

NAPAS National Association of Protection & Advocacy Systems

Side by Side of HR 1350 Parts A and B of the IDEA

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Notes: This document is intended as an overview only – an attempt to cover those proposed changes expected to be of greatest interest to parents/advocates. We do not guarantee to have covered every possible change proposed in the bill. Language that is not in quotes is a paraphrase of the bill or statutory language

Bold = In the “Bill Language” column it shows a change from current law. In the “Current Law” column, it is used for comparison against the change proposed in the bill.

Bold Italics = Areas of especial concern or questions.

Current Law	Bill Language
<p>601(C)(4) Findings:</p> <p>“However, the implementation of this Act has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.”</p>	<p>Removed</p>
<p>601(C)(4)(D) “...providing appropriate special education and related services and aids and supports in the regular classroom to such children, whenever appropriate;”</p>	<p>Removed</p>
<p>601(C)(4)(E)”...supporting high-quality, intensive professional development for all personnel who work with such children in order to ensure that they have the skills and knowledge necessary to enable them --</p> <p>(i) to meet developmental goals and, to the maximum extent possible, those challenging expectations that have been established for all children; and</p> <p>(ii) to be prepared to lead productive, independent, adult lives, to the maximum extent possible; “</p>	<p>Now 601(C)(4)(D)</p> <p>“supporting high-quality, intensive professional development for all personnel who work with children with disabilities.”</p> <p>Remainder removed</p>
<p>601 (C)(9) (A) “The opportunity for full participation in awards for grants and contracts; boards of organizations receiving funds under this Act; and peer review panels; and training of professionals in the area of special education by minority individuals, organizations, and historically black colleges and universities is essential if we are to obtain greater success in the education of minority children with disabilities.”</p>	<p>Removed this entire topic</p> <p>(Much of the demographic info. has been changed in the findings section as well.)</p>
<p>602(3) Definitions</p> <p>(B) Child Aged 3-9: The term 'child with a disability' for a child aged 3 through 9 may, at the discretion of the State and the local educational agency, include a child...”</p>	<p>602(3)(B)</p> <p>“The term 'child with a disability' for a child aged 3 through 9, or any subset of that age range may at the discretion of the State and the local educational agency, include a child...”</p>

N/A	<p>602(9) Added:</p> <p>“Highly qualified—the term “highly qualified” has the same meaning as that term in section 9101 of the Elementary and Secondary Education Act of 1965.”</p>
<p>602 (21) “PARENT TRAINING AND INFORMATION CENTER- The term 'parent training and information center' means a center assisted under section 682 or 683.”</p>	<p>602(22) Parent and Community Training and Information Center--</p> <p>The term “Parent and Community Training and Information Center” means a center assisted under section 671.”</p> <p>Note: That section is in Part D, which is not discussed here.</p>
<p>602(30) TRANSITION SERVICES- The term 'transition services' means a coordinated set of activities for a student with a disability that --</p> <p>(A) is designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;</p> <p>(B) is based upon the individual student's needs, taking into account the student's preferences and interests; and</p> <p>(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.</p>	<p>602(31) TRANSITION SERVICES- The term 'transition services' means a coordinated set of activities for a child with a disability that –</p> <p>(A) is designed within an results-oriented process, that is focused on improving the academic and developmental achievement of the child with a disability to facilitate the move from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;</p> <p>(B) is based upon the individual student's needs, taking into account the student's skills, preferences and interests; and</p> <p>(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.</p>
<p>SEC. 604. ABROGATION OF STATE SOVEREIGN IMMUNITY.</p>	<p><i>Not included in bill. Does this mean it is</i></p>

<p>(a) IN GENERAL- A State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act.</p> <p>(b) REMEDIES- In a suit against a State for a violation of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as those remedies are available for such a violation in the suit against any public entity other than a State.</p> <p>(c) EFFECTIVE DATE- Subsections (a) and (b) apply with respect to violations that occur in whole or part after the date of the enactment of the Education of the Handicapped Act Amendments of 1990.</p>	<p><i>excluded? The bill skips from sec. 603 to 605 without comment.</i></p>
<p>607 (a) “PUBLIC COMMENT PERIOD- The Secretary shall provide a public comment period of at least 90 days on any regulation proposed under part B or part C of this Act on which an opportunity for public comment is otherwise required by law.”</p>	<p>Per 607 (C) public comment period is now 30 days</p>
<p>607 (b)</p> <p>“...(b) PROTECTIONS PROVIDED TO CHILDREN- The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this Act that would procedurally or substantively lessen the protections provided to children with disabilities under this Act, as embodied in regulations in effect on July 20, 1983 (particularly as such protections relate to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation.</p> <p>(c) POLICY LETTERS AND STATEMENTS- The Secretary may not, through policy letters or other statements, establish a rule that is</p>	<p>New 607 (b) adds: “...Protections provided to children—The Secretary may not implement or publish in final form, any regulation prescribed pursuant to this Act that would—(1) violate or contradict any provision of this Act; and (2) would procedurally or substantively lessen the protections provided to children with disabilities under this Act, as embodied in regulations in effect on July 20, 1983...”</p> <p>(The rest is the same as current law.)</p> <p>Adds the same language about “violate or contradict...” to the provision about policy letters.</p>

<p>required for compliance with, and eligibility under, this part without following the requirements of section 553 of title 5, United States Code.</p> <p>(d) CORRESPONDENCE FROM DEPARTMENT OF EDUCATION DESCRIBING INTERPRETATIONS OF THIS PART-</p> <p>(1) IN GENERAL- The Secretary shall, on a quarterly basis, publish in the Federal Register, and widely disseminate to interested entities through various additional forms of communication, a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of this Act or the regulations implemented pursuant to this Act.</p> <p>(2) ADDITIONAL INFORMATION- For each item of correspondence published in a list under paragraph (1), the Secretary shall identify the topic addressed by the correspondence and shall include such other summary information as the Secretary determines to be appropriate.</p>	
<p>607(e) “ISSUES OF NATIONAL SIGNIFICANCE- If the Secretary receives a written request regarding a policy, question, or interpretation under part B of this Act, and determines that it raises an issue of general interest or applicability of national significance to the implementation of part B, the Secretary shall --</p> <p>(1) include a statement to that effect in any written response;</p> <p>(2) widely disseminate that response to State educational agencies, local educational agencies, parent and advocacy organizations, and other</p>	<p>Removes: Under provision on Correspondence from Department of Education... removes 607(e) “Issues of National Significance.”</p>

<p>interested organizations, subject to applicable laws relating to confidentiality of information; and</p> <p>(3) not later than one year after the date on which the Secretary responds to the written request, issue written guidance on such policy, question, or interpretation through such means as the Secretary determines to be appropriate and consistent with law, such as a policy memorandum, notice of interpretation, or notice of proposed rulemaking. “</p>	
<p>607(f) “EXPLANATION- Any written response by the Secretary under subsection (e) regarding a policy, question, or interpretation under part B of this Act shall include an explanation that the written response --</p> <p>(1) is provided as informal guidance and is not legally binding; and</p> <p>(2) represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented. “</p>	<p>607(f)(3)</p> <p>“... represents only the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented and is not persuasive or binding as to any other set of facts.”</p> <p><i>This greatly limits the use of the letters of interpretation.</i></p>
<p>No Sec. 608 or 609</p>	<p>Adds a sec. 608 (State administration) and 609 (GAO Review; Report)</p> <p>The first section deals with rulemaking and the state’s requirement to identify which requirements that belong to the state and are in addition to federal requirements.</p> <p>The GAO report has to do with studying paperwork burden.</p>
<p>Sec. 611 Grants to States</p>	<p>Adds a 611(a)(3) Limitation on grants to states: the number of children with disabilities ages 3-17 may not exceed 12% number of all children of that age in the state.</p> <p><i>Currently some states serve substantially more</i></p>

	<p><i>than 12% so this cap is hurtful to them.</i></p> <p>Also appears to remove funding for the “freely associated states” formerly in 611(b) (e.g. Guam, American Samoa)</p>
611(d) Allocations to States	<p><i>Appears to dramatically alter the funding formula. Subsection (e)PERMANENT FORMULA appears to be missing from the bill.</i></p>
611(f) State Level Activities	<p>Changes the state set aside (Part B funds that the state may retain for state department purposes) – separating out the amount for monitoring, enforcement and complaint investigation from a second group of activities, including the voluntary binding arbitration program, compliance with NCLB requirements, pre-referral intervention programs, and paperwork reduction among other activities. State may also retain an additional 4% to create risk- sharing funds to assist LEAs with high cost students.</p> <p><i>All state admin. is together in the statute .</i></p>
611(g) Subgrants to LEAs	<p>Specifies that subgrants shall be made to public charter schools that operate as LEAs as well as LEAs.</p>
<p>611(g)(3) “FORMER CHAPTER 1 STATE AGENCIES-</p> <p>(A) To the extent necessary, the State --</p> <p>(i) shall use funds that are available under subsection (f)(1)(A) to ensure that each State agency that received fiscal year 1994 funds under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 receives, from the combination of funds under subsection (f)(1)(A) and funds provided under paragraph (1) of this subsection, an amount equal to --</p> <p>(I) the number of children with disabilities, aged 6 through 21, to whom the agency was providing special education and related</p>	<p>Removes 611(g)(3) “Former Chapter 1 State Agencies”</p>

<p>services on December 1 of the fiscal year for which the funds were appropriated, subject to the limitation in subparagraph (B); multiplied by</p> <p>(II) the per-child amount provided under such subpart for fiscal year 1994; and</p> <p>(ii) may use those funds to ensure that each local educational agency that received fiscal year 1994 funds under that subpart for children who had transferred from a State-operated or State-supported school or program assisted under that subpart receives, from the combination of funds available under subsection (f)(1)(A) and funds provided under paragraph (1) of this subsection, an amount for each such child, aged 3 through 21 to whom the agency was providing special education and related services on December 1 of the fiscal year for which the funds were appropriated, equal to the per-child amount the agency received under that subpart for fiscal year 1994.</p> <p>(B) The number of children counted under subparagraph (A)(i)(I) shall not exceed the number of children aged 3 through 21 for whom the agency received fiscal year 1994 funds under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965...”</p>	
<p>611(i) Secretary of the Interior</p>	<p>Changes reporting requirement (reporting by tribes to Secretary of Interior) from biennial to annual</p>
<p>612 (a) “IN GENERAL- A State is eligible for assistance under this part for a fiscal year if the State demonstrates to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets each of the following conditions:”</p>	<p>Changes bolded language to “provides assurances to”</p> <p><i>Weaker language</i></p>
<p>612(a)(10) (A) Children placed in private schools by their parents --</p>	<p>612(a)(10)(A)(i)(I) – (IV)</p> <p>Adds language regarding counts of number of children with disabilities in the private schools in the district, for the LEA’s use in determining</p>

	the appropriate balance of federal funds received and services provided to private school students.
612(a)(10) (A) Children placed in private schools by their parents --	612(a)(10)(A)(ii) Adds a time requirement to private school child find – same time requirements as for public school in that LEA.
612(a)(10)(C) PAYMENT FOR EDUCATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS WITHOUT CONSENT OF OR REFERRAL BY THE PUBLIC AGENCY- (iv) EXCEPTION- Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement may not be reduced or denied for failure to provide such notice if -- (I) the parent is illiterate and cannot write in English; (II) compliance with clause (iii)(I) would likely result in physical or serious emotional harm to the child; (III) the school prevented the parent from providing such notice; or (IV) the parents had not received notice, pursuant to section 615 , of the notice requirement in clause (iii)(I). ...”	612(a)(10)(C)(iv) (parental notice to district provision) The parent’s obligation to provide notice to the district may “ in the discretion of a court or hearing officer , be reduced or denied for failure to provide such notice if the parents is illiterate or cannot write English. The requirement currently does not allow a hearing officer’s discretion. Either the parent was excused from the notice requirement or not. Also removes “(II) compliance with clause (iii)(I) would likely result in physical or serious emotional harm to the child;” which was another reason for the parental notice requirement to be waived. If the parent fails to provide proper notice and this is not excused, the parent may not receive reimbursement for the tuition.
612(a)(12) “(12) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES--..”	Entire Subsection removed. (Subsection dealt with interagency agreements)
612(a)(14) – (22) Comprehensive System of Personnel Development (CSPD) et seq.	Completely revised and replaced CSPD with “Personnel Standards” (14)(B)(i) (“ensure that special education teachers who teach cores academic subjects are highly qualified in those subjects”) <i>Hence, “Highly qualified” applies to IDEA as well as NCLB.</i>

	<p>“Performance Goals and Indicators” (15) (“... the performance goals and indicators must be the same as the state’s definition of Adequate Yearly Progress”) also the SEA must now report on progress annually instead of biennially;</p> <p>“Participation in Assessments” (16) (adds the requirement that inclusion in assessments applies to NCLB assessments);</p> <p>“Early Dispute Resolution” (17) (The State must have a system in effect which <i>may</i> include IEP facilitators, training of school personnel in conflict resolution, and parental communication skills and which <i>shall</i> include mediation and voluntary binding arbitration.)</p>
<p>613(a)(2)(C) LOCAL EDUCATIONAL AGENCY ELIGIBILITY</p> <p>(C) TREATMENT OF FEDERAL FUNDS IN CERTAIN FISCAL YEARS-</p> <p>(i) Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which amounts appropriated to carry out section 611 exceeds \$4,100,000,000, a local educational agency may treat as local funds, for the purpose of such clauses, up to 20 percent of the amount of funds it receives under this part that exceeds the amount it received under this part for the previous fiscal year.</p> <p>(ii) Notwithstanding clause (i), if a State educational agency determines that a local educational agency is not meeting the requirements of this part, the State educational agency may prohibit the local educational agency from treating funds received under this part as local funds under clause (i) for any fiscal year, only if it is authorized to do so by the State constitution or a State statute. ”</p>	<p>613(a)(2)(C)</p> <p>amends (ii) to add that an LEA may use up to 20% of excess funds to provide additional funding to ESEA programs (for children not necessarily IDEA eligible) including student achievement, literacy, teacher quality, school safety and other programs.</p> <p>Adds a (iii) – if an LEA is unable to provide FAPE to all students, the SEA shall prohibit the use of the excess funds as described above, unless the SEA is prevented from doing this by state constitution or statute.</p>
<p>613(a)(4) “PERMISSIVE USE OF FUNDS- Notwithstanding paragraph (2)(A) or section 612(a)(18)(B) (relating to commingled funds), funds provided to the local educational agency under this part may be used for</p>	<p>613(a)(4) <i>Allows LEA to use IDEA funds for: (1) services and aids that also benefit non-disabled students</i> <i>(2) pre-referral services (reading and behavior services for children not IDEA eligible)</i></p>

<p>the following activities:</p> <p>(A) SERVICES AND AIDS THAT ALSO BENEFIT NONDISABLED CHILDREN- For the costs of special education and related services and supplementary aids and services provided in a regular class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if one or more nondisabled children benefit from such services.</p> <p>(B) INTEGRATED AND COORDINATED SERVICES SYSTEM- To develop and implement a fully integrated and coordinated services system in accordance with subsection (f). “</p>	<p><i>(3) services for high cost students</i> <i>(4) case management and administration (e.g. for technology for data collection),</i> <i>(5) supplemental educational services provided for under NCLB for IDEA eligible students (eg. For excess costs for IDEA students to receive these services</i></p> <p><i>(This provision is distinct from the ESEA related spending above.)</i></p>
<p>613 – No such provisions</p>	<p>Adds 613(f) Prereferral Services</p> <p>An LEA may not use more than 15% of its (regular Part B funds) to create to develop and implement pre-referral educational support services for students in kindergarten through Grade 12, who have not been identified as needing sp.ed. or related services but who need additional academic or behavioral support to succeed in an a general ed. environment. “Nothing in this subsection shall be construed to either limit or create a right to a free appropriate public education under this part. “</p> <p>Note: does not appear to put any time limit on this service or mandatory referral to IDEA eligibility at any time.</p> <p>Removes: Coordinated Services System and School Based Improvement Plan</p>

<p>Sec 614(a)(1)(C) Evaluations: Parent Consent; Initial Evaluations.</p> <p>“(i) IN GENERAL- The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602(3)(A) or 602(3)(B) shall obtain an informed consent from the parent of such child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.”</p>	<p>Sec 614(a)(1)(D)</p> <p>“(i) IN GENERAL- The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602(3)(A) or 602(3)(B) shall seek to obtain an informed consent from the parent of such child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.”</p> <p>Adds (ii) ABSENCE OF CONSENT: The LEA may pursue due process procedures if the parent refuses consent for initial evaluation and does not have to provide the evaluation or IEP if the parent refuses consent or does not respond.</p> <p>Also adds Sec 614(a)(1)(B) A parent, SEA, LEA or other state agency may initiate a request for an initial evaluation to determine whether a child is a child with a disability.</p>
<p>Sec. 614(a)(2) Re-evaluations</p> <p>“(2) REEVALUATIONS- A local educational agency shall ensure that a reevaluation of each child with a disability is conducted --</p> <p>(A) if conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years; and</p> <p>(B) in accordance with subsections (b) and (c). “</p>	<p>Sec. 614(a)(2)</p> <p>Changes wording: Re-evaluation shall occur not more than once per year unless parent and LEA agree otherwise, and at least once every 3 years unless parent and LEA agree that a re-evaluation is unnecessary.</p>
<p>614(b)(2) Conduct of Evaluation</p> <p>(2) CONDUCT OF EVALUATION- In conducting the evaluation, the local</p>	<p>614(b)(2) Conduct of Evaluation</p> <p>(2) CONDUCT OF EVALUATION- In conducting the evaluation, the local</p>

<p>educational agency shall --</p> <p>(A) use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities;</p>	<p>educational agency shall --</p> <p>(A) use multiple up to date measures and assessments to gather relevant functional and developmental information, including information provided by the parent, that may assist in determining:</p> <ul style="list-style-type: none"> (i) whether the child is a child with a disability (ii) and the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities; and ...”
<p>614(b)(3)(A)</p> <p>“(3) ADDITIONAL REQUIREMENTS- Each local educational agency shall ensure that --</p> <p>(A) tests and other evaluation materials used to assess a child under this section --</p> <ul style="list-style-type: none"> (i) are selected and administered so as not to be discriminatory on a racial or cultural basis; and (ii) are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; and <p>(B) any standardized tests that are given to the child --</p> <ul style="list-style-type: none"> (i) have been validated for the specific purpose for which they are used; (ii) are administered by trained and knowledgeable personnel; and (iii) are administered in accordance with any 	<p>614(b)(3)(A)</p> <p>“(3) ADDITIONAL REQUIREMENTS- Each local educational agency shall ensure that --</p> <p>(A) assessments and other evaluation measures used to assess a child under this section --</p> <ul style="list-style-type: none"> (i) are selected and administered so as not to be discriminatory on a racial or cultural basis; and (ii) are provided and administered <i>to the extent practicable</i> in the language or form most likely to yield accurate academic and developmental data: (iii) are used for the designed purposes for which the assessments or measured are valid and reliable; (iv) are administered by trained and knowledgeable personnel; and (v) are administered in accordance with any instructions provided by the producer of such tests;

<p>instructions provided by the producer of such tests;</p> <p>(C) the child is assessed in all areas of suspected disability; and</p> <p>(D) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided. “</p>	<p>(B) the child is assessed in all areas for which there is a reasonable basis to believe that a disability may exist; and</p> <p>(C) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided. “</p>
<p>614(b)(4)</p> <p>“(4) DETERMINATION OF ELIGIBILITY- Upon completion of administration of tests and other evaluation materials --</p> <p>(A) the determination of whether the child is a child with a disability as defined in section 602(3) shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and</p> <p>(B) a copy of the evaluation report and the documentation of determination of eligibility will be given to the parent.</p> <p>(5) SPECIAL RULE FOR ELIGIBILITY DETERMINATION- In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency. “</p>	<p>614(b)(4)</p> <p>“(4) DETERMINATION OF ELIGIBILITY- Upon completion of administration of tests and other evaluation materials --</p> <p>(A) the determination of whether the child is a child with a disability as defined in section 602(3) and the educational needs of the child shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and...”</p> <p>(B) a copy of the evaluation report and the documentation of determination of eligibility will be given to the parent.</p> <p>(5) DETERMINATION OF ELIGIBILITY AND EDUCATIONAL NEED— In making a determination of eligibility, under Paragraph 4(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is – (A) a lack of scientifically based instruction practices and programs that contain the essential components of reading instruction (as that term is defined in Sec. 1208(3) of the ESEA of 1965; (B) Lack of instruction in math; or (C) Limited English proficiency.”</p> <p>(6) SPECIFIC LEARNING DISABILITIES— (A) IN GENERAL: -- Notwithstanding</p>

	<p>section 607 of this Act, or any other provision of law, when determining whether a child has a specific learning disability as defined under this Act, the LEA shall not be required to take into consideration whether the child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation or mathematical reasoning. (B) ADDITIONAL AUTHORITY— In determining whether a child has a specific learning disability, a LEA may use a process which determines if a child responds to scientific, research based intervention.”</p>
<p>614(d)</p> <p>“(d) INDIVIDUALIZED EDUCATION PROGRAMS-</p> <p>(1) DEFINITIONS- As used in this title:</p> <p>(A) INDIVIDUALIZED EDUCATION PROGRAM- The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes --</p> <p>(i) a statement of the child's present levels of educational performance, including –</p> <p>(I) how the child's disability affects the child's involvement and progress in the general curriculum; or</p> <p>(II) for preschool children, as appropriate, how the disability</p>	<p>614(d)</p> <p>“(d) INDIVIDUALIZED EDUCATION PROGRAMS-</p> <p>(1) DEFINITIONS- As used in this title:</p> <p>(A) INDIVIDUALIZED EDUCATION PROGRAM- The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes --</p> <p>(I)a statement of the child's present levels of academic achievement and developmental needs , including –</p> <p>(aa) how the child's disability affects the child's involvement and progress in the general curriculum; or</p> <p>(bb) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;</p>

<p>affects the child's participation in appropriate activities;</p> <p>(ii) a statement of measurable annual goals, including benchmarks or short-term objectives, related to --</p> <p>(I) meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum; and</p> <p>(II) meeting each of the child's other educational needs that result from the child's disability;</p> <p>(iii) a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child --(I) to advance appropriately toward attaining the annual goals;</p> <p>(II) to be involved and progress in the general curriculum in accordance with clause (i) and to participate in extracurricular and other nonacademic activities; and</p> <p>(III) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph;</p> <p>(iv) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in clause (iii)</p> <p>(v) (I) a statement of any individual modifications in the administration of State or districtwide assessments of student achievement that are needed in order for the child to participate in such assessment; and ...”</p>	<p>(ii) a statement of measurable annual goals, designed to --</p> <p>(aa) enable the child to be involved in and progress in the general curriculum; and</p> <p>(bb) meet the child's other educational needs that result from the child's disability;</p> <p>(iii) a statement of the special education and related services and supplementary aids and services, <i>based on peer reviewed research</i>, and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child –</p> <p>(aa) to advance appropriately toward attaining the annual goals;</p> <p>(bb) to be involved in and progress in the general curriculum in accordance with sub clause (i) and to participate in extracurricular and other nonacademic activities; and</p> <p>(III) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph;</p> <p>(iv) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in clause (iii);</p> <p>(v) (aa) a statement of any individual <i>reasonable and appropriate</i> modifications in the administration of State or districtwide assessments of student achievement that are necessary to measure the academic achievement of the child consistent with section 612(a)(16(A)(ii); and ...”</p> <p><i>This language (“reasonable and appropriate”) puts an ADA/Section 504 style standard into the IDEA. Including a different standard, without more information, could be</i></p>
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	<i>problematic or at the very least create confusion.</i>
614(d) No such provision	614(d)(1)(A)(ii) Adds this section just before 614(d)(1)(B)...(page 116) “ RULE OF CONSTRUCTION—Nothing in this subparagraph shall be construed to require—(I) that additional information be included in a child’s IEP beyond what is explicitly required in this sub-paragraph; and (II) the IEP team to include information under one component of a child’s IEP that is already contained under another component of such IEP.”
614(d)(1)(B) IEP Team No such provision	614(d)(1)(B) IEP Team (i) Allows regular ed. teacher to be exempt from discussions not related to the child’s participation in the regular ed. environment. Also only one regular ed teacher per team is required..
No such provision No such provision	Adds 614(d)(3)(D) IEP Team Attendance (page 121) Parent and LEA may jointly excuse any member of the IEP Team from attending all or part of an IEP meeting if they agree that attendance is not necessary. They may also obtain input from that person prior to the meeting. Adds 614(d)(3)(E) AGREEMENT ON MEETING

<p>No such provision</p> <p>No such provision</p>	<p>Parent and LEA may agree to change IEP after the annual IEP meeting using written documents rather than reconvening IEP team in person.</p> <p>Adds 614(d)(3)(F) CONSOLIDATION OF IEP TEAM MEETINGS</p> <p>To the extent possible, the LEA shall encourage the consolidation of IEP meetings.</p> <p>Adds 614(d)(3)(G) AMENDMENTS</p> <p>Changes to the IEP may be made either by the entire IEP team or by amending the IEP rather than redrafting the entire IEP (see 614(d)(3)(E))</p>
	<p>Adds 614(d)(7)(f) (p.128) ALTERNATE MEANS OF MEETING PARTICIPATION</p> <p>When conducting IEP meetings, parent and LEA may agree to use alternative means of part. Such as video conferences and conference calls. “</p>
<p>No such provision</p>	<p>Adds 614(d)(5) MULTI – YEAR IEP (page 124)</p> <p>LEA may offer to the parent the <i>option</i> of developing a comprehensive multi year IEP not to exceed 3 years in duration, designed to cover the natural transition points for the child (see definition of “natural transition points,” page 126).</p> <p>With the consent of the parent, the IEP Team shall develop an IEP which includes measurable goals coinciding with the natural</p>

	<p>transition points, and measurable annual goals.</p> <p>There will then be a "streamlined annual review" that determines current levels of progress and whether annual goals are being achieved. The IEP will be amended as appropriate.</p> <p>If the IEP team determines that the child is not making sufficient progress, the LEA shall ensure that the IEP team reviews the IEP within 30 calendar days. At the request of the parent, the IEP team shall conduct a multi year IEP instead of the streamlined annual review.</p> <p><i>This provision is troubling for a number of reasons. Some of which include: 1) this is too long a period to go without a comprehensive review, especially for young children and, 2) without short term objectives, it is very difficult to assess annual progress.</i></p>
<p>(615)(c) CONTENT OF PRIOR WRITTEN NOTICE- The notice required by subsection (b)(3) shall include --</p> <ul style="list-style-type: none"> (1) a description of the action proposed or refused by the agency; (2) an explanation of why the agency proposes or refuses to take the action; (3) a description of any other options that the agency considered and the reasons why those options were rejected; (4) a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action; (5) a description of any other factors that are relevant to the agency's proposal or refusal; 	<p>(615)(c) CONTENT OF PRIOR WRITTEN NOTICE- The notice required by subsection (b)(3) shall include --</p> <ul style="list-style-type: none"> (1) a description of the action proposed or refused by the agency; (2) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action; (3) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained (4) sources for parents to contact to

<p>(6) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and</p> <p>(7) sources for parents to contact to obtain assistance in understanding the provisions of this part.</p>	<p>obtain assistance in understanding the provisions of this part.</p> <p>Removes “a description of any other factors that are relevant to the agency's proposal or refusal” and “a description of any other options that the agency considered and the reasons why those options were rejected.”</p> <p>Adds: <i>“(2) RULE OF CONSTRUCTION- The failure to provide notice under subsection (b)(3) shall not, in and of itself, result in a finding by a hearing officer at a due process hearing conducted pursuant to subsection (f), that the local educational agency's proposed action was not appropriate.”</i></p>
<p>615 (d) “PROCEDURAL SAFEGUARDS NOTICE-</p> <p>“(1) IN GENERAL- A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents, at a minimum –</p> <p>(A) upon initial referral for evaluation;</p> <p>(B) upon each notification of an individualized education program meeting and upon reevaluation of the child; and</p> <p>C) upon registration of a complaint under subsection (b)(6).</p> <p>(2) CONTENTS- The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents, unless it clearly is not feasible to do so, and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to --</p> <p>(A) independent educational evaluation;</p>	<p>615 (d) PROCEDURAL SAFEGUARDS NOTICE-</p> <p>“(1) IN GENERAL- A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents, at a minimum –</p> <p>(A) upon initial referral or parental request for evaluation;</p> <p>(B) Annually at the beginning of the school year;</p> <p>(C) Upon written request by a parent.”</p> <p>Removes: “ upon each notification of an individualized education program meeting and upon reevaluation of the child; and upon registration of a complaint under subsection (b)(6). “</p> <p>“(2) CONTENTS- The procedural safeguards notice shall include a description of the procedural safeguards, written in the native language of the parents, unless it clearly is not feasible to do so, and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to --</p>

<p>(B) prior written notice;</p> <p>(C) parental consent;</p> <p>(D) access to educational records;</p> <p>(E) opportunity to present complaints;</p> <p>(F) the child's placement during pendency of due process proceedings;</p> <p>(G) procedures for students who are subject to placement in an interim alternative educational setting; “</p> <p>(H) requirements for unilateral placement by parents of children in private schools at public expense;</p> <p>(I) mediation;</p> <p>(J) due process hearings, including requirements for disclosure of evaluation results and recommendations;</p> <p>(K) State-level appeals (if applicable in that State);</p> <p>(L) civil actions; and</p> <p>(M) attorneys' fees. “</p>	<p>(A) independent educational evaluation;</p> <p>(B) prior written notice;</p> <p>(C) parental consent;</p> <p>(D) access to educational records;</p> <p>(E) opportunity to present complaints;</p> <p>(F) the child's placement during pendency of due process proceedings;</p> <p>(G) procedures for students who are subject to placement in an interim alternative educational setting;</p> <p>(H) requirements for unilateral placement by parents of children in private schools at public expense;</p> <p>(I) mediation, early dispute resolution and voluntary binding arbitration;</p> <p>(II) binding arbitration;</p> <p>(J) due process hearings, including requirements for disclosure of evaluation results and recommendations;</p> <p>(K) State-level appeals (if applicable in that State);</p> <p>(L) civil actions; and</p> <p>(M) attorneys' fees.”</p>
<p>615(e) Mediation</p> <p>No Voluntary Binding Arbitration option</p>	<p>615(e) Mediation and Voluntary Binding Arbitration</p> <p>Adds:</p> <p>(1)(A) Any SEA or LEA that receives</p>

	<p>assistance must provide the opportunity for mediation to parties to disputes, even those arising prior to the filing of a request for due process.</p> <p>(I)(B)(ii) Must offer parents the opportunity to meet with a disinterested party to learn about mediation but can no longer make them do it.</p> <p>(2) Voluntary Binding Arbitration: SEA shall ensure that procedures are established and implemented that allow this option when a hearing is requested. Must be voluntarily and knowingly agreed to in writing by the parties, conducted by a qualified and impartial arbitrator, and the LEA shall ensure that parents who chose to use it understand that it is final (unless there is fraud or misconduct on the part of the arbitrator) and in lieu of a due process hearing. Parties jointly agree on an arbitrator from a list provided by the SEA, conducted per state law on arbitration, or Revised Uniform Arbitration Act if no state law, arbitration shall be scheduled in a timely manner and in a location convenient to the parties.</p>
<p>615(f)(3)(C)</p> <p>No such provision</p>	<p>615(f)(3)(C)</p> <p>Adds "...Decision made by a hearing office must be based on a determination of whether or not the child received a free appropriate public education.</p> <p><i>I presume this requirement prevents wins on "purely procedural matters." However Rowley already requires an analysis under both the procedural and substantive prongs.</i></p>
<p>615(g)</p> <p>"(g) APPEAL- If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision</p>	<p>615(g)</p> <p><i>This provision has been eliminated</i></p>

<p>to the State educational agency. Such agency shall conduct an impartial review of such decision. The officer conducting such review shall make an independent decision upon completion of such review.</p>	
<p>615(h)</p> <p>“...(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities..”</p>	<p>615(h)(1)</p> <p>...(1) the right to be represented by counsel and by non-attorney advocates and to be accompanied and advised by individuals with special knowledge or training with respect to the problems of children with disabilities..”</p> <p><i>Resolves the problem presented in In re Arons?</i></p> <p>Also, in (g) the transcript is no longer sent to the appeals panel, presumably because the panel has been eliminated.</p>
<p>615(i) ADMINISTRATIVE PROCEDURES-</p> <p>(1) IN GENERAL-</p> <p>(A) DECISION MADE IN HEARING- A decision made in a hearing conducted pursuant to subsection (f) or (k) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2) of this subsection.</p> <p>(B) DECISION MADE AT APPEAL- A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2) of this subsection.</p> <p>(2) RIGHT TO BRING CIVIL ACTION-</p> <p>(A) IN GENERAL- Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an</p>	<p>Just says “(i)” is amended by re-designating it has subsection “(h)” (<i>presumably because the SEA appeal was eliminated?</i>)</p> <p><i>So, does this mean there are no changes to the civil action/attorney fee provisions?</i></p>

appeal under [subsection \(g\)](#), and any party aggrieved by the findings and decision under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(B) ADDITIONAL REQUIREMENTS- In any action brought under this paragraph, the court -

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(i) shall receive the records of the administrative proceedings;

(ii) shall hear additional evidence at the request of a party; and

(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(3) JURISDICTION OF DISTRICT COURTS; ATTORNEYS' FEES-

(A) IN GENERAL- The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

(B) AWARD OF ATTORNEYS' FEES- In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.

(C) DETERMINATION OF AMOUNT OF ATTORNEYS' FEES- Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(D) PROHIBITION OF ATTORNEYS' FEES AND RELATED COSTS FOR CERTAIN

SERVICES-

(i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if --

(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

(II) the offer is not accepted within 10 days;
and

(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in [subsection \(e\)](#) that is conducted prior to the filing of a complaint under [subsection \(b\)\(6\)](#) or [\(k\)](#) of this section.

(E) EXCEPTION TO PROHIBITION ON ATTORNEYS' FEES AND RELATED COSTS- Notwithstanding [subparagraph \(D\)](#), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(F) REDUCTION IN AMOUNT OF ATTORNEYS' FEES- Except as provided in [subparagraph \(G\)](#), whenever the court finds that --

(i) the parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds

<p>the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;</p> <p>(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or</p> <p>(iv) the attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with subsection (b)(7); the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.</p> <p>(G) EXCEPTION TO REDUCTION IN AMOUNT OF ATTORNEYS' FEES- The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section. “</p>	
<p>DISCIPLINE</p> <p>615(k)</p> <p>“...(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING-</p> <p>(1) AUTHORITY OF SCHOOL PERSONNEL-</p> <p>(A) School personnel under this section may order a change in the placement of a child with a disability --</p> <p>(i) to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities); and</p> <p>(ii) to an appropriate interim alternative educational setting for the same amount of time</p>	<p>615(k) is re -designated as 615(j)</p> <p><i>Substantial changes</i></p> <p>615(j)</p> <p>“...(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING-</p> <p>(1) AUTHORITY OF SCHOOL PERSONNEL-</p> <p>(A) School personnel under this section may order a change in the placement of a child with a disability <i>who violates a code of student conduct</i> to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities);”</p>

<p>that a child without a disability would be subject to discipline, but for not more than 45 days if --</p> <p>(I) the child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency; or</p> <p>(II) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.</p> <p>(B) Either before or not later than 10 days after taking a disciplinary action described in subparagraph (A) --</p> <p>(i) if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the suspension described in subparagraph (A), the agency shall convene an IEP meeting to develop an assessment plan to address that behavior; or</p> <p>(ii) if the child already has a behavioral intervention plan, the IEP Team shall review the plan and modify it, as necessary, to address the behavior. ...”</p>	<p>children without disabilities);”</p> <p>Adds: “(B) ADDITIONAL AUTHORITY—Subject to subparagraph (C) and notwithstanding any other provision of this Act, school personnel under this section may order a change in the placement of a child with a disability who violates a code of student conduct policy to an appropriate interim alternative educational setting (selected to as to enable the child to continue to participate in the gen. education curriculum, although in another setting, and to <i>progress toward meeting</i> the goals set out in the child’s IEP), <i>except that the change in placement may last beyond 45 school days</i> (to the extent such alternative and such duration would be applied to students without disabilities) <i>if required by State law or regulation for the violation in question, to ensure the safety and appropriate educational atmosphere in the schools under the jurisdiction of the LEA...</i>”</p> <p>?? <i>Removes drug, weapon and dangerousness provisions and replaces it with the ability to place a child in an IAES for a violation of the school code.</i></p> <p>?? <i>Allows unilateral decision-making by district to remove child with dangerous behavior- no hearing requirement prior to removal. Thus, no expedited hearing.</i></p> <p>?? <i>Changes services in IAES from “and to continue to receive those services and modifications, including those described in the child’s current IEP, that will enable the child to meet the goals set out in that IEP;”(615(k)(3)(B)(i)) to “and to progress toward meeting the goals set out in the child’s IEP)”</i></p> <p>?? <i>Removes requirement to provide FBA/BIP and IEP team review.</i></p> <p>?? <i>Removes requirement for Manifestation Determination Review</i></p> <p>?? <i>There is no longer any required review of the appropriateness of the</i></p>
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	<p><i>program placement or whether or not services in the IEP are being provided. IEP team may review it but doesn't have or have to change its decision because the child's BIP was not implemented, etc.</i></p> <p>?? <i>State law may be amended to allow IAES to extend indefinitely.</i></p> <p>?? <i>While parent appeals, child remains in IAES instead of classroom setting.</i></p> <p>?? <i>Does not clearly indicate that the child will return to regular classroom at the end of 45 day placement (or longer if provided by state law)</i></p> <p>Questions:</p> <p><i>The hearing provision 615(f)(1)(A) says that one has a right to hearing etc. to appeal decisions made in (k). These need to be changed to (j) or those rights do not apply.</i></p> <p><i>How does the 30 day "resolution" provision impact the timeline? If a child is sent to IAES for 45 days and parent files a due process hearing request, may the district spend 30 of those days "trying to resolve the problem" with stay put in the alternative setting?</i></p>
<p>Sec 617</p> <p>“...(b) RULES AND REGULATIONS- In carrying out the provisions of this part, the Secretary shall issue regulations under this Act only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements of this Act....”</p>	<p>Sec 617</p> <p>(Assuming there are no changes to 616)</p> <p><i>This provision appears to have been removed. What impact, if any, does this have, especially given the new language in 607(b)(1)?</i></p> <p>Adds a requirement for a Pilot Program granting waivers to states of paperwork requirements. Similar to language in Keller Bill.</p>
<p>618</p>	<p>618</p> <p>adds Data gathering requirements re: the number of voluntary binding arbitrations and mediations. If there is significant racial</p>

	disproportionality, LEA must spend 15 % of its Part B funds on pre-referral support services.
619	619 Funding formula for this program has been altered.