TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
20 U.S.C. 1432. DEFINITIONS.		
In this part: (1) AT-RISK INFANT OR TODDLER—The term `at-risk infant or toddler' means an individual under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.	See revised definition for 20 U.S.C. 1432(3) under revised 20 U.S.C. 1435(a)(1).	
(2) COUNCIL—The term `council' means a State interagency coordinating council established under 20 U.S.C. 1441.		
(3) DEVELOPMENTAL DELAY—The term `developmental delay', when used with respect to an individual residing in a State, has the meaning given such term by the State under 20 U.S.C. 1435(a)(1).		
(4) EARLY INTERVENTION SERVICES—The term `early intervention services' means developmental services that— (A) are provided under public supervision;	No substantive change although statute at 20 U.S.C. 1432(4)(C) adds language from current regulations “as identified by the individualized family service plan team”.	
(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;		
(C) are designed to meet the developmental needs of an infant or toddler with a disability, as identified by the individualized family service plan team, in any 1 or more of the following areas:		
(i) physical development;		
(ii) cognitive development;		
(iii) communication development;		
(iv) social or emotional development; or		
(v) adaptive development;		
(D) meet the standards of the State in which the services are provided, including the requirements of this part;		

[1] This checklist is provided to assist States in the completion of OMB Information Collection 1820-0550. Use of the checklist is optional.

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P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(E) Include— (i) family training, counseling, and home visits;	No substantive change.	
(ii) special instruction;		
(iii) speech-language pathology and audiology services, and sign language and cued language services;	Adds sign language and cued language services 20 U.S.C. 1432(4)(E)(iii)	
(iv) occupational therapy;	No substantive change.	
(v) physical therapy;		
(vi) psychological services;		
(vii) service coordination services;		
(viii) medical services only for diagnostic or evaluation purposes;		
(ix) early identification, screening, and assessment services;		
(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;		
(xi) social work services;		
(xii) vision services;	No substantive change.	
(xiii) assistive technology devices and assistive technology services; and	(The definition of assistive technology device was revised at section 602 (1)(B) exception clause—the term does not include a medical device that is surgically implanted, or the replacement of such device.	
(xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;		
(F) are provided by qualified personnel, including— (i) special educators; (ii) speech-language pathologists and audiologists; (iii) occupational therapists; (iv) physical therapists; (v) psychologists;	Replaces (viii) nutritionists with *(viii) registered dieticians*. Adds *(x) vision specialists, including ophthalmologists and optometrists* and renumbers the professions that follow.	

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(vi) social workers; (vii) nurses; (viii) registered dietitians; (ix) family therapists; (x) vision specialists, including ophthalmologists and optometrists; (xi) orientation and mobility specialists; and (xii) pediatricians and other physicians;		
(G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and	No substantive change.	
(H) are provided in conformity with an individualized family service plan adopted in accordance with 20 U.S.C. 1436.		
(5) INFANT OR TODDLER WITH A DISABILITY—The term 'infant or toddler with a disability'— (A) means an individual under 3 years of age who needs early intervention services because the individual—	No substantive change.	
(i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in 1 or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or		
(ii) has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and		
(B) may also include, at a State's discretion— (i) at-risk infants and toddlers; and	Adds State's discretion to include in its definition of 'infant or toddler with a disability' children with disabilities who are eligible for services under 20 U.S.C. 1419 and who previously received services under Part C until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs serving such children include: (a) an educational component that promotes school	
(ii) children with disabilities who are eligible for services under 20 U.S.C. 1419 and who previously received services under this part until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under this part serving such children shall include—		
(I) an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and		

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(II) a written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under this part or participate in preschool programs under 20 U.S.C. 1419.	readiness and incorporates pre-literacy, language, and numeracy skills; and (b) a written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under Part C or participate in preschool programs under 20 U.S.C. 1419.	
20 U.S.C. 1433. GENERAL AUTHORITY.		
The Secretary shall, in accordance with this part, make grants to States (from their allotments under 20 U.S.C. 1443) to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.	No substantive change.	
20 U.S.C. 1434. ELIGIBILITY.		
In order to be eligible for a grant under 20 U.S.C. 1433, a State shall provide assurances to the Secretary that the State—	Replaces prior law "shall demonstrate to the Secretary" with *shall provide assurances to the Secretary*.	
(1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State, infants and toddlers with disabilities who are homeless children and their families, and infants and toddlers with disabilities who are wards of the State; and	Adds (under the list of infants and toddlers with disabilities to whom early intervention services must be made available: *infants and toddlers with disabilities who are homeless children and their families, and infants and toddlers with disabilities who are wards of the State*.	
(2) has in effect a statewide system that meets the requirements of 20 U.S.C. 1435.	No substantive change.	
20 U.S.C. 1435. REQUIREMENTS FOR STATEWIDE SYSTEM.		
(a) IN GENERAL—A statewide system described in 20 U.S.C. 1433 shall include, at a minimum, the following components:	Adds *rigorous* to the definition of the term 'developmental delay' that will be used by the State.	
(1) A rigorous definition of the term `developmental delay' that will be used by the State in carrying out programs under this part in order to appropriately identify infants and toddlers with disabilities that are in need of services under this part.	Adds *in order to appropriately identify infants and toddlers with disabilities that are in need of services under this part* (Part C).	

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(2) A State policy that is in effect and that ensures that appropriate early intervention services based on scientifically based research, to the extent practicable, are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State and infants and toddlers with disabilities who are homeless children and their families.	Adds requirement that the State policy ensures that appropriate early intervention services based on "scientifically-based research, to the extent practicable" are available to infants and toddlers with disabilities, including the additional group, infants and toddlers with disabilities who are homeless children and their families.	
(3) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State, and a family-directed identification of the needs of each family of such an infant or toddler, to assist appropriately in the development of the infant or toddler.	No substantive change.	
(4) For each infant or toddler with a disability in the State, an individualized family service plan in accordance with 20 U.S.C. 1436, including service coordination services in accordance with such service plan.		
(5) A comprehensive child find system, consistent with part B, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources and that ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for services under this part that will reduce the need for future services.	Adds the language that "ensures rigorous standards for appropriately identifying….that will reduce the need for future services." 20 U.S.C 1435(a)(5) Reference to Part B child find provisions incorporates reference to Section 612(a)(3), which was revised to add explicit reference to child find of "children with disabilities who are homeless children or are wards of the State." Section 602 contains new definitions for the terms "homeless" and "wards of the State".	
(6) A public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency designated or established under paragraph (10) to all primary referral sources, especially hospitals and physicians, of information to be given to parents, especially to inform parents with premature infants, or infants with other physical risk factors associated with learning or developmental complications, on the availability of early intervention services under this part and of services under 20 U.S.C. 1419, and procedures for assisting such sources in disseminating such information to parents of infants and toddlers.	Adds the following language "under the public awareness program especially to inform parents with premature infants, or infants with other physical risk factors associated with learning or developmental complications on the availability of services under Part C and of services under 20 U.S.C. 1419." Substitutes prior language with assisting such sources in disseminating such information.	
(7) A central directory that includes information on early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State.	No substantive change.	

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(8) A comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the State that—	Mandates ('shall' instead of 'may') activities under 8(A) and leaves optional activities under 8(B). Clarifies requirements in (iii) regarding training for personnel to coordinate transition for children exiting Part C.	
(A) shall include— (i) implementing innovative strategies and activities for the recruitment and retention of early education service providers; (ii) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part; and (iii) training personnel to coordinate transition services for infants and toddlers served under this part from a program providing early intervention services under this part and under part B (other than 20 U.S.C. 1419), to a preschool program receiving funds under 20 U.S.C. 1419, or another appropriate program; and	See above.	
(B) may include— (i) training personnel to work in rural and inner-city areas; and (ii) training personnel in the emotional and social development of young children.	Permits, in (ii), training personnel in the emotional and social development of young children.	
(9) Policies and procedures relating to the establishment and maintenance of qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including the establishment and maintenance of qualifications that are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which such personnel are providing early intervention services, except that nothing in this part (including this paragraph) shall be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with State law, regulation, or written policy, to assist in the provision of early intervention services under this part to infants and toddlers with disabilities.	Deletes paragraph (B) from prior law and prior references to Part B CSPD. Maintains the State standard requirement. Deletes reference to the highest requirements in the State from the prior law. 303.361 Note that Section 632 was revised to add "registered dieticians" and "vision specialists" in the list of qualified personnel.	
(10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out—	No substantive change.	
(A) the general administration and supervision of programs and activities receiving assistance under 20 U.S.C. 1433, and the monitoring of programs and activities used by the State to carry out this part, whether or not such programs or activities are receiving assistance made available under 20 U.S.C. 1433, to ensure that the State complies with this part;		

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(B) the identification and coordination of all available resources within the State from Federal, State, local, and private sources;	No substantive change.	
(C) the assignment of financial responsibility in accordance with 20 U.S.C. 1437(a)(2) to the appropriate agencies;		
(D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families under this part in a timely manner pending the resolution of any disputes among public agencies or service providers;		
(E) the resolution of intra- and interagency disputes; and		
(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.		
(11) A policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements.	No substantive change.	
(12) A procedure for securing timely reimbursements of funds used under this part in accordance with 20 U.S.C. 1440(a).	No substantive change.	
(13) Procedural safeguards with respect to programs under this part, as required by 20 U.S.C. 1439.	Incorporates revised mediation provisions from section 615(e). 20 U.S.C. 1439(a)(8)	
(14) A system for compiling data requested by the Secretary under 20 U.S.C. 1418 that relates to this part.	Revised Section 618 added requirement for disaggregation and reporting of data by gender as well as reporting on the number of due process hearing requests filed and hearings conducted and mediations held and settlement agreements reached through mediation	
(15) A State interagency coordinating council that meets the requirements of 20 U.S.C. 1441.	Revised Section 641 adds four new members to SICC (Medicaid, foster care, mental health, and homeless reps.) and requires policies and procedures revised to require the four new members.	

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(16) Policies and procedures to ensure that, consistent with 20 U.S.C. 1436(d)(5)—	Adds italicized language regarding the provision of early intervention services in a setting other than a natural, environment *that is most appropriate, as determined by the parent and the individualized family service plan team* only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.	
(A) to the maximum extent appropriate, early intervention services are provided in natural environments; and		
(B) the provision of early intervention services for any infant or toddler with a disability occurs in a setting other than a natural environment that is most appropriate, as determined by the parent and the individualized family service plan team, only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.		
(b) POLICY—In implementing subsection (a)(9), a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subsection (a)(9).	This is a State option that was maintained but the revised statute deletes "consistent with State law within 3 years"; otherwise no substantive change.	
(c) Flexibility To Serve Children 3 Years of Age Until Entrance Into Elementary School—	New provision. A state may choose to offer parents the right to elect, when their child exits Part C at age three and is eligible for services under Section 619, to continue to have the child receive early intervention services, provided those services include an educational component that promotes school readiness and incorporates pre-literacy, language and numeracy skills, until the child enters, or is eligible to enter, kindergarten.	
(1) IN GENERAL—A statewide system described in 20 U.S.C. 1433 may include a State policy, developed and implemented jointly by the lead agency and the State educational agency, under which parents of children with disabilities who are eligible for services under 20 U.S.C. 1419 and previously received services under this part, may choose the continuation of early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) for such children under this part until such children enter, or are eligible under State law to enter, kindergarten.		
(2) REQUIREMENTS—If a statewide system includes a State policy described in paragraph (1), the statewide system shall ensure that—	New provision. If the State elects to include the policy described immediately above, the State-wide system must ensure that annual notice is provided to parents that includes the parents' rights based on their choice, an explanation of the differences between services under Part C and Part B, the types and locations of services, applicable procedural safeguards and any possible fees or costs as described in 20 U.S.C. 1432(4)(B). Imposes new reporting requirements for children eligible for services under 20 U.S.C. 1419 but who continue to receive services under Part C after age 3.	
(A) parents of children with disabilities served pursuant to this subsection are provided annual notice that contains—		
(i) a description of the rights of such parents to elect to receive services pursuant to this subsection or under part B; and		
(ii) an explanation of the differences between services provided pursuant to this subsection and services provided under part B, including—		
(I) types of services and the locations at which the services are provided;		

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(II) applicable procedural safeguards; and	See above.	
(III) possible costs (including any fees to be charged to families as described in 20 U.S.C. 1432(4)(B)), if any, to parents of infants or toddlers with disabilities;		
(B) services provided pursuant to this subsection include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills;		
(C) the State policy will not affect the right of any child served pursuant to this subsection to instead receive a free appropriate public education under part B;		
(D) all early intervention services outlined in the child's individualized family service plan under 20 U.S.C. 1436 are continued while any eligibility determination is being made for services under this subsection;		
(E) the parents of infants or toddlers with disabilities (as defined in 20 U.S.C. 1432(5)(A)) provide informed written consent to the State, before such infants or toddlers reach 3 years of age, as to whether such parents intend to choose the continuation of early intervention services pursuant to this subsection for such infants or toddlers;		
(F) the requirements under 20 U.S.C. 1437(a)(9) shall not apply with respect to a child who is receiving services in accordance with this subsection until not less than 90 days (and at the discretion of the parties to the conference, not more than 9 months) before the time the child will no longer receive those services; and	See above.	
(G) there will be a referral for evaluation for early intervention services of a child who experiences a substantiated case of trauma due to exposure to family violence (as defined in section 320 of the Family Violence Prevention and Services Act).	See above.	
(3) REPORTING REQUIREMENT—If a statewide system includes a State policy described in paragraph (1), the State shall submit to the Secretary, in the State's report under 20 U.S.C. 1437(b)(4)(A), a report on the number and percentage of children with disabilities who are eligible for services under 20 U.S.C. 1419 but whose parents choose for such children to continue to receive early intervention services under this part.		
(4) AVAILABLE FUNDS—If a statewide system includes a State policy described in paragraph (1), the policy shall describe the funds (including an identification as Federal, State, or local funds) that will be used to ensure that the option described in paragraph (1) is available to eligible children and families who provide the consent described in paragraph (2)(E), including fees (if any) to be charged to families as described in 20 U.S.C. 1432(4)(B).	See above.	

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(5) RULES OF CONSTRUCTION—	See above.	
(A) SERVICES UNDER PART B—If a statewide system includes a State policy described in paragraph (1), a State that provides services in accordance with this subsection to a child with a disability who is eligible for services under 20 U.S.C. 1419 shall not be required to provide the child with a free appropriate public education under part B for the period of time in which the child is receiving services under this part.	Clarifies that children with disabilities who are eligible to receive services under 20 U.S.C. 1419 but who continue to receive services under Part C after age 3, are not entitled to FAPE as long as their parents have elected to receive early intervention services under Part C.	
(B) SERVICES UNDER THIS PART—Nothing in this subsection shall be construed to require a provider of services under this part to provide a child served under this part with a free appropriate public education.		
20 U.S.C. 1436. INDIVIDUALIZED FAMILY SERVICE PLAN.		
(a) ASSESSMENT AND PROGRAM DEVELOPMENT—A statewide system described in 20 U.S.C. 1433 shall provide, at a minimum, for each infant or toddler with a disability, and the infant's or toddler's family, to receive—	No substantive change.	
(1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;		
(2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler; and	No substantive change.	
(3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (e), including a description of the appropriate transition services for the infant or toddler.	Adds *including a description of the appropriate transition services for the infant or toddler* to the provision regarding IFSP development by a multidisciplinary team.	
(b) PERIODIC REVIEW—The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).	No substantive change.	
(c) PROMPTNESS AFTER ASSESSMENT—The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parents' consent, early intervention services may commence prior to the completion of the assessment.	No substantive change.	

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(d) CONTENT OF PLAN—The individualized family service plan shall be in writing and contain— (1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;	No substantive change.	
(2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;		
(3) a statement of the measurable results or outcomes expected to be achieved for the infant or toddler and the family, including pre-literacy and language skills, as developmentally appropriate for the child, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the results or outcomes is being made and whether modifications or revisions of the results or outcomes or services are necessary;	Substitutes *measurable results or outcomes* expected to be achieved for the infant and toddler or family for the previous major outcomes and adds including pre-literacy and language skills, as developmentally appropriate for the child.	
(4) a statement of specific early intervention services based on peer-reviewed research, to the extent practicable, necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;	Modifies the specific early intervention services identified on the IFSP as *based on peer-reviewed research to the extent practicable*.	
(5) a statement of the natural environments in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;	Adds anticipated *length* and *frequency* for services in (d)(6) and express reference to *including transition services* in (d)(7). 20 U.S.C. 1436(d)(6).	
(6) the projected dates for initiation of services and the anticipated length, duration, and frequency of the services;		
(7) the identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and		
(8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.	No substantive change.	
(e) PARENTAL CONSENT—The contents of the individualized family service plan shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in such plan. If the parents do not provide consent with respect to a particular early intervention service, then only the early intervention services to which consent is obtained shall be provided.	No substantive change.	

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
20 U.S.C. 1437. STATE APPLICATION AND ASSURANCES.		
(a) APPLICATION—A State desiring to receive a grant under 20 U.S.C. 1433 shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application shall contain—	No substantive change. Note that 20 U.S.C. 1437(a) still requires the Part C application to contain the elements of the application identified at 20 U.S.C.1437(a).	
(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under 20 U.S.C. 1433;		
(2) a certification to the Secretary that the arrangements to establish financial responsibility for services provided under this part pursuant to 20 U.S.C. 1440(b) are current as of the date of submission of the certification;	New requirement. The application must contain a certification to the Secretary that the arrangements to establish financial responsibility for services provided under this part pursuant to 20 U.S.C. 1440(b) are current as of the date of submission of the certification. Note that 20 U.S.C. 1440(b)(3)(c) requires 'other appropriate written methods' (not interagency agreements, statute, or regulations) be approved by the Secretary.	
(3) information demonstrating eligibility of the State under 20 U.S.C. 1434, including— (A) information demonstrating to the Secretary's satisfaction that the State has in effect the statewide system required by 20 U.S.C. 1433; and (B) a description of services to be provided to infants and toddlers with disabilities and their families through the system;	No substantive change.	
(4) if the State provides services to at-risk infants and toddlers through the statewide system, a description of such services;		
(5) a description of the uses for which funds will be expended in accordance with this part;		
(6) a description of the State policies and procedures that require the referral for early intervention services under this part of a child under the age of 3 who— (A) is involved in a substantiated case of child abuse or neglect; or (B) is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure;	New requirement. Broader than the CAPTA June 2003 amendment. The application must include a description of the State policies and procedures that require the referral for early intervention services under this part of a child under the age of 3 who-(A) is involved in a substantiated case of abuse or neglect; or (B) is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure.	

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(7) a description of the procedure used to ensure that resources are made available under this part for all geographic areas within the State;	No substantive change.	
(8) a description of State policies and procedures that ensure that, prior to the adoption by the State of any other policy or procedure necessary to meet the requirements of this part, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities;		
(9) a description of the policies and procedures to be used— (A) to ensure a smooth transition for toddlers receiving early intervention services under this part (and children receiving those services under 20 U.S.C. 1435(c)) to preschool, school, other appropriate services, or exiting the program, including a description of how— (i) the families of such toddlers and children will be included in the transition plans required by subparagraph (C); and (ii) the lead agency designated or established under 20 U.S.C. 1435(a)(10) will—	Clarifies transition policies to apply to children receiving services under 20 U.S.C. 1435(c)) to…school…	
(I) notify the local educational agency for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under part B, as determined in accordance with State law;	Modifies the State's requirement for policies and procedures to include a broader time period to hold the transition conference. The transition conference still must be held at least 90 days prior to the child's being eligible for preschool services (i.e. three years old); however, now the transition conference may occur *at the discretion of all such parties, not more than 9 months before the child is eligible for preschool services*…. [Prior law allowed up to six months before the child's third birthday.]	
(II) in the case of a child who may be eligible for such preschool services, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency not less than 90 days (and at the discretion of all such parties, not more than 9 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive; and		
(III) in the case of a child who may not be eligible for such preschool services, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under part B, to discuss the appropriate services that the child may receive;	No substantive change.	
(B) to review the child's program options for the period from the child's third birthday through the remainder of the school year; and	No substantive change.	

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(C) to establish a transition plan, including, as appropriate, steps to exit from the program;	New requirement. The State policies and procedures regarding transition plans must include *as appropriate, steps to exit the program*.	
(10) a description of State efforts to promote collaboration among Early Head Start programs under section 645A of the Head Start Act, early education and child care programs, and services under part C; and	New requirement. The application must include a description of State efforts to promote collaboration among Early Head Start programs under section 645A of the Head Start Act, early education and child care programs, and services under Part C.	
(11) such other information and assurances as the Secretary may reasonably require.	No substantive change.	
(b) ASSURANCES—The application described in subsection (a)—	No substantive change.	
(1) shall provide satisfactory assurance that Federal funds made available under 20 U.S.C. 1443 to the State will be expended in accordance with this part;		
(2) shall contain an assurance that the State will comply with the requirements of 20 U.S.C. 1440;		
(3) shall provide satisfactory assurance that the control of funds provided under 20 U.S.C. 1443, and title to property derived from those funds, will be in a public agency for the uses and purposes provided in this part and that a public agency will administer such funds and property;	No substantive change.	
(4) shall provide for—		
(A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part; and		
(B) keeping such reports and affording such access to the reports as the Secretary may find necessary to ensure the correctness and verification of those reports and proper disbursement of Federal funds under this part;		
(5) provide satisfactory assurance that Federal funds made available under 20 U.S.C. 1443 to the State—		
(A) will not be commingled with State funds; and		
(B) will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds;		

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(6) shall provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under 20 U.S.C. 1443 to the State;		
(7) shall provide satisfactory assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups, including minority, low-income, homeless, and rural families and children with disabilities who are wards of the State, in the planning and implementation of all the requirements of this part; and	Adds 'wards of the State' to the list of underserved groups. The State must provide an assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups, including…*children with disabilities who are wards of the State*. Note Section 602 contains a new definition for "ward of the State".	
(8) shall contain such other information and assurances as the Secretary may reasonably require by regulation.	No substantive change.	
(c) STANDARD FOR DISAPPROVAL OF APPLICATION—The Secretary may not disapprove such an application unless the Secretary determines, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.	No substantive change.	
(d) SUBSEQUENT STATE APPLICATION—If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets a requirement of this section, including any policy or procedure filed under this part (as in effect before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004), the Secretary shall consider the State to have met the requirement for purposes of receiving a grant under this part.	Minor change in the reference to Part C, adding a new reference to the *Individuals with Disabilities Education Improvement Act*, dropping reference to *part H* and replacing *act* with *title.*	
(e) MODIFICATION OF APPLICATION—An application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification of an application to the same extent and in the same manner as this section applies to the original application.	No substantive change.	
(f) MODIFICATIONS REQUIRED BY THE SECRETARY—The Secretary may require a State to modify its application under this section, but only to the extent necessary to ensure the State's compliance with this part, if—	No substantive change.	
(1) an amendment is made to this title, or a Federal regulation issued under this title;		
(2) a new interpretation of this title is made by a Federal court or the State's highest court; or		
(3) an official finding of noncompliance with Federal law or regulations is made with respect to the State.		

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
20 U.S.C. 1438. USES OF FUNDS.		
In addition to using funds provided under 20 U.S.C. 1433 to maintain and implement the statewide system required by such section, a State may use such funds—	No substantive change.	
(1) for direct early intervention services for infants and toddlers with disabilities, and their families, under this part that are not otherwise funded through other public or private sources;		
(2) to expand and improve on services for infants and toddlers and their families under this part that are otherwise available;		
(3) to provide a free appropriate public education, in accordance with part B, to children with disabilities from their third birthday to the beginning of the following school year;		
(4) with the written consent of the parents, to continue to provide early intervention services under this part to children with disabilities from their 3rd birthday until such children enter, or are eligible under State law to enter, kindergarten, in lieu of a free appropriate public education provided in accordance with part B; and	New provision. Allows that, with the written consent of the parents, a State may use Federal Part C funds to continue to provide early intervention services may continue to be provided under Part C from the child's 3rd birthday until the child enters, or is eligible under State law to enter, kindergarten in lieu of a free appropriate public education provided in accordance with part B.	
(5) in any State that does not provide services for at-risk infants and toddlers under 20 U.S.C. 1437(a)(4), to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purposes of—	Previous (4), renumbered due to new provision above.	
(A) identifying and evaluating at-risk infants and toddlers;		
(B) making referrals of the infants and toddlers identified and evaluated under subparagraph (A); and		
(C) conducting periodic follow-up on each such referral to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.		

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
20 U.S.C. 1439. PROCEDURAL SAFEGUARDS.		
(a) MINIMUM PROCEDURES—The procedural safeguards required to be included in a statewide system under 20 U.S.C. 1435(a)(13) shall provide, at a minimum, the following:	No substantive change.	
(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.	No substantive change. However, as noted below in the addendum to Section 615 and section 614(f), for Part C State lead agencies that have adopted the Part B due process hearing procedures under 34 CFR §303.420, they must comply with revised Section 615 provisions that apply to due process hearings, which are Sections 615(b)(6), (7) and (8), (c)(2), (f), (g), (h), (i), (l), (n) and (o) and section 614(f).	
(2) The right to confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.	No substantive change.	
(3) The right of the parents to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this part in accordance with State law without jeopardizing other early intervention services under this part.		
(4) The opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.		
(5) Procedures to protect the rights of the infant or toddler whenever the parents of the infant or toddler are not known or cannot be found or the infant or toddler is a ward of the State, including the assignment of an individual (who shall not be an employee of the State lead agency, or other State agency, and who shall not be any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents.	No substantive change.	
(6) Written prior notice to the parents of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or placement of the infant or toddler with a disability, or the provision of appropriate early intervention services to the infant or toddler.		
(7) Procedures designed to ensure that the notice required by paragraph (6) fully informs the parents, in the parents' native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.		

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(8) The right of parents to use mediation in accordance with 20 U.S.C. 1415, except that— (A) any reference in the section to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under 20 U.S.C. 1435(a)(10);	Reference to 20 U.S.C. 1415 is to the revised 20 U.S.C. 1415(e) provisions regarding mediation (see attachment).	
(B) any reference in the section to a local educational agency shall be considered to be a reference to a local service provider or the State's lead agency under this part, as the case may be; and	No substantive change.	
(C) any reference in the section to the provision of a free appropriate public education to children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.		
(b) SERVICES DURING PENDENCY OF PROCEEDINGS—During the pendency of any proceeding or action involving a complaint by the parents of an infant or toddler with a disability, unless the State agency and the parents otherwise agree, the infant or toddler shall continue to receive the appropriate early intervention services currently being provided or, if applying for initial services, shall receive the services not in dispute.	No substantive change.	
20 U.S.C. 1440. PAYOR OF LAST RESORT.		
(a) NONSUBSTITUTION—Funds provided under 20 U.S.C. 1443 may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under 20 U.S.C. 1443 may be used to pay the provider of services pending reimbursement from the agency that has ultimate responsibility for the payment.	No substantive change.	
(b) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES— (1) ESTABLISHING FINANCIAL RESPONSIBILITY FOR SERVICES— (A) IN GENERAL—The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency and the designated lead agency, in order to ensure—	New provision. Requires an interagency agreement, statute, regulation *or other appropriate written mechanism* to ensure *the provision of, and financial responsibility for,* services under Part C and that the services are consistent with the requirements of 20 U.S.C. 1435 and the State's application under 20 U.S.C. 1437, including the provision of services during the pendency of any dispute.	
(i) the provision of, and financial responsibility for, services provided under this part; and		
(ii) such services are consistent with the requirements of 20 U.S.C. 1435 and the State's application pursuant to 20 U.S.C. 1437, including the provision of such services during the pendency of any such dispute.		

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(B) CONSISTENCY BETWEEN AGREEMENTS OR MECHANISMS UNDER PART B—The Chief Executive Officer of a State or designee of the officer shall ensure that the terms and conditions of such agreement or mechanism are consistent with the terms and conditions of the State's agreement or mechanism under 20 U.S.C. 1412(a)(12), where appropriate.	New provision.	
(2) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY— (A) IN GENERAL—If a public agency other than an educational agency fails to provide or pay for the services pursuant to an agreement required under paragraph (1), the local educational agency or State agency (as determined by the Chief Executive Officer or designee) shall provide or pay for the provision of such services to the child.	New provision. Amended to require the State lead agency to provide or pay for services not provided or paid for by public agency.	
(B) REIMBURSEMENT—Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism required under paragraph (1).		
(3) SPECIAL RULE—The requirements of paragraph (1) may be met through— (A) State statute or regulation;	New Provision. Note that if a State is meeting requirements through any method other than State statute, regulation or signed agreements it must submit those methods in the application for the Secretary's approval.	
(B) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or		
(C) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary through the review and approval of the State's application pursuant to 20 U.S.C. 1437.		
(c) REDUCTION OF OTHER BENEFITS—Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to medicaid for infants or toddlers with disabilities) within the State.	New statutory provision that incorporates current regulation at 34 CFR 303.527(c).	

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
20 U.S.C. 1441. STATE INTERAGENCY COORDINATING COUNCIL.		
(a) ESTABLISHMENT— (1) IN GENERAL—A State that desires to receive financial assistance under this part shall establish a State interagency coordinating council.	No substantive change.	
(2) APPOINTMENT—The council shall be appointed by the Governor. In making appointments to the council, the Governor shall ensure that the membership of the council reasonably represents the population of the State.	No substantive change.	
(3) CHAIRPERSON—The Governor shall designate a member of the council to serve as the chairperson of the council, or shall require the council to so designate such a member. Any member of the council who is a representative of the lead agency designated under 20 U.S.C. 1435(a)(10) may not serve as the chairperson of the council.		
(b) COMPOSITION— (1) IN GENERAL—The council shall be composed as follows: (A) PARENTS—Not less than 20 percent of the members shall be parents of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. Not less than 1 such member shall be a parent of an infant or toddler with a disability or a child with a disability aged 6 or younger.	No substantive change.	
(B) SERVICE PROVIDERS—Not less than 20 percent of the members shall be public or private providers of early intervention services.		
(C) STATE LEGISLATURE—Not less than 1 member shall be from the State legislature.	No substantive change.	
(D) PERSONNEL PREPARATION—Not less than 1 member shall be involved in personnel preparation.		
(E) AGENCY FOR EARLY INTERVENTION SERVICES—Not less than 1 member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies.		
(F) AGENCY FOR PRESCHOOL SERVICES—Not less than 1 member shall be from the State educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency.		

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(G) STATE MEDICAID AGENCY—Not less than 1 member shall be from the agency responsible for the State medicaid program.	New required member.	
(H) HEAD START AGENCY—Not less than 1 member shall be a representative from a Head Start agency or program in the State.	No substantive change.	
(I) CHILD CARE AGENCY—Not less than 1 member shall be a representative from a State agency responsible for child care.		
(J) AGENCY FOR HEALTH INSURANCE—Not less than 1 member shall be from the agency responsible for the State regulation of health insurance.		
(K) OFFICE OF THE COORDINATOR OF EDUCATION OF HOMELESS CHILDREN AND YOUTH—Not less than 1 member shall be a representative designated by the Office of Coordinator for Education of Homeless Children and Youths.	Section 641 adds new required members under K, L, and M. Added State policies and procedures must be revised to require these four new members under G, K, L, and M.	
(L) STATE FOSTER CARE REPRESENTATIVE—Not less than 1 member shall be a representative from the State child welfare agency responsible for foster care.		
(M) MENTAL HEALTH AGENCY—Not less than 1 member shall be a representative from the State agency responsible for children's mental health.		
(2) OTHER MEMBERS—The council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs (BIA), or where there is no BIA-operated or BIA-funded school, from the Indian Health Service or the tribe or tribal council.	No substantive change.	
(c) MEETINGS—The council shall meet, at a minimum, on a quarterly basis, and in such places as the council determines necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.	No substantive change.	
(d) MANAGEMENT AUTHORITY—Subject to the approval of the Governor, the council may prepare and approve a budget using funds under this part to conduct hearings and forums, to reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives), to pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business, to hire staff, and to obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this part.	No substantive change.	

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(e) FUNCTIONS OF COUNCIL— (1) DUTIES—The council shall—		
(A) advise and assist the lead agency designated or established under 20 U.S.C. 1435(a)(10) in the performance of the responsibilities set forth in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements;		
(B) advise and assist the lead agency in the preparation of applications and amendments thereto;		
(C) advise and assist the State educational agency regarding the transition of toddlers with disabilities to preschool and other appropriate services; and		
(D) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State.		
(2) AUTHORIZED ACTIVITY—The council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children from birth through age 5. The council may advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.	No substantive change.	
(f) CONFLICT OF INTEREST—No member of the council shall cast a vote on any matter that is likely to provide a direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.	No substantive change “is likely to” substituted “would”.	
20 U.S.C. 1442. FEDERAL ADMINISTRATION.		
20 U.S.C. 1416, 1417, and 1418 shall, to the extent not inconsistent with this part, apply to the program authorized by this part, except that— (1) any reference in such sections to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under 20 U.S.C. 1435(a)(10);	No substantive change. References to sections 20 U.S.C. 1416, 1417 and 1418 are to the newly revised sections 20 U.S.C. 1416, 1417, and 1418 and incorporate all of those changes. Section 616 was substantially revised to create a monitoring, technical assistance and enforcement scheme that requires States to submit State Performance Plans	
(2) any reference in such sections to a local educational agency, educational service agency, or a State agency shall be considered to be a reference to an early intervention service provider under this part; and		

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(3) any reference to the education of children with disabilities or the education of all children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.	containing targets and report annually to the Department on the State's performance and to the public on the State's targets. Section 617 contains new provisions requiring, among other things, the Department to publish with the final regulations model prior written notice and IFSP forms. Section 618 requires for Part C that child count data be reported disaggregated by gender as well as reporting on the number of children receiving Part C services under section 635(c) if the State elects to provide such services. Revised Section 618 requires reporting on the number of due process hearing requests filed and hearings conducted and mediations held and settlement agreements reached through mediation.	

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
Part B Procedural Safeguard Provisions that May Apply to Part C. All State lead agencies must comply with revised section 615(e) mediation provisions under section 639. State lead agencies that have chosen under Part C to adopt Part B due process hearing procedures under current 34 CFR §303.420 must comply with revised sections 615(b)(6), (7) and (8), (c)(2), (f), (g), (h), (i), (l), (n) and (o) by July 1, 2005 in addition to the mediation provisions in section 615(e). Section 614(f) also applies to allow mediation to be conducted using alternate means of participation if the parties agree (see description below under section 614(f).		
20 U.S.C. 1415. PROCEDURAL SAFEGUARDS.		
(a) ESTABLISHMENT OF PROCEDURES—Any State educational agency, State agency, or local educational agency that receives assistance under this part shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies.	No substantive change. Revise definition of parent at 20 U.S.C. 1402(23).	
(b) TYPES OF PROCEDURES—The procedures required by this section shall include the following:	No substantive change.	
(6) An opportunity for any party to present a complaint— (A) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and	Revised to provide that *any party* has a right to a hearing [prior law guaranteed that right only to parents] and adds a new provision that a request for a hearing be filed within two years of when the parents or agency knew or should have known of the alleged violation, unless the State has an explicit timeline for presenting complaints under Part B.	
(B) which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for presenting such a complaint under this part, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph.		
(7) (A) Procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with subsection (c)(2) (which shall remain confidential)—	Revises the content of this notice to refer to available contact information for homeless children and adds a new requirement that the party or their attorney must file the notice before a party can have a due process hearing.	
(i) to the other party, in the complaint filed under paragraph (6), and forward a copy of such notice to the State educational agency; and		
(ii) that shall include— (I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;		

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(II) in the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child and the name of the school the child is attending;		
(III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and		
(IV) a proposed resolution of the problem to the extent known and available to the party at the time.		
(B) A requirement that a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii).		
(8) Procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively.	Revised to clarify that States must provide a model form to assist parents in filing a due process complaint and a due process complaint notice.	
(c) NOTIFICATION REQUIREMENTS—		
(2) DUE PROCESS COMPLAINT NOTICE—	New and detailed requirements that a due process complaint notice be considered to be sufficient unless the receiving party notifies the hearing officer and the complainant, within 15 days of receipt, that the notice does not meet the required content requirements; that an agency provide prior written notice within 10 days if the agency has not provided prior written notice about the issues in the complaint; that a non-complaining party respond within 10 days specifically addressing the issues in the complaint; that a hearing officer make a determination about sufficiency of the due process complaint notice within 5 days; that a complaint notice may be amended with the written consent of the other party and a resolution meeting; that a hearing officer can grant permission to amend a due process complaint notice, but not within 5 days of the due process hearing; and that the due process hearing timelines recommence upon the filing of an amended notice.	
(A) COMPLAINT—The due process complaint notice required under subsection (b)(7)(A) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of subsection (b)(7)(A).		
(B) RESPONSE TO COMPLAINT—		
(i) LOCAL EDUCATIONAL AGENCY RESPONSE—		
(I) IN GENERAL—If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, such local educational agency shall, within 10 days of receiving the complaint, send to the parent a response that shall include—		
(aa) an explanation of why the agency proposed or refused to take the action raised in the complaint;		
(bb) a description of other options that the IEP Team considered and the reasons why those options were rejected;		

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(cc) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and		
(dd) a description of the factors that are relevant to the agency's proposal or refusal.		
(II) SUFFICIENCY—A response filed by a local educational agency pursuant to subclause (I) shall not be construed to preclude such local educational agency from asserting that the parent's due process complaint notice was insufficient where appropriate.		
(ii) OTHER PARTY RESPONSE—Except as provided in clause (i), the non-complaining party shall, within 10 days of receiving the complaint, send to the complaint a response that specifically addresses the issues raised in the complaint.		
(C) TIMING—The party providing a hearing officer notification under subparagraph (A) shall provide the notification within 15 days of receiving the complaint.		
(D) DETERMINATION—Within 5 days of receipt of the notification provided under subparagraph (C), the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of subsection (b)(7)(A), and shall immediately notify the parties in writing of such determination.		
(E) AMENDED COMPLAINT NOTICE—		
(i) IN GENERAL—A party may amend its due process complaint notice only if—		
(I) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to subsection (f)(1)(B); or		
(II) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.		
(ii) APPLICABLE TIMELINE—The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice, including the timeline under subsection (f)(1)(B).		

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(e) MEDIATION— (1) IN GENERAL—Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.	Revised to require that mediation be available to resolve any dispute [prior law only required mediation to be available to resolve matters that were the subject of a due process hearing request and that mediation be available prior to (and regardless if) a due process hearing request is filed.] This provision at Section 615(e) applies to all Part C lead agencies.	
(2) REQUIREMENTS—Such procedures shall meet the following requirements:	No substantive change.	
(A) The procedures shall ensure that the mediation process—		
(i) is voluntary on the part of the parties;		
(ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this part; and		
(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.		
(B) OPPORTUNITY TO MEET WITH A DISINTERESTED PARTY—A local educational agency or a State agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with—		
(i) a parent training and information center or community parent resource center in the State established under 20 U.S.C. 1471 or 1472; or		
(ii) an appropriate alternative dispute resolution entity, to encourage the use, and explain the benefits, of the mediation process to the parents.		
(C) LIST OF QUALIFIED MEDIATORS—The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.		
(D) COSTS—The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).		

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(E) SCHEDULING AND LOCATION—Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.		
(F) WRITTEN AGREEMENT—In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that—	New provision. Requires that mediation agreements be in writing, signed by both the parents and agency representative, include a clause that discussions during mediation remain confidential and not be used as evidence in subsequent due process hearings or court actions, and that the agreements be enforceable in any State court of competent jurisdiction or in Federal district court.	
(i) states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;		
(ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency; and		
(iii) is enforceable in any State court of competent jurisdiction or in a district court of the United States.		
(G) MEDIATION DISCUSSIONS—Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.		
(f) IMPARTIAL DUE PROCESS HEARING— (1) IN GENERAL— (A) HEARING—Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.	Revised to clarify that either the parents or the LEA (or lead agency or EIS program) can request a due process hearing.	
(B) RESOLUTION SESSION— (i) PRELIMINARY MEETING—Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint—	New provision. Requires that, prior to a due process hearing, the LEA convene a meeting with the parents and the relevant member(s) of the IEP team with specific knowledge of the facts in the complaint within 15 days of receipt of the compliant, to discuss and attempt to resolve the complaint.	
(I) within 15 days of receiving notice of the parents' complaint;		
(II) which shall include a representative of the agency who has decisionmaking authority on behalf of such agency;	New provision. The meeting must include someone from the agency with decision-making authority on	

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and	behalf of the agency and may not include an LEA attorney unless the parents bring an attorney. The parties may agree in writing to waive the meeting or agree to use mediation.	
(IV) where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint, unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process described in subsection (e).		
(ii) HEARING—If the local educational agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence.	New provision. If the LEA has not resolved the complaint to the satisfaction of the parents within 30 days of receipt of the complaint, the due process hearing may occur.	
(iii) WRITTEN SETTLEMENT AGREEMENT—In the case that a resolution is reached to resolve the complaint at a meeting described in clause (i), the parties shall execute a legally binding agreement that is—	New provision. If there is a resolution, the parties shall execute a written, signed document that is enforceable in any State court of competent jurisdiction or in Federal district court.	
(I) signed by both the parent and a representative of the agency who has the authority to bind such agency; and		
(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.		
(iv) REVIEW PERIOD—If the parties execute an agreement pursuant to clause (iii), a party may void such agreement within 3 business days of the agreement's execution.	New provision. A party can void a written agreement within 3 business days.	
(2) DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS— (A) IN GENERAL—Not less than 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations, that the party intends to use at the hearing.	No substantive change.	
(B) FAILURE TO DISCLOSE—A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.		
(3) LIMITATIONS ON HEARING— (A) PERSON CONDUCTING HEARING—A hearing officer conducting a hearing pursuant to paragraph (1)(A) shall, at a minimum—	Revised to add requirements that a hearing officer cannot have personal or professional interests that conflict with the person's objectivity; possess	

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(i) not be— (I) an employee of the State educational agency or the local educational agency involved in the education or care of the child; or	knowledge of and the ability to understand the statute, regulations and court interpretations of the law and regulations; possess the knowledge and ability to conduct hearings in accordance with standard legal practice; and possess the knowledge and ability to render and write decisions in accordance with standard legal practice.	
(II) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;		
(ii) possess knowledge of, and the ability to understand, the provisions of this title, Federal and State regulations pertaining to this title, and legal interpretations of this title by Federal and State courts; standard legal practice; and		
(iii) possess the knowledge and ability to conduct hearings in accordance with appropriate,		
(iv) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.		
(B) SUBJECT MATTER OF HEARING—The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.	New provision. Requires that a party requesting a due process hearing cannot raise issues in a hearing that were not raised in the due process complaint notice, unless the other party agrees.	
(C) TIMELINE FOR REQUESTING HEARING—A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part, in such time as the State law allows.	New provision. Creates a Federal default 2-year time limit, from when the parent or agency knew or should have known of the alleged violation, to file a request for a due process hearing, that applies unless the State has established an explicit timeline for requesting due process under Part B.	
(D) EXCEPTIONS TO THE TIMELINE—The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to—	New provision. The timeline shall not apply to a parent if the parent was prevented from filing by *specific misrepresentations by the [LEA] that it had resolved the problem* or the LEA withheld information that the parent had a right to under Part B.	
(i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or		
(ii) the local educational agency's withholding of information from the parent that was required under this part to be provided to the parent.		

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(E) DECISION OF HEARING OFFICER— (i) IN GENERAL—Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.	New provision. Adds new requirements that hearing decisions be based on a determination whether the child received FAPE and that procedural inadequacies can result in a finding that FAPE was not provided only if those inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision making regarding FAPE, or caused a deprivation of educational benefits.	
(ii) PROCEDURAL ISSUES—In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies—		
(I) impeded the child's right to a free appropriate public education;		
(II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or		
(III) caused a deprivation of educational benefits.		
(iii) RULE OF CONSTRUCTION—Nothing in this subparagraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.		
(F) RULE OF CONSTRUCTION—Nothing in this paragraph shall be construed to affect the right of a parent to file a complaint with the State educational agency.	New provision. Nothing in 20 U.S.C. 1415(f) should be construed to prevent a parent from filing a complaint with the SEA under the State complaint procedures.	
(g) APPEAL— (1) IN GENERAL—If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency.	No substantive change.	
(2) IMPARTIAL REVIEW AND INDEPENDENT DECISION—The State educational agency shall conduct an impartial review of the findings and decision appealed under paragraph (1). The officer conducting such review shall make an independent decision upon completion of such review.	No substantive change.	
(h) SAFEGUARDS—Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded—	No substantive change.	
(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;		

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;		
(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and		
(4) the right to written, or, at the option of the parents, electronic findings of fact and decisions, which findings and decisions—		
(A) shall be made available to the public consistent with the requirements of 20 U.S.C. 1417(b) (relating to the confidentiality of data, information, and records); and		
(B) shall be transmitted to the advisory panel established pursuant to 20 U.S.C. 1412(a)(21).		
(i) ADMINISTRATIVE PROCEDURES— (1) IN GENERAL— (A) DECISION MADE IN HEARING—A decision made in a hearing conducted pursuant to subsection (f) or (k) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2).	No substantive change.	
(B) DECISION MADE AT APPEAL—A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2).		
(2) RIGHT TO BRING CIVIL ACTION— (A) IN GENERAL—Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision made under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy.	No substantive change.	
(B) LIMITATION—The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the State has an explicit time limitation for bringing such action under this part, in such time as the State law allows.	New provision. Creates a Federal default timeline of 90 days to appeal final State due process decisions to court, that applies unless the State has an explicit timeline for bringing such actions under Part B.	
(C) ADDITIONAL REQUIREMENTS—In any action brought under this paragraph, the court—	No substantive change.	
(i) shall receive the records of the administrative proceedings;		

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(ii) shall hear additional evidence at the request of a party; and		
(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.		
(3) JURISDICTION OF DISTRICT COURTS; ATTORNEYS' FEES— (A) IN GENERAL—The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.	No substantive change. Note that the changes below are applicable only to the extent that attorneys' fees are available in a due process proceeding or civil court action.	
(B) AWARD OF ATTORNEYS' FEES— (i) IN GENERAL—In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs—	No substantive change.	
(I) to a prevailing party who is the parent of a child with a disability;		
(II) to a prevailing party who is a State educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or	New provision. Incorporates, into IDEA, the standards of Fed. R. Civ. Pro. 11 and case law providing for public agencies to recover attorneys' fees from parents' attorneys if the case *was frivolous, unreasonable or without foundation or was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the costs of litigation*.	
(III) to a prevailing State educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.		
(ii) RULE OF CONSTRUCTION—Nothing in this subparagraph shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.	New provision. Nothing in 20 U.S.C. 1415(i)(3) should be construed to affect the attorneys' fees limitation in the FY 2005 DC appropriations bill.	
(C) DETERMINATION OF AMOUNT OF ATTORNEYS' FEES—Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.	No substantive change.	
(D) PROHIBITION OF ATTORNEYS' FEES AND RELATED COSTS FOR CERTAIN SERVICES— (i) IN GENERAL—Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if—	No substantive change.	

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;		
(II) the offer is not accepted within 10 days; and		
(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.		
(ii) IEP TEAM MEETINGS—Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e).	No substantive change.	
(iii) OPPORTUNITY TO RESOLVE COMPLAINTS—A meeting conducted pursuant to subsection (f)(1)(B)(i) shall not be considered—	New provision. Attorneys' fees are not available for the resolution session meetings required by 20 U.S.C. 1415(f)(1)(B)(I).	
(I) a meeting convened as a result of an administrative hearing or judicial action; or		
(II) an administrative hearing or judicial action for purposes of this paragraph.		
(E) EXCEPTION TO PROHIBITION ON ATTORNEYS' FEES AND RELATED COSTS—Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.	No substantive change.	
(F) REDUCTION IN AMOUNT OF ATTORNEYS' FEES—Except as provided in subparagraph (G), whenever the court finds that—	No substantive change.	
(i) the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;		
(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;		
(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or		

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
(iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A), the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.		
(G) EXCEPTION TO REDUCTION IN AMOUNT OF ATTORNEYS' FEES—The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.	No substantive change.	
(l) RULE OF CONSTRUCTION—Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.	No substantive change.	
(n) ELECTRONIC MAIL—A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the agency makes such option available.	New provision. Parents can elect to receive notices required by 20 U.S.C. 1415 through email, if the agency makes such option available.	
(o) SEPARATE COMPLAINT—Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.	New provision. Clarifies that nothing in 20 U.S.C. 1415 prevents a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.	
Section 614(f) Alternate Means of Meeting Participation.—When conducting IEP team meetings and placement meetings pursuant to this section, section 615(e), and section 615(f)(1)(B), and carrying out administrative matters under section 615 (such as scheduling exchange of witness lists, and status conferences), the parent of a child with a disability and a local educational agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.	New provision that applies to all Part C lead agencies to allow the parties in mediation to agree to use a conference call or video conference in lieu of an in-person meeting. This provision also applies to Part C lead agencies that have adopted the Part B due process hearing procedures to allow alternate means of participation, such as a teleconference, for the dispute resolution session under section 615(f)(1)(B) if the parties agree and for administrative matters in implementing the due process hearing provisions such as scheduling or status conferences and exchanging of witness lists.	

TECHNICAL ASSISTANCE CHECKLIST[1] — APPLICATION REQUIREMENTS FOUND IN P.L. 108-446		
P.L. 108-446	**Description of Changes**	**Checklist - Change Is in Place**
20 U.S.C. 1401. DEFINITIONS. The following definitions are excerpted from Section 602 as they apply to Part C.		
Except as otherwise provided, in this title: (1) ASSISTIVE TECHNOLOGY DEVICE. — (A) IN GENERAL.—The term 'assistive technology device' means any time, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability (B) EXCEPTION.—The term does not include a medical device that is surgically implanted, or the replacement of such device.	Revised definition that applies to Part C.	
(11) HOMELESS CHILDREN.—The term 'homeless children' has the meaning given the term 'homeless children and youths' in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).	New definition that applies to Part C.	
(23) PARENT.—The term 'parent' means— (A) a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent); (B) a guardian (but not the State if the child is a ward of the State); (C) an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for e child's welfare; or (D) except as used in sections 615(b)(2) and 639(a)(5), an individual assigned under either of those sections to be a surrogate parent.	Revised definition that applies to Part C.	
(36) WARD OF THE STATE.— (A) IN GENERAL.—The term 'ward of the State' means a child who, as determined by the State where the child resides, is a foster child, is a ward of the State, or is in the custody of a public child welfare agency. (B) EXCEPTION.—The term does not include a foster child who has a foster parent who meets the definition of a parent in paragraph (23).	New definition that applies to Part C.	