`SEC. 615. PROCEDURAL SAFEGUARDS.

`(a) ESTABLISHMENT OF PROCEDURES- Any State educational agency, State agency, or local educational agency that receives assistance under this part shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies.

`(b) TYPES OF PROCEDURES- The procedures required by this section shall include the following:

`(1) An opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child.

`(2)(A) Procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual to act as a surrogate for the parents, which surrogate shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child. In the case of--

`(i) a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of this paragraph; and

`(ii) an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)), the local educational agency shall appoint a surrogate in accordance with this paragraph.

`(B) The State shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.

`(3) Written prior notice to the parents of the child, in accordance with subsection (c)(1), whenever the local educational agency--

`(A) proposes to initiate or change; or

`(B) refuses to initiate or change,

the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.

`(4) Procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so.

`(5) An opportunity for mediation, in accordance with subsection (e).

`(6) An opportunity for any party to present a complaint--

`(A) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and

`(B) which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for presenting such a complaint under this part, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph.

`(7)(A) Procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with subsection (c)(2) (which shall remain confidential)--

`(i) to the other party, in the complaint filed under paragraph (6), and forward a copy of such notice to the State educational agency; and

`(ii) that shall include--

`(I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;

`(II) in the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child and the name of the school the child is attending;

`(III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

`(IV) a proposed resolution of the problem to the extent known and available to the party at the time.

`(B) A requirement that a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii).

`(8) Procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively.

`(c) NOTIFICATION REQUIREMENTS-

`(1) CONTENT OF PRIOR WRITTEN NOTICE- The notice required by subsection (b)(3) shall include--

`(A) a description of the action proposed or refused by the agency;

`(B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

`(C) 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;
`(D) sources for parents to contact to obtain assistance in understanding the provisions of this part;
`(E) a description of other options considered by the IEP Team and the reason why those options were rejected; and
`(F) a description of the factors that are relevant to the agency's proposal or refusal.

`(2) DUE PROCESS COMPLAINT NOTICE-

`(A) COMPLAINT- The due process complaint notice required under subsection (b)(7)(A) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of subsection (b)(7)(A).

`(B) RESPONSE TO COMPLAINT-

`(i) LOCAL EDUCATIONAL AGENCY RESPONSE-

`(I) IN GENERAL- If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, such local educational agency shall, within 10 days of receiving the complaint, send to the parent a response that shall include--

`(aa) an explanation of why the agency proposed or refused to take the action raised in the complaint;

`(bb) a description of other options that the IEP Team considered and the reasons why those options were rejected;

`(cc) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

`(dd) a description of the factors that are relevant to the agency's proposal or refusal.

`(II) SUFFICIENCY- A response filed by a local educational agency pursuant to subclause (I) shall not be construed to preclude such local educational agency from asserting that the parent's due process complaint notice was insufficient where appropriate.

`(ii) OTHER PARTY RESPONSE- Except as provided in clause (i), the non-complaining party shall, within 10 days of receiving the complaint, send to the complaint a

response that specifically addresses the issues raised in the complaint.

`(C) TIMING- The party providing a hearing officer notification under subparagraph (A) shall provide the notification within 15 days of receiving the complaint.

`(D) DETERMINATION- Within 5 days of receipt of the notification provided under subparagraph (C), the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of subsection (b)(7)(A), and shall immediately notify the parties in writing of such determination.

`(E) AMENDED COMPLAINT NOTICE-

`(i) IN GENERAL- A party may amend its due process complaint notice only if--

`(I) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to subsection (f)(1)(B); or

`(II) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.

`(ii) APPLICABLE TIMELINE- The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice, including the timeline under subsection (f)(1)(B).

`(d) PROCEDURAL SAFEGUARDS NOTICE-

`(1) IN GENERAL-

`(A) COPY TO PARENTS- A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents--

`(i) upon initial referral or parental request for evaluation;

`(ii) upon the first occurrence of the filing of a complaint under subsection (b)(6); and

`(iii) upon request by a parent.

`(B) INTERNET WEBSITE- A local educational agency may place a current copy of the procedural safeguards notice on its Internet website if such website exists.

`(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--

`(A) independent educational evaluation;

`(B) prior written notice;

`(C) parental consent;
`(D) access to educational records;
`(E) the opportunity to present and resolve complaints, including--
`(i) the time period in which to make a complaint;
`(ii) the opportunity for the agency to resolve the complaint; and
`(iii) the availability of mediation;
`(F) the child's placement during pendency of due process proceedings;
`(G) procedures for students who are subject to placement in an interim alternative educational setting;
`(H) requirements for unilateral placement by parents of children in private schools at public expense;
`(I) due process hearings, including requirements for disclosure of evaluation results and recommendations;
`(J) State-level appeals (if applicable in that State);
`(K) civil actions, including the time period in which to file such actions; and
`(L) attorneys' fees.

`(e) MEDIATION-

`(1) IN GENERAL- Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.

`(2) REQUIREMENTS- Such procedures shall meet the following requirements:

`(A) The procedures shall ensure that the mediation process--
`(i) is voluntary on the part of the parties;
`(ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this part; and
`(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

`(B) OPPORTUNITY TO MEET WITH A DISINTERESTED PARTY- A local educational agency or a State agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with--
`(i) a parent training and information center or community parent resource center in the State established under section 671 or 672; or
`(ii) an appropriate alternative dispute resolution entity,
to encourage the use, and explain the benefits, of the mediation process to the parents.

`(C) LIST OF QUALIFIED MEDIATORS- The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

`(D) COSTS- The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

`(E) SCHEDULING AND LOCATION- Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

`(F) WRITTEN AGREEMENT- In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that--

`(i) states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

`(ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency; and

`(iii) is enforceable in any State court of competent jurisdiction or in a district court of the United States.

`(G) MEDIATION DISCUSSIONS- Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

`(f) IMPARTIAL DUE PROCESS HEARING-

`(1) IN GENERAL-

`(A) HEARING- Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

`(B) RESOLUTION SESSION-

`(i) PRELIMINARY MEETING- Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint--

`(I) within 15 days of receiving notice of the parents' complaint;

`(II) which shall include a representative of the agency who has decisionmaking authority on behalf of such agency;

`(III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and

`(IV) where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint,

unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process described in subsection (e).

`(ii) HEARING- If the local educational agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence.

`(iii) WRITTEN SETTLEMENT AGREEMENT- In the case that a resolution is reached to resolve the complaint at a meeting described in clause (i), the parties shall execute a legally binding agreement that is--

`(I) signed by both the parent and a representative of the agency who has the authority to bind such agency; and

`(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.

`(iv) REVIEW PERIOD- If the parties execute an agreement pursuant to clause (iii), a party may void such agreement within 3 business days of the agreement's execution.

`(2) DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS-

`(A) IN GENERAL- Not less than 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations, that the party intends to use at the hearing.

`(B) FAILURE TO DISCLOSE- A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

`(3) LIMITATIONS ON HEARING-

`(A) PERSON CONDUCTING HEARING- A hearing officer conducting a hearing pursuant to paragraph (1)(A) shall, at a minimum--

`(i) not be--

`(I) an employee of the State educational agency or the local educational agency involved in the education or care of the child; or

`(II) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

`(ii) possess knowledge of, and the ability to understand, the provisions of this title, Federal and State regulations pertaining to this title, and legal interpretations of this title by Federal and State courts;

`(iii) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

`(iv) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

`(B) SUBJECT MATTER OF HEARING- The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.

`(C) TIMELINE FOR REQUESTING HEARING- A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part, in such time as the State law allows.

`(D) EXCEPTIONS TO THE TIMELINE- The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to--

`(i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or

`(ii) the local educational agency's withholding of information from the parent that was required under this part to be provided to the parent.

`(E) DECISION OF HEARING OFFICER-

`(i) IN GENERAL- Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

`(ii) PROCEDURAL ISSUES- In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies--

`(I) impeded the child's right to a free appropriate public education;

`(II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or

`(III) caused a deprivation of educational benefits.

`(iii) RULE OF CONSTRUCTION- Nothing in this subparagraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.

`(F) RULE OF CONSTRUCTION- Nothing in this paragraph shall be construed to affect the right of a parent to file a complaint with the State educational agency.

`(g) APPEAL-

`(1) IN GENERAL- 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 to the State educational agency.

`(2) IMPARTIAL REVIEW AND INDEPENDENT DECISION- The State educational agency shall conduct an impartial review of the findings and decision appealed under paragraph (1). The officer conducting such review shall make an independent decision upon completion of such review.

`(h) SAFEGUARDS- Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded--

`(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;

`(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

`(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

`(4) the right to written, or, at the option of the parents, electronic findings of fact and decisions, which findings and decisions--

`(A) shall be made available to the public consistent with the requirements of section 617(b) (relating to the confidentiality of data, information, and records); and

`(B) shall be transmitted to the advisory panel established pursuant to section 612(a)(21).

`(i) ADMINISTRATIVE PROCEDURES-

`(1) IN GENERAL-

`(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).

`(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).

`(2) RIGHT TO BRING CIVIL ACTION-

`(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 appeal under subsection (g), and any party aggrieved by the findings and decision made 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) LIMITATION- The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the State has an explicit time limitation for bringing such action under this part, in such time as the State law allows.

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

`(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-

`(i) IN GENERAL- In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs--

`(I) to a prevailing party who is the parent of a child with a disability;

`(II) to a prevailing party who is a State educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

`(III) to a prevailing State educational agency or local educational agency against the attorney of a

parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

`(ii) RULE OF CONSTRUCTION- Nothing in this subparagraph shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

`(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) IN GENERAL- 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) IEP TEAM MEETINGS- 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).

`(iii) OPPORTUNITY TO RESOLVE COMPLAINTS- A meeting conducted pursuant to subsection (f)(1)(B)(i) shall not be considered--

`(I) a meeting convened as a result of an administrative hearing or judicial action; or

`(II) an administrative hearing or judicial action for purposes of this paragraph.

`(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, or the parent's attorney, 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 the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

`(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

`(iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A),

the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

`(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.

`(j) MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT- Except as provided in subsection (k)(4), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

`(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING-

`(1) AUTHORITY OF SCHOOL PERSONNEL-

`(A) CASE-BY-CASE DETERMINATION- School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

`(B) AUTHORITY- School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for

not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

`(C) ADDITIONAL AUTHORITY- If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in section 612(a)(1) although it may be provided in an interim alternative educational setting.

`(D) SERVICES- A child with a disability who is removed from the child's current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or subparagraph (C) shall--

`(i) continue to receive educational services, as provided in section 612(a)(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

`(ii) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

`(E) MANIFESTATION DETERMINATION-

`(i) IN GENERAL- Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--

`(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

`(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

`(ii) MANIFESTATION- If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

`(F) DETERMINATION THAT BEHAVIOR WAS A MANIFESTATION- If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall--

`(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);

`(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and

`(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

`(G) SPECIAL CIRCUMSTANCES- School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child--

`(i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;

`(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or

`(iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

`(H) NOTIFICATION- Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.

`(2) DETERMINATION OF SETTING- The interim alternative educational setting in subparagraphs (C) and (G) of paragraph (1) shall be determined by the IEP Team.

`(3) APPEAL-

`(A) IN GENERAL- The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

`(B) AUTHORITY OF HEARING OFFICER-

`(i) IN GENERAL- A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).

`(ii) CHANGE OF PLACEMENT ORDER- In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may--

`(I) return a child with a disability to the placement from which the child was removed; or

`(II) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

`(4) PLACEMENT DURING APPEALS- When an appeal under paragraph (3) has been requested by either the parent or the local educational agency--

`(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

`(B) the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

`(5) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES-

`(A) IN GENERAL- A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

`(B) BASIS OF KNOWLEDGE- A local educational agency shall be deemed to have knowledge that a child is a child with a

disability if, before the behavior that precipitated the disciplinary action occurred--

`(i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

`(ii) the parent of the child has requested an evaluation of the child pursuant to section 614(a)(1)(B); or

`(iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

`(C) EXCEPTION- A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to section 614 or has refused services under this part or the child has been evaluated and it was determined that the child was not a child with a disability under this part.

`(D) CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE-

`(i) IN GENERAL- If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

`(ii) LIMITATIONS- If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

`(6) REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES-

`(A) RULE OF CONSTRUCTION- Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent

State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

`(B) TRANSMITTAL OF RECORDS- An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

`(7) DEFINITIONS- In this subsection:

`(A) CONTROLLED SUBSTANCE- The term `controlled substance' means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

`(B) ILLEGAL DRUG- The term `illegal drug' means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

`(C) WEAPON- The term `weapon' has the meaning given the term `dangerous weapon' under section 930(g)(2) of title 18, United States Code.

`(D) SERIOUS BODILY INJURY- The term `serious bodily injury' has the meaning given the term `serious bodily injury' under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

`(l) RULE OF CONSTRUCTION- Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.

`(m) TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY-

`(1) IN GENERAL- A State that receives amounts from a grant under this part may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)--

`(A) the agency shall provide any notice required by this section to both the individual and the parents;

`(B) all other rights accorded to parents under this part transfer to the child;

`(C) the agency shall notify the individual and the parents of the transfer of rights; and

`(D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

`(2) SPECIAL RULE- If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part.

`(n) ELECTRONIC MAIL- A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the agency makes such option available.

`(o) SEPARATE COMPLAINT- Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.