



A Union of Professionals

Individuals with Disabilities Education Improvement Act 2004 Summary

The U.S. House of Representatives approved the conference committee report on Friday, November 19, 2004, to reauthorize the Individuals with Disabilities Education Act (IDEA). The bill was approved with nearly unanimous bipartisan support in the House by a vote of 397-3, with Reps. Jeff Flake, R-Ariz., Scott Garret, R-N.J., and Ron Paul, R-Texas voting against the measure. On December 3, 2004, President Bush signed the nation's special education bill into law.

The effective date for all changes in the bill is July 1, 2005. The only exceptions are the requirements for highly qualified teachers, which will take effect immediately. This is necessary to maintain alignment with the No Child Left Behind (NCLB) requirement that all teachers become highly qualified by the end of the 2005-2006 school year. Many other provisions will become more defined as the Education Department concludes the regulatory process. The regulatory process should be finished within a year of the law's passage, but it can take longer.

Many of the changes are in line with recommendations from President Bush's Commission on Excellence in Special Education (PCESE) released in July of 2002. The report focused on paperwork reduction for teachers, early intervention, and parental choice improving academic results for children. It also emphasized the need to make IDEA law less focused on compliance and more focused on improving outcomes for students with disabilities.

The text of the conference report is available online at <http://edworkforce.house.gov>. Provided below is a brief summary of changes in the categories of alternate assessments, attorneys fees, discipline, enforcement, funding, highly qualified teachers, and paperwork and meetings.

Discipline

IDEA 1997 – Manifestation determinations are required when a student with a disability is subjected to a disciplinary change of placement.

IDEA Improvement Act 04 – Students with disabilities will have the same consequences meted out as their nondisabled peers for the same violation or infraction of the code of conduct, unless the discipline problem is a direct result of the student's disability.

In the 2004 reauthorization, the AFT worked to simplify the procedures for disciplining students with disabilities, give school officials the authority to remove students who jeopardize safety and persistently disrupt learning, and provide high-quality alternative settings for children who are suspended or removed. Under the '97 law, school officials had to

convene an IEP meeting to determine whether a child's behavior was a manifestation of his or her disability. The language determining what was, or wasn't, a manifestation was very broad. The 2004 language is much more specific stating that in determining whether the behavior was a manifestation of a child's disability, the conduct in question has to be caused by or have a direct and substantial relationship to the child's disability or be the direct result of the LEA's failure to implement the IEP (provide required services.) Also, under the '97 law, the student had to remain in the classroom during the manifestation determination, under the 2004 reauthorization; the student can now be removed to an alternative setting during that time. AFT is pleased with additional modifications to the 97' discipline provisions. In addition to infractions involving guns, weapons and drugs, school personnel can now remove a student who has "inflicted serious bodily injury" to an alternative setting for 45 school days. A much needed correction has been made, the new law eliminates three definitions of a "day" contained in the '97 law , and specifies "school days."

Enforcement

IDEA 1997 – Referenced state monitoring policies and enforcement guidelines.

IDEA Improvement Act 04 – Requires states to set enforcement targets specifically around disproportionality, transition services and issues related to free and appropriate public education (FAPE) and least restrictive environment (LRE).

In addition, the new law provides a structured noncompliance timeline and has included harsh, enforceable sanctions such as mandated targeted spending or withholding of federal dollars for noncompliance.

Funding

IDEA 1997 – Funded up to 11% of cost per pupil expenditure.

IDEA Improvement Act 04 – Authorizes funding increases for the next six years at \$2.3 billion per year. The allocations are not mandatory. This will fund the per pupil expenditure up to 19% if Congress meets the authorized levels.

In addition, the new law gives states the option of creating accounts for high-risk, high-cost students, using up to 10% of the state-level activities funds to reimburse districts. Furthermore, states will be given more flexibility to redirect their own, local resources for other educational purposes.

Highly Qualified Teachers

IDEA 1997 – no highly qualified provision, must have satisfied a state's entry requirement for licensure and/or certification (provisional or emergency).

IDEA Improvement Act 04 – Special educators must have obtained full State certification as a special education teacher (including certification obtained through alternative routes of certification).

In addition, the new law will require "new" special education teachers who teach multiple

academic subjects and who are highly qualified in math, language arts, or science, to demonstrate proficiency in any extra subject they teach, which must be done within two years of their hire date. Also, it will require new teachers providing instruction in multiple subjects to demonstrate competency under the High Objective Uniform State Standard of Evaluation (HOUSSSE), which considers years of experience and professional development as part of their qualifications. Lastly, A special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards may demonstrate subject matter competence by meeting the NCLB requirements applicable to an elementary school teacher, or in the case of instruction above the elementary level, by having subject matter knowledge appropriate to the level of instruction being provided, as determined by the State. The IDEA Improvement Act 2004 will devote 100 percent of the new state development grant to personnel development, with a focus on recruitment, preparation, and retention of highly qualified teachers.

Paperwork and Meetings

IDEA 1997 – IEPs had to list goals, short-term objectives had to explain how goals would be met. Required parents and education teams to be physically present during development or modifications to the IEP.

IDEA Improvement Act 04 – Short term objectives are no longer mandatory unless the student is severely disabled. Nor are short-term objectives required for students who take regular assessments or an alternate assessment on grade-level. IEP short-term objectives are required for students taking tests based on alternate achievement standards.

In addition, the new law will allow IEPs to be developed or modified by conference call or through written amendments. The law will still require schools to report to parents on their child’s progress and schools can issue the report on a quarterly basis. In addition, IDEA 2004 will permit 15 states to establish a three-year IEP program for students of all ages. Parents in those states will still have the option for a one-year IEP. Also, 15 states will have the option to waive certain federal and state paperwork requirements as long as civil and procedural safeguards are maintained.

The AFT is deeply concerned about the new “Excusal” provision in the bill. A member of the IEP team may be excused from attending an IEP meeting, when the meeting involves a modification to or discussion of the member’s curriculum area or related services if the parent and the local educational agency consent to the excusal. Both general and special education teachers provide invaluable information at IEP meetings and utilize this opportunity to develop and maintain crucial relationships with not only the parents, but other service providers who provide instructional services to the student. Absence of this opportunity may potentially exacerbate the communication disconnect within the special education community.

Paraprofessionals

IDEA 1997 – Required paraprofessionals who are appropriately trained and supervised, in accordance with State law, regulation or written policy to be used to assist in the provision of special education and related services under the related services personnel and paraprofessionals provision.

IDEA Improvement Act 2004 – Language remains the same as in IDEA '97.

AFT has a long-standing position on high standards for employment and training of paraprofessionals. Up until the moment the IDEA Act 2004 was reauthorized, there was no clear indication which direction Congress would take on personnel standards for paraprofessionals. Essentially, the language for IDEA '97 still stands. In accordance with State law, paraprofessionals and assistants who are appropriately trained and supervised may be used to assist in the provision of special education and related services to children with disabilities. In addition, the State must adopt a policy that includes a requirement that local educational agencies in the State take measures to recruit, hire, train and retain highly qualified personnel, including paraprofessionals to provide and related services to children with disabilities.

Special education paraprofessionals who provide instructional support in Title I schoolwide programs still must meet the NCLB requirements. This has remained unchanged since the passage of NCLB in 2002.

Disproportionality and Over-identification

IDEA 1997 - Required States to collect and disseminate data to determine if significant disproportionality on the basis of race was occurring with respect to identification of children with disabilities and placement of such children in particular categories.

IDEA Improvement Act 2004 – Will provide funds for training school personnel in effective teaching strategies and positive behavioral interventions and supports to prevent over-identification and misidentification of children.

From the time federal law first required schools to provide a free appropriate public education to children with disabilities, African-American children have been disproportionately identified in certain disability categories (mental retardation and emotionally disturbed) and disproportionately placed in separate, self contained settings. IDEA '97 essentially addressed the collection and review of disproportionate data, but failed short of proactively addressing the root causes of disproportionality. By clarifying that schools are not limited to using a single model, IDEA Improvement Act 2004 allows for the development of new approaches to determine whether students have specific learning disabilities.

In addition, the new law will require districts that have significant over-identification of minority students to operate a pre-referral program.