SEC. 613. LOCAL EDUCATIONAL AGENCY ELIGIBILITY.

(a) IN GENERAL- A local educational agency is eligible for assistance under this part for a fiscal year if such agency submits a plan that provides assurances to the State educational agency that the local educational agency meets each of the following conditions:

(1) CONSISTENCY WITH STATE POLICIES- The local educational agency, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under section 612.

(2) USE OF AMOUNTS-

(A) IN GENERAL- Amounts provided to the local educational agency under this part shall be expended in accordance with the applicable provisions of this part and--

(i) shall be used only to pay the excess costs of providing special education and related services to children with disabilities;

(ii) shall be used to supplement State, local, and other Federal funds and not to supplant such funds; and

(iii) shall not be used, except as provided in subparagraphs (B) and (C), to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.

(B) EXCEPTION- Notwithstanding the restriction in subparagraph (A)(iii), a local educational agency may reduce the level of expenditures where such reduction is attributable to--

(i) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel;

(ii) a decrease in the enrollment of children with disabilities;

(iii) the termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the State educational agency, because the child--

(I) has left the jurisdiction of the agency;

(II) has reached the age at which the obligation of the agency to provide a free appropriate public education to the child has terminated; or

(III) no longer needs such program of special education; or

(iv) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.
(C) ADJUSTMENT TO LOCAL FISCAL EFFORT IN CERTAIN FISCAL YEARS-

(i) AMOUNTS IN EXCESS- Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which the allocation received by a local educational agency under section 611(f) exceeds the amount the local educational agency received for the previous fiscal year, the local educational agency may reduce the level of expenditures otherwise required by subparagraph (A)(iii) by not more than 50 percent of the amount of such excess.

(ii) USE OF AMOUNTS TO CARRY OUT ACTIVITIES UNDER ESEA- If a local educational agency exercises the authority under clause (i), the agency shall use an amount of local funds equal to the reduction in expenditures under clause (i) to carry out activities authorized under the Elementary and Secondary Education Act of 1965.

(iii) STATE PROHIBITION- Notwithstanding clause (i), if a State educational agency determines that a local educational agency is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a) or the State educational agency has taken action against the local educational agency under section 616, the State educational agency shall prohibit the local educational agency from reducing the level of expenditures under clause (i) for that fiscal year.

(iv) SPECIAL RULE- The amount of funds expended by a local educational agency under subsection (f) shall count toward the maximum amount of expenditures such local educational agency may reduce under clause (i).

(D) SCHOOLWIDE PROGRAMS UNDER TITLE I OF THE ESEA- Notwithstanding subparagraph (A) or any other provision of this part, a local educational agency may use funds received under this part for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount so used in any such program shall not exceed--

(i) the number of children with disabilities participating in the schoolwide program; multiplied by

(ii)(I) the amount received by the local educational agency under this part for that fiscal year; divided by

(II) the number of children with disabilities in the jurisdiction of that agency.

(3) PERSONNEL DEVELOPMENT- The local educational agency shall ensure that all personnel necessary to carry out this part are appropriately
and adequately prepared, subject to the requirements of section 612(a)(14) and section 2122 of the Elementary and Secondary Education Act of 1965.

(4) PERMISSIVE USE OF FUNDS-

(A) USES- Notwithstanding paragraph (2)(A) or section 612(a)(17)(B) (relating to commingled funds), funds provided to the local educational agency under this part may be used for the following activities:

(i) 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 1 or more nondisabled children benefit from such services.

(ii) EARLY INTERVENING SERVICES- To develop and implement coordinated, early intervening educational services in accordance with subsection (f).

(iii) HIGH COST EDUCATION AND RELATED SERVICES- To establish and implement cost or risk sharing funds, consortia, or cooperatives for the local educational agency itself, or for local educational agencies working in a consortium of which the local educational agency is a part, to pay for high cost special education and related services.

(B) ADMINISTRATIVE CASE MANAGEMENT- A local educational agency may use funds received under this part to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the individualized education program of children with disabilities, that is needed for the implementation of such case management activities.

(5) TREATMENT OF CHARTER SCHOOLS AND THEIR STUDENTS- In carrying out this part with respect to charter schools that are public schools of the local educational agency, the local educational agency--

(A) serves children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools; and

(B) provides funds under this part to those charter schools--
(i) on the same basis as the local educational agency provides funds to the local educational agency's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and
(ii) at the same time as the agency distributes other Federal funds to the agency's other public schools, consistent with the State's charter school law.

(6) PURCHASE OF INSTRUCTIONAL MATERIALS-
(A) IN GENERAL- Not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, a local educational agency that chooses to coordinate with the National Instructional Materials Access Center, when purchasing print instructional materials, shall acquire the print instructional materials in the same manner and subject to the same conditions as a State educational agency acquires print instructional materials under section 612(a)(23).
(B) RIGHTS OF LOCAL EDUCATIONAL AGENCY- Nothing in this paragraph shall be construed to require a local educational agency to coordinate with the National Instructional Materials Access Center. If a local educational agency chooses not to coordinate with the National Instructional Materials Access Center, the local educational agency shall provide an assurance to the State educational agency that the local educational agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(7) INFORMATION FOR STATE EDUCATIONAL AGENCY- The local educational agency shall provide the State educational agency with information necessary to enable the State educational agency to carry out its duties under this part, including, with respect to paragraphs (15) and (16) of section 612(a), information relating to the performance of children with disabilities participating in programs carried out under this part.

(8) PUBLIC INFORMATION- The local educational agency shall make available to parents of children with disabilities and to the general public all documents relating to the eligibility of such agency under this part.

(9) RECORDS REGARDING MIGRATORY CHILDREN WITH DISABILITIES- The local educational agency shall cooperate in the Secretary's efforts under section 1308 of the Elementary and Secondary Education Act of 1965 to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging, among the States, health and educational information regarding such children.

(b) EXCEPTION FOR PRIOR LOCAL PLANS-
(1) IN GENERAL- If a local educational agency or State agency has on file with the State educational agency policies and procedures that demonstrate that such local educational agency, or such State agency, as the case may be, meets any requirement of subsection (a), including any
policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the State educational agency shall consider such local educational agency or State agency, as the case may be, to have met such requirement for purposes of receiving assistance under this part.

(2) MODIFICATION MADE BY LOCAL EDUCATIONAL AGENCY- Subject to paragraph (3), an application submitted by a local educational agency in accordance with this section shall remain in effect until the local educational agency submits to the State educational agency such modifications as the local educational agency determines necessary.

(3) MODIFICATIONS REQUIRED BY STATE EDUCATIONAL AGENCY- If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the provisions of this title are amended (or the regulations developed to carry out this title are amended), there is a new interpretation of this title by Federal or State courts, or there is an official finding of noncompliance with Federal or State law or regulations, then the State educational agency may require a local educational agency to modify its application only to the extent necessary to ensure the local educational agency's compliance with this part or State law.

(c) NOTIFICATION OF LOCAL EDUCATIONAL AGENCY OR STATE AGENCY IN CASE OF INELIGIBILITY- If the State educational agency determines that a local educational agency or State agency is not eligible under this section, then the State educational agency shall notify the local educational agency or State agency, as the case may be, of that determination and shall provide such local educational agency or State agency with reasonable notice and an opportunity for a hearing.

(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE-

(1) IN GENERAL- If the State educational agency, after reasonable notice and an opportunity for a hearing, finds that a local educational agency or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in subsection (a), the State educational agency shall reduce or shall not provide any further payments to the local educational agency or State agency until the State educational agency is satisfied that the local educational agency or State agency, as the case may be, is complying with that requirement.

(2) ADDITIONAL REQUIREMENT- Any State agency or local educational agency in receipt of a notice described in paragraph (1) shall, by means of 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 jurisdiction of such agency.

(3) CONSIDERATION- In carrying out its responsibilities under paragraph (1), the State educational agency shall consider any decision made in a hearing held under section 615 that is adverse to the local educational agency or State agency involved in that decision.

(e) JOINT ESTABLISHMENT OF ELIGIBILITY-
(1) JOINT ESTABLISHMENT-
   (A) IN GENERAL- A State educational agency may require a
   local educational agency to establish its eligibility jointly with
   another local educational agency if the State educational agency
determines that the local educational agency will be ineligible
under this section because the local educational agency will not be
able to establish and maintain programs of sufficient size and
scope to effectively meet the needs of children with disabilities.
   (B) CHARTER SCHOOL EXCEPTION- A State educational
   agency may not require a charter school that is a local educational
   agency to jointly establish its eligibility under subparagraph (A)
   unless the charter school is explicitly permitted to do so under the
   State's charter school law.

(2) AMOUNT OF PAYMENTS- If a State educational agency requires
the joint establishment of eligibility under paragraph (1), the total amount
of funds made available to the affected local educational agencies shall be
equal to the sum of the payments that each such local educational agency
would have received under section 611(f) if such agencies were eligible
for such payments.

(3) REQUIREMENTS- Local educational agencies that establish joint
eligibility under this subsection shall--
   (A) adopt policies and procedures that are consistent with the
   State's policies and procedures under section 612(a); and
   (B) be jointly responsible for implementing programs that receive
   assistance under this part.

(4) REQUIREMENTS FOR EDUCATIONAL SERVICE AGENCIES-
   (A) IN GENERAL- If an educational service agency is required
   by State law to carry out programs under this part, the joint
   responsibilities given to local educational agencies under this
   subsection shall--
      (i) not apply to the administration and disbursement of any
         payments received by that educational service agency; and
      (ii) be carried out only by that educational service agency.
   (B) ADDITIONAL REQUIREMENT- Notwithstanding any other
   provision of this subsection, an educational service agency shall
   provide for the education of children with disabilities in the least
   restrictive environment, as required by section 612(a)(5).

(f) EARLY INTERVENING SERVICES-
   (1) IN GENERAL- A local educational agency may not use more than 15
   percent of the amount such agency receives under this part for any fiscal
   year, less any amount reduced by the agency pursuant to subsection
   (a)(2)(C), if any, in combination with other amounts (which may include
   amounts other than education funds), to develop and implement
   coordinated, early intervening services, which may include interagency
   financing structures, for students in kindergarten through grade 12 (with a
   particular emphasis on students in kindergarten through grade 3) who have
not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

(2) ACTIVITIES- In implementing coordinated, early intervening services under this subsection, a local educational agency may carry out activities that include--

(A) professional development (which may be provided by entities other than local educational agencies) for teachers and other school staff to enable such personnel to deliver scientifically based academic instruction and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

(B) providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

(3) CONSTRUCTION- Nothing in this subsection shall be construed to limit or create a right to a free appropriate public education under this part.

(4) REPORTING- Each local educational agency that develops and maintains coordinated, early intervening services under this subsection shall annually report to the State educational agency on--

(A) the number of students served under this subsection; and

(B) the number of students served under this subsection who subsequently receive special education and related services under this title during the preceding 2-year period.

(5) COORDINATION WITH ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965- Funds made available to carry out this subsection may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under, the Elementary and Secondary Education Act of 1965 if such funds are used to supplement, and not supplant, funds made available under the Elementary and Secondary Education Act of 1965 for the activities and services assisted under this subsection.

(g) DIRECT SERVICES BY THE STATE EDUCATIONAL AGENCY-

(1) IN GENERAL- A State educational agency shall use the payments that would otherwise have been available to a local educational agency or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that local educational agency, or for whom that State agency is responsible, if the State educational agency determines that the local educational agency or State agency, as the case may be--

(A) has not provided the information needed to establish the eligibility of such local educational agency or State agency under this section;

(B) is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a);
(C) is unable or unwilling to be consolidated with 1 or more local educational agencies in order to establish and maintain such programs; or

(D) has 1 or more children with disabilities who can best be served by a regional or State program or service delivery system designed to meet the needs of such children.

(2) MANNER AND LOCATION OF EDUCATION AND SERVICES- The State educational agency may provide special education and related services under paragraph (1) in such manner and at such locations (including regional or State centers) as the State educational agency considers appropriate. Such education and services shall be provided in accordance with this part.

(h) STATE AGENCY ELIGIBILITY- Any State agency that desires to receive a subgrant for any fiscal year under section 611(f) shall demonstrate to the satisfaction of the State educational agency that--

(1) all children with disabilities who are participating in programs and projects funded under this part receive a free appropriate public education, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

(2) the agency meets such other conditions of this section as the Secretary determines to be appropriate.

(i) DISCIPLINARY INFORMATION- The State may require that a local educational agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit such statement to the same extent that such disciplinary information is included in, and transmitted with, the student records of nondisabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If the State adopts such a policy, and the child transfers from 1 school to another, the transmission of any of the child's records shall include both the child's current individualized education program and any such statement of current or previous disciplinary action that has been taken against the child.

(j) STATE AGENCY FLEXIBILITY-

(1) ADJUSTMENT TO STATE FISCAL EFFORT IN CERTAIN FISCAL YEARS- For any fiscal year for which the allotment received by a State under section 611 exceeds the amount the State received for the previous fiscal year and if the State in school year 2003-2004 or any subsequent school year pays or reimburses all local educational agencies within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services, the State educational agency, notwithstanding paragraphs (17) and (18) of section 612(a) and section 612(b), may reduce the level of expenditures from State sources for the education of children with disabilities by not more than 50 percent of the amount of such excess.
(2) PROHIBITION- Notwithstanding paragraph (1), if the Secretary determines that a State educational agency is unable to establish, maintain, or oversee programs of free appropriate public education that meet the requirements of this part, or that the State needs assistance, intervention, or substantial intervention under section 616(d)(2)(A), the Secretary shall prohibit the State educational agency from exercising the authority in paragraph (1).

(3) EDUCATION ACTIVITIES- If a State educational agency exercises the authority under paragraph (1), the agency shall use funds from State sources, in an amount equal to the amount of the reduction under paragraph (1), to support activities authorized under the Elementary and Secondary Education Act of 1965 or to support need based student or teacher higher education programs.

(4) REPORT- For each fiscal year for which a State educational agency exercises the authority under paragraph (1), the State educational agency shall report to the Secretary the amount of expenditures reduced pursuant to such paragraph and the activities that were funded pursuant to paragraph (3).

(5) LIMITATION- Notwithstanding paragraph (1), a State educational agency may not reduce the level of expenditures described in paragraph (1) if any local educational agency in the State would, as a result of such reduction, receive less than 100 percent of the amount necessary to ensure that all children with disabilities served by the local educational agency receive a free appropriate public education from the combination of Federal funds received under this title and State funds received from the State educational agency.