

Special Education Law Enacted

A piece of civil rights legislation, the IDEA guarantees students with disabilities a free appropriate public education (FAPE) in the least restrictive environment and authorizes appropriations of billions of dollars in funding to states and school districts to assist them in providing special education and related services.

The revisions of IDEA contained in the new law, Public Law 108-446, build on and more closely align IDEA with the *No Child Left Behind Act (NCLB)*. They also modify important requirements around individualized student planning, transition, litigation, and due process protections, monitoring and enforcement, and federal funding. Below is a summary of some of the major provisions in the new law.

NO CHILD LEFT BEHIND

Under *No Child Left Behind* (PL 107-110), states are working to close the achievement gap and make sure all students, including those who are disadvantaged, achieve academic proficiency. Annual state and school district report cards inform parents and communities about state and school progress. Schools that do not make progress must provide supplemental services, such as free tutoring or after-school assistance; take corrective actions; and if still not making adequate yearly progress (AYP) after five years, make dramatic changes to the way the school is run.

The revisions to IDEA contain provisions aimed at strengthening how special education students' academic progress is measured. States now are

After three years of intense debate and compromise, the Individuals with Disabilities Education Act (IDEA), America's federal statute governing special education, has been revised, enacted and, for the most part, will take effect next July. Congress finished work on the revisions to the IDEA in late November, and President Bush signed the legislation, known as the Individuals with Disabilities Education Improvement Act, on December 3rd.

required to align their accountability systems for students with disabilities to those of NCLB, which are designed to measure actual student academic progress.

Under the new law, alternate assessment scores are required to be counted when determining performance of a school district and state. In addition, the law requires Individualized Education Programs (IEP) to emphasize academic performance. Parents will be able to choose supplemental educational services, such as tutoring, for their children with disabilities when the student's schools are in need of improvement under NCLB. And, schools are required to provide quarterly reports to parents on their child's progress toward meeting IEP goals, and how that progress is being measured.

In another move to align

IDEA with NCLB, special educators must demonstrate that they are "highly qualified" to teach in the public schools. They must meet core competency subject matter requirements established for general education teachers in NCLB, unless they teach students with significant cognitive disabilities. The law also requires that special educators possess full State special education certification, or pass a State special education licensing exam and hold some sort of a State license. It also contains requirements for special educators who are teaching multiple subjects and those teaching students working on the "alternate achievement standards."

The new law requires that special education teachers be certified as "highly qualified" by the end of the 2005-06 school year, with the same definition of the term and deadline required for general education teachers under the NCLB. The "highly qualified" teacher provisions take effect immediately as schools prepare to meet the NCLB requirement by next year. Additionally, paraprofessionals are now required to meet certain state-established personnel standards.

The new IDEA also promotes the use of universal design principles in student assessment, the delivery of instruction in the general curricula and the use of technology.





Individualized Education Programs

The new law contains several important changes to the Individualized Education Program (IEP) requirements of IDEA.

Short-term goals no longer have to be part of the IEP except for students with significant disabilities. No short-term objectives are required for students who take regular assessments or an alternate assessment on grade level. For students taking tests based on alternate achievement standards, IEP short-term objectives are still required.

If changes to a student's IEP are necessary after the annual IEP meeting for a school year, the parent and the school district may agree not to convene an IEP meeting to make the changes, but instead, may develop a written document to amend or modify the current IEP. Upon request, a parent is to be provided a revised copy of the IEP with the amendments incorporated.

A member of the IEP team is not required to attend all or part of the IEP meeting if, in writing, the parent, and the school agree that the team member's attendance is not necessary.

In the case of a student with an IEP who transfers school districts within the same academic year within the same state, the new law requires the school district to provide the child with free appropriate public education (FAPE), including services comparable to those described in the previous IEP, in consultation with the parents until the school district adopts the previous IEP or develops, adopts, and implements a new IEP. For students transferring from one state to the other, the same rule holds but only until the school district conducts an evaluation, and develops a new IEP.

The new law creates an opportunity for up to 15 states to test the option of establishing a three-year IEP program for students of all ages. Parents in those

states would still get the option to have a one-year IEP. This compromise will allow the selected states to receive waivers for certain federal and state paperwork requirements as long as they do not violate civil rights and procedural safeguards. States wishing to participate in the program will compete for the 15 slots for the paperwork reduction pilot programs. The Secretary of Education will announce the competitive opportunity, evaluate the proposals, and select the 15 states.

Transition

The new law contains a few changes in the area of transition.

IDEA has been amended to clarify that one of the primary purposes of the law is to ensure a free appropriate public education designed to meet each student's unique needs and to "prepare them for further education, employment and independent living."

The revisions to IDEA eliminate the references to transition activities beginning at age 14 or younger if appropriate; now, all transition requirements are to be followed not later than the first IEP to be in effect when the student turns 16 years old.

The definition of "transition services" has been changed to emphasize that the services must be designed "within a results-oriented process," which is "focused on improving the academic and functional achievement" of the student. "Vocational education" has been added to the list of potential services and the student's "strengths" are to be taken into account as well as his or her preferences and interests when considering the student's transition needs.

Schools are required to set clear and specific transition goals beyond secondary school. The student's IEP is

to include "appropriate measurable postsecondary goals based on age appropriate transition assessments" and describe the transition services, "including courses of study," needed to reach his or her goals.

Schools are required to provide graduating high school students with disabilities a summary of their accomplishments and transition needs as they leave school.

At the end of the Congressional debate, one major transition-related provision was dropped from the bill that sets the stage for further discussions around transition issues as the 109th Congress deliberates over the reauthorization of the Workforce Investment Act (WIA). The discarded provision would have placed a significant amendment into the WIA's Vocational Rehabilitation Act to specifically authorize a very detailed transition program, including funding once appropriations reach a certain level, for the public vocational rehabilitation system. Elimination of these transition provisions at the last minute of negotiations over IDEA opens a window of opportunity for Congress to look at transition in the context of the broader workforce development system beyond just vocational rehabilitation and special education.

Over-Identification

The new law includes several provisions intended to reduce the over identification of children as disabled, including minority children.

Administrators must use new approaches to prevent over-



identification or misidentification of students with disabilities. The new law clarifies that schools are not limited to using the IQ-achievement discrepancy model when determining the existence of a learning disability. It also requires school districts with significant over-identification of minority students with disabilities to provide early intervention services, particularly to those students.

As it relates to determining whether a student has a specific learning disability, the new law says that "...a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning." It goes on to say that "in determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based interventions" as a part of the required evaluation procedures.

The new law permits all school districts to use up to 15 percent of their IDEA funds for "early intervention services" for children who may have problems in specific skills, such as reading, before they are identified as disabled and needing special education.

Student Discipline

Probably the most controversial part of the IDEA reauthorization process, there are a number of significant changes to the discipline protections enacted in the IDEA amendments of 1997.

School personnel now have the authority to consider, on a "case-by-case basis," unique circumstances when

determining whether to order a change in placement for a student with a disability who violated a code of student conduct.

The length of time school personnel may remove a student to an interim alternative setting, without a hearing officer, has been changed from 45 days to 45 school days.

In addition, school personnel may now remove a student who "has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function" to such an interim placement without a hearing officer ruling.

The criteria to be used in disciplinary action for determining whether a behavior is a manifestation of a student's disability is: 1) whether the conduct in question is caused by, or had a direct and substantial relationship to, the student's disability; or 2) whether the conduct in question was the direct result of the school district's failure to implement the student's IEP."

Due Process & Litigation

There are several important changes to the due process rights of families.

The new law allows complaints to be submitted no more than two years from the date a parent or agency knew or should have known about the issue that is the subject of the complaint, or within the timeline the state requires.

It also requires both parties submit a due process complaint notice before accessing a due process hearing. The law now allows for mediation to be requested prior to the filing of a complaint and strengthens the provisions for developing a written binding confidential agreement. And, the new law creates a new "resolution session"

process as a means of dispute resolution.

The law maintains the right of parents and families to sue a district or state and collect attorney's fees, but also allows a school district to collect reasonable attorney's fees in egregious cases. A party bringing a civil action has 90 days from the date of the hearing officer's decision to bring a civil action, or the time period allowed by the state law.

Monitoring & Compliance

States and the U.S. Department of Education (ED) must work together closely to enforce the law in a systematic way. The new law requires states to develop performance plans with measurable targets on such indicators as free appropriate public education (FAPE) and least restrictive environment (LRE). The new law specifically requires states to identify enforcement targets such as minority representation in special education and issues related to a FAPE. It also provides a structured timeline for ED to help states comply with the law, and increasingly severe sanctions if states continue to fail to do so. The new law sets up specific timelines for ED to react to states' noncompliance. While the sanctions for noncompliance focus on technical assistance, the Secretary of Education does have the authority to withhold funding whether partially or entirely.

The Secretary of Education will review the state performance plan annually and determine whether a state is in compliance, or needs "assistance," "intervention" or "substantial intervention" in implementing the law. After two years of noncompliance, ED will continue to offer assistance through other federal agencies, professional development, and other resources from experts.

After three consecutive years of non-compliance, the Secretary of Education could require the state to develop a cor-



rective action plan, enter into a compliance agreement, withhold partial or future funding, or refer the matter to the Justice Department for appropriate enforcement action.

Funding

Although the new law stops short of guaranteeing that the federal government will pay 40 percent of the costs of special education, it authorizes significant additional spending that, if appropriated, will bring the federal contribution to special education to the 40 percent mark by 2011. Congress opted to address the funding issue through this “glide path” rather than making special education funding an entitlement or mandatory.

The new law also makes some changes to the funding formula. It provides formulas for determining the maximum amount a state can receive based on numerous factors, including the number of children receiving special education and related services aged 3-5 and 6-21; and average per pupil expenditure in the United States. It also provides a formula for allocating any increase in appropriations over the previous fiscal year, based on a state’s relative population of children aged 3-21 with disabilities and based on the relative population of children with disabilities who are living in poverty. No state’s allocation can be less than the previous year’s allocation.

The new law establishes risk pools for local education agencies to help pay for the education of high-need students and the unexpected enrollment of students with disabilities. Under this provision, states have the option to receive 10 percent of the amount of funds the state reserves for state-level activities. Any funds that a state does not use for the risk pool will be allocated to the local educational agencies in the next fiscal year. The law caps the amount of funds that may be used for administration at the fiscal year 2004 level and allows states to retain an increased

portion for other required state level activities. This portion would be capped after two years.

The new law also authorizes local school districts to reduce local expenditures on certain programs below prior year’s levels, up to an amount equivalent to 50 percent of new federal special education funding each year, on a cumulative basis, as long as an equivalent amount of local funds is used for activities authorized under the Elementary and Secondary Education Act.

Except for some provisions related to “highly qualified” teachers mentioned earlier, the new law will be effective on July 1, 2005 and the U.S. Department of Education now begins the arduous process of developing implementing regulations.

Resources

The new law, Individuals with Disabilities Education Improvement Act of 2004, (HR 1350) can be viewed at <http://thomas.loc.gov/home/thomas.html>.

American Association of People with Disabilities (AAPD)’s website, contains analysis of the new law from several different sources at <http://www.aapd.com/News/IDEA/indexIDEA.html>.

Consortium for Citizens with Disabilities (CCD)’s website contains a analysis of the conference committee language at <http://www.c-c-d.org/IDEA%20Conference%20Language.doc>.

Council for Exceptional Children (CEC) prepared a summary of the new law available at <http://www.cec.sped.org/>.

National Center on Secondary Education and Transition (NCCSET) has compared the key provisions on transition in the new law compared


to the existing law at http://www.ncset.org/publications/related/idea_transition.asp

National Association of State Directors of Special Education (NASDSE) has prepared *The Individuals with Disabilities Education Act: A Comparison of P.L. 105-17 (IDEA '97) to H.R. 1350* as passed by Congress on November 19, 2004, a side-by-side that compares current law to the new law. Order information is available at <http://www.nasdse.org>. NASDSE and the National Education Association (NEA) also have co-authored *IDEA and NCLB: The Intersection of Access and Outcomes (2nd Edition)*, which provides information on the intersection of IDEA and the No Child Left Behind Act (NCLB). The document is available at <http://www.nea.org/specialed/ideanclbintersection.html>

The National Collaborative on Workforce and Disability for Youth (NCWD/Youth) is composed of partners with expertise in disability, education, employment, and workforce development issues. NCWD/Youth is housed at the Institute for Educational Leadership in Washington, DC. The Collaborative is charged with assisting state and local workforce development systems to integrate youth with disabilities into their service strategies.

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NCWD/Youth
1-877-871-0744 (toll free)
www.ncwd-youth.info
Collaborative@iel.org



Office of Disability
Employment Policy