

Report for Congress

Received through the CRS Web

Individuals with Disabilities Education Act: Statutory Provisions and Selected Issues

January 25, 2002

Nancy Lee Jones
Legislative Attorney
American Law Division

Richard N. Apling
Specialist in Social Legislation
Domestic Social Policy Division

Individuals with Disabilities Education Act: Statutory Provisions and Selected Issues

Summary

The Individuals with Disabilities Education Act (IDEA) is both a grants statute and a civil rights statute. It provides federal funding for the education of children with disabilities and requires, as a condition for the receipt of such funds, the provision of a free appropriate public education (FAPE). The statute also contains detailed due process provisions to ensure the provision of FAPE. Originally enacted in 1975, the act responded to increased awareness of the need to educate children with disabilities and to judicial decisions requiring that states provide an education for children with disabilities if they provided an education for children without disabilities.

IDEA has been amended several times, most recently and most comprehensively by the 1997 IDEA reauthorization, P.L. 105-17, the Individuals with Disabilities Education Act Amendments of 1997. The 1997 reauthorization was the result of years of congressional debate and its final version was crafted by a bipartisan and bicameral working group. P.L. 105-17 placed many former regulatory requirements into the statute in order to make the requirements of IDEA more accessible and also added substantive changes. Among the key features of the 1997 IDEA reauthorization are expanded procedures for the discipline of disabled students, new state and substate allocation formulas, and emphasis on educational results.

Congress is presently examining IDEA again. The purpose of this report is to summarize the provisions of all four parts of IDEA—Parts A through D and to discuss selected issues, especially regarding selected provisions of Part B—the most often discussed part of the act. Part A contains the general provisions, including the purposes of the Act and definitions. Part B contains provisions relating to the education of school aged and preschool children and includes the funding formula, provisions relating to evaluations, eligibility determinations, individual education programs (IEPs) and educational placements. It also contains detailed requirements for procedural safeguards as well as withholding of funds and judicial review. It is Part B's procedural safeguards that are sometimes referred to as IDEA's discipline provisions although they cover situations besides discipline. Part C concerns infants and toddlers with disabilities while Part D contains the requirements for various national activities designed to improve the education of children with disabilities.

This report will not be updated.

Contents

Structure of IDEA	3
Selected Provisions	4
Part A	4
Developmental Delays	5
Related Services	6
Part B	6
Funding Provisions for Part B Grants to States	6
State Eligibility	8
Other Selected State Eligibility Provisions	11
Local Educational Agency Eligibility	13
Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements	14
Procedural Safeguards	16
Withholding and Judicial Review	18
Administration	19
Program Information	19
Preschool Grants	19
Part C	20
Part D	21
Subpart 1	21
Subpart 2	21

Individuals with Disabilities Education Act: Statutory Provisions and Selected Issues

Introduction

The Individuals with Disabilities Education Act (IDEA) is both a grants statute and a civil rights statute. It provides federal funding for the education of children with disabilities and requires, as a condition for the receipt of such funds, the provision of a free appropriate public education (FAPE). The statute also contains detailed due process provisions to ensure the provision of FAPE. IDEA states, in part, that it has the following purposes:

- “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living;
- to ensure that the rights of children with disabilities and parents of such children are protected; and
- to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities...”¹

Originally enacted in 1975 as the Education for All Handicapped Children Act, P.L. 94-142,² the act responded to increased awareness of the need to educate children with disabilities and to judicial decisions requiring that states provide an education for children with disabilities if they provided an education for children

¹ 20 U.S.C. §1400(d), P.L. 105-17 §601.

² The name was changed to the Individuals with Disabilities Education Act by P.L. 101-476. This public law also substituted the phrase “children with disabilities” for the phrase “handicapped children” throughout the act.

without disabilities.³ As the Supreme Court stated in *Smith v. Robinson*,⁴ the statute “...is a comprehensive scheme set up by Congress to aid the States in complying with their constitutional obligations to provide public education for handicapped children.”⁵

IDEA has been amended several times,⁶ most recently and most comprehensively by the 1997 IDEA reauthorization, P.L. 105-17, the Individuals with Disabilities Education Act Amendments of 1997.⁷ The 1997 reauthorization was the result of years of congressional debate and its final version was crafted by a bipartisan and bicameral working group. The end result was described by Members as “historic”⁸ and “monumental.”⁹ P.L. 105-17 placed many former regulatory requirements into the statute in order to make the requirements of IDEA more accessible and also added substantive changes. Key features of the 1997 IDEA reauthorization include:

- Expanded procedures for the discipline of disabled students. Schools have specific statutory authority to remove certain misbehaving students with disabilities from classrooms and place them in alternative settings for up to 45 days. New, but limited, authority is given to hearing officers to change the placement of disabled children.
- No cessation of educational services. Disabled students are statutorily entitled to special educational services, even if expelled from school for disciplinary reasons.

³ *PARC v. State of Pennsylvania*, 343 F.Supp. 279 (E.D. Pa. 1972); *Mills v. Board of Education of the District of Columbia*, 348 F.Supp. 866 (D.D.C. 1972). For a more detailed discussion of these cases and the congressional intent behind the enactment of P.L. 94-142 see CRS Report 95-669, *The Individuals with Disabilities Education Act: Congressional Intent*, by Nancy Lee Jones.

⁴ 468 U.S. 992 (1984).

⁵ *Id.* at 1009.

⁶ See P.L. 99-373, the Handicapped Children’s Protection Act (authorizing attorneys’ fees for prevailing parents); P.L. 99-457, the Education of the Handicapped Act Amendments of 1986 (provided funds for early intervention services for infants and toddlers); P.L. 101-476, the Education of the Handicapped Act Amendments of 1998 (renamed the statute the Individuals with Disabilities Education Act to reflect an “individuals first” approach); P.L. 103-382, the Improving America’s Schools Act, Title III, Part A (gave schools the discretion to remove a child with a disability to an interim alternative educational setting for up to 45 days if the child brings a gun to school).

⁷ For a discussion of 1997 amendments made by P.L. 105-17 see CRS Report No. 97-535, *Individuals with Disabilities Education Act Reauthorization Legislation: An Overview*, by Steven R. Aleman and Nancy Lee Jones. For an overview of the final IDEA regulations from the Department of Education see CRS Report RL30103, *The Individuals with Disabilities Education Act: Department of Education Final Regulations*, by Nancy Lee Jones and Richard N. Apling.

⁸ 143 Cong. Rec. H2538 (daily ed. May 13, 1997)(remarks of Rep. Morella).

⁹ 143 Cong. Rec. H.2538 (daily ed. May 13, 1997)(remarks of Rep. Cunningham).

- Limits on the recovery of attorneys' fees. Parents who prevail in due process disputes with school districts may not recover those attorneys' fees connected to meetings on the individualized education program (IEP) of their disabled child, except in certain circumstances.
- Increased reliance on mediation. Before parents can request a formal due process hearing over a dispute about the schooling of their disabled child, they must be offered mediation and encouraged through counseling to try mediation first to resolve the problem.
- New state and substate allocation formulas. Under the grants to states program, enactment of appropriations above approximately \$4.9 billion (which occurred in FY2000) triggers a new state formula that distributes a base amount to states equal to their allocations in the year before the trigger was initially reached (FY1999) and distributes "new money" based upon total school-age population (weighted 85%) and total school-age population *in poverty* (weighted 15%). Minimum and maximum grant provisions ensure that there is a floor and ceiling on the amount of aid going to states. Aid to local school districts now is distributed in a similar fashion as aid to states.
- Emphasis on educational results. Each disabled child's individualized education program (IEP) must relate programming for the child to achievement in the general education curriculum. Further, states must establish performance goals and indicators for disabled pupils as well as include disabled pupils in statewide assessments and alternative assessments.
- Providing fiscal relief to local school districts. When federal appropriations for the grants to states program exceed \$4.1 billion (which occurred in FY1999) and a school district gets a larger award, the district is permitted to reduce local spending on special education by a certain amount.
- Revamped and streamlined special purpose programs (Part D). There are three broad special purpose programs: state program improvement grants; coordinated research and personnel preparation; and coordinated technical assistance, support, and dissemination.¹⁰

Congress is presently examining IDEA again. The purpose of this report to is identify and discuss the major provisions of IDEA.¹¹

Structure of IDEA

¹⁰ For a more detailed discussion of P.L. 105-17 see CRS Report 97-535, *Individuals with Disabilities Education Act Reauthorization Legislation: An Overview*, by Steven R. Aleman and Nancy Lee Jones.

¹¹ For a more concise discussion of IDEA see CRS Report RS20366, *The Individuals with Disabilities Education Act (IDEA): Overview of Major Provisions*, by Richard Apling and Nancy Lee Jones.

Currently IDEA is divided into four sections, Parts A, B, C, and D. Part A contains the general provisions, including the purposes of the Act and definitions. Part B, the most often discussed part of the act, contains provisions relating to the education of school aged and preschool children and includes the funding formula, provisions relating to evaluations, eligibility determinations, IEPs and educational placements. It also contains detailed requirements for procedural safeguards as well as withholding of funds and judicial review. It is Part B's procedural safeguards that are sometimes referred to as IDEA's discipline provisions although they cover situations besides discipline. Part C concerns infants and toddlers with disabilities¹² while Part D contains the requirements for various national activities designed to improve the education of children with disabilities.

Selected Provisions

Part A

IDEA begins with the title of the act and a statement of findings including the finding that “[d]isability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.”¹³

The definitions section includes definitions for various terms used in IDEA. Several of the most discussed terms are:

- assistive technology device – “...any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability;”
- child with a disability – “a child–(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereafter referred to as ‘emotional disturbance’), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, needs special education and related services;”
- child aged 3-9 – “The term ‘child with a disability’ for a child aged 3 through 9 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 one or

¹² Part C was originally established as Part H.

¹³ 20 U.S.C. §1400(c)(1), P.L. 105-17 §601.

more of the following areas: physical developments, cognitive developments, communication development, social or emotional development, or adaptive development; and (ii) who, by reason thereof, needs special education and related services;”

- excess cost – “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 or secondary school student, as may be appropriate, and which shall be computed after deducting—(A) amounts received—(i) under part B of this title; (ii) under part A of title I of the Elementary and Secondary Education Act of 1965; or (iii) under part A of title VII of that Act; and (B) any State or local funds expended for programs that would qualify for assistance under any of those parts.”
- 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, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under Sec. 614(d);”
- related services – “the term ‘related services’ means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, 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;” and
- transition services – “the term ‘transition services’ means a coordinated set of activities for a student with a disability that —(A) is designed within an outcome-oriented process, which promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (B) is based upon the individual student’s needs, taking into account the student’s preferences and interests; and (C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and when appropriate, acquisition of daily living skills with functional vocational evaluation.”¹⁴

¹⁴ 20 U.S.C. §1401, P.L. 105-17 §602.

Developmental Delays. The definitions were not a particularly controversial part of the 1997 reauthorization of IDEA but several changes were made then. One of the most significant was the addition to the definition of child with a disability for children ages 3 through 9. This provision was added in order to allow for a category for developmental delays for young children since determining the specific category of disability is often difficult for this age group. The House and Senate reports stated that the “[u]se of ‘developmental delay’ as part of a unified approach will allow the special education and related services to be directly related to the child’s needs and prevent locking the child into an eligibility category which may be inappropriate or incorrect, and could actually reduce later referral of children with disabilities to special education.”¹⁵

Related Services. The definition of related services was key in determining what services a school district is required to provide for a child with very severe disabilities in *Cedar Rapids Community School District v. Garret F.*¹⁶ Garret F. was a child paralyzed from the neck down as a result of a motorcycle accident but who retained his mental abilities. His family had arranged for his physical care during the day for a number of years but eventually they requested the school to accept financial responsibility for his health care services during the school day. The Supreme Court, interpreting the definition of related services, held that the extensive services required by Garret F. must be provided by the school as long as they were not medical services that must be provided by a physician.¹⁷

Part B

Funding Provisions for Part B Grants to States. Section 611¹⁸ determines how funds appropriated for the grants to states programs are distributed to states, local school districts, and other recipients. After funds are reserved by the Secretary of Education for the outlying areas and freely associated states and for services for Indian children with disabilities,¹⁹ the remainder of the funds are distributed by formula to the 50 states, the District of Columbia, and Puerto Rico. Until FY2000, funds were distributed under an “interim formula,” (Section

¹⁵ S.Rep. No. 105-17, at 6; H.R. Rep. No. 105-95, at 86.

¹⁶ 526 U.S. 66 (1999).

¹⁷ For a more detailed discussion see CRS Report RS20104, *Cedar Rapids Community School District v. Garret F.: The Individuals with Disabilities Education Act*, by Nancy Lee Jones.

¹⁸ 20 U.S.C. §1411, P.L. 105-17 §611.

¹⁹ Section 611(b), 20 U.S.C. §1411(b), requires the Secretary to reserve up to 1% of total appropriations for grants to states for outlying areas and freely associated states. The Secretary reserves less than this maximum percentage. Section 611(c) requires that the Secretary reserve 1.226% of total appropriations for assistance to Indian children with disabilities provided by the Secretary of the Interior. Until FY2002, this percentage was reserved. In FY2002 (apparently based on a recommendation from the U.S. Department of Education (ED)), appropriations language required that this amount be determined by increasing the FY2001 amount by the rate of inflation. See H. Rept. 107-342, p. 28. This resulted in about 1.1% of total appropriations being reserved.

611(d)(2)) which was essentially the same as the state formula under prior law and was based on states' proportional shares of children with disabilities. The 1997 amendments provided for a new, "permanent" formula once appropriations exceeded \$4,924,672,200, which occurred in FY2000 (Section 611(e)).

The permanent formula first requires that each state receive a base grant, which is the amount received in the base year—the year before the permanent formula became effective (in this case the FY1999 grant). The next step in the permanent formula is to distribute 85% of the remaining funds among the states based on states' shares of total population ages 3 to 21²⁰ and 15% of the remaining funds based on states' shares of poor children in that age range. The third step ensures that states do not receive less than certain minimum amounts or more than maximum amounts. Under recent substantial funding increases for these grants, the key constraint on a state's grant is that it cannot grow by a percentage that is either 1.5 percentage points below or 1.5 percentage points above the growth rate for total Part B grants to states appropriations.²¹ For example, FY2002 appropriations increased by 18.8% over FY2001 appropriations. As a result of the formula, states' increases ranged from 17.3% above their FY2001 grants to 20.3% above those grants. The overall maximum grant that a state may receive is the amount resulting from multiplying the number of children with disabilities served by the state by 40% of the national average per pupil expenditure (APPE).²²

The Act permits states to reserve funds from their grants for administration and other statewide activities (such as providing direct services to children with disabilities, funding the mediation process discussed below, meeting local personnel needs, and achieving other purposes). (Section 611(f)(3)) The Secretary calculates these amounts for states each year by adjusting the prior year's amount by the rate of inflation or the percentage increase in each state's total grant. Since grants have been growing substantially each year and because the rate of inflation has been low, the latter has been used to determine these reserves. A state may use a specified portion of the state reserve for administration of Part B, including the administration of programs for preschoolers, which are funded in part under Section 619. This amount is based on an inflation-adjusted increase over the prior year amount (again, as determined by the Secretary).²³ For FY2000, this amount is approximately 3% of the overall state grants. The result of these provisions is to ensure that funds for administration and other statewide activities grow at least by the rate of inflation, but

²⁰ These age ranges for this population vary from state to state depending on the age range for which each state makes FAPE available.

²¹ Section 611(e)(4), 20 U.S.C. §1411(e)(4), provides formula procedures for the permanent formula when appropriations for a fiscal year are less than the prior fiscal year's appropriations—procedures which have not been used so far, since appropriations have been growing.

²² For further information on maximum state grants and "full funding" of the grants to states programs, see CRS Report for Congress RL30810. *Individuals with Disabilities Education Act (IDEA): Issues Regarding "Full Funding" of Part B Grants to States*, by Richard N. Apling.

²³ The minimum amount a state may reserve for administration (originally \$500,000 for FY1998) also is annually adjusted for inflation.

that most of future increases in Part B funding will be directed to the local level, presumably for direct services for children with disabilities.

Any year in which the growth of a state's grant exceeds the rate of inflation (which has been the case in recent years), the Act requires states to reserve an amount for local capacity-building and improvement grants unless this amount is less than \$100,000. The maximum amount for these grants is calculated by multiplying the amount the state was allowed to reserve for state-level activities in the prior fiscal year by the difference between the growth rate of the state's grant and the rate of inflation.

Funds remaining after removing the above reserves are distributed to LEAs based on a "permanent" formula²⁴ (Section 611(g)(2)(B)) similar to the state formula discussed above. Like the state formula, LEAs are first allocated base grants.²⁵ Again similar to the state formula, 85% of the remaining funds is allocated based on LEAs' shares of public and private school enrollment and 15% of the remaining funds is allocated based on shares of children living in poverty, as determined by the SEA. There is no minimum or maximum grant and the 40% maximum grant provision that applies to the state does not apply at the LEA level.

The main rationale in 1997 for the new formula was to remove any federal funding incentive for states or LEAs to "overidentify" children with disabilities. The main concern was that a formula based on numbers of children served might be providing such an incentive.²⁶ The solution was to switch to a census-based formula, which allocates funds mostly on population. However, a complete switch to such an approach would have significantly redistributed IDEA funds among the states, i.e., there would be large "winners and losers." To dampen the impact of the new formula, Congress delayed its implementation until appropriations grew significantly, guaranteed a base grant amount derived from the prior formula, and prevented massive state gains and losses from year to year by providing minimum grant provisions and by limiting gains to $\pm 1.5\%$ points relative to the overall increase in appropriations.

State Eligibility. In order to be eligible for IDEA funds, states must have in place certain policies and procedures. Foremost among these is the core requirement of IDEA that states provide a free appropriate public education to all children with

²⁴ Prior to FY2000 when the permanent formula "trigger" appropriation was surpassed, funds were distributed to LEAs based on the approach used prior to the 1997 amendments, proportional to the number of children served.

²⁵ This is an amount an LEA would have received under the prior formula for FY1999 if the state had distributed 75% of its grant to the local level.

²⁶ Other provisions of the Act also address concerns about the overidentification of students for special education, especially the overidentification of minority students. For example, as discussed below, the Act requires that multiple methods be used to evaluate and re-evaluate children with disabilities and that tests and other assessment instruments be free of racial and cultural bias. For further information on this issue, see CRS Report for Congress RL31189, *Individuals with Disabilities Education Act (IDEA): Identification and Misidentification of Children with Disabilities* by Richard N. Apling.

disabilities between the ages of 3 and 21 residing in the state, including those children who have been suspended or expelled from school.²⁷ This requirement does not apply to children aged 3 through 5 and 18 through 21 in a state where the provision of such education would be inconsistent with state law or practice or to certain children in adult correctional facilities.²⁸ States must establish a goal of providing full educational opportunity to all children with disabilities.²⁹ States must also identify children with disabilities residing in the state.³⁰ An individualized education program (IEP) must be developed for each child with a disability³¹ and, to the maximum extent appropriate, children with disabilities are to be educated with children who are not disabled and placement in special classes or separate schools is to occur only when the nature or severity of the disability is such that education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily.³² Procedural safeguards,³³ evaluations,³⁴ and confidentiality³⁵ are required. In addition, there is a requirement regarding transitions from early intervention programs³⁶ as well as provisions on the coverage of children with disabilities in private schools.³⁷ Finally, there are requirements concerning supervisory responsibilities for state agencies,³⁸ obligations relating to ensuring services,³⁹ procedural requirements relating to local educational agency eligibility,⁴⁰ and a requirement for a comprehensive system of personnel development.⁴¹

Free Appropriate Public Education. The cornerstone of IDEA is the requirement of a free appropriate public education (FAPE). This term is defined in the statute and includes special education and related services. Although the FAPE requirement has remained essentially unchanged since 1975, there was an addition in 1997 requiring the continuation of educational services even when children with disabilities are suspended or expelled.

²⁷ 20 U.S.C. §1412(a)(1)(A), P.L. 105-17 §612(a)(1)(A).

²⁸ 20 U.S.C. §1412(a)(1)(B), P.L. 105-17 §612(a)(1)(B).

²⁹ 20 U.S.C. §1412(a)(2), P.L. 105-17 §612(a)(2).

³⁰ 20 U.S.C. §1412(a)(3), P.L. 105-17 §612(a)(3).

³¹ 20 U.S.C. §1412(a)(4), P.L. 105-17 §612(a)(4).

³² 20 U.S.C. §1412(a)(5), P.L. 105-17 §612(a)(5).

³³ 20 U.S.C. §1412(a)(6), P.L. 105-17 §612(a)(6).

³⁴ 20 U.S.C. §1412(a)(7), P.L. 105-17 §612(a)(7).

³⁵ 20 U.S.C. §1412(a)(8), P.L. 105-17 §612(a)(8).

³⁶ 20 U.S.C. §1412(a)(9), P.L. 105-17 §612(a)(9).

³⁷ 20 U.S.C. §1412(a)(10), P.L. 105-17 §612(a)(10).

³⁸ 20 U.S.C. §1412(a)(11), P.L. 105-17 §612(a)(11).

³⁹ 20 U.S.C. §1412(a)(12), P.L. 105-17 §612(a)(12).

⁴⁰ 20 U.S.C. §1412(a)(13), P.L. 105-17 §612(a)(13).

⁴¹ 20 U.S.C. §1412(a)(14), P.L. 105-17 §612(a)(14).

Continuation of Educational Services. During the 1997 reauthorization of IDEA, a phrase was added to the basic requirement of the provision of FAPE prohibiting the cessation of educational services for a child with a disability even if that child was suspended or expelled. Although this had been the way the Department of Education had interpreted IDEA prior to 1997, putting the requirement in the statute was one of the most contentious additions to IDEA. Those opposed to this addition argued that this created a disparity in treatment between children with disabilities and children without disabilities in states that did not provide educational services to children who had been suspended or expelled. In addition, they contended that the decision on whether or not to provide services should rest with the states. On the other hand, those in favor of requiring the continuation of services argued that children with disabilities were more likely to be negatively effected by not receiving educational services and were more likely to become involved in the criminal justice system and to become dependent on welfare.⁴² During IDEA hearings in 1997, the Police Chief of the city of Buffalo, New York testified on behalf of police chief executives stating: “Expulsion without education is not a deterrent to crime in our schools or our communities. Youth who commit criminal acts may need to have their freedom in the community removed, but should not be removed from education....[K]ids left without the resources or structure to become law abiding adults will only be more likely to become involved in crime....The response to violent and disruptive children in schools must reach beyond just putting them on the streets without the supervision and help they need.”⁴³

Child Find. States are obligated to strive to identify all children residing in the state who might qualify for special education and related services. This means not only assessing the needs of children enrolled in public schools, but also making sure that children not in public schools (such as those attending private schools and those who are home schooled) and their parents are aware that, if a child is a child with a disability and as a result needs special education and related services, a free appropriate public education (FAPE) will be made available. It should be noted that the actual evaluation of a child to determine eligibility and special education services must follow procedures discussed below, including parental informed consent prior to a child’s evaluation.

Education with Children who do not Have Disabilities. The 1997 IDEA amendments added a statutory provision requiring that to the maximum extent appropriate, children with disabilities are to be educated with children who are not disabled and placement in special classes or separate schools is to occur only when the nature or severity of the disability is such that education in the regular classroom

⁴² See e.g., Wagner, Mary, et al., *The Transition Experience of Young People with Disabilities: A Summary of Findings form the National Longitudinal Transition Study of Special Education Student*, Menlo Park, SRI (1993).

⁴³ Statement of Kevin Comerford, Police Chief, Buffalo Police Department, Buffalo, New York, *Hearings on H.R. 5, the IDEA Improvement Act of 1997*, Before the Subcommittee on Early Childhood, Youth and Families of the Committee on Education and Workforce, 105th Cong., 1st Sess. 255 -256 (Feb. 4 and 6, 1997).

with the use of supplementary aids and services cannot be achieved satisfactorily.⁴⁴ This concept, often referred to as the least restrictive environment, inclusion, or mainstreaming, was contained in the regulations promulgated under IDEA prior to the 1997 amendments and has been examined in the current regulations.⁴⁵

Private Schools. The 1997 amendments to the Individuals with Disabilities Education Act changed previous statutory language regarding private school services for children with disabilities who are unilaterally placed in a private school by their parents. Three major additions were made to the statutory language on this issue: (1) requiring the states to spend a proportionate amount of IDEA funds on private school children with disabilities who are enrolled in the private school by their parents, (2) allowing school districts to provide special education related services on the premises of private schools, including parochial schools, and (3) applying the identification, child find, and evaluation provisions to children placed by their parents in private schools. Since enactment, several courts have interpreted these provisions and found public schools are not required to pay the costs of special education services for a particular child in a private school; rather, states are required to expend proportionate amounts of federal funds on special education services for such children.⁴⁶

Other Selected State Eligibility Provisions. The following are some additional requirements that states must meet to receive assistance under Part B:

- To respond to ongoing shortages of qualified special education teachers and other trained personnel, states are required to have a comprehensive personnel development system (Section 612(a)(14))⁴⁷ and personnel standards (Section 612(a)(15))⁴⁸ to ensure appropriate and adequate training and preparation of personnel. These requirements are related to other provisions in the Act discussed elsewhere, such as Section 653 and local educational agency (LEA) requirements under Section 613.
- As part of the goal of 1997 Amendments to improve outcomes for children with disabilities, states are required to establish performance goals (related to overall state educational goals and standards) and indicators to assess those goals (Section 612(a)(16)).⁴⁹ At a minimum, these indicators should address achievement, drop-out rates, and graduation rates for children with

⁴⁴ 20 U.S.C. §1412(a)(5), P.L. 105-17 §612(a)(5).

⁴⁵ 34 C.F.R. §§300.550 *et seq.* For a more detailed discussion of this issue see Jones, Nancy and Aleman, Steven, *The 1997 IDEA Amendments: A Guide for Educators, Parents and Attorneys* 5:1 *et seq.* (2d ed. 2000).

⁴⁶ For a detailed discussion of private schools and IDEA see CRS Report 98-854, *Individuals with Disabilities Education Act: Services in Private Schools Under P.L. 105-17*, by Nancy Lee Jones. Note that 20 U.S.C. §1412(f), P.L. 105-17 §612(f), contains certain funding provisions relating to private schools.

⁴⁷ 20 U.S.C. §1412(a)(14).

⁴⁸ 20 U.S.C. §1412(a)(15).

⁴⁹ 20 U.S.C. §1412(a)(16).

disabilities. (For a related provision, see the discussion of IEP requirements below.)

- A related requirement is that children with disabilities are to be included in state and local assessment programs, with accommodations as necessary (Section 612(a)(17)).⁵⁰ For those children for whom participation in state and local assessments is not feasible, the state is required to develop and conduct alternative assessments. (For a related provision, see the discussion of IEP requirements below.)
- Like other federal education grant programs, states must comply with certain fiscal requirements. States must ensure that IDEA funds supplement, not supplant, other federal, state, and local funds for special education (Section 612(a)(18)).⁵¹ In addition, unless waived by the Secretary for exceptional or uncontrollable circumstances, states must not reduce funding for special education from one year to the next (Section 612(a)(19)),⁵² or they face loss of federal funding equal to the amount of the reduction. Sometimes known as maintenance of effort (MOE), this provision helps to ensure that federal funds add to, rather than substitute for, overall funding for special education and related services.⁵³ (LEAs have similar fiscal requirements. See discussion under LEA eligibility below.)
- States are required to have state advisory panels (Section 612(a)(21))⁵⁴ that include a diverse group of representatives of individuals and organizations involved in the education of children with disabilities. These panels advise state educational agencies (SEAs) on various concerns, issues, and policies.
- Under Section 612(b)⁵⁵, SEAs are authorized to provide direct services to children with disabilities. In providing such services, the SEA basically is treated as another LEA and may use funds that otherwise would have gone to those LEAs in the state for which the state is providing services. Section 613(h) details circumstances under which states may provide direct services. These include LEAs that are unable to provide special education and related services or that enroll children with disabilities who can be better served in regional or state programs (e.g., in schools for visually or hearing impaired children).

⁵⁰ 20 U.S.C. §1412(a)(17).

⁵¹ 20 U.S.C. §1412(a)(18).

⁵² 20 U.S.C. §1412(a)(19).

⁵³ The Secretary may waive these fiscal requirements if the state presents convincing evidence that FAPE is available to all children with a disability in the state.

⁵⁴ 20 U.S.C. §1412(a)(21).

⁵⁵ 20 U.S.C. §1412(b).

- Section 612(e)⁵⁶ clarifies that nothing in IDEA permits states to reduce benefits or alter eligibility under the Maternal and Child Health Block Grant (Title V of the Social Security Act) or under Medicaid (Title XIX of the Social Security Act) with respect to providing FAPE for children with disabilities.
- Under Section 613(d)⁵⁷, states are required to reduce or stop payments to LEAs that fail to comply with requirements for LEA eligibility under 20 U.S.C. 1413(a).

Local Educational Agency Eligibility. Section 613⁵⁸ details LEA eligibility requirements for assistance under Part B. In general, LEAs must have policies and programs (Section 613(a)(1)) that are consistent with state requirements as discussed above. In addition, the section details certain other requirements that LEAs must fulfill for eligibility. Like the state, LEAs must comply with certain fiscal requirements (Section 613(a)(2)). LEAs must use Part B funds only to pay for the additional or excess cost of educating children with disabilities. Except as noted below, these funds must be used to supplement other federal, state, and local funding for special education. In addition, except as discussed below LEAs may not reduce local expenditures for special education and related services from one year to the next. One exception to the MOE requirement applies under certain circumstances when local expenditures for special education decrease. For example the MOE requirement may not apply when senior (and more highly paid) teachers retire and are replaced by younger (and lower salaried) teachers or when children requiring especially costly programs leave the LEA. An additional exception to the MOE and to the supplement, not supplant requirements is the provision allowing LEAs to “treat as local funds” a certain portion of their Part B grants to meet these fiscal requirements. Once total appropriations for the grants to states program exceeded \$4.1 billion (which occurred in FY1999), an LEA (unless the SEA determines that the LEA is not meeting the requirements of Part B) can use up to 20% of the increase in its current-year grant over the prior-year grant to satisfy the MOE and supplement not supplant requirements. That is, the LEA can substitute this portion of IDEA funds for some locally provided funds and use those funds for other purposes.⁵⁹

IDEA specifically allows a state, at its discretion, to require a local educational agency to include a statement of any current or previous disciplinary actions that have been taken against a child with a disability, in the records of the child. The statement can include a description of the behavior the child engaged in, a description of the disciplinary action taken, and other information that is relevant to the safety of the child and other individuals. This information can be transmitted to the same extent

⁵⁶ 20 U.S.C. §1412(e).

⁵⁷ 20 U.S.C. §1413(d).

⁵⁸ 20 U.S.C. §1413.

⁵⁹ On January 8, 2001, the Secretary issued final regulations (66 FR 1474) for implementing this provision.

that such information would be transmitted with the records of children who do not have disabilities.⁶⁰

In addition to these requirements, other LEA eligibility requirements include:

- LEAs must ensure that all special education personnel are adequately and properly prepared. (Section 613(a)(3))⁶¹
- LEAs are required to provide services and funding for children with disabilities in charter schools that are public schools of the LEA in the same manner in which services and funding are provided to children with disabilities in other schools in the LEA. (Section 613(a)(5))⁶²
- Except for charter schools that are LEAs, states may require an LEA that the state deems to be unable to provide effective special education programs (for example, because it is too small) to establish joint eligibility with one or more other LEAs and to jointly provide assistance under Part B. (Section 613(e))⁶³

Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements. Section 614⁶⁴ contains some of the most essential requirements of the Act. This section outlines how LEAs (and SEAs and other state agencies that are providing direct services) initially evaluate children to determine their eligibility and specific needs for special education and related services, periodically re-evaluate children receiving special education, determine the individualized education program (IEP) that provides the required special education and related services to each child with a disability, and decide where services are to be provided.

The purposes of a child's initial evaluation (for example, when he or she first enters school or when evidence of a disability is first suspected) is to determine whether the child is eligible (i.e., fits the definition—discussed above—of a child with a disability) and to determine the specific needs of the child (Section 614(a))⁶⁵. The initial evaluation (and subsequent re-evaluations) must follow certain procedures. (Section 614(b))⁶⁶. First, the LEA must obtain informed consent from the parent for the evaluation. Parental consent does not obligate the parent to agree to placement of the child in special education. In evaluating the child, the LEA must use multiple assessments and not rely on any single procedure as the sole source of evaluative information. The section is specific about the characteristics of evaluative techniques. For example, they must not discriminate based on race or culture, and

⁶⁰ 20 U.S.C. §1413(j), P.L. 105-17 §613(j).

⁶¹ 20 U.S.C. §1413(a)(3).

⁶² 20 U.S.C. §1413(a)(5).

⁶³ 20 U.S.C. §1413(e).

⁶⁴ 20 U.S.C. §1414.

⁶⁵ 20 U.S.C. §1414(a).

⁶⁶ 20 U.S.C. §1414(b).

they must be administered (unless clearly not feasible) in the child's native language or mode of communication. The determination of eligibility is to be made by a qualified team of professionals and the child's parent.

Subsequent re-evaluations are required at least every 3 years, and sooner if warranted or requested by the child's parent or teacher. These re-evaluations must follow the above requirements, including parental consent. Among the purposes of these re-evaluations are to determine if the child continues to need special education and if so whether services need to be modified. Based on the determination of the IEP team (discussed below), additional information may or may not be required and collected for a re-evaluation and subsequent decisions.

Section 614(d)(1)(A)⁶⁷ is very specific about the IEP requirements. Each individualized program is based on an individualized plan (also termed an IEP) which details:

- The child's current levels of educational performance (especially with respect to the general curriculum),
- Measurable annual goals and objectives for meeting the child's educational and other needs,⁶⁸
- The special education and related services that are to be provided (especially with respect to advancing toward the child's annual goals, making progress in the general curriculum, and participating in educational and other activities with other children with disabilities and nondisabled children),
- Any explanation of the extent to which the child will not participate with nondisabled children in the regular classroom and in other activities,
- Any modification to be made so the child can participate in state or districtwide assessments or a justification of why an alternative assessment is necessary, and
- The projected beginning date of services and their location, frequency, and duration.⁶⁹

In addition, IEPs for older children must contain information about needs and services to aid the child as he or she makes the transition from special education in public school to later activities, such as post secondary education and employment. (See the definition of transition services above.)

⁶⁷ 20 U.S.C. §1414(d)(1)(A).

⁶⁸ The child's educational needs must be assessed in terms of making progress in the general curriculum.

⁶⁹ Although FAPE must be provided to children with disabilities in adult prisons, the Act permits the modification of IEP requirements "if the State has demonstrated a bona fide security or compelling penological interest that cannot be otherwise accommodated."

The Act requires that the IEP be developed by an IEP team (Section 614(d)(1)(B))⁷⁰, which must include, among others, the parents of the child with a disability, at least one special education teacher and one regular education teacher, other representatives of the LEA, other qualified individuals, and if appropriate, the child with a disability. In general, the team is to consider the child's strengths and needs, parental concerns, and the result of the most recent evaluation. For certain children, the plan must address specified areas. For example, for a child whose behavior disrupts the education of others or his or her own learning, the team must consider strategies to address such behavior. For a child with limited English proficiency, the child's language needs must be considered. The Act requires that the team review the IEP at least annually to assess the achievement of annual goals, to make modifications to reflect lack of progress toward goals or results of re-evaluations.

Procedural Safeguards. When Congress decided to first enact P.L. 94-142 in 1975, detailed procedural safeguards were also included so that education for children with disabilities would be assured. Each state educational agency, state agency, or local educational agency that receives funds under IDEA must establish and maintain procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to a free appropriate public education.⁷¹ The various types of procedures include an opportunity for parents of a child with a disability to examine records and participate in meetings and obtain an independent educational evaluation of the child; prior written notice of a change or refusal to change a placement; an opportunity for mediation; and an opportunity to present complaints.⁷² In addition, IDEA mandates procedures that require the parent or the attorney representing the child to provide notice including the child's name and school, the nature of the problem, and a proposed resolution of the problem.⁷³ State or local educational agencies are also required to ensure that procedures are established and implemented to allow parties in a dispute to use mediation to resolve the dispute. This mediation is to be voluntary, conducted by trained, impartial mediators, and the cost is to be borne by the state.⁷⁴

When a complaint is received under IDEA with respect to the identification, evaluation, educational placement, provision of a free appropriate public education or placement in an alternative educational setting, the parents have an opportunity for an impartial due process hearing⁷⁵ with a right to appeal.⁷⁶ Any party to this hearing has the following rights

⁷⁰ 20 U.S.C. §1414(d)(1)(B).

⁷¹ 20 U.S.C. §1415(a), P.L. 105-17 §615(a).

⁷² 20 U.S.C. §1415(b), P.L. 105-17 §615(b).

⁷³ *Id.*

⁷⁴ 20 U.S.C. §1415(e), P.L. 105-17 §615(e).

⁷⁵ 20 U.S.C. §1415(f), P.L. 105-17 §615(f).

⁷⁶ 20 U.S.C. §1415(g), P.L. 105-17 §615(g).

- to be accompanied and advised by counsel and by individuals with special knowledge or training regarding children with disabilities,
- to present evidence and confront, cross-examine, and compel the attendance of witnesses,
- to receive a written or electronic version of the verbatim record of the hearing,
- to receive the written or electric findings of facts and decisions.⁷⁷

The decision made in the hearing is final, except that any party may appeal and has the right to bring a civil action in state or federal court. At the court's discretion, attorneys' fees may be awarded as part of the costs to the parents of a child with a disability who is the prevailing party.⁷⁸ Attorneys' fees are based on the rates prevailing in the community and may not be awarded for services performed subsequent to a written offer of settlement to a parent in certain circumstances including if the court finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement. Also, attorneys' fees are not to be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action or, at the state's discretion, for a mediation. Attorneys' fees may be reduced in certain circumstances including where the parent unreasonably protracted the final resolution of the controversy.⁷⁹

IDEA contains a "stay put" provision which has been in the statute since its original enactment. With certain exceptions, during the pendency of any due process proceeding or civil action, unless the state or local educational agency and the parents agree otherwise, the child with a disability shall remain in the then-current educational placement or, if applying for initial admission, be placed in the public school program until all proceedings have been completed.⁸⁰

Section 615(k) of IDEA contains detailed provisions regarding placement of children with disabilities in alternative educational settings. Generally, a child with a disability is not immune from disciplinary procedures; however, these procedures are not identical to those for children without disabilities.⁸¹ If a child with a disability commits an action that would be subject to discipline, school personnel have several options. These include

⁷⁷ 20 U.S.C. §1415(h), P.L. 105-17 §615(h).

⁷⁸ The provision on attorneys' fees was added by Congress in the Handicapped Children's Protection Act, P.L. 99-372.

⁷⁹ 20 U.S.C. §1415(i), P.L. 105-17 §615(i).

⁸⁰ 20 U.S.C. §1415(j), P.L. 105-17 §615(j).

⁸¹ For a more detailed discussion of discipline and IDEA see CRS Report 98-42, *The Individuals with Disabilities Education Act: Discipline Provisions in P.L. 105-17*, by Nancy Lee Jones. Also note that 20 U.S.C. § 1412(a)(22) requires the state educational agency to examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities and to address such discrepancies.

- a suspension for up to ten days,
- placement in an interim alternative education setting for up to forty five days for situations involving weapons or drugs, and
- asking a hearing officer to order a child placed in an interim alternative educational setting for up to forty five days if it is demonstrated that the child is substantially likely to injure himself or others in his current placement,
- conducting a manifestation determination review to determine whether there is a link between the child's disability and the misbehavior. If the child's behavior is not a manifestation of a disability, long term disciplinary action such as expulsion may occur, except that educational services may not cease.⁸²

Section 615(k)⁸³ also provides protections for children who are the subject of a disciplinary action and who allege after the action occurred that they are disabled and thus entitled to the protections of IDEA. P.L. 105-17 allows such a child to assert the protections of IDEA if the local educational agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. The law specifically states that the LEA is deemed to have such knowledge if

- the parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents such expression) to personnel of the agency that the child is in need of special education and related services;
- the behavior or performance of the child demonstrates the need for such services;
- the parent of the child has requested an evaluation of the child; or
- the teachers of the child or other LEA personnel have expressed concern about the behavior or performance of the child to the special education director or to other personnel of the agency.⁸⁴

Section 615⁸⁵ specifically states that nothing in Part B of IDEA 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.⁸⁶

⁸² 20 U.S.C. §1415(k), P.L. 105-17 §615(k)

⁸³ 20 U.S.C. §615(k), P.L. 105-17 §615(k).

⁸⁴ 20 U.S.C. §1415(k)(8), P.L. 105-17 §615(k)(8).

⁸⁵ 20 U.S.C. §615(k), P.L. 105-17 §615(k).

⁸⁶ 20 U.S.C. §1415(k)(9), P.L. 105-17 §615(k)(9).

Withholding and Judicial Review. As discussed above, IDEA provides grants of funds to the states if they meet certain conditions. If the Department of Education finds that the conditions are not substantially met, funds provided to the state may be withheld.⁸⁷ Since the amount of money provided to each state is significant, as a practical matter withholding the entire amount for a relatively small departure from the requirements would be difficult. This issue was discussed during the 1997 reauthorization and withholding may now be done in whole or in part, a change which allows the Department of Education more flexibility.

States that are dissatisfied with the Secretary of Education's determination of state eligibility for funds, may file for judicial review.⁸⁸ Provisions for judicial review regarding disagreements between parents and schools are discussed above under procedural protections.

Administration. Section 617⁸⁹ obligates the Secretary of Education to provide states with technical assistance on carrying out the requirements of Part B and, more generally, in educating children with disabilities.⁹⁰ The section also requires the Secretary to issue regulations as necessary to ensure compliance with the Act's requirements. The section also reinforces the Secretary's obligation under Section 444 of the General Education Provisions Act⁹¹ to assure the confidentiality of personally identifiable information that the Secretary, the states, and LEAs collect. Finally, the section authorizes the Secretary to hire qualified personnel to assist in administering the Act.

Program Information. Section 618⁹² requires states receiving assistance under Part B to provide annual program data to the Secretary. These data include numbers of children in various age groups served, numbers served by disability category and by race and ethnicity, and numbers and characteristics of children with disabilities placed in interim alternative settings resulting from disciplinary actions. Selected results from this data collection are published in annual reports to Congress—the most recent available report covers school year 1998-99 (the 22nd Annual Report).

Preschool Grants. Section 619⁹³ of IDEA authorizes grants to states for preschool programs serving children with disabilities ages 3 to 5.⁹⁴ States are eligible

⁸⁷ 20 U.S.C. §1416(a), P.L. 105-17 §616(a).

⁸⁸ 20 U.S.C. §1416(b) , P.L. 105-17 §616(b).

⁸⁹ 20 U.S.C. §1417 , P.L. 105-17 §617.

⁹⁰ Part D authorizes grants to provide technical assistance. See discussion below.

⁹¹ This is the Family Educational Rights and Privacy Act of 1974 (FERPA), sometimes referred to as the Buckley Amendment, 20 U.S.C. §1232g.

⁹² 20 U.S.C. §1418 , P.L. 105-17 §618.

⁹³ 20 U.S.C. §1419 , P.L. 105-17 §619.

⁹⁴ Section 619(a)(2), 20 U.S.C. §1419(a)(2), permits states to service children as young as
(continued...)

for these grants if they are eligible for grants under the Part B grants to states and make available free appropriate public education (FAPE) to all disabled children ages 3 to 5 in the state.⁹⁵ Currently all states qualify and receive preschool grants under this section. Since Part B grants to states are used to serve children with disabilities as young as 3 years of age (as well as school-age children), Section 619 is not so much a separate program as it is supplementary funding for services to this age group. In general, the provisions, requirements, and guarantees under the grants to state program that apply to school-age children with disabilities also apply to children in this age group.⁹⁶ As a result, Section 619 is a relatively brief section of the law, which deals mostly with the state and substate funding formulas for the grants and state-level activities.

The preschool state and substate grant formulas are similar to the grants to states formula discussed above. One important difference is that the formula was implemented immediately after the provision became effective—with the allocations for FY1998 funds, using FY97 grants as the base. In addition, the 40% maximum grant does not apply. The state is allowed to reserve an annually adjusted amount of the grant for state activities. The remaining funds are distributed to LEAs under a formula very similar to the substate formula for the grants to states program, discussed above.

Part C

Part C authorizes the state grants program for infants and toddlers (ages birth to 2) with disabilities and their families. A general purpose of these grants is to aid each state to create and maintain “a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families.”⁹⁷

⁹⁴(...continued)

2 years of age under Part B if they will turn 3 during the school year.

⁹⁵At the state’s discretion, children experiencing developmental delay (as defined by the state) with respect to, for example, physical, cognitive, social, or emotional development may be included as children with disabilities eligible for services.

⁹⁶For a brief overview of the provisions of Part B, see *The Individuals with Disabilities Education Act (IDEA): Overview of Major Provisions*. CRS Report for Congress RS20366 by Richard N. Apling and Nancy Lee Jones. The implementation of the Part B requirements for preschool programs does not necessarily completely parallel in all respects the implementation for school-age children with disabilities. For example, although the requirement of the least restrictive environment for serving preschool children with disabilities applies and to the maximum extent possible these children must be served with their nondisabled peers, this does not mean that a state must provide free public education to all preschool children in order to meet this requirement. LRE can be met by serving disabled preschoolers “in a variety of settings, including public or private preschool programs, regular kindergarten, Head Start programs, or childcare facilities.” U.S. Department of Education (ED) Budget Justifications for FY2002, p. H-21.

⁹⁷ 20 U.S.C. 1431(b)(1), P.L. 105-17 §631(b)(1).

In many respects, the requirements for these statewide systems resemble the requirements under IDEA Part B for special education and related services for children with disabilities served in school systems. However, state systems to serve very young children (the analog to state educational agencies (SEAs)) did not and do not exist in all states. Thus Part C differs in some respects from Part B in that it has to help create the state structure in which services can be delivered to infants and toddlers with disabilities. For example, unlike Part B, for which there are SEAs to administer the program statewide and LEAs and other educational entities to deliver special education and related services, services for infants and toddlers may be administered in different agencies or by multiple agencies in various states. Thus Part C requires states to identify the lead state agency for the program. In addition to providing direct services for infants and toddlers, an important role of the lead agency is to coordinate other federal, state, local, and private programs that potentially can provide services to infants and toddlers with disabilities.

Part C differs from Part B in other respects. For example, Part C does not recognize specific categories of disabilities. Rather the key to eligibility for services is evidence of developmental delay, the precise definition of which is left to each state. (See the discussion of developmental delay under definitions above.) In addition, because of the central role of the family in the development of very young children, services focus not just on the child with a disability but also on the family, and intervention services are detailed in an Individualized Family Service Plan (IFSP). Unlike special education for older children, which takes place mostly in schools, services for very young children take place in a variety of settings, including the home. Part C requires that, to the maximum extent possible, services be provided in “natural environments” with infants and toddlers who are not disabled.

Part D

Part D of IDEA authorizes several national activities, such as state improvement grants, research, and technical assistance, aimed at improving the education of children with disabilities. These activities are briefly summarized below.

Subpart 1. This subpart authorizes competitive state grants to improve education and services for children with disabilities, tied to the goals and indicators states must establish under Section 612(a)(16)⁹⁸ (discussed above). Although technical assistance and dissemination activities are authorized, the emphasis of these grants is on improving professional development (in general at least 75% of the grant must be spent on professional development). Subsection 653(c)(3)(D)⁹⁹ is of interest because it details characteristics of pre-service and in-service professional development that not only must be addressed to receive an improvement grant but that are cross-referenced in other IDEA requirements, for example under the requirement for state comprehensive systems of personnel development, required for

⁹⁸ 20 U.S.C. §1412(a)(16).

⁹⁹ 20 U.S.C. §1453(c)(3)(D).

state eligibility (Section 612(a)(14)). In recent years, almost all states (49) have received improvement grants, according to ED.¹⁰⁰

Subpart 2. Chapter 1 of Subpart 2 authorizes several competitive grant activities. Section 672¹⁰¹ authorizes research and innovation grants to produce “new knowledge” on special education and to integrate research and practice, among other activities. Section 673¹⁰² authorizes grants on personnel preparation, including specific initiatives on training personnel for “low-incidence” disabilities (for example, deaf-blind children) and “high-incidence” disabilities (such as those with specific learning disabilities). Section 674¹⁰³ authorizes national studies and evaluations of IDEA. The Secretary is authorized to reserve up to ½% of amounts appropriated for Parts B and C for Section 674 studies and evaluations.¹⁰⁴

Chapter 2 of Subpart 2 authorizes technical assistance, support, and dissemination activities. Section 682¹⁰⁵ authorizes parent training and information centers (PTICs), which aim to help parents better understand the nature of the child’s disabilities and their role and rights under IDEA. Section 683¹⁰⁶ authorizes community parent resource centers, which appear to augment the purposes of the centers authorized in Section 682. According to the report accompanying the 1997 Amendments, these centers (working in tandem with the PTICs) should reach even more parents many of whom are isolated by geographic, social, language, cultural, or racial factors.¹⁰⁷ Section 684¹⁰⁸ authorizes the Secretary to provide technical assistance to enhance the effectiveness of these centers. Section 685¹⁰⁹ authorizes broader technical and dissemination activities to improve education for school-age children with disabilities, to improve early intervention for younger children with disabilities, and to “address systemic-change goals and priorities.” Finally, Section 686¹¹⁰ authorizes competitive grants for the broad development and use of technology to benefit children with disabilities (Section 686(b)) and more specifically authorizes media services, including descriptive video and closed and open captioning of television and related media.

¹⁰⁰ See FY2002 Budget Justifications, p. H-39.

¹⁰¹ 20 U.S.C. §1472.

¹⁰² 20 U.S.C. §1473.

¹⁰³ 20 U.S.C. §1474.

¹⁰⁴ If this amount researches \$20 million, the maximum reserve is that amount adjusted each subsequent year by the rate of inflation. The reserve in recent years has been about \$16 million.

¹⁰⁵ 20 U.S.C. §1482.

¹⁰⁶ 20 U.S.C. §1483.

¹⁰⁷ S. Rep. 105-17, p. 39.

¹⁰⁸ 20 U.S.C. §1484.

¹⁰⁹ 20 U.S.C. §1485.

¹¹⁰ 20 U.S.C. §1486.

