

**Individuals with Disabilities
Education Improvement Act:
Selected Highlights of the
2004 Reauthorization**

**US Department of Education
Office of Special Education Programs**



Effective Dates

302(a)-(b)

- Except as noted below, Parts A, B and C of the reauthorized IDEA take effect on July 1, 2005.
- 602(10)(A) and (C)-(F) (definition of a “highly qualified” special education teacher) took effect on Dec. 3, 2004.



Purposes of the Law

601(d)

- Ensure that all children with disabilities have available to them free appropriate public education (FAPE) that is designed to meet their unique needs and prepare them for post-secondary outcomes.
- Ensure that the rights of children with disabilities and their parents are protected.
- Assist states in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families.
- Ensure educators and parents have the necessary tools to improve educational results.
- Assess and ensure the effectiveness of efforts to educate children with disabilities.

Highlights:

New Initiatives



Flexibility to Serve Children Age 3-Kindergarten Under Part C 635(c)

- If a state adopts this option, parents may choose, when a child exits Part C at age three and is eligible for Section 619 services, to continue receiving Part C services until the child is eligible to enter kindergarten.
- States may implement these flexibility provisions as of July 1, 2005 (even if funding under 643(e) is not available), if included in states' FY 2005 Part C application.



Early Intervening Services

613(f)(1) and (3)-(4)

- Enables local education agencies (LEAs) to use up to 15 percent of the amount received under Part B (with some restrictions) to provide early intervening services; does not limit or create a right to FAPE.
- Services to K-12 grade (especially K-3) students not identified as needing special education or related services, but needing additional academic and behavioral supports to succeed in general education environment.
- Reports annually to the state education agency (SEA) on the number of students served and the number who subsequently receive special education and related services during the preceding two-year period.



Early Intervening Services (continued)

613(f)(2)(A)-(B) and (5)

- Includes LEA activities such as:
 - Professional development to enable teachers and school staff to deliver scientifically based academic instruction and behavioral interventions.
 - Scientifically based literacy instruction.
 - Instruction on the use of adaptive and instructional software.
- Provides educational and behavioral evaluations, services and supports.
- Coordinates services aligned with the Elementary and Secondary Education Act (ESEA) (if funds are used to supplement, and not supplant).



Multi-Year IEP Demonstration

614(d)(5)

- The secretary of Education can grant up to 15 states the option to offer comprehensive multi-year individualized education programs (IEPs) of not more than three years in length.
- States must submit proposals to participate.
- Participation in the multi-year IEP demonstration is optional for parents.
- Other statutory requirements for the multi-year IEPs include certain required elements and an annual review procedure.
- Two years after the enactment of the IDEA, the secretary submits annual reports to Congress regarding the effectiveness of the program, including the reduction of paperwork and non instructional time for teachers, and improving positive outcomes for children with disabilities.



Paperwork Reduction – Pilot Program

609

- Provides an opportunity for states to identify ways to reduce paperwork burdens and other administrative duties to increase the time and resources available for instruction.
- Authorizes the secretary to grant waivers of statutory or regulatory requirements related to Part B for up to four years for not more than 15 states.
- States submit proposals that list the federal and state requirements that the states propose to waive.
- The secretary reports annually to Congress, beginning two years after the enactment, on the effectiveness of the waivers granted.



Model Forms

617(e)

- Requires the secretary, not later than the date of publication of the final regulations, to publish and widely disseminate to states, local educational agencies, and parent and community training and information centers, the model forms for:
 - IEPs;
 - Individualized family service plans (IFSPs);
 - The notice of procedural safeguards; and
 - Prior written notice.



State Administration: Rulemaking

608

- All state rules, regulations and policies must conform to the purposes of IDEA.
- States must identify, in writing, to LEAs and the secretary, any rule, regulation or policy that is state-imposed and not required by IDEA.
- State shall minimize the number of rules, regulations and policies that LEAs in the state are subject to under IDEA.



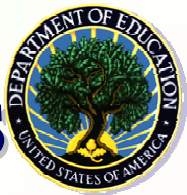
Parents



Definition of a “Parent”

602(23)

- “Parent” means:
 - Natural parent;
 - Adoptive parent;
 - Foster parent;
 - Guardian;
 - An individual acting in place of a natural or adoptive parent with whom the child lives, or an individual who is legally responsible for the child’s welfare; or a
 - Surrogate.



Procedures for Surrogate Parents

615(b)(2)(A)(i), (ii) and 602(11)

- New additions:
 - The judge overseeing the welfare of a child who is a ward of the state may appoint a surrogate parent for the child.
 - LEAs must appoint surrogate parents for unaccompanied homeless youths.
 - The term “homeless children” has the definition of that used in Section 725 of the *McKinney-Vento Homeless Assistance Act*.
 - The State shall make reasonable efforts to appoint a surrogate within 30 days after the determination that the child needs one.



Parent Organization

602(24), 671(a)(2)

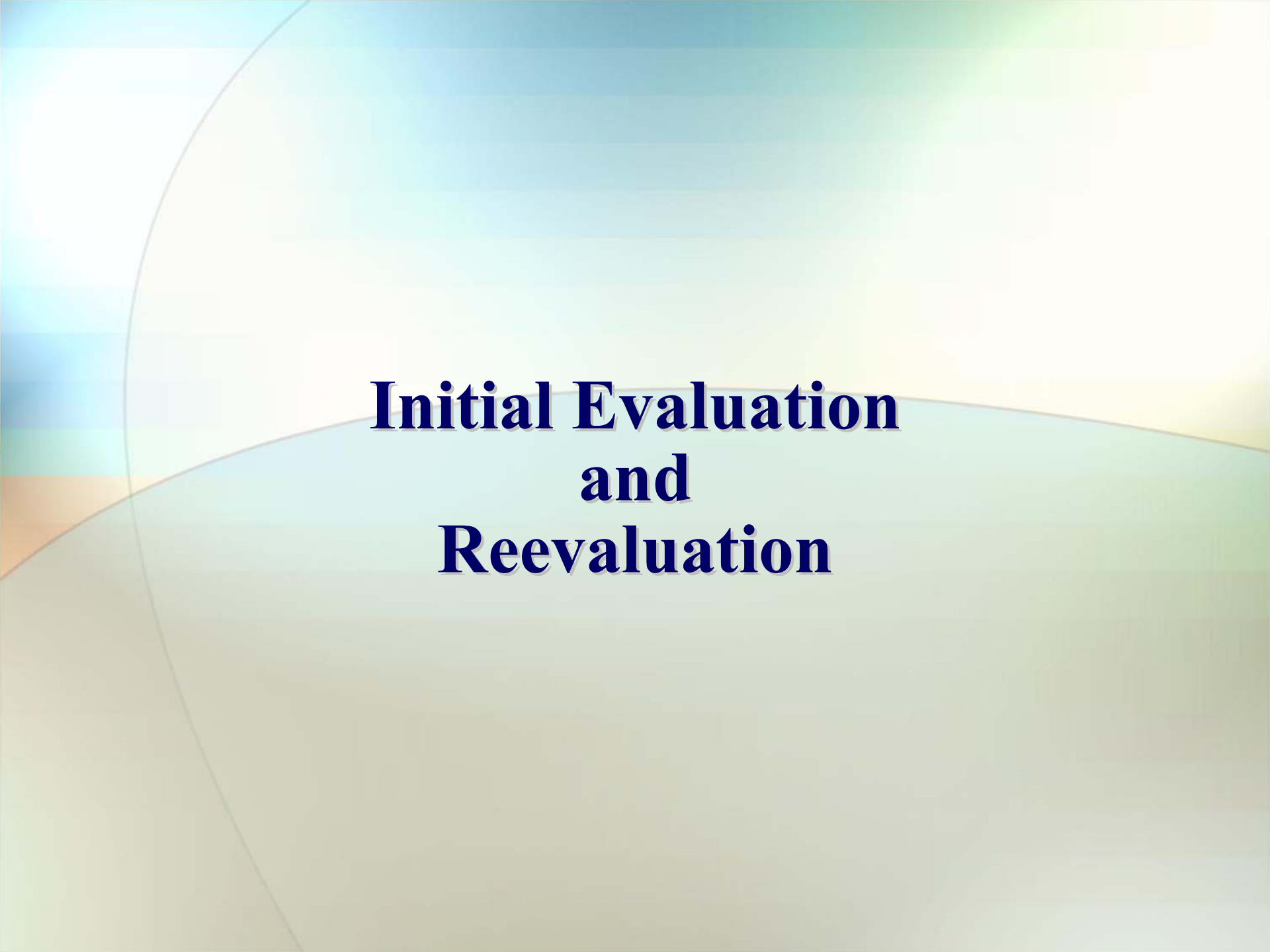
- A private nonprofit organization (other than an institution of higher education) that has a board of directors, including:
 - The majority of whom are parents of children with disabilities, ages birth through age 26;
 - Individuals working in the fields of special education, related services and early intervention;
 - Individuals with disabilities; and
 - Parent and professional members broadly representative of the population to be served.

Parent Training and Information Centers

602(25), 671 and 672



- The secretary may award grants to parent organizations to support parent training and information centers.
- Board of directors includes
 - A majority of parents of children with disabilities ages birth through 26
 - parent and professional members of which are broadly representative of the population to be served, including low-income parents and parents of limited English proficient children.



Initial Evaluation and Reevaluation



Parental Consent

614(a)(1)(D)(i)(II), (ii), (iii)

- An agency responsible for FAPE must seek parental consent prior to evaluation or providing special education services.
- An agency must make reasonable attempts to get consent of parents of children who are wards of the state.
- If a parent refuses consent:
 - For evaluation: the agency may use due process to obtain authority for evaluation.
 - For services: the agency may NOT use due process in seeking to provide services; there is no fault to the public agency, and no IEP meeting is required.



Definition of “Ward of the State”

602(36)

- Revised definition includes:
 - A foster child, but not foster children, with foster parents who meet the definition of “parent.”
 - A child who, as determined by the state where the child resides, is a ward of the state.
 - A child in the custody of a public child welfare agency.



Procedures For Initial Evaluation

614(a)(1)(C)(i) and (ii)

- There is a default 60-day timeframe from receipt of parental consent for initial evaluation until the initial evaluation is conducted, unless the state establishes its own timeframe within which an evaluation must be conducted.
- The timeframe does not apply if:
 - The child attends a new school district after consent is given but before the evaluation is conducted; or
 - The parent fails to, or repeatedly refuses to, produce the child for evaluation.



Specific Learning Disabilities

614(b)(6)(A)-(B)

- When determining whether a child has a specific learning disability:
 - The LEA is not required to consider a severe discrepancy between achievement and intellectual ability.
 - The LEA may use a process that determines if a child responds to scientific, research-based intervention as part of the evaluation.

Evaluations Before Change In Eligibility: The Exception



614(c)(5)(B)

- An evaluation is not required if termination of eligibility is:
 - Due to graduation with a regular high school diploma; or
 - Because the child exceeds the age of eligibility.
- LEAs must provide the child with a summary of his or her:
 - Academic achievement; and
 - Functional performance, including recommendations on how to assist the child in meeting postsecondary goals.



Initial Evaluations and Reevaluations

614(a)(2)(B), (c)(1)(B)(ii)

- Evaluations and reevaluations include identification of data needed to determine present levels of academic achievement and related developmental needs of the child.
- Reevaluations occur:
 - Not more frequently than once a year, unless the parent and the LEA agree otherwise.
 - At least once every three years, unless the parent and the LEA agree a reevaluation is unnecessary.

Individualized Education Programs

(IEPs)



IEP Team and Attendance

614(d)(1)(B)(ii), (iii) and 614(d)(1)(C)

- IEP team must include:
 - The parents of a child with a disability;
 - Not less than one special education teacher;
 - Not less than one regular education teacher;
 - A representative of the LEA;
 - An individual who can interpret the evaluation results; and
 - Others at the discretion of the parent or agency.



IEP Team and Attendance (continued)

614(d)(1)(B)(ii), (iii) and 614(d)(1)(C)

- An IEP team member may be excused when:
 - The parent and agency agree, due to the fact that the member's area is not being discussed;
 - The parent consents in writing, and the agency also consents; and
 - The member submits, in writing to the parent and team, his or her input into the development of the IEP prior to the meeting.

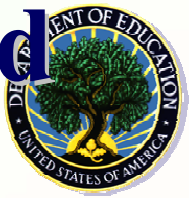


Revisions to IEPs

614(c)(1)(B), (d)(1)(A)(i)(I)(cc), (II)

- IEPs must include:
 - Present levels of academic achievement and functional performance; and
 - A statement of measurable annual goals, including both academic and functional goals.
- The requirement for short-term objectives or benchmarks has been deleted except for children who take alternate assessments aligned to alternate achievement standards.

Child's Progress Toward Goals and Reporting Progress



614(d)(1)(A)(i)(III)

- IEPs are required to include:
 - A description of how progress toward meeting annual goals will be measured; and
 - A description of when progress reports will be provided to parents.
- Reporting may include:
 - Quarterly reports; or
 - Other periodic reports concurrent with issuance of report cards.



IEP Services

614(d)(1)(A)(i)(IV)

- Adds to the statement of special education and related services and supplementary aids and services, for the child or on behalf of the child – that they be based on peer-reviewed research, to the extent practicable; and
- Modifies the provisions of this section to refer to the child's involvement and progress in the general education curriculum.



Assessments in the IEP

614(d)(1)(A)(i)(VI)

- A statement of any individual appropriate accommodation that is necessary to measure:
 - Academic achievement and functional performance on statewide and districtwide assessments.
- If the IEP team determines that the child will take an alternate assessment, a statement must be provided that indicates why the IEP team selected a particular alternate assessment, and why it is appropriate for the child.



IEP: Secondary Transition

614(d)(1)(A)(i)(VIII)

- Beginning with the IEP to be in effect when the child turns 16 and then updated annually thereafter, the IEP must include:
 - Appropriate measurable postsecondary goals based on age-appropriate transition assessments related to:
 - Training;
 - Education;
 - Employment; and
 - Independent living skills, where appropriate.
 - Transition services, including courses of study
 - Age of majority information

Changes, Consolidation and Amendments to the IEP



614(d)(3)(D), (E), and (F)

- Changes to an IEP can be made without a team meeting if parents and LEA agree and subsequently develop a written document to amend or modify the current IEP.
- LEAs shall encourage the consolidation of reevaluation meetings and other IEP meetings.
- Amendments to IEPs can be made by either the IEP team or the parents and the LEA as described above by amendment rather than a redrafting of the entire document.
 - A parent may request a copy of the revised IEP (with amendments incorporated).

Program for Children Who Transfer School Districts



614(d)(2)(C)

- Within-state transfers:
 - The new LEA provides FAPE, including services consistent with the previous district's IEP, in consultation with parents, until it adopts previous IEP or develops and implements a new IEP.
- Between-states transfers:
 - The new LEA provides FAPE, including services consistent with the previous IEP, in consultation with parents, until an evaluation, if needed, and a new IEP.
- LEAs will take reasonable steps to promptly obtain and transfer student records.



Statewide and Districtwide Assessment



Participation in Assessments

612(a)(16)(A)-(C)(i)-(ii)

- All children with disabilities are included in general state and districtwide assessment programs:
 - Including those described under ESEA.
 - With appropriate accommodations and alternate assessments where necessary and as indicated in the IEPs.
- States have guidelines for the provision of accommodations.
- Alternates are aligned with challenging academic content standards and challenging student academic achievement standards, or measure achievement against alternate academic achievement standards.



Participation in Assessments

612(a)(16)(D)(i)-(iii)

- SEAs must report (or LEAs if a districtwide assessment) the numbers of children with disabilities who participate in:
 - Regular assessments.
 - Regular assessments with accommodations.
 - Alternate assessments that are aligned to challenging academic content standards and challenging student academic achievement standards.
 - Alternate assessments that are aligned to alternate academic achievement standards, if applicable under ESEA.



Participation in Assessments

614(d)(1)(A)(i)(I)(cc), (VI)(aa) and (VI)(bb)(BB)

- IEPs must include accommodations to measure academic achievement and functional performance on state and districtwide assessments.
- IEPs must state why a particular alternate assessment is appropriate for the child.
- IEPs must include benchmarks, or short-term objectives, for children who take alternate assessments aligned to alternate achievement standards.



Participation in Assessments

602(35), 612(a)(16)(E), 612(a)(23)(A)-(B) and
613(a)(6)(A)-(B)

- Universal design principles must be used in developing assessments.
 - The design and delivery of products and services must be usable by a wide range of functional capabilities.
- Both SEAs and LEAs use the National Instructional Materials Accessibility Standard to provide instructional materials to persons who are blind or otherwise print disabled.

Procedural Safeguards

NOTE:

Statute uses the term “complaint” for due process hearing request.

Slides will refer to due process hearing request (DPHR).



Procedural Safeguards Notice

615(d)

- Notice must be given only once a year except at:
 - Initial referral;
 - Parental request for evaluation;
 - Initial filing of a DPHR; or
 - At the request of the parent.
- Permits LEAs to post notice on their Web sites.
- Adds content to the procedural safeguards notice related to timeframes for filing due process hearing requests; the opportunity for resolution process; mediation; and timeframes for lawsuits.

Subject Matter and Timeline For Hearing



615(b)(6) and (f)(3)(B)-(D)

- Any party has the right to file a DPHR.
- Party requesting the hearing cannot raise issues not identified in the due process hearing notice unless the other party agrees.
- There is a two-year limit from when a parent or agency knew or should have known about the alleged violation (unless state law provides a different time limit for DPHR under IDEA).
- Time limits do not apply if a parent cannot file due to:
 - Specific misrepresentations that the LEA had resolved the issue; and
 - The LEA withheld information it was required under IDEA to provide to the parent.



Due Process Hearing Request Notice

615(c)(2)

- The request is sufficient unless the receiver notifies the hearing officer (HO) and complainant in writing within 15 days of receipt.
- Due process hearing notice can be amended under the following conditions:
 - With written consent of the other party and that party is given the opportunity to resolve at the resolution session; or
 - Permission is granted by the HO to amend, but not within five days of the hearing.
 - The LEA sends prior written notice about issues in DPHR within 10 days of receipt if not already provided.
- Receiver responds within 10 days if request is insufficient and HO determines sufficiency within five days.



Resolution Sessions

615(f)(1)(B)

- Within 15 days of DPHR notice, LEA must convene a meeting with:
 - Parents;
 - Relevant IEP team members; and
 - An agency representative with decision-making authority.
 - May not include an LEA attorney unless parent's attorney is present.
- Meeting is for discussing the facts and resolution of DPHR issues.
- Parties may agree, in writing, to waive such meeting or to use mediation in lieu of the resolution session.



Written Settlement Agreement

615(f)(1)(B)(iii-iv)

- If resolution is reached to resolve the DPHR at a resolution session, the parties execute a legally binding agreement (written settlement agreement) that is:
 - Signed by both the parents and a representative of the agency; and
 - Enforceable in any state court of competent jurisdiction.
- If parties execute a written settlement agreement, a party may void the agreement within three business days of the agreement's execution.



Person Conducting the Hearing

615(f)(3)(A)

- Hearing Officer:
 - Cannot be an employee of the SEA or LEA involved in education or in the care of child, or have personal or professional interests that conflict with objectivity.
 - Must possess knowledge of and the ability to understand IDEA, federal and state regulations pertaining to IDEA, and legal interpretations of IDEA by federal and state courts.
 - Must possess the knowledge and the ability to conduct hearings and to render and write decisions in accordance with appropriate, standard legal practice.



Hearing Officer Determinations

615(f)(3)(E)

- Are based on substantive grounds of whether the child received FAPE.
- Procedural violations rise to level of denial of FAPE only if they:
 - Impeded the child's right to FAPE;
 - Impeded the parents' participation in the decision-making process regarding the provision of FAPE to their child; and
 - Caused a loss of educational services.



Right to Bring Civil Action: Limits Awards to Prevailing Party

615(i)(2)(B) and 615(i)(3)(B)(i)(II)

- There is a 90-day time limit from final state HO decision to the appeal to court unless the state has another explicit time limit.
- Public agencies may recover their attorneys' fees from parents' attorneys if the case was:
 - Frivolous;
 - Unreasonable; or
 - Without foundation.



Right to Bring Civil Action (continued)

615(i)(3)(B)(i)(III) and 615(i)(3)(D)(iii)

- Public agencies may recover attorneys' fees against the parents' attorney or the parents if the case was presented for any improper purpose such as to:
 - Harass;
 - Cause unnecessary delay; or
 - To needlessly increase the cost of litigation.
- Attorneys' fees for "resolution sessions" are not recoverable.



Mediation Agreement

615(e)(1), (2)(F)

- Mediation is available to resolve any matter, even before requesting a due process hearing (DPH).
- Mediation agreement must be in writing and signed by the parent and agency representative.
- Agreement is legally binding and enforceable by any state court.
- Mediation process is confidential and may NOT be used as evidence in subsequent legal action.

Procedural Safeguards:

Discipline Provisions



Manifestation Determination

615(k)(1)(E)

- Within 10 school days of the decision to change placement due to discipline, the LEA, parent and relevant IEP team members shall review all relevant information to determine if conduct was:
 - Caused by, or was in direct and substantial relationship to, the child's disability; or
 - A direct result of the LEA's failure to implement the IEP.



Special Circumstances

615(k)(1)(G)

- A school is permitted to remove a child with a disability to an alternative setting for up to 45 school days for:
 - Weapons and drug offenses; or
 - Serious bodily injury upon another person.
- “Serious bodily injury” is an injury that involves:
 - Substantial risk of death;
 - Extreme physical pain;
 - Protracted and obvious disfigurement; or
 - Protracted loss or impairment of function of a bodily member, organ or mental faculty.

Protections for Children Not yet Eligible

615(k)(5)(B)



- An LEA is deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action, a:
 - Parent expressed concern in writing to an administrator or teacher;
 - Parent had requested evaluation of the child; or
 - Teacher or other school or LEA personnel expressed concerns about a pattern of behavior to administrator.



Placement During Appeals

615(k)(4)

- A child remains in an interim alternative educational setting until:
 - The appeal is resolved;
 - Expiration of the suspension or expulsion; or
 - Whichever comes first.

Private Schools

Children Enrolled by Parents in Private Schools



612(a)(10)(A)(i - iii)

- SEAs or LEAs shall provide consultation about the complete child find process, proportionate share, the consultation process, and services.
- Child find is designed to ensure equitable participation.
- Services may be rendered on the premises of private (including religious) schools.
- State and local funds supplement, not supplant, proportionate share.
- LEAs report the number of children with disabilities and the number of those served.

Children Enrolled by Parents in Private Schools (continued)



612(a)(10)(A)(iii)(III), (iii)(V), (iv), (v)

- The consultation includes how the LEA will operate throughout the school year to ensure meaningful participation.
- If the LEA disagrees with private schools on services, it must provide a written explanation of reasons.
- Written affirmation must be provided by private school officials to the LEA that states that the consultation was meaningful and timely.
- Private schools may complain to the SEA if the consultation was not meaningful and timely, or that the LEA did not give due consideration to their views.
- If private schools are dissatisfied with the SEA's response, they may appeal to the secretary.

Personnel



Personnel Qualifications

612(a)(14) and 613(a)(3)

- CSPD eliminated under Part B.
- Qualifications aligned with NCLB.
 - Ensures content knowledge and skills.
 - Special educators must be “highly qualified.”
- Failure does not create right of action or prevent a complaint to SEAs.
- LEAs (613(a)(3)) must ensure that requirements are met.

“Highly Qualified” and “Core Academic Subjects”

602(10) and 602(4)



- “Highly qualified” aligned with NCLB.
- Requirements for special educators:
 - Basic;
 - Must teach to alternate achievement standards; and
 - Must teach multiple subjects.
- Core academic subjects are aligned with NCLB:
English, reading or language arts; mathematics; science;
foreign languages; civics and government; economics;
the arts; history; and geography.

State Eligibility and Funding



State Eligibility: Plan

612(a)

- States must submit a plan that provides assurances to the secretary that the state has, in effect, policies and procedures to ensure that the state meets each of the conditions in Section 612(a).



Performance Goals and Indicators

612(a)(15)(A)(ii)-(iv), (C)

- Aligned with NCLB.
- Performance goals for children with disabilities are the same as the state's definition of adequate yearly progress (AYP).
- Address graduation and drop-out rates.
- Are consistent, to the extent appropriate, with any other goals and standards for children in the state.
- Require annual progress reporting to the secretary and to the public.

Overidentification and Disproportionality

612(a)(24) and 618(d)



- Policies and procedures are designed to prevent overidentification or disproportionality by race and ethnicity, and examine state and local data to identify disproportionality:
 - Across disability categories;
 - In placements; and
 - In disciplinary actions.
- The state must provide for the review and revision of policies, procedures and practices and the reporting on such review.
- Requires LEAs to reserve the maximum amount for early intervening services, particularly to serve children in overidentified groups.

Prohibition on Mandatory Medication



612(a)(25)

- SEAs and LEAs are prohibited from requiring medication as a condition of:
 - Attending school;
 - Receiving services under IDEA; and
 - Receiving an evaluation.
- School personnel are permitted to consult and share with parents and guardians their classroom-based observations regarding:
 - Academic and functional performance;
 - Behavior in the classroom or in school; and
 - The need for an evaluation for special education or related services.



State Advisory Panel

612(a)(21)(B)(i), (v), (x)

- Revisions to panel membership must include:
 - Parents of children with disabilities, birth through age 26.
 - State and local education officials, including those responsible for carrying out the *McKinney-Vento Homeless Assistance Act*.
 - A representative from the state child welfare agency responsible for foster care.



State-Level Activities: Administration

611(e)

- Each state may reserve the greater of the maximum amount the state was eligible to reserve for state administration in 2004 or \$800,000.
- Administrative funds are adjusted by the rate of inflation.
- Must provide certification to the secretary that methods of ensuring services are in place before the state can expend funds under Section 611(e).
- “Sliver grants” (capacity-building grants) are eliminated; however, states can use administrative funds for capacity-building.



Adjustment to State Fiscal Effort

613(j)

- For any state that reimburses all LEAs 100 percent of the non-federal share of the costs of special education and related services from state revenue, the state may receive maintenance of effort (MOE) relief of not more than 50 percent of the increase in a state's section 611 allotment from the prior fiscal year.
- SEAs may NOT reduce their levels of effort if any LEA would, as a result, receive less than 100 percent of the amount necessary to ensure FAPE from the combination of federal and state funds.

Adjustment to State Fiscal Effort

(continued)

613(j)



- The secretary can prohibit an SEA from exercising this authority if the state is unable to establish, maintain or oversee programs of FAPE, or if the state needs assistance, intervention or substantial intervention under Section 616(d)(2)(A).
- If a state exercises authority, it shall use an equal amount of state funds to support activities authorized by the ESEA or teacher higher education programs.
- States using this authority must report to the secretary on the amount reduced and the activities that were funded.

Adjustment to Local Fiscal Effort

(continued)

613(a)(2)(C), 613(f)(1) and 616(f)



- SEAs may reduce local fiscal efforts up to 50 percent of the increase in federal allocation as long as an equal amount of local funds are used for activities authorized by ESEA.
- SEAs must prohibit LEAs from using this authority if LEAs are unable to establish or maintain FAPE or are under Section 616, SEA has taken enforcement action.
- LEAs' IDEA funds used for early intervening services under Section 613(f) count toward the maximum amount of expenditure that LEAs may reduce.



LEA Risk Pool

611(e)(3) and 613(a)(4)(A)(iii)

- SEAs:
 - Use 10 percent of the amount they reserve for state-level activities to establish a high-cost fund.
 - Small states, 10.5 percent.
 - If there are no funds for high-cost children, the numbers are nine percent and 9.5 percent, respectively.
- LEAs:
 - 613(a)(4)(A)(iii) allows cost or risk sharing funds, consortia or cooperatives to provide high-cost special education and related services.

Monitoring and Enforcement

Note: Section 642 states that, consistent with Part C, sections 616, 617 and 618 apply to Part C.



Monitoring Priorities

616(a)(3)

- The secretary shall monitor states and require each state to monitor its LEAs using quantifiable indicators to measure performance in the:
 - Provision of FAPE in the LRE.
 - State's exercise of its general supervisory authority.
 - Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.



State Performance Plans

616(b)(1)-(2)(A)-(B)

- A performance plan must be in place, within one year of enactment, that evaluates efforts to implement IDEA and shows how the state will improve performance.
- The state performance plans must:
 - Be reviewed by the state at least every six years;
 - Be approved by the secretary; and
 - Establish measurable and rigorous targets for priority areas.



State Performance Plan Reporting

616(b)(2)(C)

- Plans must establish measurable and rigorous targets.
- States must annually collect data in these priority areas to analyze the performance of each LEA.
- Each state must report annually to the secretary on its performance under its performance plan.
- States must report annually to the public on the performance of each LEA on the targets in the state's performance plan.

Approval Process for Performance Plans

616(c)



- Plan is approved, unless the secretary determines (in writing), within 120 days of receipt, that the plan does not meet requirements.
- If the plan does not meet requirements, the secretary shall notify the state, citing the specific provisions not met, and requesting additional information, if necessary.
 - The state responds to the secretary in 30 days; the secretary will approve or disapprove within 30 days of receipt of the revision or by the end of the above-mentioned 120-day period, whichever is later.

Secretary's Review and Determination

616(d)



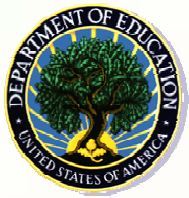
- Secretary will review annual state performance reports and determine whether the state:
 - Meets the requirements;
 - Needs assistance with implementation;
 - Needs intervention with implementation; or
 - Needs substantial intervention with implementation.
- Secretary gives notice and the opportunity for a hearing before deciding that a state “needs intervention” or needs “substantial intervention.”



Enforcement

616(e)

- Specifies types of enforcement the secretary will impose if a state:
 - “Needs assistance” for two consecutive years;
 - “Needs intervention” for three consecutive years; or
 - “Needs substantial intervention” at any time.
- New provisions:
 - Permits the secretary to suspend payments if state is subject to withholding action.
 - Requires the secretary to report to Congress on the enforcement actions taken.
- Incorporates prior law provisions regarding the nature of withholding actions and judicial review.



State Enforcement

616(f)

- States must prohibit LEAs from reducing maintenance of effort under Section 613(a)(2)(C) for any fiscal year in which the state finds that the LEA is not meeting the:
 - Requirements of Part B; or
 - Targets in the state performance plan.



New Data Requirements

618(a)

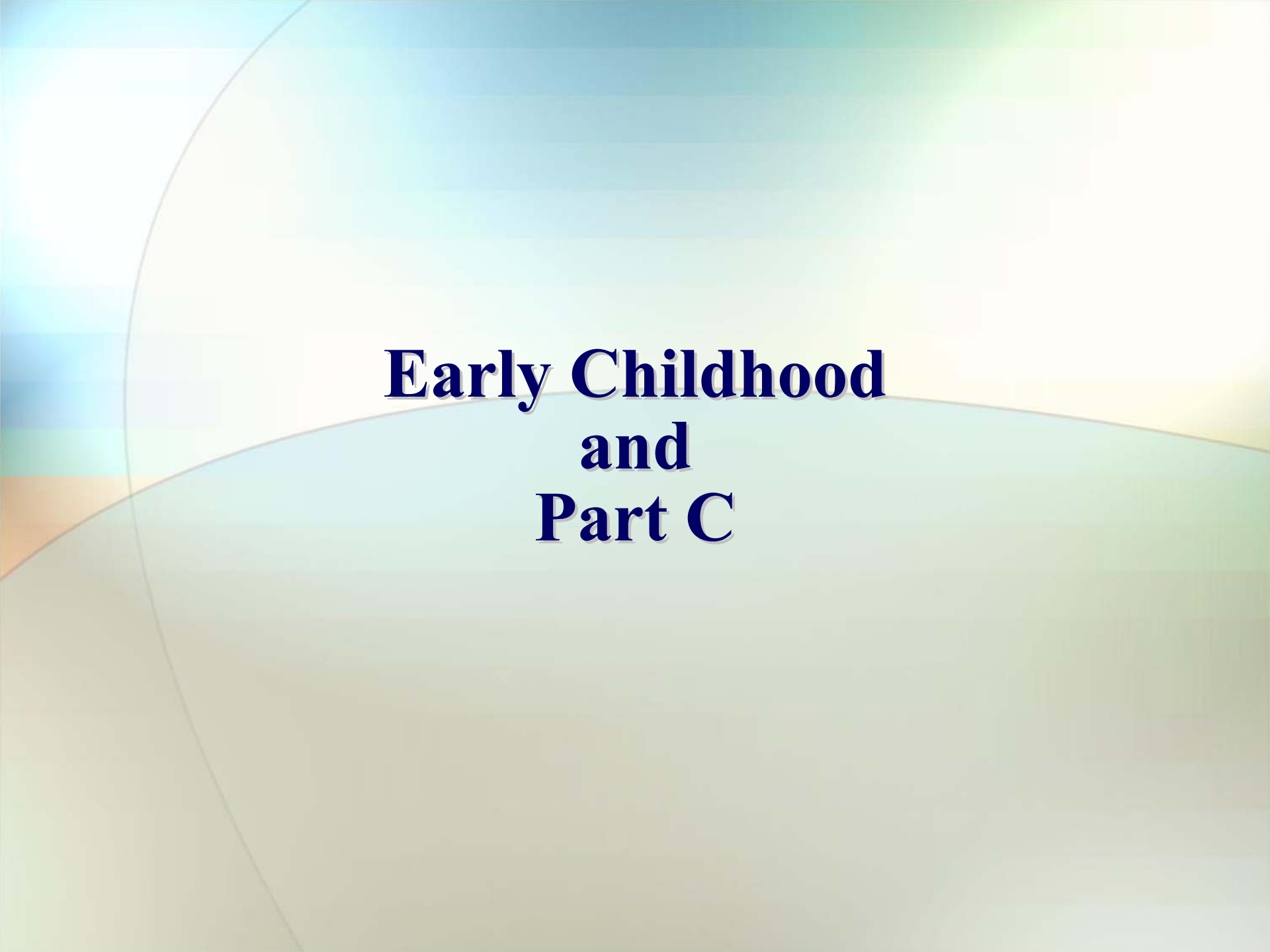
- A state's 3-21 child count data is reported by:
 - Race;
 - Ethnicity;
 - Limited English proficiency status;
 - Gender; and
 - Disability category.
- States must report numbers and percentages in each disaggregated category.



New Data Requirements

618(a)

- Adds categories of reporting for numbers of:
 - Interim alternative educational settings and acts precipitating those removals.
 - Due process hearings filed and the numbers conducted.
 - Disciplinary hearings under 615(k) and placement changes resulting from those hearings.
 - Incidences, types and durations of disciplinary actions, including suspensions of one day or more.
 - Mediations held and settlement agreements reached.



**Early Childhood
and
Part C**

Part C: Definitions of “Infants and Toddlers”



632(5)(B) and 635(c)(5)

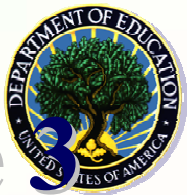
- “Infants and toddlers” may include children eligible for 619 services who previously received Part C services, until the child is eligible to enter or enters kindergarten or elementary school, provided that the programs include:
 - An educational component that promotes school readiness; and
 - Written notification to the parents regarding options under Part C and Section 619.
- Children whose parents consent to continuing to receive Part C services after age three under this option are not entitled to FAPE.



Part C Flexibility to Serve Children Age 3 up to Elementary School-Age

612(a)(1)(C), 619(f)(5), 632(5)(B)(ii)(II), 635(c), and
638(4)

- If a state lead agency adopts this option, parents may choose, when the child exits Part C at age three and is eligible for Section 619 services, to continue receiving Part C services until the child is eligible to enter kindergarten.
- States may implement these flexibility provisions as of July 1, 2005 (even if funding under 643(e) is not available) if included in state's FY 2005 Part C application.



Part B Funds for Part C After Age 3

611(e)(1)(A), 611(e)(7), 611(f)(3) and 619(f)(5)

- Funds set aside for administration or reallocation under 611 or state-level activities under 619 may be used to provide Part C services to section 619-eligible children receiving Part C services, until they are eligible to enter (or enter) kindergarten.
- State-level set-aside funds under 619 may be used to continue service coordination or case management for families receiving Part C services.



Part C: Eligibility

634(1), 635(a)(1)-(2)

- State shall provide assurances to the secretary that it has adopted a policy to ensure early intervention services, including services to homeless children and their families.
- Statewide system must include a rigorous definition of “developmental delay.”
- Services must be based on scientifically-based research, to the extent practicable.



Part C: Eligibility (continued)

635(a)(6), (8) and (16)

- Public awareness policies must be targeted to parents of premature infants and infants with other physical risk factors.
- Personnel preparation policies must also include transition and may include social and emotional development of young children.
- A state's natural environments policies must include justification language.

Part C: CSPD Mandates and Qualified Personnel



635(a)(8) and 632(4)(F)

- Mandates the development of strategies to specifically train personnel to:
 - Recruit and retain early education service providers;
 - Promote preparation of service providers; and
 - Train personnel to coordinate transition services.
- Adds the option of training personnel on the social and emotional development of young children.
- Qualified personnel include:
 - Registered dietitians; and
 - Vision specialists, including ophthalmologists and optometrists.



Part C: IFSP and Statewide Systems

636(a)(3), (d)(3)-(4)

- IFSPs must include:
 - A description of the appropriate transition services.
 - A statement of measurable results or outcomes, including pre-literacy and language skills, as developmentally appropriate.
 - Services that are based on peer-reviewed research, to the extent practicable.



Part C: IFSP and Statewide Systems

(continued)

637(a)(2) and (6)

- The application must include a:
 - Certification to the secretary that establishes financial responsibility for the provision of services.
 - Description of referral policies regarding children involved in substantial cases of abuse or neglect or who are affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.



Part C: IFSP and Statewide Systems

(continued)

637(a)(9)(A) and (10)

- The application must include:
 - A policy that transition meetings take place for children potentially eligible under Part B, with approval of the family, no later than 90 days and no earlier than nine months before the child's third birthday, and that transition plans for all children include, as appropriate, steps to exit from the program.
 - A description of the efforts to promote collaboration with Head Start, child care and early education programs.



Part C: Methods of Ensuring Services

640(b)

- Requires a statute, regulation, interagency agreement or other appropriate written method to ensure provision of, and financial responsibility for, early intervention services.
- Other appropriate written methods must be submitted in the state's application for the secretary's approval.
- Services must be consistent with the requirements of Section 635 and the application pursuant to Section 637.
- Requires that the agreement be consistent with the terms and conditions of the agreement under Section 612(a)(12), where appropriate.



SICC and FICC

641(b) and 644

- Requires that the state interagency coordinating council (SICC) have a representative from:
 - A state Medicaid agency.
 - The office of the coordinator of education of homeless children and youths.
 - A state foster care agency.
 - A mental health agency responsible for children's mental health.
- The authority for the Federal Interagency Coordinating Council (FICC) has been eliminated.

Summary



- Discussed many of the changes in the reauthorized IDEA:
 - State-level and local-level activities and information;
 - Private schools;
 - Personnel;
 - Statewide and districtwide assessment;
 - Initial evaluation and reevaluation;
 - Individualized education programs (IEPs);
 - Procedural safeguards, including discipline;
 - Monitoring and enforcement; and
 - Early childhood and Part C.



Assistance in Implementation

- Technical Assistance and Dissemination Network.
- Parent training and information centers.
- Summer Institute, Aug. 11-12, 2005.
- One-pagers on OSERS' Web site (available 3/31/05).
- Model forms (IEP, IFSP, Part B and Part C notice forms).
- More to come after regulations are issued.