“PART C—INFANTS AND TODDLERS WITH
DISABILITIES

“SEC. 631. FINDINGS AND POLICY.

“(a) FINDINGS.—Congress finds that there is an ur-
gent and substantial need—

“(1) to enhance the development of infants and
toddlers with disabilities, to minimize their potential
for developmental delay, and to recognize the signifi-
cant brain development that occurs during a child’s
first 3 years of life;

“(2) to reduce the educational costs to our soci-
ety, including our Nation’s schools, by minimizing
the need for special education and related services
after infants and toddlers with disabilities reach
school age;

“(3) to maximize the potential for individuals
with disabilities to live independently in society;

“(4) to enhance the capacity of families to meet
the special needs of their infants and toddlers with
disabilities; and

“(5) to enhance the capacity of State and local
agencies and service providers to identify, evaluate,
and meet the needs of all children, particularly mi-
nority, low-income, inner city, and rural children,
and infants and toddlers in foster care.
“(b) POLICY.—It is the policy of the United States to provide financial assistance to States—

“(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, inter-agency system that provides early intervention services for infants and toddlers with disabilities and their families;

“(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);

“(3) to enhance State capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

“(4) to encourage States to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.

“SEC. 632. DEFINITIONS.

“In this part:

“(1) AT-RISK INFANT OR TODDLER.—The term ‘at-risk infant or toddler’ means an individual under 3 years of age who would be at risk of experiencing
a substantial developmental delay if early intervention services were not provided to the individual.

“(2) COUNCIL.—The term ‘council’ means a State interagency coordinating council established under section 641.

“(3) DEVELOPMENTAL DELAY.—The term ‘developmental delay’, when used with respect to an individual residing in a State, has the meaning given such term by the State under section 635(a)(1).

“(4) EARLY INTERVENTION SERVICES.—The term ‘early intervention services’ means developmental services that—

“(A) are provided under public supervision;

“(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;

“(C) are designed to meet the developmental needs of an infant or toddler with a disability, as identified by the individualized family service plan team, in any 1 or more of the following areas:

“(i) physical development;

“(ii) cognitive development;

“(iii) communication development;
“(iv) social or emotional development;

or

“(v) adaptive development;

“(D) meet the standards of the State in which the services are provided, including the requirements of this part;

“(E) include—

“(i) family training, counseling, and home visits;

“(ii) special instruction;

“(iii) speech-language pathology and audiology services, and sign language and cued language services;

“(iv) occupational therapy;

“(v) physical therapy;

“(vi) psychological services;

“(vii) service coordination services;

“(viii) medical services only for diagnostic or evaluation purposes;

“(ix) early identification, screening, and assessment services;

“(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;

“(xi) social work services;
“(xii) vision services;
“(xiii) assistive technology devices and assistive technology services; and
“(xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant’s or toddler’s family to receive another service described in this paragraph;
“(F) are provided by qualified personnel, including—
“(i) special educators;
“(ii) speech-language pathologists and audiologists;
“(iii) occupational therapists;
“(iv) physical therapists;
“(v) psychologists;
“(vi) social workers;
“(vii) nurses;
“(viii) registered dietitians;
“(ix) family therapists;
“(x) vision specialists, including ophthalmologists and optometrists;
“(xi) orientation and mobility specialists; and
“(xii) pediatricians and other physicians;

“(G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and

“(H) are provided in conformity with an individualized family service plan adopted in accordance with section 636.

“(5) INFANT OR TODDLER WITH A DISABILITY.—The term ‘infant or toddler with a disability’—

“(A) means an individual under 3 years of age who needs early intervention services because the individual—

“(i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in 1 or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or

“(ii) has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and
“(B) may also include, at a State’s discretion—

“(i) at-risk infants and toddlers; and

“(ii) children with disabilities who are eligible for services under section 619 and who previously received services under this part until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under this part serving such children shall include—

“(I) an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and

“(II) a written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under this part or participate in preschool programs under section 619.

“SEC. 633. GENERAL AUTHORITY.

“The Secretary shall, in accordance with this part, make grants to States (from their allotments under section 643) to assist each State to maintain and implement
a statewide, comprehensive, coordinated, multidisciplinary,
interagency system to provide early intervention services
for infants and toddlers with disabilities and their families.

“SEC. 634. ELIGIBILITY.

“In order to be eligible for a grant under section 633,
a State shall provide assurances to the Secretary that the
State—

“(1) has adopted a policy that appropriate early
intervention services are available to all infants and
toddlers with disabilities in the State and their fami-
lies, including Indian infants and toddlers with dis-
abilities and their families residing on a reservation
demographically located in the State, infants and tod-

dlers with disabilities who are homeless children and
their families, and infants and toddlers with disabil-
ities who are wards of the State; and

“(2) has in effect a statewide system that meets
the requirements of section 635.

“SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.

“(a) IN GENERAL.—A statewide system described in
section 633 shall include, at a minimum, the following
components:

“(1) A rigorous definition of the term ‘develop-
mental delay’ that will be used by the State in car-
rying out programs under this part in order to ap-
appropriately identify infants and toddlers with disabilities that are in need of services under this part.

“(2) A State policy that is in effect and that ensures that appropriate early intervention services based on scientifically based research, to the extent practicable, are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State and infants and toddlers with disabilities who are homeless children and their families.

“(3) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State, and a family-directed identification of the needs of each family of such an infant or toddler, to assist appropriately in the development of the infant or toddler.

“(4) For each infant or toddler with a disability in the State, an individualized family service plan in accordance with section 636, including service coordination services in accordance with such service plan.

“(5) A comprehensive child find system, consistent with part B, including a system for making referrals to service providers that includes timelines
and provides for participation by primary referral sources and that ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for services under this part that will reduce the need for future services.

“(6) A public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency designated or established under paragraph (10) to all primary referral sources, especially hospitals and physicians, of information to be given to parents, especially to inform parents with premature infants, or infants with other physical risk factors associated with learning or developmental complications, on the availability of early intervention services under this part and of services under section 619, and procedures for assisting such sources in disseminating such information to parents of infants and toddlers with disabilities.

“(7) A central directory that includes information on early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State.

“(8) A comprehensive system of personnel development, including the training of paraprofes-
sionals and the training of primary referral sources
with respect to the basic components of early inter-
vention services available in the State that—

“(A) shall include—

“(i) implementing innovative strate-
gies and activities for the recruitment and
retention of early education service pro-
viders;

“(ii) promoting the preparation of
early intervention providers who are fully
and appropriately qualified to provide early
intervention services under this part; and

“(iii) training personnel to coordinate
transition services for infants and toddlers
served under this part from a program
providing early intervention services under
this part and under part B (other than
section 619), to a preschool program re-
ceiving funds under section 619, or an-
other appropriate program; and

“(B) may include—

“(i) training personnel to work in
rural and inner-city areas; and
“(ii) training personnel in the emotional and social development of young children.

“(9) Policies and procedures relating to the establishment and maintenance of qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including the establishment and maintenance of qualifications that are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which such personnel are providing early intervention services, except that nothing in this part (including this paragraph) shall be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with State law, regulation, or written policy, to assist in the provision of early intervention services under this part to infants and toddlers with disabilities.

“(10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out—

“(A) the general administration and supervision of programs and activities receiving as-
sistance under section 633, and the monitoring of programs and activities used by the State to carry out this part, whether or not such programs or activities are receiving assistance made available under section 633, to ensure that the State complies with this part;

“(B) the identification and coordination of all available resources within the State from Federal, State, local, and private sources;

“(C) the assignment of financial responsibility in accordance with section 637(a)(2) to the appropriate agencies;

“(D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families under this part in a timely manner pending the resolution of any disputes among public agencies or service providers;

“(E) the resolution of intra- and inter-agency disputes; and

“(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that in-
clude all additional components necessary to ensure meaningful cooperation and coordination.

“(11) A policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements.

“(12) A procedure for securing timely reimbursements of funds used under this part in accordance with section 640(a).

“(13) Procedural safeguards with respect to programs under this part, as required by section 639.

“(14) A system for compiling data requested by the Secretary under section 618 that relates to this part.

“(15) A State interagency coordinating council that meets the requirements of section 641.

“(16) Policies and procedures to ensure that, consistent with section 636(d)(5)—

“(A) to the maximum extent appropriate, early intervention services are provided in natural environments; and
“(B) the provision of early intervention services for any infant or toddler with a disability occurs in a setting other than a natural environment that is most appropriate, as determined by the parent and the individualized family service plan team, only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.

“(b) Policy.—In implementing subsection (a)(9), a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subsection (a)(9).

“(c) Flexibility To Serve Children 3 Years of Age Until Entrance Into Elementary School.—

“(1) In general.—A statewide system described in section 633 may include a State policy, developed and implemented jointly by the lead agency and the State educational agency, under which parents of children with disabilities who are eligible
for services under section 619 and previously received services under this part, may choose the continuation of early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) for such children under this part until such children enter, or are eligible under State law to enter, kindergarten.

“(2) REQUIREMENTS.—If a statewide system includes a State policy described in paragraph (1), the statewide system shall ensure that—

“(A) parents of children with disabilities served pursuant to this subsection are provided annual notice that contains—

“(i) a description of the rights of such parents to elect to receive services pursuant to this subsection or under part B; and

“(ii) an explanation of the differences between services provided pursuant to this subsection and services provided under part B, including—

“(I) types of services and the locations at which the services are provided;
“(II) applicable procedural safeguards; and

“(III) possible costs (including any fees to be charged to families as described in section 632(4)(B)), if any, to parents of infants or toddlers with disabilities;

“(B) services provided pursuant to this subsection include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills;

“(C) the State policy will not affect the right of any child served pursuant to this subsection to instead receive a free appropriate public education under part B;

“(D) all early intervention services outlined in the child’s individualized family service plan under section 636 are continued while any eligibility determination is being made for services under this subsection;

“(E) the parents of infants or toddlers with disabilities (as defined in section 632(5)(A)) provide informed written consent to the State, before such infants or toddlers reach 3 years of age, as to whether such parents in-
tend to choose the continuation of early inter-
vention services pursuant to this subsection for
such infants or toddlers;

“(F) the requirements under section
637(a)(9) shall not apply with respect to a child
who is receiving services in accordance with this
subsection until not less than 90 days (and at
the discretion of the parties to the conference,
not more than 9 months) before the time the
child will no longer receive those services; and

“(G) there will be a referral for evaluation
for early intervention services of a child who ex-
periences a substantiated case of trauma due to
exposure to family violence (as defined in sec-
tion 320 of the Family Violence Prevention and
Services Act).

“(3) Reporting requirement.—If a state-
wide system includes a State policy described in
paragraph (1), the State shall submit to the Sec-
retary, in the State’s report under section
637(b)(4)(A), a report on the number and percent-
age of children with disabilities who are eligible for
services under section 619 but whose parents choose
for such children to continue to receive early inter-
vention services under this part.
“(4) AVAILABLE FUNDS.—If a statewide system includes a State policy described in paragraph (1), the policy shall describe the funds (including an identification as Federal, State, or local funds) that will be used to ensure that the option described in paragraph (1) is available to eligible children and families who provide the consent described in paragraph (2)(E), including fees (if any) to be charged to families as described in section 632(4)(B).

“(5) RULES OF CONSTRUCTION.—

“(A) SERVICES UNDER PART B.—If a statewide system includes a State policy described in paragraph (1), a State that provides services in accordance with this subsection to a child with a disability who is eligible for services under section 619 shall not be required to provide the child with a free appropriate public education under part B for the period of time in which the child is receiving services under this part.

“(B) SERVICES UNDER THIS PART.—Nothing in this subsection shall be construed to require a provider of services under this part to provide a child served under this part with a free appropriate public education.
“SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN.

“(a) ASSESSMENT AND PROGRAM DEVELOPMENT.—

A statewide system described in section 633 shall provide, at a minimum, for each infant or toddler with a disability, and the infant’s or toddler’s family, to receive—

“(1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;

“(2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family’s capacity to meet the developmental needs of the infant or toddler; and

“(3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (e), including a description of the appropriate transition services for the infant or toddler.

“(b) PERIODIC REVIEW.—The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

“(c) PROMPTNESS AFTER ASSESSMENT.—The individualized family service plan shall be developed within a
reasonable time after the assessment required by subsection (a)(1) is completed. With the parents’ consent, early intervention services may commence prior to the completion of the assessment.

“(d) CONTENT OF PLAN.—The individualized family service plan shall be in writing and contain—

“(1) a statement of the infant’s or toddler’s present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;

“(2) a statement of the family’s resources, priorities, and concerns relating to enhancing the development of the family’s infant or toddler with a disability;

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

“(5) a statement of the natural environments in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;

“(6) the projected dates for initiation of services and the anticipated length, duration, and frequency of the services;

“(7) the identification of the service coordinator from the profession most immediately relevant to the infant’s or toddler’s or family’s needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and

“(8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.
(e) Parental Consent.—The contents of the individualized family service plan shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in such plan. If the parents do not provide consent with respect to a particular early intervention service, then only the early intervention services to which consent is obtained shall be provided.

SEC. 637. STATE APPLICATION AND ASSURANCES.

“(a) Application.—A State desiring to receive a grant under section 633 shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application shall contain—

“(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 633;

“(2) a certification to the Secretary that the arrangements to establish financial responsibility for services provided under this part pursuant to section 640(b) are current as of the date of submission of the certification;

“(3) information demonstrating eligibility of the State under section 634, including—
“(A) information demonstrating to the Secretary’s satisfaction that the State has in effect the statewide system required by section 633; and

“(B) a description of services to be provided to infants and toddlers with disabilities and their families through the system;

“(4) if the State provides services to at-risk infants and toddlers through the statewide system, a description of such services;

“(5) a description of the uses for which funds will be expended in accordance with this part;

“(6) a description of the State policies and procedures that require the referral for early intervention services under this part of a child under the age of 3 who—

“(A) is involved in a substantiated case of child abuse or neglect; or

“(B) is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure;

“(7) a description of the procedure used to ensure that resources are made available under this part for all geographic areas within the State;
“(8) a description of State policies and procedures that ensure that, prior to the adoption by the State of any other policy or procedure necessary to meet the requirements of this part, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities;

“(9) a description of the policies and procedures to be used—

“(A) to ensure a smooth transition for toddlers receiving early intervention services under this part (and children receiving those services under section 635(c)) to preschool, school, other appropriate services, or exiting the program, including a description of how—

“(i) the families of such toddlers and children will be included in the transition plans required by subparagraph (C); and

“(ii) the lead agency designated or established under section 635(a)(10) will—

“(I) notify the local educational agency for the area in which such a child resides that the child will shortly reach the age of eligibility for pre-
school services under part B, as deter-
dined in accordance with State law;

“(II) in the case of a child who
may be eligible for such preschool
services, with the approval of the fam-
ily of the child, convene a conference
among the lead agency, the family,
and the local educational agency not
less than 90 days (and at the discre-
tion of all such parties, not more than
9 months) before the child is eligible
for the preschool services, to discuss
any such services that the child may
receive; and

“(III) in the case of a child who
may not be eligible for such preschool
services, with the approval of the fam-
ily, make reasonable efforts to con-
vene a conference among the lead
agency, the family, and providers of
other appropriate services for children
who are not eligible for preschool serv-
ices under part B, to discuss the ap-
propriate services that the child may
receive;
“(B) to review the child’s program options for the period from the child’s third birthday through the remainder of the school year; and

“(C) to establish a transition plan, including, as appropriate, steps to exit from the program;

“(10) a description of State efforts to promote collaboration among Early Head Start programs under section 645A of the Head Start Act, early education and child care programs, and services under part C; and

“(11) such other information and assurances as the Secretary may reasonably require.

“(b) ASSURANCES.—The application described in subsection (a)—

“(1) shall provide satisfactory assurance that Federal funds made available under section 643 to the State will be expended in accordance with this part;

“(2) shall contain an assurance that the State will comply with the requirements of section 640;

“(3) shall provide satisfactory assurance that the control of funds provided under section 643, and title to property derived from those funds, will be in a public agency for the uses and purposes provided
in this part and that a public agency will administer
such funds and property;

“(4) shall provide for—

“(A) making such reports in such form
and containing such information as the Sec-
retary may require to carry out the Secretary’s
functions under this part; and

“(B) keeping such reports and affording
such access to the reports as the Secretary may
find necessary to ensure the correctness and
verification of those reports and proper dis-
bursement of Federal funds under this part;

“(5) provide satisfactory assurance that Federal
funds made available under section 643 to the
State—

“(A) will not be commingled with State
funds; and

“(B) will be used so as to supplement the
level of State and local funds expended for in-
fants and toddlers with disabilities and their
families and in no case to supplant those State
and local funds;

“(6) shall provide satisfactory assurance that
such fiscal control and fund accounting procedures
will be adopted as may be necessary to ensure prop-
er disbursement of, and accounting for, Federal
funds paid under section 643 to the State;

“(7) shall provide satisfactory assurance that
policies and procedures have been adopted to ensure
meaningful involvement of underserved groups, in-
cluding minority, low-income, homeless, and rural
families and children with disabilities who are wards
of the State, in the planning and implementation of
all the requirements of this part; and

“(8) shall contain such other information and
assurances as the Secretary may reasonably require
by regulation.

“(c) STANDARD FOR DISAPPROVAL OF APPLICA-
TION.—The Secretary may not disapprove such an appli-
cation unless the Secretary determines, after notice and
opportunity for a hearing, that the application fails to
comply with the requirements of this section.

“(d) SUBSEQUENT STATE APPLICATION.—If a State
has on file with the Secretary a policy, procedure, or as-
surance that demonstrates that the State meets a require-
ment of this section, including any policy or procedure
filed under this part (as in effect before the date of enact-
ment of the Individuals with Disabilities Education Im-
provement Act of 2004), the Secretary shall consider the
State to have met the requirement for purposes of receiving a grant under this part.

“(e) Modification of Application.—An application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification of an application to the same extent and in the same manner as this section applies to the original application.

“(f) Modifications Required by the Secretary.—The Secretary may require a State to modify its application under this section, but only to the extent necessary to ensure the State’s compliance with this part, if—

“(1) an amendment is made to this title, or a Federal regulation issued under this title;

“(2) a new interpretation of this title is made by a Federal court or the State’s highest court; or

“(3) an official finding of noncompliance with Federal law or regulations is made with respect to the State.

“SEC. 638. USES OF FUNDS.

“In addition to using funds provided under section 633 to maintain and implement the statewide system required by such section, a State may use such funds—
“(1) for direct early intervention services for infants and toddlers with disabilities, and their families, under this part that are not otherwise funded through other public or private sources;

“(2) to expand and improve on services for infants and toddlers and their families under this part that are otherwise available;

“(3) to provide a free appropriate public education, in accordance with part B, to children with disabilities from their third birthday to the beginning of the following school year;

“(4) with the written consent of the parents, to continue to provide early intervention services under this part to children with disabilities from their 3rd birthday until such children enter, or are eligible under State law to enter, kindergarten, in lieu of a free appropriate public education provided in accordance with part B; and

“(5) in any State that does not provide services for at-risk infants and toddlers under section 637(a)(4), to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private
community-based organizations, services, and personnel for the purposes of—

“(A) identifying and evaluating at-risk infants and toddlers;

“(B) making referrals of the infants and toddlers identified and evaluated under subparagraph (A); and

“(C) conducting periodic follow-up on each such referral to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.

“SEC. 639. PROCEDURAL SAFEGUARDS.

“(a) MINIMUM PROCEDURES.—The procedural safeguards required to be included in a statewide system under section 635(a)(13) shall provide, at a minimum, the following:

“(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this para-
the court shall receive the records of the ad-
ministrative proceedings, shall hear additional evi-
dence at the request of a party, and, basing its deci-
sion on the preponderance of the evidence, shall
grant such relief as the court determines is appro-
priate.

“(2) The right to confidentiality of personally
identifiable information, including the right of par-
ents to written notice of and written consent to the
exchange of such information among agencies con-
sistent with Federal and State law.

“(3) The right of the parents to determine
whether they, their infant or toddler, or other family
members will accept or decline any early intervention
service under this part in accordance with State law
without jeopardizing other early intervention services
under this part.

“(4) The opportunity for parents to examine
records relating to assessment, screening, eligibility
determinations, and the development and implemen-
tation of the individualized family service plan.

“(5) Procedures to protect the rights of the in-
fant or toddler whenever the parents of the infant or
toddler are not known or cannot be found or the in-
fant or toddler is a ward of the State, including the
assignment of an individual (who shall not be an em-
ployee of the State lead agency, or other State agen-
cy, and who shall not be any person, or any em-
ployee of a person, providing early intervention serv-
ices to the infant or toddler or any family member
of the infant or toddler) to act as a surrogate for the
parents.

“(6) Written prior notice to the parents of the
infant or toddler with a disability whenever the State
agency or service provider proposes to initiate or
change, or refuses to initiate or change, the identi-
fication, evaluation, or placement of the infant or
toddler with a disability, or the provision of appro-
priate early intervention services to the infant or
toddler.

“(7) Procedures designed to ensure that the no-
tice required by paragraph (6) fully informs the par-
ents, in the parents’ native language, unless it clear-
ly is not feasible to do so, of all procedures available
pursuant to this section.

“(8) The right of parents to use mediation in
accordance with section 615, except that—

“(A) any reference in the section to a
State educational agency shall be considered to
be a reference to a State’s lead agency established or designated under section 635(a)(10);

“(B) any reference in the section to a local educational agency shall be considered to be a reference to a local service provider or the State’s lead agency under this part, as the case may be; and

“(C) any reference in the section to the provision of a free appropriate public education to children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

“(b) Services During Pendency of Proceedings.—During the pendency of any proceeding or action involving a complaint by the parents of an infant or toddler with a disability, unless the State agency and the parents otherwise agree, the infant or toddler shall continue to receive the appropriate early intervention services currently being provided or, if applying for initial services, shall receive the services not in dispute.

“SEC. 640. PAYOR OF LAST RESORT.

“(a) Nonsubstitution.—Funds provided under section 643 may not be used to satisfy a financial commitment for services that would have been paid for from an-
other public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under section 643 may be used to pay the provider of services pending reimbursement from the agency that has ultimate responsibility for the payment.

“(b) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES.—

“(1) ESTABLISHING FINANCIAL RESPONSIBILITY FOR SERVICES.—

“(A) IN GENERAL.—The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency and the designated lead agency, in order to ensure—

“(i) the provision of, and financial responsibility for, services provided under this part; and

“(ii) such services are consistent with the requirements of section 635 and the State’s application pursuant to section
637, including the provision of such services during the pendency of any such dispute.

“(B) CONSISTENCY BETWEEN AGREEMENTS OR MECHANISMS UNDER PART B.—The Chief Executive Officer of a State or designee of the officer shall ensure that the terms and conditions of such agreement or mechanism are consistent with the terms and conditions of the State’s agreement or mechanism under section 612(a)(12), where appropriate.

“(2) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY.—

“(A) IN GENERAL.—If a public agency other than an educational agency fails to provide or pay for the services pursuant to an agreement required under paragraph (1), the local educational agency or State agency (as determined by the Chief Executive Officer or designee) shall provide or pay for the provision of such services to the child.

“(B) REIMBURSEMENT.—Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for
such services and such public agency shall reim-
burse the local educational agency or State
agency pursuant to the terms of the interagency
agreement or other mechanism required under
paragraph (1).

“(3) SPECIAL RULE.—The requirements of
paragraph (1) may be met through—

“(A) State statute or regulation;

“(B) signed agreements between respective
agency officials that clearly identify the respon-
sibilities of each agency relating to the provision
of services; or

“(C) other appropriate written methods as
determined by the Chief Executive Officer of
the State or designee of the officer and ap-
proved by the Secretary through the review and
approval of the State’s application pursuant to
section 637.

“(c) REDUCTION OF OTHER BENEFITS.—Nothing in
this part shall be construed to permit the State to reduce
medical or other assistance available or to alter eligibility
under title V of the Social Security Act (relating to mater-
nal and child health) or title XIX of the Social Security
Act (relating to medicaid for infants or toddlers with dis-
abilities) within the State.
“SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.”

“(a) Establishment.—

“(1) In general.—A State that desires to receive financial assistance under this part shall establish a State interagency coordinating council.

“(2) Appointment.—The council shall be appointed by the Governor. In making appointments to the council, the Governor shall ensure that the membership of the council reasonably represents the population of the State.

“(3) Chairperson.—The Governor shall designate a member of the council to serve as the chairperson of the council, or shall require the council to so designate such a member. Any member of the council who is a representative of the lead agency designated under section 635(a)(10) may not serve as the chairperson of the council.

“(b) Composition.—

“(1) In general.—The council shall be composed as follows:

“(A) Parents.—Not less than 20 percent of the members shall be parents of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. Not less than 1 such
member shall be a parent of an infant or toddler with a disability or a child with a disability aged 6 or younger.

“(B) SERVICE PROVIDERS.—Not less than 20 percent of the members shall be public or private providers of early intervention services.

“(C) STATE LEGISLATURE.—Not less than 1 member shall be from the State legislature.

“(D) PERSONNEL PREPARATION.—Not less than 1 member shall be involved in personnel preparation.

“(E) AGENCY FOR EARLY INTERVENTION SERVICES.—Not less than 1 member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies.

“(F) AGENCY FOR PRESCHOOL SERVICES.—Not less than 1 member shall be from the State educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in
policy planning and implementation on behalf of such agency.

“(G) STATE MEDICAID AGENCY.—Not less than 1 member shall be from the agency responsible for the State medicaid program.

“(H) HEAD START AGENCY.—Not less than 1 member shall be a representative from a Head Start agency or program in the State.

“(I) CHILD CARE AGENCY.—Not less than 1 member shall be a representative from a State agency responsible for child care.

“(J) AGENCY FOR HEALTH INSURANCE.—Not less than 1 member shall be from the agency responsible for the State regulation of health insurance.

“(K) OFFICE OF THE COORDINATOR OF EDUCATION OF HOMELESS CHILDREN AND YOUTH.—Not less than 1 member shall be a representative designated by the Office of Coordinator for Education of Homeless Children and Youths.

“(L) STATE FOSTER CARE REPRESENTATIVE.—Not less than 1 member shall be a representative from the State child welfare agency responsible for foster care.
“(M) Mental Health Agency.—Not less than 1 member shall be a representative from the State agency responsible for children’s mental health.

“(2) Other Members.—The council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs (BIA), or where there is no BIA-operated or BIA-funded school, from the Indian Health Service or the tribe or tribal council.

“(c) Meetings.—The council shall meet, at a minimum, on a quarterly basis, and in such places as the council determines necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

“(d) Management Authority.—Subject to the approval of the Governor, the council may prepare and approve a budget using funds under this part to conduct hearings and forums, to reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives), to pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business, to hire staff, and to ob-
tain the services of such professional, technical, and cler-
ical personnel as may be necessary to carry out its func-
tions under this part.

“(e) FUNCTIONS OF COUNCIL.—

“(1) DUTIES.—The council shall—

“(A) advise and assist the lead agency des-
ignated or established under section 635(a)(10)
in the performance of the responsibilities set
forth in such section, particularly the identifica-
tion of the sources of fiscal and other support
for services for early intervention programs, as-

ignment of financial responsibility to the ap-
propriate agency, and the promotion of the
interagency agreements;

“(B) advise and assist the lead agency in
the preparation of applications and amend-
ments thereto;

“(C) advise and assist the State edu-
cational agency regarding the transition of tod-
dlers with disabilities to preschool and other ap-
propriate services; and

“(D) prepare and submit an annual report
to the Governor and to the Secretary on the
status of early intervention programs for in-
fants and toddlers with disabilities and their families operated within the State.

“(2) AUTHORIZED ACTIVITY.—The council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children from birth through age 5. The council may advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.

“(f) CONFLICT OF INTEREST.—No member of the council shall cast a vote on any matter that is likely to provide a direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

“SEC. 642. FEDERAL ADMINISTRATION.

“(1) any reference in such sections to a State educational agency shall be considered to be a reference to a State’s lead agency established or designated under section 635(a)(10);
“(2) any reference in such sections to a local educational agency, educational service agency, or a State agency shall be considered to be a reference to an early intervention service provider under this part; and

“(3) any reference to the education of children with disabilities or the education of all children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

“SEC. 643. ALLOCATION OF FUNDS.

“(a) Reservation of Funds for Outlying Areas.—

“(1) In general.—From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve not more than 1 percent for payments to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs for assistance under this part.

“(2) Consolidation of Funds.—The provisions of Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds those areas receive under this part.

“(b) Payments to Indians.—
“(1) IN GENERAL.—The Secretary shall, subject to this subsection, make payments to the Secretary of the Interior to be distributed to tribes, tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or consortia of the above entities for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for such fiscal year.

“(2) ALLOCATION.—For each fiscal year, the Secretary of the Interior shall distribute the entire payment received under paragraph (1) by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation, as determined annually, divided by the total of such children served by all tribes, tribal organizations, or consortia.

“(3) INFORMATION.—To receive a payment under this subsection, the tribe, tribal organization,
or consortium shall submit such information to the Secretary of the Interior as is needed to determine the amounts to be distributed under paragraph (2).

“(4) USE OF FUNDS.—The funds received by a tribe, tribal organization, or consortium shall be used to assist States in child find, screening, and other procedures for the early identification of Indian children under 3 years of age and for parent training. Such funds may also be used to provide early intervention services in accordance with this part. Such activities may be carried out directly or through contracts or cooperative agreements with the Bureau of Indian Affairs, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

“(5) REPORTS.—To be eligible to receive a payment under paragraph (2), a tribe, tribal organization, or consortium shall make a biennial report to the Secretary of the Interior of activities undertaken under this subsection, including the number of con-
tracts and cooperative agreements entered into, the
number of infants and toddlers contacted and receiv-
ing services for each year, and the estimated number
of infants and toddlers needing services during the
2 years following the year in which the report is
made. The Secretary of the Interior shall include a
summary of this information on a biennial basis to
the Secretary of Education along with such other in-
formation as required under section 611(h)(3)(E).
The Secretary of Education may require any addi-
tional information from the Secretary of the Inter-
ior.

“(6) PROHIBITED USES OF FUNDS.—None of
the funds under this subsection may be used by the
Secretary of the Interior for administrative pur-
poses, including child count, and the provision of
technical assistance.

“(c) STATE ALLOTMENTS.—

“(1) IN GENERAL.—Except as provided in para-
graphs (2) and (3), from the funds remaining for
each fiscal year after the reservation and payments
under subsections (a), (b), and (e), the Secretary
shall first allot to each State an amount that bears
the same ratio to the amount of such remainder as
the number of infants and toddlers in the State
bears to the number of infants and toddlers in all States.

“(2) MINIMUM ALLOTMENTS.—Except as provided in paragraph (3), no State shall receive an amount under this section for any fiscal year that is less than the greater of—

“(A) $500,000.

“(3) RATABLE REDUCTION.—

“(A) IN GENERAL.—If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allotments to such States for such year.

“(B) ADDITIONAL FUNDS.—If additional funds become available for making payments under this subsection for a fiscal year, allotments that were reduced under subparagraph (A) shall be increased on the same basis the allotments were reduced.

“(4) DEFINITIONS.—In this subsection—
“(A) the terms ‘infants’ and ‘toddlers’ mean children under 3 years of age; and

“(B) the term ‘State’ means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

“(d) REALLOTMENT OF FUNDS.—If a State elects not to receive its allotment under subsection (c), the Secretary shall reallocate, among the remaining States, amounts from such State in accordance with such subsection.

“(e) RESERVATION FOR STATE INCENTIVE GRANTS.—

“(1) IN GENERAL.—For any fiscal year for which the amount appropriated pursuant to the authorization of appropriations under section 644 exceeds $460,000,000, the Secretary shall reserve 15 percent of such appropriated amount to provide grants to States that are carrying out the policy described in section 635(c) in order to facilitate the implementation of such policy.

“(2) AMOUNT OF GRANT.—

“(A) IN GENERAL.—Notwithstanding paragraphs (2) and (3) of subsection (c), the Secretary shall provide a grant to each State under paragraph (1) in an amount that bears the same ratio to the amount reserved under
such paragraph as the number of infants and
toddlers in the State bears to the number of in-
fants and toddlers in all States receiving grants
under such paragraph.

“(B) MAXIMUM AMOUNT.—No State shall
receive a grant under paragraph (1) for any fis-
cal year in an amount that is greater than 20
percent of the amount reserved under such
paragraph for the fiscal year.

“(3) CARRYOVER OF AMOUNTS.—

“(A) 1ST SUCCEEDING FISCAL YEAR.—
Pursuant to section 421(b) of the General Edu-
cation Provisions Act, amounts under a grant
provided under paragraph (1) that are not obli-
gated and expended prior to the beginning of
the first fiscal year succeeding the fiscal year
for which such amounts were appropriated shall
remain available for obligation and expenditure
during such first succeeding fiscal year.

“(B) 2D SUCCEEDING FISCAL YEAR.—
Amounts under a grant provided under para-
graph (1) that are not obligated and expended
prior to the beginning of the second fiscal year
succeeding the fiscal year for which such
amounts were appropriated shall be returned to
the Secretary and used to make grants to
States under section 633 (from their allotments
under this section) during such second suc-
ceeding fiscal year.

"SEC. 644. AUTHORIZATION OF APPROPRIATIONS.

"For the purpose of carrying out this part, there are
authorized to be appropriated such sums as may be nec-
essary for each of the fiscal years 2005 through 2010.