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# Finance Provisions Under the Individuals With Disabilities Education Act 1997 Amendments

Deborah A. Verstegen

The 1997 Amendments to the Individuals with Disabilities Education Act (P. L. 105-17), signed into law by the President Clinton on June 4, 1997, make comprehensive changes to the IDEA. The legislation amends and extends the infants and toddlers program and special purpose grants in addition to modifying the substantive requirements of the grants to the states and the preschool programs. The purpose of this article is to describe the key elements of the legislation related to the finance provisions with a focus on the grants to states and preschool programs.

P.L. 105-17 retains the basic structure of the IDEA—three formula grants and the discretionary grant programs. However, the fiscal provisions of the IDEA have undergone what is probably the greatest changes since the inception of this law in 1976. Important changes are found in the:

- state and substate allocation formulas<sup>1</sup>,
- terms and conditions for state and local eligibility and participation,
- fiscal accountability provisions.

This article is organized around these three areas.

## State Formula

### Grants to States Program—Part B, Section 611

Until appropriations for the grants to states program exceed \$4.9 billion, state and substate grants will be based on prior law, *i.e.*, the number of children with disabilities that are receiving special education and related services. However, the calculation of eligible children or child count may now occur, at the discretion of the state, either on the last Friday in October or December 1 of the fiscal year for which the funds are appropriated.

## New Formula<sup>2</sup>

When appropriations for the Part B grants to states program reach or exceed \$4.9 billion (\$4,924,672,200) the new formula, based on a state's entire school-aged population and a state's entire school-aged population in poverty, will take effect. Under the new formula, the states will continue to receive a base amount of funding equal to their award in the year before this “trigger” appropriation level was reached. New money, or funds above this base amount, will be distributed with 85% based on the total school-aged population and 15% based on the total population in poverty. Both these population figures will be based on the age range to which each state provides a free and appropriate public education (FAPE). Table I provides a scenario related to the base year, the “trigger” amount, and formula allocations.

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**Table I. IDEA, New Formula - Part B, § 611 - State Grant Program-Illustrative Only**

### Grants to States

Examples - Dollar Amounts are Illustrative Only

- 1998: \$4.1 billion
  - Distribution
  - Child Count formula (old)
- 1999: \$5.2 billion
  - Triggers new formula (Appropriation over \$4.9 billion)\*
  - \$5.2 billion - 1999 appropriation
  - 4.1 billion - *Base-amount*, the year before the trigger was exceeded (1998)
  - 
  - \$1.1 billion difference (New Money)
  - Distribution
  - \$4.1 billion - State Awards - Pre-trigger year allocation based on child count (1998)
  - \$1.1 billion - New Permanent Formula based on 85% census, 15% poverty (with restrictions)
- 2000: \$5.9 billion (\$1.8 above base)
  - \$5.9 billion - 2000 appropriation
  - 4.1 billion - *Base-amount* the year before the trigger was exceeded (1998)
  - 
  - \$1.8 billion difference (New Money over base year)
  - Distribution
  - \$4.1 billion - State Awards - Pre-trigger year allocation based on child count (1998)
  - \$1.8 billion - Under New Formula 85% census, 15% poverty (with restrictions)

Note: \*Appropriation must equal or be greater than \$4,924,672,200.

## Increased Funding Years: Formula Restrictions

Certain restrictions apply to state allocations under the new formula which take effect after a total appropriation of \$4.9 billion is reached. These include minimum and maximum grant provisions in years in which overall funding for this program increases.

Minimum Provisions<sup>3</sup>. Under minimum grant provisions, a state's allocation will be the greatest of the prior year's allocation, the allocation under the new formula, or one of the following three provisions:

- The base amount plus 1/3 of 1% of the total appropriation increase over the total base year amount. (For example, if the total base year appropriation was \$4.1 billion and the current appropriation is \$5.2 billion, then each state would receive at least \$3.63 million in new money, which equals 1/3 of 1% of all new funds under this provision (\$5.2 - \$4.1 billion X .0033).
- The percent increase from the prior year less 1.5%. (For example, if the total appropriation increases 10% over the prior year, then 10% minus 1.5% equals a minimum of an 8.5% increase for each state over the prior year.)
- 90% of the percent increase above the prior year. (For example, if there is a 10% increase in the total appropriation over the prior year, then each state would be entitled to receive at least a 9% increase (90% of 10%) over the prior year's allocation.)

Maximum Provisions. The maximum grant restriction overrides the minimum provisions described above. The maximum increased allowed for a state is 1.5% above the percent increase in appropriations over the

prior year. (For example, if appropriations increase over the prior year by 10%, then the maximum increase allowed for a state will be 11.5% (10% + 1.5%)). All of these provisions are summarized in Table 2.

**Decreased Funding Years: Formula Restrictions**

Limits are also placed on the allowed reduction for years in which appropriations to the grants to states program decrease after a total allocation of \$4.9 billion has been reached. These are:

- If the total allocation is less than the prior year but greater than the base year (before the trigger was reached) then the allocation to the state is the amount it received in the base year plus a prorated amount. This proration is best illustrated through an example. If the total appropriation was \$4.1 billion in the base year, and then \$5.2, \$5.9 and \$5.1 billion in subsequent years; the difference between the current and base year is \$1 billion (\$5.1 billion minus \$4.1 billion). This equals the total available pool of "remaining funds." Each state's share of these "remaining funds" is determined by its percent increase in funding for the two prior years. For example, if the state's increase between the two prior years had been \$7 million this would equal 1% of the national increase of \$0.7 billion (\$5.9 - 5.2 billion) for these two years. This percentage would be used to determine this state's share of "remaining funds." In this case, the state would receive \$10 million (1% of \$1 billion) over its base year allocation.
- If the total allocation is equal to or less than the allocation for the base year, then each state's allocation is the amount received in the base year or that amount ratably reduced.

Examples of calculations for minimum and maximum increases are shown for hypothetical states in Table 3. The top section of the table shows total counts of school-aged children, school-aged children in poverty, appropriations for 1997, and hypothetical appropriations for 1998 and 1999. Child count distributions govern 1997 and 1998 (base year). In 1999 the new permanent formula becomes effective because the appropriation is larger than \$4.9 billion. These data are provided for the U.S. and for three hypothetical states "A", "B" and "C."

**Table 2. IDEA, New State Grant Formula: Restrictions for Minimum & Maximum Increases for Funds Above Base Year (In years with Increased Appropriations)**

Minimum

1. Take the highest increase of the new formula amount or the following:

- 1/3 of 1% of total dollar increase above the base year  
Example:  
If appropriation increases from \$4.1 to \$5.2 billion then 1/3 of 1% of \$1.1 billion = \$3.63 million
  - Percent increase from prior year less 1.5%  
Example:  
If total appropriation increases 10%, then 10% - 1.5% = 8.5% increase
  - 90% of percent increase in the total appropriation above the prior year  
Example:  
If 10% increase in appropriation, then 90% of 10% = 9% increase
2. At least as much as the prior year

Maximum

- Cannot receive more than 1.5% above the total percent increase in Part B § 611 funds  
Example:  
10% increase in total appropriation over prior year  
+ 1.5%  
11.5% increase maximum

**Table 3. Examples of State Allocations under the New Formula (Part B, Section 611): Minimum/Maximums for Funds Above Base Amount**

<u>Child Count Formula</u>					
	Census Count of Children	Children in Poverty	Initial Allocation 1997	Base Year Allocation 1998	New Permanent Formula 1999
US Total	70,561,458	12,574,163	\$3,107,522,000	4,092,000,000	5,200,000,000
State A	1,089,889	252,854	53,205,156	67,619,644	85,504,328
State B	1,468,153	179,115	85,108,762	110,056,586	137,933,114
State C	8,789,680	1,511,825	306,706,866	404,171,069	518,669,775
<i>Minimum/Maximum Options for Increases in Funds Above the Base Amount (1999)</i>					
	Formula Allotment 85%/15%	Minimum 1/3 of 1%	Minimum % Increase -1.5%	Minimum 90% Increase	Maximum % Increase +1.5%
State A	X85,504,328	71,286,311	84,747,205	83,947,314	86,775,794
State B	132,014,386	113,723,253	X137,933,114	136,631,225	141,234,812
State C	541,437,593	407,837,736	506,544,643	501,763,595	X518,669,775

Note: X = the state award; \* = Assumes \$8 million for evaluation/studies.

The second part of the table illustrates possible options for state allocations under the minimum and maximum provisions of Part B. The ruling provision and amount for each state has an “X” placed next to it. As shown, State A receives the base amount set in 1998 (\$67,619,644) plus the difference between this amount and the total state grant, as determined through the new permanent formula of 15% poverty and 85% census. In this case, the formula amount is higher than any of the three minimum allocation options. As it is also lower than the maximum, the state is allocated the formula amount (\$85,504,328). State B is allocated the most (\$137,933,114) under the minimum provision that permits the state to be awarded the percentage increase in annual appropriations minus 1.5%. Again, the maximum provision does not apply so the state is allocated the highest amount under this minimum option. Finally, State “C,” with a large number of school-aged children and children in poverty, generates the largest amount under the new formula, but this is over-riden by the maximum increase permitted. Thus, State “C” is awarded \$518,669,775.

### State Education Agency Allocations

The 1997 Amendments also revised IDEA funding for state education agencies. These provisions are effective immediately.

*State Set-aside.* The amount of the state set-aside under the measure is 25% of the total amount the state received under this program in 1997, cumulatively adjusted each year by the lesser of the growth in inflation<sup>4</sup> or the percent increase in the state award over the previous fiscal year. These funds may be used for administration and for other direct services and support.

*State Administration.* For administration, the larger of either 20% or \$500,000 may be used to administer the grants to states program (Section 611), the preschool program (Section 619) and, Part C— if the SEA is the lead state agency in Part C- infants and toddlers program.<sup>5</sup> These funds may also be used for technical assistance and coordinating activities with other programs that provide assistance to children with disabilities.

*State Services and Direct Support.* The remainder of the funds retained by the state, and not used for administration, must be used by the state to support direct and support services, and for monitoring and complaint investigation. These activities include:

- Support and direct services—including technical assistance and personnel development and training,
- Monitoring and complaint investigation (for costs exceeding the 1985 amount for such services),
- Establishing and implementing a mediation process,
- Assisting LEAs in meeting personnel shortages,
- Developing a state improvement plan,
- Implementing SEA/LEA activities to meet performance goals,
- Developing and implementing a statewide coordinated service system—not to exceed 1% of the total allotment for the grants to states program (Section 611).

*Mandated Substate Grants to Local Education Agencies: The “Sliver”.* In addition, each state will be required to use an additional amount for new grants to local educational agencies in every year that its allocation increases by more than the rate of inflation for the prior year, and the amount of required funding is not less than \$100,000. These funds are to be used for making systemic changes to improve results for children with disabilities and other specified activities.

For example, if the total IDEA, Part B grant to a state was \$50 million in 1997, the SEA set-aside would be \$12.5 million (25% of total). Assume that in 1998, inflation increased 3% over the prior year; and the total IDEA, Part B grant was \$55 million. The appropriation increase over the

prior year therefore is 10%. Because the increase in funds is higher than the increase in inflation, the state would be required to provide subgrants to localities of \$875,000 (7% of \$12.5 million) for capacity building and improvement.

The amount required for subgrants to localities would vary from year to year. At their discretion, states could also use funds reserved for state-level activities for these LEA grants. If the increase in the state’s allocation does not exceed the rate of inflation, it would not be required to use any funds for these LEA grants. Therefore, the mandated amount for LEA grants would not necessarily increase from year to year. Examples of “sliver” calculations are explained in Table 4 and shown in Table 5, along with SEA set-aside amounts, including administrative and non-administrative funds.

**Table 4. IDEA, New Permanent Formula: State Activities - Subgrants to Localities (The “Sliver”)**

Mandated grants to localities for capacity building and improvement.

- Applies only when the SEA set-aside increases more than inflation

Calculation of amount to be distributed

- Calculate percent inflation increased over prior year
  - Calculate percent total appropriation (Part B § 611) increased over prior year
  - Subtract appropriation increase from inflation increase (b-a).
  - Take remainder (c) times total SEA set-aside for the prior year.
- This is the amount to be distributed (the “sliver”).

Example:

10%	inflation increase
-3%	appropriation increase
7%	multiply times prior year SEA set-aside*
(.07 * 12.5 million = \$875,000)	

Distribute \$875,000 to LEAs

\*SEA set-aside is state administration and other state level activities not including prior year subgrants to localities (if any).

### Sub-State Formula

#### Grants to States Program—Part B, Section 611

Each state receiving a grant under the grant to states program (section 611) must distribute at least 75% of the funds to local education agencies (LEAs). The allocation formula for distributing these federal funds to the LEAs mirrors the state allocation formula except there are no minimum or maximum provisions. As with the state formula, until appropriations for the grants to states program (Section 611) exceed \$4.9 billion,<sup>6</sup> substate grants are based on prior law— the number of children with disabilities that are receiving special education and related services.

#### New Formula<sup>7</sup>

When appropriations for the grants to states program exceed \$4.9 billion, this will “trigger” a new permanent state and substate formula.

Base amount and new money: New money, or funds above the base amount, received in the year before the trigger appropriation level was reached, would be distributed according to the new permanent formula. For additional dollars above the base, 85% would be based on the total school-aged population and 15% based on the total population in poverty—within the age range that states provide a free and appropriate public education.

There are slight differences in the state and LEA population and population in poverty factors that are used to distribute assistance under this program. For substate grants, the total school-age population

**Table 5. State Set-Aside - Sample State (\$ in Millions)**

	FY 1997	FY 1998	FY 1999	FY 2000
Rate of Inflation	NA	3%	5%	5%
Increase in Funding from Prior Year	NA	10%	20%	10%
Total IDEA Part B Funding	\$50.00	55.00	66.00	72.60
Total SEA Set-aside	\$ 12.5	12.875	13.52	14.87
Total State Level Activities (Sum of State Admin and Other State-Level Activities: [A+B+C+] 25% 1997 Part B Grant, adjusted)				
A. <u>State Administration</u> (20% Set-aside)	\$ 2.5	2.58	2.7	2.84
B. <u>Other State Level Activities</u> (80% Set-aside)	\$ 10	10.3	10.82	11.36
C. <u>State Sub-grants to LEAs</u> For Capacity-Bldg & Improvement (Difference Between Rate of Inflation and Increase in Funds Available times Prior Year SEA Set-aside)	\$ NA	0.88	1.93	0.68

Note: Figures are illustrative not actual; NA = not applicable.

includes only public and private school students, so the totals will be slightly lower than for the state, which includes all school-aged children. For example, the substate population will exclude home schooled children, children in prisons and other institutions, and drop-outs. For the poverty factor, the state education agency will need to determine the measure to be used to distribute aid. For example, it may use the number of children in LEAs receiving free lunches; or the number of children in families with incomes below the poverty level for the LEA.

### Other Fiscal Provisions

#### Grants to States Program, Part B, Sections 612 & 613

This section focuses on other important fiscal provisions contained in the 1997 amendments. These include the “placement neutral” formula requirement for states, the provision of special education services that also benefit nondisabled children, and the fiscal accountability provisions.

*Placement Neutral Provision for SEA Finance Formulas.* This provision<sup>8</sup> requires states to demonstrate that if the state special education funding formula distributes assistance to localities based on the type of setting in which a child is served, the state has policies and procedures to assure that these funding provisions do not result in placements that violate the requirement that children with disabilities be served in the least restrictive environment (LRE). If such policies and procedures are not in place, the state must provide the Secretary with an assurance that it will revise the funding mechanism to ensure that it does not result in restrictive placements.

State special education funding systems that provide differential allocations based on where children with disabilities receive their educational services (e.g. in a resource room, a separate classroom, or a special public or private institution) sometimes provide additional funding to LEAs when children are served in more restrictive settings. Funding systems of this type are viewed as potentially in conflict with the LRE provisions of the IDEA.

This new requirement for “placement neutrality” could affect current special education funding systems in a number of the states. About one-quarter of the states have special education funding systems that are

primarily based on placement, and many other states have subsidiary provisions that provide additional funding when students with disabilities are served in separate, regional or state, public or private, special education institutions. Separate special education transportation reimbursement formulas may also be viewed as special education funding based on student placement. These formulas generally add funds for sending students with disabilities away from neighborhood schools that can not be recouped to offset some of the costs that may be incurred for serving these students closer to home. It is unclear how broad the interpretation of this new requirement will be, and whether it will include such provisions as separate special education transportation funding.

Examples of “placement neutral” formula include systems where funds are distributed on criteria other than student placement. Alternative criteria commonly used are categories of disability, the overall count of special education students, or total counts of all students. Other alternative funding criteria are the intensity of services required by individual children with disabilities and fixed percentages of reimbursement for special education expenditures regardless of where the child is served.

*Benefits for Nondisabled students.* Another change under the 1997 Amendments allows nondisabled students to receive benefit from special education services provided for children with disabilities that are in accordance with their Individual Education Programs (IEPs). The provision encourages localities to meet the intent of the law—that children with disabilities are educated to the maximum extent possible with children without disabilities—without having to fear audit exceptions under the no supplanting or commingling of funds requirements.

For example, if a general education classroom breaks into groups for reading, and the special education teacher meets with three special education students during this time in the general classroom (or other educational setting) then children without disabilities can be included in the group. Likewise, if special materials and equipment are purchased with special education funds under IDEA, and they are placed in a resource center where children with disabilities are educated along with children without disabilities, both groups may use the materials and equipment. However, special education children have the first draw on such materials.

*SEA Fiscal Accountability Provisions.* As in prior law, these federal funds must not be commingled with state funds and must supplement and not supplant other federal, state and local funds expended for special education and related services. In addition, new provisions for state maintenance of effort have been added to the measure. States are not permitted to reduce the amount of state financial support for special education below the level of the prior year. Likewise, states are not permitted to reduced medical and other assistance available, or to alter eligibility, under Titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for children with disabilities.

However, two additional provisions provide some flexibility to states by modifying these prior requirements. First, funding for the state education agency set-aside (including assistance for administration and other uses) may be commingled with state funds and used to supplant other funds from federal, state and local sources expended for special education and related services for children with disabilities.<sup>9</sup> Second, waivers of the fiscal accountability requirements are permitted if the Secretary concurs with a state claim that it has provided clear and convincing evidence that all children with disabilities have a free and appropriate education available to them.

*LEA Fiscal Accountability Provisions.* As before, LEAs are required to use Part B funds for the excess costs of providing education and related services to children with disabilities and to supplement not supplant

other federal, state and local funds for this purpose. Localities are also still required to maintain effort (spending) at the level of the prior year. However, four exceptions and a special provision have been added through the 1997 amendments to provide for increased flexibility.

Localities may reduce their expenditures when the reduction is attributable to:

- The voluntary departure, by retirement, just cause, or otherwise, of special education personnel,
- a decrease in the enrollment of children with disabilities,
- the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities,
- the termination of the obligation of the agency to provide a program of special education to a particular child with a disability that is an exceptionally costly program (as determined by the SEA) because the child:

- has left the district,
- has reached the age at which the obligation of the district to serve the child has terminated,
- no longer needs a special education program.

In addition, if the appropriation under the state grant program (Section 611) exceeds \$4.1 billion, and the SEA permits, localities may treat up to 20% of the increase in federal funds over the prior year as local funds.

*Schoolwide Programs Under ESEA, Title I.* Another new local provision is that education agencies may now use Part B funds to carry out schoolwide programs under Elementary and Secondary Education Act (P.L. 89-10 as amended; Title I, section 1114). Schools with at least 50% of their children in poverty are eligible to participate in this program, which allows funds from a variety of state and federal categorical programs to be combined in ways that promote the provision of a unified set of instruction for all children in the school. For the first time, IDEA funds are allowed to be included in this mix of funds. The amount of IDEA funds that can be used for this purpose is governed by the percent of children with disabilities in the participating school compared to the total number of such children in the LEA.

*Bridging Services Across Program and Agencies.* An LEA may also use up to 5% of the funds it receives under the state grant program (Section 611) in combination with other funds, to develop and implement a coordinated service system designed to improve results for children and families, including children with disabilities.

## **Fiscal Provisions**

### **Preschool Grants Program**

#### **Grants to States Program, Part B, Section 619**

In general, the preschool state and substate allocation formulas mirror the grants to state program formulas, except the new preschool funding formula goes into effect immediately.

### **Allocations to States**

After reserving funds for studies and evaluations, states will receive a base amount equal to their awards in 1997 which were based on the number of children with disabilities aged three through five (and at the state's discretion, two-year-old children who will turn three during the school year) receiving special education and related services.

When appropriations under this section increase above the 1997 level, new money, will be distributed to states with 85% based on their relative school-aged population aged three through five, and 15% based on their relative population in poverty aged three through five—within the age range that states provide a free and appropriate public education. The minimum and maximum provisions pertaining to the preschool formula are the same as those under the Part B grants to states formula.

## **State Set-aside**

The 1997 Amendments revised allocations to the state education agency under the preschool grant program effective immediately. The amount of this state set-aside is 25% of the total amount received under the preschool grant program (Section 619) in 1997, cumulatively adjusted each year by the lesser of the growth in inflation or the percent increase in the state award over the previous fiscal year.

*State Administration.* Of the adjusted state set-aside, the state may retain up to 20% to administer the preschool grant program and Part C, the infant and toddler program, if the SEA is the lead agency. These funds may also be used for technical assistance and coordinating activities under Part B with other programs that provide assistance to children with disabilities.

*Other State-Level Activities.* Funds that are not retained by the state for administration shall be used by the state for direct and support services, including the following:

- Direct services for children eligible for services under the preschool grants program,
- Support services including establishing/implementing a mediation process that may benefit children aged three through five in addition to younger and older children,
- Developing a state improvement plan,
- SEA/LEA activities to implement and meet performance goals established by the state under the preschool program,
- Supplementing funds to develop/implement a statewide coordinated service system—not to exceed 1% of the total allotment for the grants to states program (Section 619).

## **Sub-State Formula**

The substate allocation formula under the 1997 Amendments to the IDEA, Part B, Section 619, mirrors the state allocation formula, except there are no minimum or maximum provisions. Each state receiving a grant under the preschool grant program (Section 619) must distribute any funds it does not reserve for administration to local education agencies.

Local education agencies will receive a base amount of funding equal to their awards in 1997 under the child count formula assuming the state took the full set aside of 25%. New money, or funds above the 1997 or base amount, would be distributed with 85% based on the relative numbers of children of ages three to five enrolled in public and private schools and 15% based on relative numbers of children living in poverty. This poverty count is based the number of children ages three to five, or the subset of this age range for whom the state provides a free and public education to eligible children.

## **Side by Side Comparison**

Table 6 provides a side-by-side comparison of major finance provisions included in P.L. 105-17.

## **Questions and Answers**

1. *Question:* When will the new permanent formula, under the grants to states program, effecting state and substate grants, become effective?

*Answer:* Not until appropriations for Part B, Section 611 exceed \$4.9 billion. It appears likely that this will occur sometime between the years 1999 and 2005.

2. *Question:* In the grants to states new permanent formula, which is overriding: minimum grants or maximum grants?

*Answer:* The maximum grant provisions are overriding and apply even if minimum grant provisions generate more state assistance.

**Table 6. IDEA Comparison Chart- Fiscal Provisions**

<b>Issue</b>	<b>Prior Law &amp; Regulations</b>	<b>Current Law (P.L. 105-17)</b>
Funding formula, generally	Prior law establishes a child count formula.	The new law keeps current law until federal appropriations reach approximately \$4.9 billion, at which time the new formula applies to funds appropriated over previous year's appropriations. Certain floors and caps would also apply to increases and decreases. Child count would continue through the year in which the new formula starts and then be discontinued after that date.
State-local funding split	Current law requires that no more than 25% of a state's grant be used at the state level, with the remainder being passed through to local educational agencies. Administrative funds limited to 5% of total funds.	The new law sets the state funding maximum as 25% of the 1997 level, and then limits the growth of that fixed sum to the rate of inflation or the increase in appropriations, whichever is smaller. Administrative funds are limited to 5% of 1997 with aforementioned restrictions. Subgrants to localities are required when increase in appropriations are higher than inflation.
In-state distribution of funds	Prior law requires that state funds be distributed by child count and prohibits distributing less than \$7,500 to any LEA.	The new law specifies that the intra-state formula will be the same as the federal formula, and eliminates the \$7,500 rule, except there are no minimums and maximums.
State Supplantation of state, local, and federal funds	Prior law and regulations prohibit supplantation of state, local, and other federal funds (except where the state provides clear and convincing evidence that all children with disabilities have FAPE available to them, in which case the Secretary may waive this requirement in whole or in part).	Prior law as to supplement not supplant and establishes a state maintenance of effort provision, based on state expenditures (not federal or local). Waiver is the same as current law, except that, the Secretary must establish by regulation within one year objective criteria for permitting reductions after determining compliance with the statute and consideration of the results of compliance reviews.
Use of funds	Prior law requires that federal funds not be commingled with state funds, and be used to supplement- and not supplant- other federal, state, and local funds.	New exemptions from maintenance of effort for LEAs are increased from the past, single regulatory exemption, to four statutory exemptions (when there is a decrease in enrollment, which is the current regulatory exception; an end to an agency's obligation to pay for an exceptionally costly program for a child; unusually long-term large expenditures (e.g. construction or equipment); or departure by retirement or otherwise of special education personnel). When LEA funds increase and were allocated from federal appropriations that exceed \$4.1 billion, an LEA may use up to 20% of the increase in federal funds to reduce its effort from the previous year by that amount.
State formula placement neutral	No similar provision in prior law.	State formula must not encourage separate placements of children with disabilities or assurances are required that it will be revised.
Flexibility in use of funds	No similar provision in prior law.	LEAs may use funds for schoolwide programs under ESEA, Title I, except funds must be based on percent of children with disabilities participating in such programs. Also, services and aids may also benefit one or more nondisabled children if IEPs are being met for children with disabilities.
Charter schools	No similar provision in prior law.	The new law contains three provisions relating to charter schools: 1) LEA charter schools may opt not to be merged into larger LEAs (unless state law specifically prevents this); 2) Non-LEA charter schools must receive an appropriate share of IDEA funds; and 3) charter schools are eligible for state discretionary program grant funds.
Services to prisoners in adult prisons	No prison specific provisions in prior law.	The new law clarifies that a state may delegate to prison authorities the responsibility for overseeing special education for individuals in adult prisons who have been tried and convicted as adults. With the delegation, any action by the Secretary on noncompliance with law (i.e. reduction in funds) must be proportional to the number of students in prison. Standards relating to IDEA services, placement, and paperwork may be relaxed to acknowledge the security and penological requirements of the prison environment.

3. *Question:* Do child counts continue once the new permanent formula is implemented?

*Answer:* No. Child counts cease once the new permanent formula is implemented. Funding will be based on total school-aged population and total school-aged population in poverty.

4. *Question:* What happens to funds distributed by states to localities under the mandated capacity building and improvement grant section (the sliver) in the subsequent year?

*Answer:* These funds flow directly to the LEAs according to the substate formula.

5. *Question:* Are the factors that distribute funds to states under the new permanent formula the same as those that distribute funds to localities?

*Answer:* No, they differ slightly. The funds to states are distributed on the most recent population and poverty data for the nation. The substate grants permit a state to select a factor for poverty, such as free lunch count. Also, the population factor within states is based on public and private school-aged pupils, rather than the total school-age population, so there is a residual number of students that are not counted within the substate formula—such as pupils being home-schooled, in state institutions, drop-outs, etc.

### Other Resources

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### Endnotes

1. Funds to states are those funds remaining after deducting assistance to: (1) Outlying areas and freely associated states, (2) evaluations and studies, and (3) the Bureau of Indian Affairs. For information on grants to outlying areas and freely associated states see P.L. 105-17 (B)(611)(b). For information on funds for the Bureau of Indian Affairs see P.L. 105-17 (B)(611)(c). In general the Secretary may reserve up to 1% of the total Part B, Section 611 appropriation for outlying areas and freely associated states. After deducting that amount and reserving funds for evaluations and studies, the Secretary shall reserve 1.226 percent to provide assistance to the Bureau of Indian Affairs. The remainder is distributed to the states as discussed herein. The discussion is limited to states and public schools.
2. Part B(611)(e).
3. Part B (611)(e)(3)(B-C)(I-ii)(I-III).
4. The state set-aside is adjusted for inflation using: U.S. Department of Labor, Bureau of Labor Statistics. *Consumer Price Index for All Urban Counties*.
5. Outlying areas can use up to five percent or \$35,000, whichever is greater.
6. The appropriations under the grants to states program (Part B, Section 611) must exceed \$4,924,672,200.
7. Part B (611)(e).
8. Part B (612)(a)(5).
9. Part B (611)(f)(1)(C).