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

`(a) FEDERAL AND STATE MONITORING-

`(1) IN GENERAL- The Secretary shall--

`(A) monitor implementation of this part through--

`(i) oversight of the exercise of general supervision by the States, as required in section 612(a)(11); and

`(ii) the State performance plans, described in subsection (b);

`(B) enforce this part in accordance with subsection (e); and

`(C) require States to--

`(i) monitor implementation of this part by local educational agencies; and

`(ii) enforce this part in accordance with paragraph (3) and subsection (e).

`(2) FOCUSED MONITORING- The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on--

`(A) improving educational results and functional outcomes for all children with disabilities; and

`(B) ensuring that States meet the program requirements under this part, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

`(3) MONITORING PRIORITIES- The Secretary shall monitor the States, and shall require each State to monitor the local educational agencies located in the State (except the State exercise of general supervisory responsibility), using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in the following priority areas:

`(A) Provision of a free appropriate public education in the least restrictive environment.

`(B) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services as defined in sections 602(34) and 637(a)(9).

`(C) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

`(4) PERMISSIVE AREAS OF REVIEW- The Secretary shall consider other relevant information and data, including data provided by States under section 618.

`(b) STATE PERFORMANCE PLANS-

`(1) PLAN-

`(A) IN GENERAL- Not later than 1 year after the date of enactment of the Individuals with Disabilities Education

Improvement Act of 2004, each State shall have in place a performance plan that evaluates that State's efforts to implement the requirements and purposes of this part and describes how the State will improve such implementation.

`(B) SUBMISSION FOR APPROVAL- Each State shall submit the State's performance plan to the Secretary for approval in accordance with the approval process described in subsection (c).

`(C) REVIEW- Each State shall review its State performance plan at least once every 6 years and submit any amendments to the Secretary.

`(2) TARGETS-

`(A) IN GENERAL- As a part of the State performance plan described under paragraph (1), each State shall establish measurable and rigorous targets for the indicators established under the priority areas described in subsection (a)(3).

`(B) DATA COLLECTION-

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

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

`(C) PUBLIC REPORTING AND PRIVACY-

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

`(ii) REPORT-

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

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

`(iii) PRIVACY- The State shall not report to the public or the Secretary any information on performance that would

result in the disclosure of personally identifiable information about individual children or where the available data is insufficient to yield statistically reliable information.

`(c) APPROVAL PROCESS-

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

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

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

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

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

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

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

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

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

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

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

`(d) SECRETARY'S REVIEW AND DETERMINATION-

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

`(2) DETERMINATION-

`(A) IN GENERAL- Based on the information provided by the State in the State performance report, information obtained through

monitoring visits, and any other public information made available, the Secretary shall determine if the State--

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

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

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

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

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

`(e) ENFORCEMENT-

`(1) NEEDS ASSISTANCE- If the Secretary determines, for 2 consecutive years, that a State needs assistance under subsection (d)(2)(A)(ii) in implementing the requirements of this part, the Secretary shall take 1 or more of the following actions:

`(A) Advise the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and require the State to work with appropriate entities. Such technical assistance may include--

`(i) the provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

`(ii) assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

`(iii) designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

`(iv) devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under part D, and private providers of scientifically based technical assistance.

`(B) Direct the use of State-level funds under section 611(e) on the area or areas in which the State needs assistance.

`(C) Identify the State as a high-risk grantee and impose special conditions on the State's grant under this part.

`(2) NEEDS INTERVENTION- If the Secretary determines, for 3 or more consecutive years, that a State needs intervention under subsection (d)(2)(A)(iii) in implementing the requirements of this part, the following shall apply:

`(A) The Secretary may take any of the actions described in paragraph (1).

`(B) The Secretary shall take 1 or more of the following actions:

`(i) Require the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within 1 year.

`(ii) Require the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, if the Secretary has reason to believe that the State cannot correct the problem within 1 year.

`(iii) For each year of the determination, withhold not less than 20 percent and not more than 50 percent of the State's funds under section 611(e), until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.

`(iv) Seek to recover funds under section 452 of the General Education Provisions Act.

`(v) Withhold, in whole or in part, any further payments to the State under this part pursuant to paragraph (5).

`(vi) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

`(3) NEEDS SUBSTANTIAL INTERVENTION- Notwithstanding paragraph (1) or (2), at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of this part or that there is a substantial failure to comply with any condition of a State educational agency's or local educational agency's eligibility under this part, the Secretary shall take 1 or more of the following actions:

`(A) Recover funds under section 452 of the General Education Provisions Act.

`(B) Withhold, in whole or in part, any further payments to the State under this part.

`(C) Refer the case to the Office of the Inspector General at the Department of Education.

`(D) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

`(4) OPPORTUNITY FOR HEARING-

`(A) WITHHOLDING FUNDS- Prior to withholding any funds under this section, the Secretary shall provide reasonable notice and an opportunity for a hearing to the State educational agency involved.

`(B) SUSPENSION- Pending the outcome of any hearing to withhold payments under subsection (b), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under this part, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under this part should not be suspended.

`(5) REPORT TO CONGRESS- The Secretary shall report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (1), (2), or (3), on the specific action taken and the reasons why enforcement action was taken.

`(6) NATURE OF WITHHOLDING-

`(A) LIMITATION- If the Secretary withholds further payments pursuant to paragraph (2) or (3), the Secretary may determine--

`(i) that such withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary's determination under subsection (d)(2); or

`(ii) that the State educational agency shall not make further payments under this part to specified State agencies or local educational agencies that caused or were involved in the Secretary's determination under subsection (d)(2).

`(B) WITHHOLDING UNTIL RECTIFIED- Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified--

`(i) payments to the State under this part shall be withheld in whole or in part; and

`(ii) payments by the State educational agency under this part shall be limited to State agencies and local educational agencies whose actions did not cause or were not involved in the Secretary's determination under subsection (d)(2), as the case may be.

`(7) PUBLIC ATTENTION- Any State that has received notice under subsection (d)(2) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the State.

`(8) JUDICIAL REVIEW-

`(A) IN GENERAL- If any State is dissatisfied with the Secretary's action with respect to the eligibility of the State under section 612, such State may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record

of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

`(B) JURISDICTION; REVIEW BY UNITED STATES SUPREME COURT- Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

`(C) STANDARD OF REVIEW- The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall be conclusive if supported by substantial evidence.

`(f) STATE ENFORCEMENT- If a State educational agency determines that a local educational agency is not meeting the requirements of this part, including the targets in the State's performance plan, the State educational agency shall prohibit the local educational agency from reducing the local educational agency's maintenance of effort under section 613(a)(2)(C) for any fiscal year.

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

`(h) DIVIDED STATE AGENCY RESPONSIBILITY- For purposes of this section, where responsibility for ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the State educational agency pursuant to section 612(a)(11)(C), the Secretary, in instances where the Secretary finds that the failure to comply substantially with the provisions of this part are related to a failure by the public agency, shall take appropriate corrective action to ensure compliance with this part, except that--

`(1) any reduction or withholding of payments to the State shall be proportionate to the total funds allotted under section 611 to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the State educational agency; and

`(2) any withholding of funds under paragraph (1) shall be limited to the specific agency responsible for the failure to comply with this part.

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

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

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