

Legislative Bulletin.....November 19, 2004

Contents:

Conference Report on H.R. 1350—Improving Education Results for Children With Disabilities Act of 2003

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Order of Business: The bill is scheduled for consideration on Friday, November 19th, pursuant to a rule. The rule allows for one hour of general debate with no motion to recommit.

The House passed H.R. 1350 on April 30, 2003, by a vote of 251-171 (<http://clerk.house.gov/evs/2003/roll154.xml>). The Senate amended and passed the bill on May 13, 2004, by a vote of 95-3.

Changes from the House bill are indicated in the summary below by strikethrough (House language not in the conference report) and bold (language in the conference report not in the House bill).

Summary: H.R. 1350 reauthorizes programs under the Individuals with Disabilities Education Act (IDEA), which provides assistance for the education of children, infants, and toddlers with disabilities.

Major changes in H.R. 1350 to current IDEA law are outlined below:

Overidentification/Misidentification of Disabled Children:

- Allows states and local education agencies (LEA) to use funds for ~~prereferral~~ “**early intervening**” systems for K-12 students who have not been enrolled in special education but need additional academic and behavioral support in general education. LEAs may use up to 15 percent of funding provided under Part B for these services. LEAs with significant overidentification of minority students would be required to operate a program.
- Prohibits a child from being identified as disabled if the sole factor of identification is the lack of scientifically-based reading instruction or instruction in math, or if the child is limited English proficient.

- Eliminates the requirement that the IQ-discrepancy model be used to identify whether a child has a “specific learning disability”
- ~~Once “full funding” of IDEA is achieved, the number of disabled children counted toward the maximum state grant would be limited to 13.5 percent of all children ages 3 to 17 in the state.~~ **Increases in state funding (starting in FY07) would be based, in part, on increases in the population of all children ages 3-21 and children in poverty.**

Discipline:

- Changes the time period allowed for school personnel to place a child who violates the school code of conduct policy in an alternative setting from 45 business days to 45 school days **if the student has a weapon or drugs at school or inflicts serious bodily injury, whether or not the action was a result of the child’s disability.** The alternative placement could be longer than 45 days if required by state law.
- Allows school personnel to discipline disabled children in the same manner as non-disabled children, although educational services for disabled children must continue in any alternative setting (if the child is suspended for more than 10 days) even if such services would be discontinued for non-disabled students
- ~~Eliminates the current law provision that requires a determination whether an action by a child (that would result in disciplinary action) was the result of his or her disability~~
- **Establishes a new program of grants to LEAs to establish alternative education settings and behavioral supports. Authorizes “such sums” for fiscal years 2005-2010.**

Individualized Education Program (IEP):

- ~~Eliminates (starting with the 2005-06 school year) the requirement that an IEP include short-term objectives and benchmarks~~
- Requires the IEP to specifically address the academic achievement goals of disabled students
- Allows the regular education teacher of a disabled child to be absent from IEP meetings if the meeting does not involve issues related to the child’s participation in the regular education environment
- Allows any member of the IEP team to be excused from a meeting if the child’s parent and the LEA agree attendance is not necessary
- Allows the IEP to be amended via a written document rather than through an IEP meeting, if the parents and LEA agree to do so
- Allows the IEP to be changed by amendment rather than redrafting the entire IEP
- Authorizes **a 15-state pilot program that would allow** LEAs and parents to voluntarily agree to develop a multi-year IEP (up to three years) rather than a one-year IEP, with an annual review required to measure student progress and amend the IEP, if appropriate. Parents who choose a multi-year IEP may go back to an annual IEP at any time.
- Requires the Individual Family Service Plan for infants and toddlers to include goals for the development of pre-literacy and language skills and a plan for the child’s transition to school

Paperwork/Regulations:

- Authorizes the Secretary to issue only those regulations that are “reasonably necessary” to ensure compliance with IDEA
- Requires states to minimize rules and regulations for LEAs and schools and to ensure that such rules are designed to help students “meet the challenging State student academic achievement standards”
- ~~Requires a GAO review of all federal IDEA requirements and a sample of state and local requirements to determine which requirements result in excessive paperwork burdens~~
- Authorizes a ~~10-state pilot program~~ **15-state pilot program** granting four-year waivers of paperwork requirements
- Requires the Secretary of Education to develop “model forms” for the IEP, procedural safeguards notice, and prior written notice
- Allows the IEP team to determine that a child may leave special education and return to regular education or graduate from high school without an exit evaluation

Litigation/Binding Arbitration/Due Process:

- ~~Requires states to establish a voluntary binding arbitration system. Both the LEA and parents of a disabled child must agree to enter into arbitration in writing. The LEA or state agency must ensure that parents understand that arbitration is in lieu of a due process hearing and the decision of the arbitrator is final~~
- Requires the state and LEA to make mediation available to resolve disputes before a formal complaint is filed
- Establishes a statute of limitations of ~~one year~~ **two years** from the date of the violation to file a complaint and requires such complaints to ~~be clear and specific~~ **describe the nature of the problem** when filed
- Requires due process hearings to be conducted by the state education agency **or LEA, as determined by state law**
- Establishes a “resolution session” to take place before a due process hearing where the parents and LEA have an opportunity to discuss and resolve complaints. If the complaint is not resolved within 30 days to the satisfaction of the parents, a due process hearing would occur. Issues could not be raised at the due process hearing that were not raised in the complaint or at the resolution session, unless the other party agrees otherwise.
- Requires decisions by due process hearing officers be based on whether or not the child received a free and appropriate public education, ~~not on procedural violations of the statute~~ **and on procedural violations if they impeded the child’s right to a free and appropriate public education, impeded parental participation, or caused deprivation of education benefits.**
- ~~Requires states to determine limits on attorneys’ fees~~ **Attorneys’ fees would be based on “rates prevailing in the community”**
- **Makes medication agreements legally binding for both sides**

Accountability:

- Requires state performance goals for children with disabilities ~~to be the same as the state's definition of adequate yearly progress under the Elementary and Secondary Education Act (ESEA)~~ and to include measurable ~~annual objectives for student progress and rigorous targets~~.
- Requires the Secretary of Education to monitor implementation of the IDEA statute.
- If a state is not in compliance with IDEA **after 2 years**, the Secretary must take one or more of the following actions: referral to technical assistance, direct use of state funds for technical assistance, or withholding of up to 50 percent of state activities funds. **If a state is not in compliance after 3 years, the Secretary could require a corrective action plan, compliance agreement, or withhold additional funds.** The Secretary is required to take further action if a state is determined to be in ~~“substantial non-compliance” or continued non-compliance~~ **need “substantial intervention.”**

Choice/Supplemental Services:

- Allows LEA funds to be used to provide supplemental services (such as tutoring) to disabled children in schools identified for school improvement under ESEA
- In Part C (Infants and Toddlers) allows states to create a program allowing children coming into the Part C preschool program to remain with their current providers, including private providers. **Authorizes incentive grants for states to implement such a program.**

Teacher Quality:

- Requires special education teachers who teach in core subjects to be “highly qualified” in those subjects. **For teachers teaching general special education, only state certification is required.**
- Requires LEAs to ensure that all personnel are “appropriately and adequately prepared,” consistent with the teacher and paraprofessional requirements in ESEA
- Requires state professional development programs to partner with LEAs and at least one higher education institution

Research:

- Moves special education research within the Institute for Education Sciences (where all other federal education research currently takes place). Establishes a National Center for Special Education Research within the Institute, headed by a Commissioner for Special Education Research
- **Allows the Secretary to provide technical assistance to states to collect data.**

Medication:

- Requires states to establish policies that prohibit school personnel from requiring a child to be prescribed medication listed under the Controlled Substances Act in order to attend school or receive services

State and Local Uses of Funds:

- ~~Allows states and LEAs to use funds to establish mechanisms (such as risk sharing funds or consortia) to manage the costs of children with low incidence, high cost~~

disabilities Allows states to establish a risk pool (high-risk fund) for LEAs with high-needs children or to use funds for cost-sharing programs.

GAO Studies/Reports: ~~Requires GAO to conduct studies on the following—~~

- ~~• Paperwork requirements under the IDEA statute~~
- ~~• State interpretations of the federal subcategories of “child with a disability”~~
- ~~• Distance learning and technology programs offered to special education teachers for professional development~~
- ~~• Services provided to limited English proficient children~~

Appropriations: Sets a framework to meet the maximum federal commitment for special education funding of 40 percent of the average annual per pupil expenditure (FY03 appropriations of \$8.87 billion equal nearly 18 percent of the average annual per pupil expenditure. The FY04 budget resolution provided \$11.1 billion, 21 percent of APPE. The House-passed FY04 Labor/HHS/Ed appropriations bill provided the same amount as the budget resolution). Authorizes appropriations for Part B as follows:

- FY05 – ~~\$13.374 billion~~ **\$12.358 billion**
- FY06 – ~~\$15.746 billion~~ **\$14.649 billion**
- FY07 – ~~\$17.918 billion~~ **\$16.939 billion**
- FY08 – ~~\$20.090 billion~~ **\$19.229 billion**
- FY09 – ~~\$22.262 billion~~ **\$21.519 billion**
- FY10 – ~~\$25.198 billion~~ **\$23.810 billion**
- FY11 – ~~such sums~~ **\$26.100 billion**
- FY12 and subsequent years – such sums

For preschool grants under Part B, H.R. 1350 authorizes ~~\$500 million for FY04 and such sums for subsequent fiscal years~~ **“such sums” for fiscal years 2005-2010.**

Appropriations for Part C, Infants and Toddlers, are authorized at ~~\$447 million for FY04 and such sums for FY05-09~~ **“such sums” for fiscal years 2005-2010.**

Appropriations for Part D, National Activities, are as follows:

- Professional development – ~~\$44 million for FY04 and such sums for FY05-09~~ **“such sums” for fiscal years 2005-2010**
- Research, technical assistance, studies and evaluations – ~~\$171.8 million for FY04 and such sums for FY05-09~~ **“such sums” for fiscal years 2005-2010**
- Personnel preparation – ~~\$90 million for FY04 and such sums for FY05-09~~ **“such sums” for fiscal years 2005-2010**
- Parent training and information centers – ~~\$59 million for FY04 and such sums for FY05-09~~ **“such sums” for fiscal years 2005-2010**

Additional Background: IDEA was last reauthorized in 1997 through 2002. Two IDEA programs, Part B Grants to States and Preschool Grants, are permanently authorized.

Committee Action: H.R. 1350 was considered and amended by the Education and the Workforce Committee on April 9 and 10, 2003, and reported favorably by a vote of 29-19.

The bill was also considered and amended by the Subcommittee on Education Reform of the Education and the Workforce Committee on April 2, 2003. The Subcommittee approved the bill by voice vote.

Administration Position: The Administration has indicated that it supports H.R. 1350.

Outside Organizations: The following outside organizations have indicated their support for H.R. 1350:

- Agudath Israel of America
- Association of Christian Schools International
- Charter School Leadership Council
- Council for American Private Education
- Council for Exceptional Children/Teacher Education Division
- Education Leaders Council
- Eunice Kennedy Shriver
- Higher Education Consortium for Special Education
- HOSTS Learning
- IDEA Infant and Toddler Coordinators Association
- National Association of Independent Schools
- National Association of Private Special Education Centers
- National Association of Secondary School Principals
- National Center for Home Education
- National Schools Boards Association
- Recording for the Blind and Dyslexic
- Union of Orthodox Jewish Congregations of America
- United States Conference of Catholic Bishops

Cost to Taxpayers: An official cost estimate is not available. However, the bill authorizes \$84.694 billion and various “such sums” for fiscal years 2005-2010.

Does the Bill Expand the Size and Scope of the Federal Government?: As detailed above, the bill makes changes to the current IDEA program, some of which include new federal rules and requirements. The bill also establishes several new programs.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: The Education and the Workforce Committee cites Article I, section 8, clause 1 (general welfare) in the committee report for H.R. 1350.

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