education. Integrating a disabled student into a regular education program may be beneficial in and of itself. For example, a child may be able to absorb only a minimal amount of the regular education program, but may benefit enormously from the language or behavior models that students without disabilities provide for him. LEAs are to allow students with disabilities to benefit from nonacademic experiences in regular education, even when they do not flourish academically. On the other hand, placing a student in regular education may be detrimental to the child. In such a case, regular education would not provide an education that is attuned to the child's unique needs.
- D. LEAs must consider the effect the student with disabilities' presence has on the regular classroom environment and on the education that the other students are receiving. For example, if a student's behavior is so disruptive as to significantly impair the education of other students, regular placement may be inappropriate. If the disabled student requires so much of the teacher's attention that the teacher will have to ignore the other students' needs in order to tend to the disabled student, the LEA should provide supplementary aids and services. A teaching assistant or an aide may minimize the burden on the teacher. If, however, the disabled child requires so much of the teacher or the aide's time that the rest of the class suffers, then the IEP committee should continue to consider a range of placement options for the student.
- 2. If the LEA determines that "full-time" education in the regular classroom cannot be achieved satisfactorily, the LEA must place the student with disabilities in the regular classroom to the maximum extent appropriate. In such a case, the LEA should consider such measures as placing the student in regular education for some academic classes and in special education for others. The appropriate mix will vary from student to student and year to year.

Because each student's needs are different, LEAs should consider any additional factors relevant to the nature and severity of the child's disability, his/her needs and abilities, and the school's response to the child's needs.

(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 for services under this title 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)(9). 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 private school children) by the local educational agency shall be equal to a

proportionate amount of Federal funds made available under this part.

`(II) In calculating the proportionate amount of Federal funds, the local educational agency, after timely and meaningful consultation with representatives of private schools as described in clause (iii), shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the local educational agency.

`(III) Such services to parentally placed private school children with disabilities may be provided to the children on the premises of private, including religious, schools, to the extent consistent with law.

`(IV) State and local funds may supplement and in no case shall supplant the proportionate amount of Federal funds required to be expended under this subparagraph.

`(V) Each local educational agency shall maintain in its records and provide to the State educational agency the number of children evaluated under this subparagraph, the number of children determined to be children with disabilities under this paragraph, and the number of children served under this paragraph.

`(ii) CHILD FIND REQUIREMENT-

`(I) IN GENERAL- The requirements of paragraph (3) (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.

`(II) EQUITABLE PARTICIPATION- The child find process shall be designed to ensure the equitable participation of parentally placed private school children with disabilities 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 the agency's public school children.

`(IV) COST- The cost of carrying out this clause, including individual evaluations, may not be considered in determining whether a local educational 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 in 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 private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children, including 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 amount of Federal funds available to serve parentally placed private school children with disabilities under this subparagraph, including the determination of how the amount was calculated;

`(III) the consultation process among the local educational agency, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed private school 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 with disabilities, including a discussion of types of services, including direct services and 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 or the types of services, whether provided directly or 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 directly or through a contract.

`(iv) WRITTEN AFFIRMATION- When timely and meaningful consultation as required by clause (iii) has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide such affirmation 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 submit a complaint 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 submit a complaint, the official shall provide the basis of the noncompliance with this subparagraph 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 submit a complaint to the Secretary by providing the basis of the noncompliance with this subparagraph 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) DIRECTLY OR THROUGH CONTRACTS- The provision of services pursuant to this subparagraph shall be provided--

`(aa) by employees of a public agency; or

`(bb) through contract by the public agency with an individual, association, agency, organization, or other entity.

`(II) SECULAR, NEUTRAL, NONIDEOLOGICAL- Special education and related services provided to parentally placed private school children with disabilities, 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 subparagraph, 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 title, 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 educational agencies 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 item (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;

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

`(cc) compliance with clause (iii)(I) would likely result in physical harm to the child; 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 or cannot write in English; or

`(bb) compliance with clause (iii)(I) would likely result in 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;

`(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State agency 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; and

`(iii) in carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.

`(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(26) relating to related services,

602(33) relating to supplementary aids and services, and 602(34) 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 QUALIFICATIONS-

`(A) IN GENERAL- The State educational agency has established and maintains qualifications 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 qualifications under subparagraph (A) include qualifications 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) QUALIFICATIONS FOR SPECIAL EDUCATION TEACHERS- The qualifications described in subparagraph (A) shall ensure that each person employed as a special education teacher in the State who teaches elementary school, middle school, or secondary school is highly qualified by the deadline established in section 1119(a)(2) of the Elementary and Secondary Education Act of 1965.

`(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 paragraph 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 title, 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 dropout 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), which may include elements of the reports required under section 1111(h) of the Elementary and Secondary Education Act of 1965.

`(16) PARTICIPATION IN ASSESSMENTS-

`(A) IN GENERAL- All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations and 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 (A) with accommodations 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 standards and challenging student academic achievement standards; and

`(II) if the State has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out 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 ALTERNATE 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.

Mississippi Code 1972, Annotated

§ 37-23-9. Courses of study, methods of teaching, and qualifications of instructors.

Except as otherwise provided in Laws, 1999, Chapter 582, course of study, teacher-pupil ratio, adequacy of methods of instruction, in-service training qualifications of teachers and technicians, and necessary equipment for special education must comply with the requirements established by the state department of education. Boards of trustees of the districts wherein a special class or classes are

established are to employ teachers as provided by law for the purpose of teaching the established special classes.

§ 37-23-148. Participation in assessment programs by children with disabilities; Department of Education to report on results of assessment of disabled children.

(1) Children with disabilities shall be included in general statewide and district-wide assessments programs, with appropriate accommodations, where necessary. As appropriate, the State Department of Education and the local educational agency shall:

(a) Develop policies and procedures for the participation of children with disabilities in alternate assessments for those children who cannot participate in statewide and district-wide assessment programs; and

(b) Develop and, beginning not later than July 1, 2000, conduct those alternate assessments.

(2) The State Department of Education shall make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(a) The number of children with disabilities participating in regular assessments;

(b) The number of children participating in alternate assessments;

(c) The performance of those children on regular assessments, beginning not later than July 1, 1998, and on alternate assessments, not later than July 1, 2000, if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children; and

(d) Data relating to the performance of children with disabilities shall be disaggregated for assessments conducted after July 1, 1998.

“(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) RULE OF CONSTRUCTION- In complying with paragraphs (17) and (18), a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to local educational agencies, including funding based on student attendance or enrollment, or inflation.

`(21) 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, be representative of the State population, and be 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, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.);
- `(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) not less than 1 representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;

- `(x) a representative from the State child welfare agency responsible for foster care; and
- `(xi) representatives from the State juvenile and adult corrections agencies.

Mississippi Code 1972, Annotated

§ 37-23-145. Advisory panel on special education; membership; duties.

(1) The State Board of Education shall establish and maintain 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.

(2) The advisory panel shall consist of members appointed by the State Superintendent of Education who are representative of the state's population and who are composed of individuals involved in, or concerned with, the education of children with disabilities, including:

- (a) Parents of children with disabilities;**
- (b) Individuals with disabilities;**
- (c) Teachers;**
- (d) Representatives of institutions of higher education that prepare special education and related services personnel;**
- (e) State and local education officials;**
- (f) Administrators of programs for children with disabilities;**
- (g) Representatives of other state agencies involved in the financing or delivery of related services to children with disabilities;**
- (h) Representatives of private schools and public charter schools;**
- (i) At least one (1) representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and**
- (j) Representatives from the State juvenile and adult correction agencies.**

(3) A majority of the members of the panel shall be individuals with disabilities or parents of children with disabilities.

(4) The duties of the advisory panel shall include:

- (a) Advise the State Department of Education of unmet needs within the State in the education of children with disabilities;**
- (b) Comment publicly on any rules or regulations proposed by the State Department of Education regarding the education of children with disabilities;**
- (c) Advise the State Department of Education in developing evaluations and reporting on data to the secretary in accordance with the requirements under IDEA;**
- (d) Advise the State Department of Education in developing and implementing policies relating to the coordination of services for children with disabilities; and**
- (e) Advise the State Department of Education in developing corrective action plans to address findings identified in federal monitoring reports under IDEA.**

(5) The advisory panel shall be provided the opportunity to provide comments to the State Board of Education on rules or regulations proposed by the State Department of Education relating to the implementation of the IDEA 1997 Amendments.

`(C) SPECIAL RULE- A majority of the members of the panel shall be individuals with disabilities or parents of children with disabilities (ages birth through 26).

`(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.

`(22) SUSPENSION AND EXPULSION RATES-

`(A) IN GENERAL- The State educational agency examines data, including data disaggregated by race and ethnicity, 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 positive behavioral interventions and supports, and procedural safeguards, to ensure that such policies, procedures, and practices comply with this title.

`(23) ACCESS TO 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 National Instructional Materials Accessibility Standard in the Federal Register.

`(B) RIGHTS OF STATE EDUCATIONAL AGENCY- Nothing in this paragraph shall be construed to require any State educational agency to coordinate with the National Instructional Materials Access Center. If a State educational agency chooses not to coordinate with the National Instructional Materials Access Center, such agency shall provide an assurance to the Secretary that the agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

`(C) PREPARATION AND DELIVERY OF FILES- If a State educational agency chooses to coordinate with the National Instructional Materials Access Center, not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, the agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to--

`(i) require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard; or

`(ii) purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

`(D) ASSISTIVE TECHNOLOGY- In carrying out this paragraph, the State educational agency, to the maximum extent possible, shall work collaboratively with the State agency responsible for assistive technology programs.

`(E) DEFINITIONS- In this paragraph:

`(i) NATIONAL INSTRUCTIONAL MATERIALS ACCESS CENTER- The term 'National Instructional Materials Access Center' means the center established pursuant to section 674(e).

`(ii) NATIONAL INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARD- The term 'National Instructional Materials Accessibility Standard' has the meaning given the term in section 674(e)(3)(A).

`(iii) SPECIALIZED FORMATS- The term 'specialized formats' has the meaning given the term in section 674(e)(3)(D).

`(24) OVERIDENTIFICATION AND DISPROPORTIONALITY- The State has in effect, consistent with the purposes of this title and with section 618(d), policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in section 602.

`(25) PROHIBITION ON MANDATORY MEDICATION-

`(A) IN GENERAL- The State educational agency shall prohibit State and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation under subsection (a) or (c) of section 614, or receiving services under this title.

`(B) RULE OF CONSTRUCTION- Nothing in subparagraph (A) shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under paragraph (3).

`(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 2004, 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 2004, the provisions of this title are amended (or the regulations developed to carry out this title are amended), there is a new interpretation of this title 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 that 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).

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) ADJUSTMENT TO LOCAL FISCAL EFFORT IN CERTAIN FISCAL YEARS-

`(i) AMOUNTS IN EXCESS- Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which 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 reduce the level of expenditures otherwise

required by subparagraph (A)(iii) by not more than 50 percent of the amount of 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 unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a) or the State educational agency has taken action against the local educational agency under section 616, the State educational agency shall prohibit the local educational agency from reducing the level of expenditures under clause (i) for 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

`(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, subject to the requirements of section 612(a)(14) 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).

`(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 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 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 (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 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 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 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 2004, the provisions of this title are amended (or the regulations developed to carry out this title are amended), there is a new interpretation of this 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 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 reduced by the agency 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 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 coordinated, early intervening 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 instruction and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

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) 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.

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) 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 shall obtain informed consent from the parent of such child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

(II) 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 parent of such child does not provide consent for 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 procedures 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 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, 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 education curriculum, or, for preschool children, to participate in appropriate activities;

`(B) not use any single 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) 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;
- `(ii) are provided and administered in the language 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 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 assessments;

`(B) the child is assessed in all areas of suspected disability;

`(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 assessments and other evaluation 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 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 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 math; 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 and other qualified professionals, as appropriate, shall--

`(A) review existing evaluation data on the child, including--

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

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

`(iii) observations by teachers and related services providers; 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 is a child with a disability as 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 academic achievement and 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 assessments and other evaluation 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)(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 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 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- 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 education curriculum;

`(bb) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; 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 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 education 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, 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 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 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 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 16, 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 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 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) not less than 1 regular education teacher of such child (if the child is, or may be, participating in the regular education environment);

`(iii) not less than 1 special education teacher, or where appropriate, 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 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), 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;

`(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, consider the use of 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, 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 needs 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 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- 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) 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)(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 the IEP.

`(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)(VI) (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 such children's age, before 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 paragraph (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, 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.

Mississippi Code 1972, Annotated

§ 37-23-135. Eligibility standards for assistance under Individuals with Disabilities Education Act.

(1) For the purposes of this section, each local educational agency is eligible for assistance under IDEA Part B for a fiscal year if, in providing for the education of children with disabilities within its jurisdiction, policies, procedures and programs are in effect that are consistent with the regulations established by the State Department of Education.

(2) The local educational agency shall have in effect policies and procedures, and programs that are consistent with the State Department of Education's policies and procedures to ensure:

(a) A free appropriate public education is available to all children with disabilities residing in the state between the ages of three (3) and twenty (20), inclusive. Educational services for children with disabilities who have been suspended or expelled from school shall be provided based on the requirements of IDEA, applicable federal regulations and state regulations;

(b) The full educational opportunity goal established by the state is implemented;

(c) All children with disabilities, who are in need of special education and related services, including children with disabilities attending private school, regardless of the severity of their disabilities, are identified, located, and evaluated;

(d) An individualized education program is developed, reviewed and revised for each child with a disability;

(e) Children with disabilities are provided services within their least restrictive environment;

(f) Children with disabilities and their parents are afforded the procedural safeguards required under IDEA;

(g) Children with disabilities are evaluated as required under IDEA;

(h) The State Department of Education and local education agencies will assure the protection of the confidentiality of any personally identifiable data, information and records collected or maintained as required under IDEA and the Family Rights and Privacy Act.

(i) Children with disabilities participating in early intervention programs assisted under IDEA Part C who will participate in preschool programs assisted under IDEA Part B shall experience a smooth transition. An individualized educational program shall be developed and implemented by the child's third birthday;

(j) Children with disabilities enrolled in private schools by their parents shall be provided special education and related services to the extent required under IDEA;

(k) Children with disabilities who are placed in private schools or facilities by the local educational agency shall be provided special education and related services, in accordance with an individualized education program, at no cost to their parents;

(l) A comprehensive system of personnel development has been developed to ensure appropriately qualified personnel are available and personnel are trained in accordance with the requirements of the State Department of Education and IDEA;

(m) Personnel providing educational services to children with disabilities meet the personnel standards of the State Department of Education;

(n) The performance goals and indicators shall be implemented as established by the State Board of Education; and

(o) Children with disabilities are included in statewide and district-wide assessment programs, with appropriate accommodations, in accordance with regulations established by the State Board of Education.

(3) The local educational agency shall make available to parents of children with disabilities and to the general public all documents relating to the agency's eligibility under IDEA.

(4) If the State Department of Education determines that a local educational agency is not eligible to receive federal funds due to compliance violations not being resolved within a specified timeline, the local educational agency shall be notified of that determination and shall be provided with reasonable notice and an opportunity for a hearing. The local educational agency in receipt of such notice, shall, by means of public notice, take such measures as may be necessary to bring the pendency of an action to withhold funds to the attention of the public within the jurisdiction of such agency.

(5) The State Department of Education, after reasonable notice and an opportunity for a hearing, shall reduce or shall not provide any further payments to the local educational agency until the department is satisfied that the violations have been corrected.

Mississippi Code 1972, Annotated

§ 37-23-137. Parental consent, involvement, and participation in educational decisions; procedures for evaluations and testing; rights of parents to receive copies of child's educational records.

(1) Consent shall be obtained:

- (a) Prior to initial evaluation;*
- (b) Prior to implementation of the initial individualized educational program for a child with a disability;*
- (c) Prior to reevaluation, except that such consent is not required, if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the parent failed to respond; and*
- (d) Prior to the release of educational records as required under the Family Educational Rights and Privacy Act and IDEA.*

(2) If the parent of a child with a disability refuses consent for the evaluation, the local educational agency may continue to pursue an evaluation by utilizing the due process hearing procedures under IDEA, except to the extent these are not in conflict with Mississippi law relating to parental consent.

(3) Written prior notice shall be provided to the parents of the child whenever a local educational agency proposes to initiate or change or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to that child.

(4) Written prior notice shall be provided in the native language of the parents, unless it clearly is not feasible to do so.

(5) Written prior notice shall include:

- (a) A description of the action proposed or refused by the local educational agency;*
- (b) An explanation of why the local educational agency proposes or refuses to take the action;*
- (c) A description of any other options that the local educational agency considered and the reasons why those options were rejected;*
- (d) description of any other factors that are relevant to the local educational agency's proposal or refusal;*
- (e) A description of each evaluation procedure, test, record, or report the local educational agency used as a basis for the proposed or refused action;*
- (f) A description of any factors that are relevant to the local educational agency's proposal or refusal;*
- (g) A statement that the parents of a child with a disability have protection under the procedural safeguards under IDEA and, if the notice is not an initial referral for evaluation, notification of an individualized educational program meeting or notice for reevaluation, the means by which a copy of a description of procedural safeguards can be obtained; and*
- (h) Sources for parents to contact to obtain assistance in understanding the provisions under IDEA.*

(6) A copy of the procedural safeguards established by the State Department of Education shall be given to the parents upon:

- (a) Initial referral for evaluation;*

- (b) Each notification of an individualized education program meeting;*
- (c) Reevaluation; and*
- (d) Registration of a complaint under IDEA to the State Department of Education.*

(7) The State Department of Education and each local educational agency shall establish procedures to ensure parents of children with disabilities have the opportunity to participate in meetings with respect to the identification, evaluation, and education placement of the child, and the provision of a free appropriate public education of such child. Local educational agencies shall provide parents of children with disabilities an opportunity to provide input in the development of the agencies' application for funding, as required under IDEA.

(8) In conducting the evaluation, the local educational agency shall:

- (a) Use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent, that may assist in determining whether the child is a child with a disability and 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 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.*

(9) Each local educational agency shall ensure that:

- (a) Tests and other evaluation materials used to assess a child are:
 - (i) Selected and administered so as not to be discriminatory on a racial or cultural basis; and*
 - (ii) Provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;**
- (b) Any standardized tests that are given to the child:
 - (i) Have been validated for the specific purpose for which they are used;*
 - (ii) Are administered by trained and knowledgeable personnel; and*
 - (iii) Are administered in accordance with any instructions provided by the producer of such tests;**
- (c) The child is assessed in all areas of suspected disability; and*
- (d) Assessment tools and strategies that provide relevant information that directly assist persons in determining the educational needs of the child are provided.*

(10) 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 under IDEA and state regulations established by the State Board of Education shall be made by a team of qualified professionals and the parent of the child and certified by a Screening Team as defined by the State Board of Education;*
- (b) In making such a determination of eligibility, a child shall not be determined to be a child with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency; and*
- (b) A copy of the evaluation report and the documentation of determination of eligibility will be given to the parent.*

(c)

(11) Parents shall have an opportunity to obtain an independent educational evaluation of their child in accordance with the requirements under IDEA.

(12) An outside individual or entity contracting with a local educational agency for the purpose of performing an observation in order to make recommendations of possible changes in a child's IEP, or any outside individual or entity making an observation of a child which results in such recommendations, shall submit a report of the observation to the local educational agency. The local educational agency shall notify the parent upon receipt of this report.

(13) Parents and guardians shall have the right of review or to receive copies of all educational records, as such records are defined by the Family Educational Rights and Privacy Act and the Individuals with Disabilities Education Act, pertaining to their child. The local educational agency shall be responsible for making the educational records available to the parent or guardian. The cost of providing a copy of any information contained in a student's educational record to the parents or guardians shall be established by the local school board in accordance with the requirements of the Family Educational Rights and Privacy Act and the Individuals with Disabilities Education Act.

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 a free appropriate public education by such agencies.

(b) TYPES OF PROCEDURES- The procedures required by this section shall include the following:

(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)(A) 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 to act as a surrogate for the parents, which surrogate 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. In the case of--

(i) a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of this paragraph; and

(ii) an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)), the local educational agency shall appoint a surrogate in accordance with this paragraph.

(B) The State shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.

(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 any party to present a complaint--

`(A) 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; and

`(B) which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for presenting such a complaint under this part, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph.

`(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 (or available contact information in the case of a homeless 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.

`(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) 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 notice 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 and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

`(C) 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;

- `(D) sources for parents to contact to obtain assistance in understanding the provisions of this part;
- `(E) a description of other options considered by the IEP Team and the reason why those options were rejected; and
- `(F) a description of the factors that are relevant to the agency's proposal or refusal.

`(2) DUE PROCESS COMPLAINT NOTICE-

`(A) COMPLAINT- 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 subsection (b)(7)(A).

`(B) RESPONSE TO COMPLAINT-

 `(i) LOCAL EDUCATIONAL AGENCY RESPONSE-

 `(I) IN GENERAL- If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, such local educational agency shall, within 10 days of receiving the complaint, send to the parent a response that shall include--

- `aa) an explanation of why the agency proposed or refused to take the action raised in the complaint;
- `bb) a description of other options that the IEP Team considered and the reasons why those options were rejected;
- `cc) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

 `dd) a description of the factors that are relevant to the agency's proposal or refusal.

 `(II) SUFFICIENCY- A response filed by a local educational agency pursuant to subclause (I) shall not be construed to preclude such local educational agency from asserting that the parent's due process complaint notice was insufficient where appropriate.

 `(ii) OTHER PARTY RESPONSE- Except as provided in clause (i), the non-complaining party shall, within 10 days of receiving the complaint, send to the complaint a response that specifically addresses the issues raised in the complaint.

`(C) TIMING- The party providing a hearing officer notification under subparagraph (A) shall provide the notification within 15 days of receiving the complaint.

`(D) DETERMINATION- Within 5 days of receipt of the notification provided under subparagraph (C), 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 the parties in writing of such determination.

`(E) AMENDED COMPLAINT NOTICE-

 `(i) IN GENERAL- A party may amend its due process complaint notice only if--

- `(I) the other party 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

with respect to a violation of federal or state regulations by a local educational agency relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.

(2) Procedures that require the parent of a child with a disability, or the attorney representing the child, to provide notice to the State Department of Education shall include:

(a) The name of the child, the address of the residence of the child, and the name of the school the child is attending;

(b) 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

(c) A proposed resolution of the problem to the extent known and available to the parents at the time.

(3) State Department of Education shall develop a model form to assist parents in filing a complaint in accordance with the requirements under IDEA.

(4) All complaints shall remain protected by the confidentiality requirements under IDEA.

(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 that 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 AGREEMENT- In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that--

`(i) states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

`(ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency; and

`(iii) 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 hearing or civil proceeding.

Mississippi Code 1972, Annotated

§ 37-23-141. Mediation; promulgation of rules and regulations; confidentiality.

(1) The State Department of Education shall promulgate the necessary rules and regulations to establish a mediation system which, at a minimum, shall be available whenever a due process hearing under IDEA is requested. The mediation system shall allow parties the opportunity to resolve such disputes involving 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.

(2) The State Department of Education shall ensure that the mediation process is:

(a) Voluntary on the part of the parties;

(b) Not used to deny or delay a parent's right to a due process hearing under IDEA or to deny any other rights afforded under IDEA; and

(c) Conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(3) The State Department of Education may establish procedures to require parents who choose not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with a parent training and information center or community parent resource center in the state established under IDEA, or an appropriate alternative dispute resolution entity. The purpose of the meeting is to encourage the use, and explain the benefits, of the mediation process to the parents.

(4) The State Department of Education 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.

(5) The state shall bear the cost of the mediation process, including the costs of all meetings described in this section.

(6) 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 in dispute.

(7) An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement.

(8) 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) RESOLUTION SESSION-

`(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 relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint--

`(I) within 15 days of receiving notice of the parents' complaint;

`(II) which shall include a representative of the 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 facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint,

unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process described in subsection (e).

`(ii) HEARING- If the local educational agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence.

`(iii) WRITTEN SETTLEMENT AGREEMENT- In the case that a resolution is reached to resolve the complaint at a meeting described in clause (i), the parties shall execute a legally binding agreement that is--

`(I) signed by both the parent and a representative of the agency who has the authority to bind such agency; and

`(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.

`(iv) REVIEW PERIOD- If the parties execute an agreement pursuant to clause (iii), a party may void such agreement within 3 business days of the agreement's execution.

`(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 knowledge of, and the ability to understand, the provisions of this title, Federal and State regulations pertaining to this title, and legal interpretations of this title by Federal and State 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) TIMELINE FOR REQUESTING HEARING- A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part, in such time as the State law allows.

`(D) EXCEPTIONS TO THE TIMELINE- The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to--

`(i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or

`(ii) the local educational agency's withholding of information from the parent that was required under this part to be provided to the parent.

`(E) 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) impeded the child's right to a free appropriate public education;

`(II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or

`(III) caused a deprivation of educational benefits.

(iii) RULE OF CONSTRUCTION- Nothing in this subparagraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.

(F) RULE OF CONSTRUCTION- Nothing in this paragraph shall be construed to affect the right of a parent to file a complaint with the State educational agency.

Mississippi Code 1972, Annotated

§ 37-23-143. Due process hearing.

(1) When any public agency directly responsible for the education of children with disabilities initiates or 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, the parent of a child with a disability or the agency shall have the opportunity to request a state-level impartial due process hearing.

(2) The State Department of Education shall promulgate rules and regulations consistent with the requirements under IDEA to establish a system for the provision of state-level impartial due process hearings. Such provisions shall include:

(a) At least five (5) business days prior to a hearing being conducted, 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. A hearing officer may bar any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(b) A hearing may not be conducted by an employee of the State Department of Education or the local educational agency involved in the education or care of the child.

(c) The right of either party to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.

(d) The right of either party to present evidence and confront and cross-examine witnesses.

(e) The right, at the option of parents, to a written or electronic verbatim record of such hearing.

(f) The right, at the option of parents, to electronic findings of fact and decisions.

(g) Findings and facts shall be made available to the public and transmitted to the advisory panel consistent with the requirements under IDEA.

(3) The decision made by the hearing officer shall be final, except that any party aggrieved by the findings and decision made by the hearing officer shall have the right to bring a civil action with respect to the issues of the due process hearing. Such civil action may be brought in any court of competent jurisdiction within forty-five (45) days from the date of the decision of the impartial due process hearing officer.

(4) Except as provided under IDEA, during the pendency of any proceedings conducted pursuant to this section, unless the local educational agency and the parents otherwise agree, the child will 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. This requirement does not limit the local educational agency from obtaining a temporary restraining order from any court of competent jurisdiction, as deemed necessary by the agency.

Mississippi Code 1972, Annotated

§ 37-23-11. Hearings regarding child's identification, evaluation or educational placement; state or federal court civil actions.

(1) When any public agency directly responsible for the education of exceptional children shall: (a) initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, or (b) refuse 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, the parent of a child with a disability or the agency shall have the opportunity to request a state-level impartial due process hearing.

(2) The State Department of Education shall promulgate rules and regulations consistent with the requirements under IDEA to establish a system for the provision of state-level impartial due process hearings. Such provisions shall include:

(a) At least five (5) business days prior to a hearing being conducted, 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. A hearing officer may bar any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(b) A hearing may not be conducted by an employee of the State Department of Education or the local educational agency involved in the education or care of the child.

(c) The right of either party to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.

(d) The right of either party to present evidence and confront and cross-examine witnesses.

(e) The right, at the option of parents, to a written, or, electronic verbatim record of such hearing.

(f) The right, at the option of parents, to electronic findings of fact and decisions.

(g) Findings and facts shall be made available to the public and transmitted to the advisory panel consistent with the requirements under IDEA.

(3) The decision made by the hearing officer shall be final, except that any party aggrieved by the findings and decision made by the hearing officer shall have the right to bring a civil action with respect to the issues of the due process hearing. Such civil action may be brought in any court of competent jurisdiction within thirty (30) days from the date of the decision of the impartial due process hearing officer.

(4) Except as provided under IDEA, during the pendency of any proceedings conducted pursuant to this section, unless the local educational agency and the parents otherwise agree, the child will 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. This requirement does not limit the local educational agency from obtaining a temporary restraining order from any court of competent jurisdiction, as deemed necessary by the agency.

(g) APPEAL-

`(1) IN GENERAL- 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.

`(2) IMPARTIAL REVIEW AND INDEPENDENT DECISION- The State educational agency shall conduct an impartial review of the findings and decision appealed under paragraph (1). 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 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)(21).

`(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 made 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-

`(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 prevailing State educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

`(ii) RULE OF CONSTRUCTION- Nothing in this subparagraph shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

`(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 the 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) CASE-BY-CASE DETERMINATION- School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

`(B) AUTHORITY- School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement 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).

`(C) 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 (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be

applied to children without disabilities, except as provided in section 612(a)(1) although it may be provided in an interim alternative educational setting.

`(D) SERVICES- A child with a disability who is removed from the child's current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or subparagraph (C) shall--

`(i) continue to receive educational services, as provided in 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, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

`(E) MANIFESTATION DETERMINATION-

`(i) IN GENERAL- Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--

`(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

`(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

`(ii) MANIFESTATION- If the local educational agency, the parent, and relevant members of the IEP Team determine 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.

`(F) DETERMINATION THAT BEHAVIOR WAS A MANIFESTATION- If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall--

`(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);

`(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and

`(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

`(G) SPECIAL CIRCUMSTANCES- 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, 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;

`(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or

`(iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

`(H) 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.

`(2) DETERMINATION OF SETTING- The interim alternative educational setting in subparagraphs (C) and (G) of paragraph (1) 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 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- A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).

`(ii) CHANGE OF PLACEMENT ORDER- In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may--

`(I) return a child with a disability to the placement from which the child was removed; or

`(II) 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 an appeal under paragraph (3) has been requested by either the parent or the local educational agency--

`(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)(C), 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 and shall result in a determination within 10 school days after the hearing.

`(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 to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, 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(a)(1)(B); or

`(iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

`(C) EXCEPTION- A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to section 614 or has refused services under this part or the child has been evaluated and it was determined that the child was not a child with a disability under this part.

`(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 this subsection, 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) RULE OF 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- In this subsection:

`(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 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) ELECTRONIC MAIL- A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the agency makes such option available.

`(o) SEPARATE COMPLAINT- 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.

It is the policy of the MDE that each public agency that provides education to children with disabilities will establish, maintain and implement procedural safeguards regarding disciplinary procedures for these children and their parent(s). Public agencies are required to adopt this policy and the procedures necessary to implement the requirements under this section.

REMOVAL OF TEN (10) DAYS OR LESS PER INCIDENT

Removals

School personnel may order the removal of a child for not more than ten (10) consecutive school days (refer to **Glossary** in Policy Guidance for the definition of School Days) to the extent that such removals would be applied to children without a disability for the same offense or when the child's behavior is deemed to be dangerous behavior (refer to **Glossary** Policy Guidance for the definition of Dangerous Behavior). Additional removals of not more than ten (10) consecutive school days in that same school year for separate incidents of misconduct may be ordered as long as those removals do not constitute a change in placement. A change in placement occurs when a series of removals is made that constitute a pattern due to the child being removed for more than ten (10) school days in a school year, and because of factors such as length of each removal, the total amount of time the child is removed and the proximity of the removals to one another.

Whether a pattern of removals constitutes a change in placement will be determined on a case-by-case basis by the public agency and is subject to review through due process. School personnel will not use their ability to suspend a child for ten (10) days or less at a time on multiple occasions in a school year as a means of avoiding the IEP requirements for appropriately considering and addressing a child's behavior.

Services

Services must be provided during such removals as follows:

- A. If during the first ten (10) day period of removal(s), a child is removed for more than ten (10) consecutive school days for a violation of school rules, services must be provided following day ten (10) of the removal. When removals during the first ten (10) day period are less than ten (10) cumulative days, services are not required;
- B. After a child has been removed from his or her current placement for more than ten (10) cumulative school days in the same school year, during any subsequent days of removal the local school district must provide services;
- C. In any case where a child is removed for a violation of school rules for more than ten (10) consecutive school days or has been removed from his or her change of placement for more than ten (10) cumulative school days, services must be provided. However, after the child has been suspended for a total of twenty (20) days for school rule violations, the school will provide services within the school, unless the child represents a danger to himself or others; and
- D. Services will be provided to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP. School personnel, in consultation with the child's special education teacher, will determine the extent of services necessary to enable the child to appropriately progress in the general

curriculum and appropriately advance toward achieving the goals set out in the child's IEP. Schools must provide all services that can be reasonably provided outside of the school setting.

Behavioral Assessment/Intervention

When a child with a disability has been removed for more than ten (10) school days in a school year, the local school district must implement the procedures addressed in the BEHAVIORAL ASSESSMENT AND INTERVENTION PLAN section below.

MORE THAN TEN (10) CONSECUTIVE DAYS or CONSTITUTE A PATTERN

Removal

When a change in placement occurs due to the removal of a child for more than ten (10) consecutive days in a school year for a violation of school rules or a series of removals occurs that constitutes a pattern because they cumulate to more than ten (10) school days in a school year, an IEP committee will meet.

Behavioral Assessment/Intervention

An IEP committee will address the functional behavioral assessment and positive behavioral intervention requirements as indicated in the BEHAVIORAL ASSESSMENT AND INTERVENTION PLAN section.

Manifestation Review and Services

An IEP committee will conduct a manifestation determination review in accordance with the procedures outlined in the MANIFESTATION DETERMINATION REVIEW section below.

If the IEP committee determines the child's behavior is not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied in the same manner to a child with a disability, except that services must be provided. The IEP Committee will determine the extent of services necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP.

If the IEP Committee determines the behavior is a manifestation of the child's disability, the committee will review the child's services and placement and revise, as necessary, the IEP. The revisions to the child's IEP must be implemented without unnecessary delays. A change in placement that is appropriate and consistent with the child's needs may be implemented subject to the parent's procedural safeguards, including parental notice and the right to due process.

INTERIM ALTERNATIVE PLACEMENT DUE TO WEAPON OR DRUG VIOLATION

Removal

School personnel may order the removal of a child that results in a change in placement to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days if:

- A. The child carries a weapon to school or to a school function or acquires a weapon at school or at a school function under the jurisdiction of a State or local educational agency; or
- B. The child 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.

The district may first remove the child for up to ten (10) consecutive school days (providing, as necessary, services addressed in the REMOVAL FOR TEN (10) DAYS or LESS PER INCIDENT (Services) section above) while convening the IEP committee to determine the child's interim alternative setting. At the end of that ten (10) day period, or earlier, if feasible, the child will be placed into the interim alternative setting for no longer than a total of forty-five (45) days.

The forty-five (45) day interim alternative educational setting is not mandatory. When this type of a change in placement occurs, the procedures in the REMOVAL FOR MORE THAN TEN (10) DAYS or REMOVALS THAT CONSTITUTE A PATTERN section must be implemented.

Further, there is no requirement that a child be placed in an interim alternative setting in order for the IEP committee to determine that there is a need for a change of placement.

Services

An IEP committee will meet and determine the interim alternative setting for placement of a child with a disability. Any interim alternative educational setting in which the child with a disability is placed will:

- A. Be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in the IEP; and
- B. Include services and modifications designed to prevent the behavior from recurring.

Behavioral Assessment/Intervention

An IEP committee will also address the functional behavioral assessment and positive behavioral intervention requirements as indicated in the BEHAVIORAL ASSESSMENT AND INTERVENTION PLAN section below.

Manifestation Review

An IEP committee will conduct a manifestation determination review in accordance with the procedures outlined in the MANIFESTATION DETERMINATION REVIEW section below. Placement into an interim alternative setting for no more than forty-five (45) days due to a weapon or drug offense may occur even when the behavior is a manifestation of the child's disability.

Placement Following Interim Setting

School personnel are not prohibited from initially placing a child with a disability in an alternative placement for up to forty-five (45) days and subsequently changing the child's placement based on the public agency's relevant disciplinary procedures applicable to children without disabilities. In no case shall the child's placement in the interim alternative setting extend beyond the forty-five (45) day time period per school year for weapons or drug violations without the order of a hearing officer as indicated in INTERIM ALTERNATIVE PLACEMENT BY A HEARING OFFICER. Such disciplinary procedures must be applied in the same manner for a child with a disability as the agency would apply to nondisabled children, except that services and the procedures indicated in MORE THAN TEN (10) CONSECUTIVE DAYS or CONSTITUTE A PATTERN and INTERIM ALTERNATIVE PLACEMENT BY A HEARING OFFICER section must be implemented.

INTERIM ALTERNATIVE PLACEMENT BY A HEARING OFFICER

Authority of a Hearing Officer

An impartial State level due process hearing officer may order, in an expedited hearing, a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) days if the hearing officer:

- A. Determines that the public agency has demonstrated by substantial evidence (refer to **Glossary** in Policy Guidance for the definition of Substantial Evidence) that maintaining the current placement of a child is substantially likely to result in injury to the child or to others;
- B. Considers the appropriateness of the child's current placement;
- C. Considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
- D. Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the child's special education teacher, meets the requirements for services as indicated above.

The hearing officer will determine whether the interim alternative educational setting of the child meets the statutory requirements or, as necessary, may revise or modify the placement of the child.

If at the end of an interim alternative educational placement of up to forty-five (45) days, school officials believe that it would be dangerous to return the child to the regular placement because the child would be substantially likely to injure self or others in that placement, they can ask an impartial hearing officer to order that the child remain in an interim alternative educational setting for an additional forty-five (45) days. If necessary, school officials can also request subsequent extensions of these interim alternative educational settings for up to 45 days at a time if school officials continue to believe that the child would be substantially likely to injure self or others if returned to his or her regular placement.

In order for the child to remain in the interim alternative educational setting for any additional 45-day placements, the LEA must demonstrate to the hearing officer that services and modifications designed to address the dangerous behavior were attempted.

Additionally, at any time, school officials may seek to obtain a court order to remove a child with a disability from school or to change a child's current educational placement if they believe that maintaining the child in the current educational placement is substantially likely to result in injury to the child or others.

An agency may request an expedited State level due process hearing for change in placement to an interim alternative setting if school officials believe that a child is substantially likely to injure himself or herself or others in the current placement.

Services

The agency may first remove the child for up to ten (10) consecutive school days (providing services as necessary in the REMOVAL FOR TEN (10) DAYS or LESS PER INCIDENT (Services) section). At the end of that ten (10) day period, or earlier, if feasible, the child will be placed into the interim alternative setting. The school personnel, in consultation with the child's special education teacher, will initially select and propose the interim alternative setting. The setting must:

- A. Be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and
- B. Include services and modifications designed to prevent the behavior from recurring.

Behavioral Assessment/Intervention

An IEP committee will address the functional behavioral assessment and positive behavioral intervention requirements as indicated in the BEHAVIORAL ASSESSMENT AND INTERVENTION PLAN section below.

Manifestation Review

An IEP committee will conduct a manifestation determination review in accordance with the procedures outlined in the MANIFESTATION DETERMINATION REVIEW section below. Placement into an interim alternative setting for no more than forty-five (45) days due to a child with a disability substantially likely to injure himself or herself, or others may occur even when the behavior is a manifestation of the child's disability.

NOTICE

Not later than the date on which the decision is made by school authorities to take disciplinary action regarding a change in placement, the parent(s) will be notified of the action and provided a copy of the Procedural Safeguards notice. Notification to the parent(s) of the action to be taken may be made orally or in writing. The method of notification and date of notification as well as the person who completed the notification must be documented. The parent's receipt of the Procedural Safeguards notice must be verified and documented. Documentation must be maintained on file.

BEHAVIORAL ASSESSMENT AND INTERVENTION PLAN

The following procedures will be implemented when a child has been removed for more than ten (10) school days in a school year or when a change in placement occurs:

- A. An IEP committee must meet either before or no later than ten (10) school days after either first removing the child for more than ten (10) school days in a school year or commencing a removal that constitutes a change in placement.
- B. If the public agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in the removal, the IEP Committee must meet and develop an assessment plan. The plan must be documented on the child's IEP. Written parental consent for conducting an assessment must be obtained as required in IDEA.

If the child already has a behavioral intervention plan addressed on his/her IEP, the committee must meet to review the plan and its implementation, and, modify the plan and its implementation, as necessary, to address the behavior.

- C. As soon as practicable after developing the plan and completing the assessments required by the plan, the IEP Committee will meet again to develop appropriate behavioral interventions to address that behavior. The interventions addressed on the IEP will be implemented without unnecessary delay.
- D. If subsequently a child with a disability who has a behavioral intervention plan and who has been removed from the child's current educational placement for more than ten (10) school days in a school year is subject to removal that does not constitute a change in placement, the IEP committee members will review the behavioral intervention plan and its implementation to determine if modifications are necessary. If one or more of the committee members believe that modifications are needed, the committee shall meet to modify the plan and its implementation to the extent the committee determines necessary.

MANIFESTATION DETERMINATION REVIEW

When a disciplinary action is contemplated to change a child's placement to an interim alternative setting due to a drug or weapon violation or due to a hearing officer's decision, or if a disciplinary action involving a change in placement is contemplated for other behavior that violated any rule or code of conduct of the public agency that applies to all children, the following must occur:

- A. Immediately, if possible, but in no case later than ten (10) school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.
- B. A review as described above will be conducted by the IEP committee and other qualified personnel. This review may occur when the committee meets to discuss the child's behavioral intervention plan. The IEP committee and other qualified personnel will determine that the behavior of the child was not a manifestation of the child's disability only after consideration of the following:
 - 1. Evaluation and diagnostic results, including such results or other relevant information supplied by the parent(s) of the child;

2. Observations of the child; and
3. The child's IEP and placement.

C. Based on the consideration of the information, the IEP committee and other qualified personnel will then determine if the following standards were met:

1. In relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavioral intervention strategies were provided consistent with the child's IEP and placement;
2. The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and
3. The child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

If the standards were met, the IEP committee will determine the behavior to not be a manifestation of the child's disability. The relevant disciplinary procedures applicable to children without disabilities may be implemented in the same manner, except services must be provided as outlined in the MORE THAN TEN (10) CONSECUTIVE DAYS or CONSTITUTE A PATTERN section.

If any of the standards were not met, the IEP committee will determine the behavior is a manifestation of the child's disability. When the public agency identifies deficiencies in the child's IEP, including placement or the implementation of the IEP, the committee will review the child's services and/or placement and revise, as necessary, the IEP. The agency will take immediate steps to remedy the deficiencies noted and/or will implement the revisions to the child's IEP without unnecessary delays. A change in placement that is appropriate and consistent with the child's needs may be implemented subject to the parent's procedural safeguards rights.

The placements into an interim alternative setting due to weapon or drug offenses, as well as due to the order of a hearing officer, apply whether the behavior is or is not a manifestation of the child's disability.

- D. If the public agency initiates disciplinary procedures applicable to all children, the agency will ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

PARENT APPEAL OF DECISION

The parent(s) may request a due process hearing when there is disagreement regarding:

- A. The determination that the child's behavior was not a manifestation of the child's disability; or
- B. Any decision regarding a child's placement due to a disciplinary action.

The MDE will arrange for an expedited hearing when such a request for a hearing is made by the parent(s).

EXPEDITED DUE PROCESS HEARINGS

When an expedited due process hearing is requested by the parent(s) due to the issues listed in the PARENT APPEAL OF DECISION section above or an agency requests a hearing when a child is substantially likely to injure himself or herself or others in the current placement, the hearing will be conducted by a qualified State-level hearing officer as addressed in QUALIFICATIONS OF AN IMPARTIAL DUE PROCESS HEARING OFFICER in Section VII of Policy Guidance. The procedures for due process hearings outlined in Section VII of Policy Guidance will be followed by the hearing officer and all parties with the exception of:

- A. At least three (3) business days prior to the hearing, 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. Either party may prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least three (3) business days before the hearing; and
- C. A written decision from the hearing officer will be mailed to the parties within forty-five (45) days of the public agency's receipt of the request for the hearing, without exceptions or extensions.

In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements noted in the MANIFESTATION DETERMINATION REVIEW section. The placements into an interim alternative setting due to weapon or drug offenses as well as due to the order of a hearing officer apply whether the behavior is or is not a manifestation of the child's disability.

In reviewing a decision to place the child in an interim alternative educational setting due to a violation of the agency's code of conduct in relation to a weapon or drugs, the hearing officer shall apply the standards set out in the INTERIM ALTERNATIVE PLACEMENT BY A HEARING OFFICER (Authority of a Hearing Officer) section above.

The decision made by the hearing officer shall be final, except that any party aggrieved by the findings and decision of the hearing officer shall have the right to bring civil action with respect to the issues of the due process hearing

PLACEMENT DURING APPEALS

During a due process hearing or subsequent court action, the procedures in the CHILD'S STATUS DURING PENDENCY will apply when a hearing is requested, except in the situations listed below:

- A. When parents request a due process hearing or an appeal regarding their child's placement in an interim alternative placement or regarding the manifestation determination made while a child is in an interim alternative placement, the child will remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the forty-five (45) day placement, whichever occurs first, unless the parent and the public agency otherwise agree.

- B. If a child's placement is in an interim alternative educational placement due to a violation of the agency's code of conduct regarding weapons or drugs or a hearing officer's decision, and school personnel propose to change the child's placement after the expiration of the forty-five (45) day interim alternative placement, during any proceedings to challenge the proposed change in placement the child must remain in the current placement (the child's placement prior to the interim alternative educational setting).
- C. If agency personnel maintain that it is dangerous for the child to be in the current placement during the pendency of the due process proceedings, the agency may request an expedited due process hearing. In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the standards in the INTERIM ALTERNATIVE PLACEMENT BY A HEARING OFFICER (Authority of a Hearing Officer) section above must be applied by the hearing officer. A hearing officer may not order a placement in an interim alternative setting for more than forty-five (45) days. The district may repeat its request for an expedited hearing, as necessary.

A local school district will not be prohibited from seeking judicial relief, through measures such as a temporary restraining order, when necessary.

REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

IDEA, Part B does not prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or 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.

The agency reporting a crime committed by a child with a disability will ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime in accordance with the Family Educational Rights and Privacy Act of 1974.

KNOWLEDGE OF DISABILITY

When the following actions occur, district personnel must implement follow up procedures as indicated in Sections III and IV:

- A. The parent of the child has expressed concern in writing (or orally if the parent(s) does not know how to write or has a disability that prevents a written statement) to agency personnel that the child is in need of special education and related services;

The behavior or performance of the child demonstrates the need for special education and related services and a disability as defined under IDEA

- B. The parent of the child has requested an evaluation of their child to determine if the child has a disability and is in need of special education and related services
- C. The teacher of the child or other personnel of the local school district have expressed concern about the behavior or performance of the child to the Supervisor of Special Education of the agency or to other district personnel.

PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE

A parent may assert any of the protections provided in this section, even though their child has not been determined to be eligible for special education and related services under IDEA, if:

- A. The child engaged in behavior that violated any rule or code of conduct of the local school district, including any behavior described in this section, and
- B. Before the behavior that precipitated the disciplinary measures occurred, school personnel had knowledge that the child may have a disability as indicated in A - D above and, as a result, the district did not:
 - 1. Determine that an evaluation was not necessary in accordance with the procedures in Section III IDEA; or
 - 2. Conduct an evaluation and determine that the child was not a child with a disability under IDEA; and
 - 3. Provide written prior notice to the child's parent(s) of its determination in accordance with the procedures in IDEA. Receipt of the notice must be verified and documented.

NO BASIS OF KNOWLEDGE

If a local school district does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child (based on the requirements in the KNOWLEDGE OF A DISABILITY section above), the child may be subject to the same disciplinary measures applied to children without disabilities who engaged in comparable behaviors.

If a request is made for an evaluation by the parent(s) to determine whether their child may have a disability under IDEA and may be in need of special education and related services during the time period in which the child is subject to disciplinary measures as described previously in this section, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the child will remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If the child is determined not to have a disability and be in need of special education and related services, the parent(s) will be given written prior notice of the determination in accordance with the requirements in IDEA. Receipt of the notice will be verified and documented.

If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the public agency and information provided by the parent(s), the agency will provide special education and related services in accordance with the provisions of IDEA and the disciplinary procedures for removal addressed in this section.

SEC. 616. MONITORING, TECHNICAL ASSISTANCE, AND ENFORCEMENT.

- `(a) FEDERAL AND STATE MONITORING--
 - `(1) IN GENERAL-- The Secretary shall--
 - `(A) monitor implementation of this part through--

`(i) IN GENERAL- Each State shall collect valid and reliable information as needed to report annually to the Secretary on the priority areas described in subsection (a)(3).

`(ii) RULE OF CONSTRUCTION- Nothing in this title shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under this part.

`(C) PUBLIC REPORTING AND PRIVACY-

`(i) IN GENERAL- The State shall use the targets established in the plan and priority areas described in subsection (a)(3) to analyze the performance of each local educational agency in the State in implementing this part.

`(ii) REPORT-

`(I) PUBLIC REPORT- The State shall report annually to the public on the performance of each local educational agency located in the State on the targets in the State's performance plan. The State shall make the State's performance plan available through public means, including by posting on the website of the State educational agency, distribution to the media, and distribution through public agencies.

`(II) STATE PERFORMANCE REPORT- The State shall report annually to the Secretary on the performance of the State under the State's performance plan.

`(iii) PRIVACY- The State shall not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children or where the available data is insufficient to yield statistically reliable information.

Mississippi Code 1972, Annotated

§ 37-23-147. State performance goals for children with disabilities; special recognition of schools providing full inclusion of children with disabilities.

(1) The State Department of Education shall establish goals for the performance of children with disabilities that will promote the purpose of IDEA and are consistent, to the maximum extent appropriate, with other goals and standards for children established by the State Department of Education. Performance indicators used to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates shall be developed. Every two (2) years, the progress toward meeting the established performance goals shall be reported to the public.

(2) To encourage the full inclusion of children with disabilities in all aspects of academic and extracurricular activities, the State Department of Education shall provide special recognition to the schools receiving such designation and their school districts. Examples of such recognition may include, but not be limited to: public announcements and events, certificates of recognition and plaques for teachers, principals, superintendents and parents, and media announcements utilizing the services of Mississippi Educational Television. This special recognition shall be awarded to one (1) elementary, one (1) middle school, and one (1) high school, based on entries submitted to the Mississippi Advisory Committee for Special Education by the deadline of March 31. These entries shall be in the form of a report, not to exceed five (5) pages, listing name, address and telephone number of the school district/school; teacher or staff responsible for administering the program; type of position

held by each of these employees including credentials; description of the program; number of students with disabilities included; type and level of severity of disabilities; number of students without disabilities involved in the program; how long the program has been in operation; benefit of program to all students; and a description of how this program could be replicated by other school districts. Winners of the Exemplary Inclusion Program contest shall be chosen by the Mississippi Advisory Committee for Special Education in April of each year.

Recognition shall be given to these schools during the May Mississippi State Board of Education meeting each year. Information on these exemplary programs shall be provided to other school districts and the general public through news releases, the state department website, and other similar avenues.

PROGRAM IMPROVEMENT MONITORING

Introduction

The Individuals with Disabilities Education Act Amendments of 1997 (IDEA-97) strengthens the focus of the law on improving educational results for children with disabilities by addressing the importance of the following areas:

- **Access to the general curriculum in regular classrooms.** The education of children with disabilities should be closely aligned with the general education curriculum and achieved with appropriate aids and services and supports in the regular classroom, whenever possible;
 - **Higher expectations** for children with disabilities;
- **Strengthening the role of parents** and ensuring that families have opportunities to participate in the education of their children;
- **High quality, intensive professional development** for all personnel who work with children with disabilities to ensure that they have the skills and knowledge necessary to prepare children for productive and independent living;
- **Incentives for whole-school approaches and pre-referral interventions** to reduce the need to label children as disabled in order to address their learning needs; and
- **Focusing resources on teaching and learning** while reducing paperwork and requirements that do not assist in improving educational results.

The Mississippi Department of Education (MDE) is authorized under § 37-23-5 of Mississippi Code 1972, to “foster, inspect, approve and administer a program of education for exceptional children.” It is the responsibility of the MDE, Office of Special Education (OSE) to ensure implementation of the mandates of federal and state laws and regulations regarding the provision of programs, services, and protections to all Mississippi children and youths with disabilities.

Since IDEA was first passed in 1975, we have learned that program compliance and results for children with disabilities can exist independently of one another. Mississippi’s past monitoring system focused almost entirely on compliance with procedural requirements without attention to program effectiveness. A district can meet all the criteria on a compliance checklist and still have children who do not make adequate progress year after year. On the other hand, a district may produce results in its special education programs and not meet the procedural requirements of IDEA. Therefore, compliance and results are often disconnected, which should not be the case.

The new Mississippi Program Improvement Monitoring (MPIM) system seeks to address the need for focusing on areas of compliance that impact on results for children. Conceptually, a system that previously focused upon procedural compliance now focuses on program effectiveness and student results. Procedurally, a system that had always depended upon MDE site reviews now involves the district and the Department collaborating in the analysis of program effectiveness and in the implementation of Improvement Plans. The goal of the collaborative review is to make programs more effective and to impact upon outcomes for students. In addition, the process ensures that Federal requirements as well as State law and regulations are implemented and that protections guaranteed to students with disabilities and their parents are enforced. There are also predictable sets of rewards, technical assistance for improving results, and sanctions for districts that do not improve.

Continuous Improvement Monitoring Process

Purpose

Program Improvement Monitoring is designed around critical areas that reflect the themes of the U. S. Office of Special Education Programs' (OSEP) Continuous Improvement Monitoring Process (CIMP) and concepts of Focused Monitoring currently being considered for adoption by OSEP. Those critical areas are:

Continuity. An effective accountability system must be continuous and integrate self-assessment with continuous feedback and response;

Partnership with stakeholders. MDE works in partnership with all stakeholders to impact the education of children and youth with disabilities;

District accountability. Districts are accountable for identifying strengths and weaknesses based on data and other information, identifying and implementing effective strategies for improvement, and measuring and reporting progress;

Self review. The OSE works with stakeholders to implement an on-going local educational agency (LEA) self-review process that is focused on improved results for children and youths with disabilities and facilitates continuous feedback and use of information to support planned continuous improvement;

Data-driven process. The MPIM process is informed by data that focus on improved results for children and youths with disabilities. Data will be collected and used on an on-going basis to determine LEA program performance, select LEAs for on-site monitoring, and to impact decisions regarding programs and services, which meet the needs of children in each district;

Technical assistance. Since the focus of Mississippi Program Improvement Monitoring is on continuous improvement, technical assistance is a critical component and a high priority for OSE. Components of technical assistance are developing corrective action plans, training, identification and dissemination of promising practices, and other strategies, which meet the needs of local districts; and

Predictable rewards and sanctions. Districts achieving the highest performance level on each of the indicators for two consecutive years will receive recognition after validation by the OSE. Districts failing to complete and implement Corrective Action Plans and failing to show progress on the selected indicators will enter a graduated system of automatic sanctions. The most severe level of sanctions will only be used as last resort when all MDE efforts to achieve district compliance for results have failed.

Description

Mississippi's Program Improvement Monitoring System is designed around **priorities**, the key elements that have the greatest potential for improving results for children. **Indicators** are the measures of how a priority has been implemented. Priorities and Indicators will be selected by the Statewide Steering Committee, a diverse group of stakeholders, through an annual self-assessment process which includes analysis of data and issues regarding special education programs. The Office of Special Education will prepare a **Data Profile** each year which will provide vital information on the effectiveness of district programs for students with disabilities.

Districts will be divided into enrollment groups and each group will be ranked annually according to data measuring the indicators. Performance levels will be set for each indicator and the lowest performing districts on each indicator will be targeted for on-site monitoring. Districts will not be monitored on more than one indicator in a given year. If a district is lowest on more than one indicator, the next lowest district will be monitored on the indicator. A small number of LEAs will also be selected at random for on-site monitoring. All districts will conduct an annual self-review and improvement planning based on analysis of data on the indicators using a standard instrument provided by MDE.

Deficiencies and compliance violations identified during on-site monitoring will require that the district develop and implement a Corrective Action Plan. The Corrective Action Plan must include measurable benchmarks for improvement as indicated by data on the indicators.

Districts will not receive an onsite visit on the same indicator for two consecutive years provided that an approved Corrective Action Plan has been developed and implemented. Districts will have eighteen (18) months to evidence improvement on an indicator before being considered for onsite monitoring on the same indicator. Two consecutive years in the lowest performance group will result in the first level of sanctions.

Surveys developed by MDE in collaboration with stakeholder groups will be issued to a random sample of parents in districts selected for on-site monitoring. The surveys will be distributed, compiled, and reported by an external agency or organization contracted by MDE. The surveys will be designed to identify weaknesses in the system of service delivery or procedural compliance with IDEA.

Process

The MPIM process is designed to involve all primary stakeholders in the review of the district's special education supports and services. Districts are to make data-informed determinations of their effectiveness in meeting the requirements of IDEA-97 through a team-based self review.

All districts will complete an annual Self-Review of its programs for students with disabilities. The Self-Review and resulting improvement plan will be submitted as part of the district's project application. Districts targeted for on-site monitoring will establish a **Review Team** to complete the Self-Review of the district's special education programs. The team should consist of the following:

- the special education supervisor;
- a building principal;
- a special education teacher;
- a general education teacher;
- a related service provider;
- a parent of a student with a disability; and
- a representative of any other critical stakeholder group within the community (e.g., vocational rehabilitation counselor, provider of early intervention services).

The district will analyze data, utilize the review protocols to review records, and develop improvement plans. The self-review and resulting improvement plan will be submitted as part of the district's project application.

The **Self-Review Protocols** have been developed as tools to facilitate district self review. The Review Protocols provide a structure for districts in the collection and analysis of data that is used to measure the status and progress of district performance goals.

The District Review Team should review the records of a percentage of their total special education population using the **Self-Review Protocols** to reach valid conclusions on the status of special education services. The review should include records from each disability category, from a variety of teachers, from each building in the district, from students being served in and out of the district, and from both initial placements and re-evaluations.

Districts targeted for onsite monitoring must complete a Corrective Action Plan, developed by the Review Team that outlines the proposed strategies to improve results for children on the data indicators. The Corrective Action Plan must be approved by the OSE Monitoring Team to ensure that the improvement strategies are measurable and adequate to achieved the desired results.

On-Site Validation and Improvement Planning

The OSE will conduct an on-site visit of the lowest performing districts on each indicator. The District Review Team and the OSE Monitoring Team will meet to discuss the self-review process and the findings identified in self-review. Each OSE team leader will design the Validation Meeting based on individual district needs. Generally, the following steps will take place with the district team:

- ✓ The OSE team leader will facilitate a team discussion including:
 - ◆ The process used by the district to conduct the review (i.e., who was involved, how the self-review was completed, etc.);

- ◆ A summary of the district’s findings and analysis;
- ◆ Discussion of the Data Profile; and
- ◆ Review of the Parent Survey results.

- ✓ The Validation will include a review of student files selected randomly from district files.
- ✓ The OSE Monitoring Team will conduct interviews with teachers, administrators, parents, service providers, and students, when appropriate.
- ✓ The Monitoring Team will observe special education classrooms and regular education classrooms that include students with disabilities, as well as related service providers, as appropriate.
- ✓ The OSE will submit a Monitoring Report to the district within thirty (30) days of completion of the on-site visit.
- ✓ The OSE team leader will confirm that the district has developed a Corrective Action Plan to correct all areas not in results or procedural compliance. The Corrective Action Plan must include measurable benchmarks that lead to improvement on the priority indicator.
- ✓ The Review Team will present the OSE Monitoring Report to the local school board within forty-five (45) days of receipt of the report, with notice provided to the OSE at least ten (10) business days prior to the school board meeting.
- ✓ Districts will publish the monitoring report summary (provided by the OSE) in at least one major local newspaper for five (5) consecutive days for newspapers published daily and for two (2) consecutive weeks for those published weekly.
- ✓ The district will implement its Corrective Action Plan.
- ✓ The OSE will provide technical assistance to support district improvement efforts.
- ✓ The OSE team leader will conduct a follow-up visit to verify the implementation of the Corrective Action Plan.

REWARDS AND SANCTIONS

Rewards

Districts at the highest performance level in each enrollment group on all indicators will be classified as Exemplary and receive the following rewards:

1. Letter to the district superintendent;
2. Certificate of recognition presented at annual statewide conference;
3. Press release to local and state newspapers; and
4. Commendations on MDE web site and in publications.

Sanctions

Level 1

- Failure to meet all requirements in results and compliance reviews and completion of a Corrective Action Plan to address identified needs will result in immediate notification to the Office of Accreditation by the OSE that the district has failed to meet Standard 23.3 and reporting of Non-Accredited Status by the Office of Accreditation.
- Meeting with Local School Board attended by OSE staff.

Level 2

- Meeting with State Board of Education to present Corrective Action Plan.
- Appointment by MDE of a Special Education Consultant to assist with implementation of the Improvement Plan, at district expense.

Level 3

- Withholding of Part B funds.

`(c) APPROVAL PROCESS-

`(1) DEEMED APPROVAL- The Secretary shall review (including the specific provisions described in subsection (b)) each performance plan submitted by a State pursuant to subsection (b)(1)(B) and the plan shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120-day period beginning on the date on which the Secretary received the plan, that the plan does not meet the requirements of this section, including the specific provisions described in subsection (b).

`(2) DISAPPROVAL- The Secretary shall not finally disapprove a performance plan, except after giving the State notice and an opportunity for a hearing.

`(3) NOTIFICATION- If the Secretary finds that the plan does not meet the requirements, in whole or in part, of this section, the Secretary shall--

`(A) give the State notice and an opportunity for a hearing; and

`(B) notify the State of the finding, and in such notification shall--

`(i) cite the specific provisions in the plan that do not meet the requirements; and

`(ii) request additional information, only as to the provisions not meeting the requirements, needed for the plan to meet the requirements of this section.

`(4) RESPONSE- If the State responds to the Secretary's notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the State received the notification, and resubmits the plan with the requested information described in paragraph (3)(B)(ii), the Secretary shall approve or disapprove such plan prior to the later of--

`(A) the expiration of the 30-day period beginning on the date on which the plan is resubmitted; or

`(B) the expiration of the 120-day period described in paragraph (1).

`(5) FAILURE TO RESPOND- If the State does not respond to the Secretary's notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the State received the notification, such plan shall be deemed to be disapproved.

`(d) SECRETARY'S REVIEW AND DETERMINATION-

`(1) REVIEW- The Secretary shall annually review the State performance report submitted pursuant to subsection (b)(2)(C)(ii)(II) in accordance with this section.

`(2) DETERMINATION-

`(A) IN GENERAL- Based on the information provided by the State in the State performance report, information obtained through monitoring visits, and any other public information made available, the Secretary shall determine if the State--

`(i) meets the requirements and purposes of this part;

`(ii) needs assistance in implementing the requirements of this part;

`(iii) needs intervention in implementing the requirements of this part; or

`(iv) needs substantial intervention in implementing the requirements of this part.

`(B) NOTICE AND OPPORTUNITY FOR A HEARING- For determinations made under clause (iii) or (iv) of subparagraph (A), the Secretary shall provide reasonable notice and an opportunity for a hearing on such determination.

`(e) ENFORCEMENT-

`(f) STATE ENFORCEMENT- If a State educational agency determines that a local educational agency is not meeting the requirements of this part, including the targets in the State's performance plan, the State educational agency shall prohibit the local educational agency from

reducing the local educational agency's maintenance of effort under section 613(a)(2)(C) for any fiscal year.

`(g) RULE OF CONSTRUCTION- Nothing in this section shall be construed to restrict the Secretary from utilizing any authority under the General Education Provisions Act to monitor and enforce the requirements of this title.

`(h) 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.

`(i) DATA CAPACITY AND TECHNICAL ASSISTANCE REVIEW- The Secretary shall--

`(1) review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of this section is collected, analyzed, and accurately reported to the Secretary; and

`(2) provide technical assistance (from funds reserved under section 611(c)), where needed, to improve the capacity of States to meet the data collection 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 the following:

`(1)(A) The number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are in each of the following separate categories:

`(i) Receiving a free appropriate public education.

`(ii) Participating in regular education.

`(iii) In separate classes, separate schools or facilities, or public or private residential facilities.

`(iv) 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.

`(v)(I) Removed to an interim alternative educational setting under section 615(k)(1).

`(II) The acts or items precipitating those removals.

`(III) The number of children with disabilities who are subject to long-term suspensions or expulsions.

`(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, gender, and ethnicity, who, from birth through age 2, stopped receiving early intervention services because of program completion or for other reasons.

`(D) 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.

`(E) 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.

`(F) The number of due process complaints filed under section 615 and the number of hearings conducted.

`(G) The number of hearings requested under section 615(k) and the number of changes in placements ordered as a result of those hearings.

`(H) 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.

`(3) Any other information that may be required by the Secretary.

`(b) DATA REPORTING-

`(1) PROTECTION OF IDENTIFIABLE DATA- The data described in subsection (a) shall be publicly reported by each State in a manner that does not result in the disclosure of data identifiable to individual children.

`(2) SAMPLING- The Secretary may permit States and the Secretary of the Interior to obtain the data described in subsection (a) through sampling.

`(c) TECHNICAL ASSISTANCE- The Secretary may provide technical assistance to States to ensure compliance with the data collection and reporting requirements under this title.

`(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 and ethnicity is occurring in the State and the local educational agencies of 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--

`(A) 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 title;

`(B) require any local educational agency identified under paragraph (1) to reserve the maximum amount of funds under section 613(f) to provide comprehensive coordinated early intervening services to serve children in the

local educational agency, particularly children in those groups that were significantly overidentified under paragraph (1); and
(C) require the local educational agency to publicly report on the revision of policies, practices, and procedures described under subparagraph (A).

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) for a fiscal year 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) 1/3 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;

`(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.

`(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;

`(5) to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with part C to children with disabilities who are eligible for services under this section and who previously received services under part C until such children enter, or are eligible under State law to enter, kindergarten; or

`(6) at the State's discretion, to continue service coordination or case management for families who receive services under part C.

`(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 the local educational 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 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) STATE DEFINED- In 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- There are authorized to be appropriated to carry out this section such sums as may be necessary.

EXTENDED SCHOOL YEAR

Extended School Year (ESY) is the provision of special education and related services to students with disabilities in accordance with an IEP beyond the normal school year of the local district and at no cost to the parents of the student.

Extended School Year will be provided in accordance with guidelines set forth in the ESY Handbook, which must include the standards below:

EXTENDED SCHOOL YEAR STANDARDS

COMPONENT ONE:

QUALIFYING CRITERIA

STANDARD 1:

Local education agencies shall ensure that ESY qualifying criteria are completed in accordance with MDE ESY guidelines.

STANDARD 2:

Parents shall be advised of and involved in the ESY qualification process.

COMPONENT TWO:

PLANNING

STANDARD 1:

Local education agencies shall ensure that the ESY program of each student is individually designed, reflects high priority needs, and includes services necessary to conduct the program.

STANDARD 2:

Parents shall be given opportunities to be involved actively in the design and implementation of the ESY.

STANDARD 3:

Local education agencies shall ensure that there is ongoing communication between regular school year staff and ESY staff sufficient to ensure program continuity.

COMPONENT THREE:

IMPLEMENTATION

STANDARD 1:

Local education agencies shall continue to address LRE factors, including integration with nondisabled children, in the implementation of the ESY program.

STANDARD 2:

Local education agencies shall ensure that the services listed on the IEP are provided.

STANDARD 3:

Local education agencies shall ensure that instructional activities conducted during ESY are documented.

COMPONENT FOUR:

EVALUATION

STANDARD 1:

Local education agencies shall ensure that instructional personnel measure and report student outcomes.

STANDARD 2:

Local education agencies shall evaluate ESY outcome data to determine program effectiveness.