



## **Memorandum**

November 21, 2003

**SUBJECT:** The Individuals with Disabilities Education Act (IDEA): Section by Section Discussion of S. 1248, 108<sup>th</sup> Congress

**FROM:** Nancy Lee Jones  
Legislative Attorney  
American Law Division

Richard N. Apling  
Specialist in Social Legislation  
Domestic Social Policy Division

The Individuals with Disabilities Education Act (IDEA) authorizes federal funding for the education of children with disabilities and requires, as a condition for the receipt of such funds, the provision of a free appropriate public education (FAPE).<sup>1</sup> The statute also contains detailed due process provisions to ensure the provision of FAPE. Originally enacted in 1975, the Act responded to increased awareness of the need to educate children with disabilities, and to judicial decisions requiring that states provide an education for children with disabilities if they provided an education for children without disabilities.<sup>2</sup>

IDEA has been amended several times, most recently and most comprehensively by the 1997 IDEA reauthorization, P.L. 105-17. Congress is presently examining IDEA again and H.R. 1350, 108<sup>th</sup> Congress, passed the House on April 30, 2003, by a vote of 251 to 171.<sup>3</sup> In the Senate, S. 1248 was introduced by Senators Gregg and Kennedy and referred to the Senate Health, Education, Labor and Pensions Committee on June 12,

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<sup>1</sup> 20 U.S.C. §1400 *et seq.*

<sup>2</sup> For an overview of IDEA see CRS Report RL31259, *The Individuals with Disabilities Education Act: Statutory Provisions and Selected Issues*.

<sup>3</sup> For a discussion of H.R. 1350 see Nancy Lee Jones and Richard N. Apling, "The Individuals with Disabilities Education Act (IDEA): Selected Changes that Would be Made to the Law by H.R. 1350, 108<sup>th</sup> Congress," CRS RL31830 (as updated May 2, 2003).

2003. The bill was reported out of committee on June 25, 2003<sup>4</sup> and placed on the Senate legislative calendar under general orders on November 3, 2003.<sup>5</sup>

This memorandum examines S. 1248 and summarizes the changes made in various sections. It should be noted that this memorandum is not comprehensive but provides an explanation of the major changes made by S. 1248. Not every section of S. 1248 is included. Those that are not included are either identical or essentially the same as current law. For a comprehensive comparison of S. 1248 with current law, see “Individuals with Disabilities Education Act (IDEA) and S. 1248, 108<sup>th</sup> Congress: A Side by Side Comparison with Comments,” CRS general distribution memorandum for Congress, by Nancy L. Jones and Richard N. Apling.

## **TITLE I—AMENDMENTS TO THE THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT**

### **PART A—GENERAL PROVISIONS**

#### **SECTION 602. DEFINITIONS**

The definitions in current law are, for the most part, unchanged by S. 1248. However, the bill would make some significant changes to this section.

**Section 602(1) and (25)** – Assistive Technology Device and Related Services. S. 1248 would amend the definitions of “assistive technology device” and “related services” to eliminate coverage of surgically implanted medical devices, the post-surgical maintenance, programming, or replacement of such a device, or an external device connected with the use of a surgically implanted medical device. The routine maintenance and monitoring of an external device at the same time the child is receiving IDEA services is permitted.

**Section 602(4)** – Core Academic Subject. S. 1248 would add a definition of a “core academic subject” by reference to the definition of that term in section 9101 of the Elementary and Secondary Education Act (ESEA). (The ESEA definition lists “English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography” as core academic subjects.) This helps to align IDEA with the new requirements for teacher qualifications in the No Child Left Behind Act (NCLBA).

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<sup>4</sup> S. Rep. No. 108-185, 108<sup>th</sup> Cong.

<sup>5</sup> For a narrative discussion of S. 1248 see Richard N. Apling and Nancy Lee Jones, “The Individuals with Disabilities Education Act (IDEA): Selected Changes that Would be Made to the Law by S. 1248, 108<sup>th</sup> Congress,” CRS Report RL31971. For a detailed comparison of S. 1248 with current law see Nancy Lee Jones and Richard N. Apling, “Individuals with Disabilities Education Act (IDEA) and S. 1248, 108<sup>th</sup> Congress: A Side by Side Comparison with Comments,” CRS General Distribution Memorandum (Nov. 17, 2003).

**Section 602(10)** – Highly Qualified. S. 1248 would add extensive definitions of “highly qualified” and “consultative services,” again to align IDEA with NCLBA requirements with respect to the qualification of educational personnel, while taking into account differences between special education and general education teachers. For example, if a special education teacher provides only “consultative services” (including, for example, adjustments to the learning environment, modifications to instructional methods, and adaptations of the curriculum) to a secondary school teacher teaching core academic subjects to children with disabilities, the special education teacher, to meet the definition of highly qualified, must meet the standards of the definition for all special education teachers (that is, be fully certified in the state as a special education teacher and demonstrate the knowledge and skills necessary to teach children with disabilities) but need not meet standards with respect to the academic subjects being taught (as the regular teacher must do to be highly qualified under NCLBA).

## **PART B—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES**

### **SECTION 611. AUTHORIZATION; ALLOTMENT; USE OF FUNDS; AUTHORIZATION OF APPROPRIATIONS**

**Section 611(a)** – Grant to States. S. 1248 would specify a calculation of the maximum amount available “for awarding grants under this part for any fiscal year.” This total would be calculated based on the total number of children with disabilities served for school year 2002-2003 times 40% of national average per pupil expenditure (APPE).<sup>6</sup> The total amount for each successive year would be determined by increasing this amount by an annual factor derived 85% from overall growth in child population and 15% from overall growth in children living in poor families.<sup>7</sup> This amount would presumably be distributed to states, outlying areas, and the Bureau of Indian Affairs according to current-law provisions. Thus, for years following 2002-2003, S. 1248 apparently would eliminate the provision in current law determining a state’s maximum state grant at 40% of APPE times the number of children with disabilities the state serves. This provision would have no impact on a state’s allocation until the state became eligible for its maximum grant.

**Section 611(b)** – Outlying Areas and Freely Associated States. S. 1248 would continue the reserve for outlying areas, while making a change in funding for the “freely associated states” of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. Under S. 1248, each of these entities would

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<sup>6</sup> Maximum state grants (the basis of “full funding” for IDEA) are calculated based on 40% of the national average per pupil expenditure (APPE) times the number of children with disabilities the state serves.

<sup>7</sup> These percentages parallel the weights given to and the age ranges for population and poverty in the grants-to-states formula. Age ranges for population and poverty vary according to the age ranges for children with disabilities in the various states.

receive a grant equal to the amount received for FY2003 under Part B. For FY2003, the total amount for these entities is about \$6.6 million.

**Section 611(d) and Section 611(f)** – Allocations to States and Subgrants to Local Educational Agencies. S. 1248 would make minimal changes in current IDEA state and substate grant formulas, none of which would appear to change how IDEA funds are currently allocated.

**Section 611(e)** – State-Level-Activities. S. 1248 would make certain changes in provisions governing state reserves for administration and other state-level activities. S. 1248 would permit states to reserve for state administration the maximum reserved for fiscal year 2003 or \$800,000, whichever amount is greater. Apparently these amounts would be increased by inflation each year. With the exception of the increased minimum for administration, states' administrative reserves should be the same as those under current law. S. 1248 would change the maximum amount states could reserve for other state activities and would enlarge the scope of those activities. For FY2004 and FY2005, states could reserve up to 10% of their total grants (or 12% for states for which the maximum administrative reserve would be \$800,000) after subtracting the amount reserved for state administration. Beginning in FY2006, the maximum amount for other state activities would be adjusted by the rate of inflation. This approach would continue through FY2009. S. 1248 would also increase the scope of other state-level activities. In addition to a variety of required and permitted uses of these funds, states would be required to use 2% of the state's total grant (after reserving an amount for state administration) to assist LEAs to address the needs of "high-need" children with disabilities. The Senate bill defines a high-need child as one for whom providing a free appropriate public education (FAPE) costs more than 4 times the national average per pupil expenditure (APPE). (The applicable APPE for school year 2002-2003 is about \$7,500.) States would distribute funds to approved LEAs to pay 75% of the special education and related services costs that exceed 4 times APPE.

## **SECTION 612. STATE ELIGIBILITY**

**Section 612(a)** – In General. Current law requires that states, to be eligible under Part B, must demonstrate to the Secretary that specified policies and procedures are in effect; S. 1248 would require that states submit a plan that provides assurances that specified policies and procedures are in effect.

**Section 612(a)(1)** – Free Appropriate Public Education (FAPE). The S. 1248 FAPE requirements in subparagraphs (A) and (B) are the same as current law except that S. 1248 adds a new subsection which would permit services under Part C (the Infants and Toddlers program) to continue (at the parents' discretion) for older children who are eligible for services under the preschool program (Sec. 619). This new provision states that the early intervention services of Part C, not the requirement of a free appropriate public education, are applicable to such children.

**Section 612(a)(5)** – Least Restrictive Environment. The requirement in current law that to the maximum extent appropriate children with disabilities are to be educated with

children who do not have disabilities is kept. S. 1248 would change, and appear to strengthen, the protections for children with disabilities in the provision related to state special education formulas based on the settings in which children with disabilities are served.

**Section 612(a)(10) – Children in Private Schools.** S. 1248 would keep the general provision in current law that children with disabilities enrolled in private school by their parents participate in IDEA programs with funds expended being equal to a proportional amount of federal funds available under IDEA. However, S. 1248 would make significant changes by limiting this requirement to children who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency. New provisions would be added by S. 1248 regarding record keeping, and child-find requirements. There also would be new provisions requiring consultation with representatives of children who are parentally placed in private schools, written affirmation of this consultation, and compliance procedures. S. 1248 would require that the control of funds used to provide special education and related services as well as title to materials, equipment, and property purchased with those funds, shall be in and administered by a public agency.

The provisions relating to the placement of children with disabilities in private schools by a public agency are generally the same under current law and S. 1248, although changes were made to the exceptions to reductions of the cost of reimbursement.

**Section 612(a)(14) – Personnel Standards.** S. 1248 would make substantial changes in requirements for state personnel standards to more closely align IDEA with NCLBA. For example, states would be required to “ensure that each special education teacher in the State who teaches in an elementary, middle, or secondary school is highly qualified not later than the 2006-2007 school year.” (See above the proposed definition of “highly qualified.”) S. 1248 would change the provision that states have a policy requiring LEAs to make “an ongoing good faith effort” in recruiting and hiring “appropriately and adequately trained personnel” to requiring LEAs to “take measurable steps to recruit, hire, train, and retain highly qualified personnel.” S. 1248 would remove requirements regarding a state comprehensive system of personnel development and regarding hiring and retraining personnel to meet highest state personnel standards. S. 1248 would require that providers of related services (such as, physical therapy and counseling services) meet standards that “are consistent with” state requirements “that apply to the professional discipline in which” related services are being provided.<sup>8</sup> S. 1248 would add a rule of construction to ensure that no individual right of action is created with respect to failure

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<sup>8</sup> S. 1248 would permit a parent to complain to the state educational agency (SEA) if he or she believed staff were not highly qualified as defined by the Act but would not create “a right of action on behalf of an individual student” if a parent claimed that a staff person were not highly qualified. That is, the parent would have the right to complain to the SEA but would not have the right to seek remedies through the courts.

to meet personnel standards and that a parent's ability to file a complaint with the SEA regarding staff qualifications is not abridged.

**Section 612(a)(15)** – Performance Goals and Indicators. S. 1248 would add language to align IDEA state goals and indicators requirements with the Elementary and Secondary Education Act (ESEA) as amended by No Child Left Behind Act (NCLBA) and would add requirements. In general, children with disabilities would be required to participate in state and districtwide testing programs as under NCLBA. As determined by the individualized education program (IEP) team, depending on each child's needs, he or she could take assessments with or without accommodations (e.g., alternative testing environments, such as a quieter location than the regular classroom). Such assessments must be aligned with the state's "challenging academic content and academic achievement standards." For some, presumably more severely disabled children, alternative assessments can be used. These alternative assessments are to be aligned with the state's "challenging academic content and academic achievement standards" or with a state's content standards but with **alternative achievement standards**.

**Section 612(a)(16)** – Participation in Assessments. S. 1248 would modify the assessment participation requirement to align it with ESEA/NCLBA requirements and would add a requirement for state accommodation guidelines. S. 1248 also would modify the alternative assessment requirement, in part to recognize that states and LEAs should have developed these and to align the requirement with ESEA/NCLBA, and would modify the reporting requirements on assessments. S. 1248 would add a requirement related to universal design.

**Section 612(a)(22)** – Access to Instructional Materials. S. 1248 would add a state requirement on materials accessibility.

**Section 612(f)** – By-Pass for Children in Private Schools. S. 1248 would add language extending the by-pass provision to cover SEAs, LEAs, or other entities failing to provide equitable participation for children with disabilities.

## **SECTION 613. LOCAL EDUCATIONAL AGENCY ELIGIBILITY**

**Section 613(a)(1)** – In General. S. 1248 would change the general requirement that an LEA, to be eligible, "demonstrate" (current law) that it meets listed requirements to "submit a plan to the state to provide assurances" (S. 1248).

**Section 613(a)(2)** – Use of Amounts. Generally S. 1248 would be the same as current law except that S. 1248 would make substantial changes to the "treat as local" provision in current law. At current funding levels under current law, LEAs are permitted to treat as local funds up to 20% of the *annual increase* in their Part B grant for the purposes of meeting requirements not to supplant and to maintain effort. At current funding levels, S. 1248 would permit LEAs to treat up to 8% of their *total* grant to meet these requirements. Once maximum funding is reached, LEAs could treat up to 40% of their grants to meet these requirements. In addition, LEAs may count these funds for the purpose of early

intervention services in subsection (f). S. 1248 would also add a new subsection requiring a report by the LEA to the SEA.

**Section 613(a)(3) - Personnel Development.** S. 1248 would change the local personnel development requirement to make it consistent with the state requirement under Sec. 612 and with Sec. 2122 of ESEA, which deals with local applications and needs assessment.

**Section 613(a)(4) - Permissive Use of Funds.** Generally S. 1248 would be the same as current law except that S. 1248 would add a new permitted use of local funds for case management.

**Section 613(a)(5) – Treatment of Charter Schools and their Students.** Generally S. 1248 would be the same as current law except that S. 1248 would elaborate on the services to be provided children with disabilities attending charter schools and on funds distribution.

**Section 613(a)(6) – Purchase of Instructional Materials.** S. 1248 would add a local requirement parallel to the state requirement regarding instructional materials.

**Section 613(a)(9) – Records Regarding Migratory Children with Disabilities.** S. 1248 would add a local requirement regarding records of migrant children.

**Section 613(f) – Early Intervening Services.** S. 1248 would add authority for LEAs to use up to 15% of their Part B grant for early intervention services. These services could be provided to students (from kindergarten to 12<sup>th</sup> grade but emphasizing those in kindergarten to 3<sup>rd</sup> grade) “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.” Activities that a LEA could undertake include provision of educational and behavioral services and support (“including scientifically based literacy instruction”) and professional development for teachers to provide such services. The bill notes that “nothing in this subsection shall be construed to either limit or create a right to a free appropriate public education under this part.” S. 1248 also would require a GAO study on the types of services provided to children served under this subsection.

**Section 613(j) – State Agency Flexibility.** S. 1248 would extend the revised “treat as local” provision (see above) for states that fund at least 80% of the nonfederal costs of special education and related services.

## **SECTION 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS**

**Section 614(a) – Evaluations and Reevaluations.** S. 1248 would make several changes to section 614's requirements concerning evaluations and reevaluations. The bill specifically states that either a parent, or state agency or local educational agency may request an initial evaluation of a child. The bill would set a time period for when the evaluation must be conducted. The bill provides that the local educational agency is not to be considered in violation of the requirement to provide a free appropriate public

education if special education and related services are not provided due to a refusal or failure to consent to an evaluation. S. 1248 would also add to the provision on reevaluations in various ways including limiting a reevaluation to not more than once a year unless the parents and local educational agency agree.

**Section 614(b)** – Evaluation Procedures. S. 1248 would make several changes to section 614's requirements concerning evaluation procedures. For the conduct of the evaluation, the bill would require that academic information shall be included, and the requirement not to use any single procedure is expanded to prohibit the use of a single measure or assessment as well. The tests and other evaluation materials would be administered “to the extent practicable, in the language and form most likely to yield accurate information.” A new subsection on specific learning disabilities would be added by the bill which states that a local educational agency shall not be required to take discrepancies between achievement and intellectual abilities into account.

**Section 614(c)** – Additional Requirements for Evaluation and Reevaluations. Subsections 614(c)(1)-(3) of S. 1248 are identical to current law. Section 614(c)(4) of S. 1248 would make a clarifying change. The substantive changes that would be made by the bill involve evaluations before a change in eligibility. S. 1248 would provide exceptions to the requirement for evaluations when a child graduates from high school or is beyond the age of coverage. Such a child would receive a summary of performance under the bill.

**Section 614(d)** – Individualized Education Programs. S. 1248 would make several changes to the definition of individualized education program. Instead of a statement of the child’s present levels of educational performance, S. 1248 would insert a statement of the child’s present levels of academic achievement and functional performance. S. 1248 would also eliminate the requirement in current law for benchmarks or short term objectives and modify the current provisions on state and district wide assessments and the current provisions on transitional services. S. 1248 would add a subsection entitled a “rule of construction” stating that nothing in the section shall be construed to require that additional information be included in a child’s IEP beyond what is explicitly required in this section. The provision in current law at section 614(e) that the IEP team is not required to include information under one component of the child’s IEP that is already in another component is added in this subsection.

**Section 614(d)(1)(C)** – IEP Team Attendance. S. 1248 would add a new subsection delineating when a member of an IEP team is not required to attend an IEP team meeting and when an IEP team member may be excused from attendance. This subsection would also require that a parent’s agreement and consent be in writing.

**Section 614(d)(3)** – Development of IEP. S.1248 would add a requirement that the IEP team consider the academic, developmental and functional needs of the child.

**Section 614(d)(3)(B)** – Consideration of Special Factors. S. 1248 would change current law regarding behavioral interventions and supports to require such interventions and



other strategies when a child's behavior impedes his learning or that of others. S. 1248 would also add a requirement that the IEP team consider, when appropriate, for a child who is blind or visually impaired, instructional services relating to functional performance skills, orientations and mobility and skills in the use of assistive technology devices.

**Section 614(d)(3)(C)** – Requirement with Respect to Regular Education Teacher. S. 1248 would add language relating to behavioral supports.

**Section 614(d)(3)(D)** – Agreement. S. 1248 would allow the parent and local educational agency to agree not to convene an IEP meeting for changes after the annual IEP meeting.

**Section 614(d)(3)(E)** – Consolidation of IEP Team Meetings. S. 1248 would encourage the consolidation of reevaluations with IEP team meetings.

**Section 614(d)(4)** – Review and Revision of IEP. S. 1248 would change the current language from requiring participation of the regular education teacher when appropriate to requiring participation when consistent with the new provision on attendance at IEP meetings.

**Section 614(d)(5)** – Three-Year IEP. S. 1248 would add a new provision allowing a three year IEP in certain circumstances for a child who has reached the age of 18.

**Section 614(f)** – Alternative Means of Meeting Participation. S. 1248 would add a new provision on alternative means of meeting participation, such as video conferences and conference calls.

## **SECTION 615. PROCEDURAL SAFEGUARDS**

**Section 615(a)** – Establishment of Procedures. This subsection is the same as current law.

**Section 615(b)** – Types of Procedures. S. 1248 would make several changes to section 615(b), including an opportunity for either party to present complaints and specific provisions relating to homeless children or youth.

**Section 615(c)** – Notification Requirements. S. 1248 would keep the substance of current law regarding the content of the prior written notice but would add a new subsection on the due process complaint notice, providing in part that the notice is to be deemed sufficient unless there is written notification to the hearing officer and other party within twenty days of receiving the complaint. A new subsection would be added delineating when a parent may amend their due process complaint notice.

**Section 615(d)** – Procedural Safeguards Notice. S. 1248 would limit the provision of the procedural safeguards notice to once a year with certain exceptions including when a parent requests the notice. The bill would add requirements that the new time periods for

filing complaints and civil actions be included in the contents of the notice and that the notice include more information regarding the opportunity to present and resolve complaints.

**Section 615(e)** – Mediation. S. 1248 would specify that mediation may be used for matters arising prior to the filing of a due process complaint. In addition, the bill would change current law so as to offer, not require, a meeting with a disinterested party to explain the benefits of mediation. S. 1248 would also add headings to the subsections.

**Section 615(f)** – Impartial Due Process Hearing. S. 1248 would amend section 615(f) to specifically allow the local educational agency to ask for a due process hearing. The bill would also require a preliminary meeting with the parents and the IEP team to attempt to resolve the complaint. This meeting must be convened within 15 days of receiving notice of the complaint and must meet certain other requirements. If the complaint is not resolved within fifteen days, the due process hearing may occur. If an agreement is reached during the meeting the agreement shall be set forth in a written settlement agreement that is enforceable in court.

S. 1248 would add to the requirements for a person conducting a due process hearing.

S. 1248 would prohibit the party requesting the due process hearing from raising issues at the hearing that were not raised in the notice unless the other party agrees but nothing would preclude a parent from filing a separate due process complaint on another issue.

S. 1248 would provide for a time line for the filing of a due process complaint, requiring that the parent or public agency request an impartial due process hearing within two years of the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint. There are also exceptions to the time line.

S. 1248 would require that the decision made by the hearing officer be made on substantive grounds based on a determination of whether the child received a free appropriate public education. In matters alleging a procedural violation, the hearing officer may find that the child did not receive a free appropriate public education only in certain circumstances. However, the bill specifies that nothing shall be construed to preclude a hearing officer from ordering a local education agency to comply with procedural requirements. Also, nothing in the section is to be construed to affect the right of a parent to file a complaint with the State educational agency.

**Section 615(g)** – Appeal. This section is essentially the same as current law and allows for a party aggrieved by the findings of a due process hearing conducted by the local educational agency to appeal the decision to the State educational agency.

**Section 615(h)** – Safeguards. S. 1248 would make no substantive changes to current law which provides in part for the right to be accompanied by counsel and to present evidence and cross-examine witnesses.

**Section 615(i)** – Administrative Procedures. S. 1248 would add a requirement that the party bringing a civil action must bring the action within 90 days from the date of the hearing officer’s decision or, if the state has an explicit time limitation, such time as the state law allows. S. 1248 also would not allow attorneys’ fees for the preliminary meeting. The bill would add a new subsection specifically allowing parents to represent their children in court.

**Section 615(j)** – Maintenance of Current Educational Placement. S. 1248 would make no substantive changes to current law which requires that unless the state or local educational agency and the parents agree otherwise, the child remains in the then-current educational placement until all proceedings have been completed.

**Section 615(k)** – Placement in Alternative Educational Setting. S. 1248 would make significant changes to the current provisions of section 615(k). Among these changes are the ability of school personnel to order a change in placement for up to 10 school days for a child with a disability who violates a code of student conduct; and the ability of school personnel to remove a student to an interim alternative educational setting for not more than 45 school days when the child has committed serious bodily injury upon another person while at school or at a school function under the jurisdiction of a State or local educational agency. A new definition of serious bodily injury would be added. When a parent requests a hearing regarding a disciplinary procedure, S. 1248 would require that the child remain in the interim alternative educational setting pending the decision of the hearing officer.

S. 1248 would require that the LEA notify the parents of the decision to take disciplinary action and all the procedural safeguards available under section 615, not later than the date on which the decision to take disciplinary action is made. When a child with a disability is removed from his or her current placement pursuant these authorities, S. 1248 would require that the child continue to receive educational services so as to enable the child to continue to participate in the general educational curriculum and to progress toward meeting the IEP goals. In addition, the bill would require that the child receive functional behavioral intervention services designed to address the behavior violation so that the violation does not recur and a behavior assessment if the LEA did not conduct one prior to when the violation occurred.

Under S. 1248, a hearing may be requested by the parent of a child with a disability who disagrees with any decision regarding disciplinary action, placement or the manifestation determination under this subsection, or by a LEA that believes the maintenance of the current placement of the child is substantially likely to result in injury to the child or others.

S. 1248 also contains revised language regarding the manifestation determination. Manifestation determinations do not have to be conducted prior to taking a disciplinary action for ten consecutive school days or less or for a removal in cases involving weapons, drugs, or serious bodily injury. In other situations, the Senate bill would

require that within ten 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 IEP team shall review all relevant information in the student's file, any information provided by the parents, and teacher observations to determine: (1) if the conduct in question was the result of the child's disability; or (2) if the conduct in question resulted from the failure to implement the IEP or develop and implement behavioral interventions. If either of these two conditions is applicable, the Senate bill provides that the conduct is determined to be a manifestation of the child's disability. Current law contains similar requirements including the requirement that the IEP team consider all relevant information. However, the current law specifically lists examples of the information that must be considered.<sup>9</sup>

The Senate bill would make some changes to the current statutory language on the placement of a child during appeals. Generally, S. 1248 would require that the child remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided, unless the parent and the state or local educational agency agree otherwise. However, S. 1248 would delete the provision in current law regarding current placement and expedited hearings<sup>10</sup> and would add a requirement that the state or local educational agency arrange for an expedited hearing which shall occur within twenty school days of the date the hearing is requested.

Changes would also be made regarding protections for children not yet eligible for special education. S. 1248 would amend current law, in part, by adding a new situation where the LEA is deemed to have knowledge: where the child has engaged in a pattern of behavior that should have alerted LEA personnel that the child may be in need of special education and related services. In addition, the Senate bill would add an exception where the LEA is deemed not to have knowledge that the child has a disability if the parent of the child has not agreed to allow an evaluation of the child.

**Section 615(l)** -- Rule of Construction. S. 1248 would make no change in the current provision.

**Section 615(m)** – Transfer of Parental Rights at the Age of Majority. S. 1248 would make no change in the current provision.

**Section 615(n)** – E- Mail. S. 1248 would add a new subsection allowing the parent of a child with a disability to elect to receive the notices required under section 615 by email if the public agency makes such option available.

## **SECTION 616. MONITORING, TECHNICAL ASSISTANCE, AND ENFORCEMENT**

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<sup>9</sup> 20 U.S.C. §1415(k)(4)(C).

<sup>10</sup> 20 U.S.C. §1415(k)(7)(B)-(C).

**Section 616(a)** – Federal and State Monitoring. S. 1248 would require the Secretary to monitor implementation of the Act through oversight and a system of indicators, to enforce the Act, and to require States to monitor implementation of the Act by LEAs and enforce the Act. The subsection would require that the primary focus of Federal and State monitoring activities shall be on improving educational results and functional outcomes for all children with disabilities, while ensuring compliance with program requirements, with a particular emphasis on requirements relating to improving educational results for children with disabilities. In addition, monitoring priorities are provided as well as permissive areas of review.

**Section 616(b)** – Indicators. Subsection (b) would require the Secretary to implement and administer a system of required indicators that measure the progress of the States in improving their performance.

**Section 616(c)** – Compliance and Enforcement. S. 1248 would require the Secretary to examine relevant State information and data annually to determine whether the State is making satisfactory progress toward improving educational results and is in compliance with the Act. The bill would provide for more detailed procedures for the Secretary to follow to determine compliance and, like current law, would provide for judicial review of the Secretary's final action.

**Section 616(d)** – Divided State Agency Responsibility. S. 1248 is essentially the same as current law.

**Section 616(e)** – State and Local Monitoring. S. 1248 would require the State educational agency to monitor and enforce the act.

#### **SECTION 617. ADMINISTRATION**

**Section 617** – Administration. S. 1248 would delete the subsection in current law relating to regulations and add a new subsection regarding model forms.

#### **SECTION 618. PROGRAM INFORMATION**

**Section 618** – Program Information. S. 1248 would change current law relating to program information by adding in various subsections requirements for data on gender and children with limited English proficiency, and requiring more data on disciplinary actions. In addition, the current law provisions relating to sampling are deleted and provisions are added concerning data reporting and technical assistance.

**SECTION 619. PRESCHOOL GRANTS** – Sec. 619 of S. 1248 is substantially the same as Sec. 619 in current law. However, changes made to other sections of Part B apply to Section 619 as well as to the Part B grants-to-states program.

#### **PART C—INFANTS AND TODDLERS WITH DISABILITIES**

Most of the provisions of Part C of IDEA, which authorizes services for infants and toddlers with disabilities, would remain the same under S. 1248.

## **SECTION 632. DEFINITIONS**

**Section 632(5)** –“Infant or Toddler with a Disability.” S. 1248 would include in the definition preschool children with disabilities eligible to be served under Sec. 619 who had been served under Part C.

## **SECTION 635. REQUIREMENTS FOR STATEWIDE SYSTEM**

**Section 635(a)(1)** – Definition of ‘developmental delay.’ S. 1248 would add minimal criteria to the definition of developmental delay; whereas current law leaves the determination completely up to the state.

**Section 635(a)(9)** – Personnel standards. S. 1248 would add language to ensure that qualified paraprofessionals are not prohibited from providing early intervention services. S. 1248 would require, at a minimum, that the definition include all infants and toddlers experiencing a developmental delay of 35% or more in one area of development or a delay of 25% or more in two or more areas of development.

**Section 635(a)(16)** – Provision of services in a natural environment. S. 1248 would qualify the requirement that early intervention services be provided in a natural environment if a specific outcome cannot be met in a natural environment.

**Section 635(b)** – Flexibility to Serve Children 3 Years of Age to under 6 Years of Age. S. 1248 would add a subsection that would permit parents of children with disabilities eligible for preschool services under Sec. 619 to continue early intervention services under Part C until the child enters kindergarten. Such programs would be developed and implemented by the state educational agency (SEA) and the Part C lead state agency (if different from the SEA). The programs would have to include “an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills.” Participation of children with disabilities ages 3 to 5 in such programs would be based on informed written parental consent. In addition, parents of participating children would receive annual information on their rights to pursue services for their children under these Part C provisions or under Part B, and differences in services and parental rights under the two programs. Part B funds (in addition to Part C funds) could be used to support this program. S. 1248 stipulates that “nothing in this subsection shall be construed to require a provider of services under this part [i.e., Part C] to provide a child served under this part with a free appropriate public education.”

## **SECTION 637. STATE APPLICATION AND ASSURANCES**

**Section 637(a)(6)** – S. 1248 would add requirements to the state application for state policies and procedures related to early intervention services for infants and toddlers involved with child abuse or neglect or affected by prenatal drug exposure.

## **SECTION 640. PAYOR OF LAST RESORT**

**Section 640(b)** – Obligations Related to and Methods of Ensuring Services . S. 1248 would add a subsection to clarify public agencies’ obligations to pay for or provide services for children with disabilities under Part C.

## **SECTION 643. ALLOCATION OF FUNDS**

**Section 643(e)** – Reservation for State Bonus Grants. The bill would require the Secretary to reserve 10% of any increase in appropriation for Part C over \$434,159,000 (the FY2003 amount) for “bonus grants” to states carrying out services to children with disabilities ages 3 to 6 under Section 635(b).

## **PART D—NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF CHILDREN WITH DISABILITIES**

Part D of IDEA authorizes various national activities aimed at improving the education of children with disabilities. S. 1248 would maintain some aspects of Part D but would also reorganize and make significant changes to this part.

### **SUBPART 1—STATE PERSONNEL PREPARATION AND PROFESSIONAL DEVELOPMENT GRANTS**

Subpart 1 under S. 1248 would focus state grants on personnel preparation and in-service training. These grants would remain competitive until appropriations reached \$100 million. (The current appropriation for state improvement grants is about \$51 million.) When that amount is reached, the Secretary would first allocate sufficient funds to ensure that multi-year grants already underway would be funded to completion. Remaining funds would be distributed to states by a formula based on each state’s share of the overall amount states received under the Part B grants-to-states program for the preceding year,<sup>11</sup> except that no state would receive less than ¼% “of the amount made available under this part.”

### **SUBPART 2—SCIENTIFICALLY BASED RESEARCH, TECHNICAL ASSISTANCE, MODEL DEMONSTRATION PROJECTS, AND DISSEMINATION OF INFORMATION**

Subpart 2 of Part D under S. 1248 would authorize “scientifically based” research, technical assistance, demonstration projects, and dissemination. The bill would require research conducted under Subpart 2 to be coordinated with the Center for Special Education Research. This center—which would be authorized by Title III of S. 1248 by

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<sup>11</sup> For example, a state that received 1% of applicable funds during the previous fiscal year, would receive 1% of the funds available for allocation under this program.

adding a new Part E to the Education Sciences Reform Act of 2002—would sponsor research and evaluation related to IDEA and the needs of children with disabilities.

### **SUBPART 3—SUPPORTS TO IMPROVE RESULTS FOR CHILDREN WITH DISABILITIES**

Subpart 3 of Part D under S. 1248 would continue authorization for parent training and information centers and community parent resource centers, which provide assistance to parents of children with disabilities, and for technology development and media services.

### **SUBPART 4—INTERIM ALTERNATIVE EDUCATIONAL SETTINGS, BEHAVIORAL SUPPORTS, AND WHOLE SCHOOL INTERVENTIONS**

S. 1248 would authorize new activities under subpart 4 of Part D related to interim alternative settings, behavioral support, and “whole school” intervention. This subpart would authorize the Secretary of Education to make grants to LEAs or consortia of LEAs and other entities, such as institutions of higher education and community-based organizations, to establish or enhance practices related to student behavior. These practices might include, for example, early identification of children “at risk for emotional and behavioral difficulties” and training of school personnel “on effective strategies for positive behavior intervention.” Grants also could focus on improving interim alternative settings providing FAPE for children with disabilities removed from their current placements for reasons of behavior problems.

## **TITLE II—AMENDMENTS TO THE REHABILITATION ACT OF 1973**

**Section 202** – Definitions. S. 1248 would add a definition of a “student with a disability” to Section 7 of the Rehabilitation Act of 1973.

**Section 203** – State Plan. (a) Assessment and Strategies. S. 1248 would add new provisions to Section 101(a)(15) to require the state plan to assess the needs of students with disabilities, including their need for transition services, and to require the state plan to assure that the state has developed and implemented strategies to address transition needs of students with disabilities, achieve the goals and priorities identified by the state, and improve and expand vocational rehabilitation (VR) services for students with disabilities on a statewide basis. S. 1248 also would require that the state will use funds appropriated under the new authorization of appropriations to improve and expand VR services for students with disabilities.

**Section 204** -- Scope of Services. S. 1248 would amend Section 103 of the Rehabilitation Act of 1973 to specify that transition services include services identified under the bill, and to specify that consultation and technical assistance include planning for transition from school to post-school activities, including employment.



**Section 205** – Standards and Indicators. S. 1248 would amend Section 106(a) to add that the measures be consistent with the corresponding state-adjusted levels of performance under the Workforce Investment Act (WIA), and would add a new provision that measures of performance include the program's performance on transition to post-school activities and achievement of post-school goals of students served under the program.

**Section 206** – Reservation for Expanded Transition Services. S. 1248 would add a new Section 110A, which would require states to reserve an amount (to be calculated by the Commissioner of the Rehabilitative Services Administration) for expanded transitional services.

**TITLE III—NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH  
SEC. 301. NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH.**

S. 1248 would add a new Part E to the Education Sciences Reform Act of 2002, which authorizes a National Center for Special Education Research.

**TITLE IV—COMMISSION ON UNIVERSAL DESIGN AND THE  
ACCESSIBILITY OF CURRICULUM AND INSTRUCTIONAL MATERIALS**

S. 1248 would authorize a Commission on Universal Design and Accessibility.