



SUMMARY OF FINAL IDEA BILL

This document is an initial summary of the IDEA reauthorization bill passed by Congress on Friday, November 19th. It is organized by NEA's key priority areas. **More detailed documents will be forthcoming to help NEA members, as well as organization staff and affiliates, deal with the implementation of the law.** Overall, this bill does not represent a major overhaul of IDEA. However, for the first time in federal law, the paperwork burden of educators is addressed.

NEA Victories (in brief):

- ▶ Defeated vouchers by wide bipartisan margins
- ▶ Shaped the themes of the President's Commission Report, as well as House and Senate bills (i.e., NEA tagline: Let's Re-Focus IDEA on Improved Services and Learning, rather than Paperwork and Process)
- ▶ Fought back attempts to expand NCLB's "highly qualified" requirements to IDEA-funded ESPs
- ▶ Won insertion of language to increase focus on professional development (from preparation to recruitment to retention)
- ▶ Won insertion of language to help reduce paperwork
- ▶ Advocated for enhanced focus on early intervention
- ▶ Advocated for (and won) a balanced way to simplify discipline procedures, while protecting fundamental civil rights of students with disabilities
- ▶ Advocated for fair ways to reduce litigation between parents and school districts

What's Not in the Bill (in brief):

- ▶ No mandatory full funding. Final bill contains authorization levels that put us on a seven year path to get to full funding
- ▶ Highly qualified agreement is not as clear as NEA's position (i.e., if you're certified or licensed as a special education teacher, you should be deemed highly qualified for purposes of ESEA/NCLB). The bill does contain a new and dramatic expansion of flexibility of ESEA/NCLB's provisions by allowing states to create high, objective, uniform state standards of evaluation (HOUSSE) for NEW special education teachers – a provision not currently allowed by ESEA/NCLB. Further, the bill clarifies that states may create a multi-subject HOUSSE for veteran special education teachers. (Six affiliates have already worked with their state departments of education to create these: KS, MD, MI, NC, SC, and WI.)
- ▶ No requirement for States, as a condition of accepting IDEA funds, develop a policy about class sizes/caseloads for special educators. (There are several general references encouraging states and districts to use personnel development funds to attract and retain special educators. NEA staff will continue to work during the implementation stage with the U.S. Department of Education to ensure that guidance materials include specific references to addressing class sizes/caseloads as a recruitment and retention tool.)

Fix the Highly Qualified Definition for Special Education Teachers

The law requires all special education teachers to be certified in special education. For special education teachers teaching students with the most significant cognitive disabilities – those who take alternate assessments aligned to alternate standards – the teachers will also be required to have an elementary certification, or for those teaching above the elementary grade level, demonstrate the ability to teach at the appropriate instructional level for their students. New special education teachers teaching multiple subjects must meet the NCLB highly qualified standard in at least one core subject area (language arts, math, or science) in order to be hired, and then will have two years from the date of employment to take advantage of a HOUSSE to demonstrate competence in other core subject areas. Veteran special education teachers teaching multiple subjects can take advantage of the HOUSSE to demonstrate competence in other core subject areas. (See attached sheet for “highly qualified” requirements and statutory language.)

Protection for Education Support Professionals

The House IDEA bill would have dramatically expanded ESEA/NCLB’s highly qualified provisions for education support professionals (ESPs) to IDEA-funded ESPs, not just Title I-funded ESPs. We were successful in defeating that proposed expansion. In short, the only special education ESPs who are subject to NCLB’s highly qualified requirements are those working in schools where Title I money is used for school-wide programs AND who are helping to deliver core academic content. If the ESP is a personal assistant and does not perform instructional tasks, she is exempt from meeting the NCLB highly qualified requirements.

There is language that beefs up current law by requiring states to ensure they have policies and programs in place to “allow paraprofessionals and assistants 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 this part to children which disabilities.” We attempted to get stronger language to attempt to protect ESPs from liability when they are asked to perform medical or health-related functions. *We will continue to pursue this issue in implementation.*

Enhance the Focus on and Opportunities for Professional Development

The law now requires that 100% (compared to 75% under IDEA ’97) of all State Improvement Grant money (found in Part D of IDEA; \$91 million for this fiscal year) be devoted to professional development. This is a competitive program which issues 5-year grants. And once funding for the SIG program exceeds \$100 million, it becomes a formula grant (which NEA lobbied hard for, since not all states currently get SIG \$). States must use 90 percent of these funds to carry out *at least one* of the following: 1) mentoring, team teaching, reduced class schedules and caseloads, and intensive professional development; 2) ensuring that academic and functional standards or assessments are aligned with state content standards as well as professional development; 3) encouraging collaborative and consultative models for early intervention, special education, and related services; 4) Encouraging and supporting the training of special education and regular education teachers and administrators to effectively use and integrate technology; 5) expanding professional development activities; 6) developing and implementing initiatives to promote the recruitment and retention of highly qualified special education teachers, particularly initiatives that have been proven effective in recruiting and retaining highly qualified teachers; 7) developing programs designed to improve the quality of early intervention personnel, including paraprofessionals and primary referral sources; and 8) training personnel, including administrators, about how to write effective IEPs and conduct effective and efficient IEP meetings.

New programs are created to help new special education teachers (mentoring, induction, added PD, etc.). There is a lot of language encouraging states to deal with recruitment and even more so with retention. There is a scholarship program to recruit people to enter the special education teaching profession in exchange for at least 2 years of service as a special education teacher. Furthermore, there is language to encourage training of both special education teachers and regular education teachers to work with students with disabilities.

Reducing Paperwork

The law still requires schools to provide short-term objectives for students who take alternate assessments based upon alternate achievement standards. Short-term objectives for all others, however, are replaced by the beginning of the 05-06 school year with “annual measurable goals.”

The law allows 15 states to design paperwork reduction plans without sacrificing essential civil rights of students. This is a demonstration program for which the Secretary of Education will be required two years after the date of enactment to issue a report to Congress about whether this program has indeed reduced paperwork for educators, increased collaboration between IEP team members, improved outcomes, enhanced longer-term planning, and enhanced satisfaction of family members.

It also allows 15 states to offer voluntary 3-yr IEPs (to coincide with natural transition points) to all students, provided that there are regular Reports to Congress on the effectiveness in reducing paperwork burden on teachers, increasing collaboration between IEP team members, improving outcomes, enhancing longer-term planning, and ensuring satisfaction of family members.

A GAO study of paperwork burdens is required, along with GAO’s recommendations.

The law allows State Part B money to be used for paperwork reduction efforts

The law allows Part D money to be used for professional development related to reduction of paperwork through effective IEP writing and implementation

The law requires USED to develop model IEP and IFSP forms, model notice of procedural safeguards, and model prior written notice no later than the date the final regulations are published.

Enhance Focus on and use of Early Intervention Strategies

The law will give flexibility to local school districts to use up to 15 percent of their funds for early intervening services for students (in k-12) before they are identified as needing special education services (i.e., prior to an evaluation for IDEA eligibility).

It allows for the development of new approaches to determine whether students have specific learning disabilities by clarifying that schools are not limited to using the IQ-achievement discrepancy model. Schools may still use the IQ discrepancy model as a part of eligibility determinations, so long as it is not the sole determinant of eligibility.

The law maintains early intervention and preschool special education programs for infants, toddlers, and preschoolers with disabilities, including allowing states to create a system that gives parents the choice to have their child continue early intervention services until the age of five.

It requires that infants and toddlers who are abused, neglected, drug-exposed, or have experienced family violence, be referred for early intervention.

Simplify Discipline Procedures

Students with disabilities may be removed from the classroom for up to 10 days for any violation of a school code of conduct, in the same manner and to the same extent that a non-disabled student would be. (in other words, equal punishment for the same offense). A manifestation determination would have to be conducted within 10 days to determine whether the behavior was the result of the child's disability or whether the behavior was a "direct result of the local educational agency's failure to implement the IEP."

Schools can still automatically remove a student with a disability for up to 45 days for carrying drugs or a weapon to school, but a new category of offense has been added to this 45-day automatic removal provision. A student with a disability who causes "serious bodily harm" can now be automatically removed for up to 45 days from the classroom regardless of whether the behavior was the result of the disability.

The requirement to conduct functional behavioral assessments and implement or modify existing behavioral intervention plans was put back in and applies to students for whom the behavior in question is deemed to be manifestations of their disabilities AND who are removed from the classroom for more than 10 days.

The final bill also allows schools to take into account on a case-by-case basis "any unique circumstances . . . when determining whether to order a change in placement for a child with a disability who violates a code of student conduct." (This may be the biggest change in the discipline provisions – it is designed to grant limited exceptions to the "stay put" rule. We will work with USED to include helpful guidance language on how this might be helpful for ensuring the safety of NEA members and students in the classroom.)

Finally, there is a new grant program (a high priority of NEA's) to help states and LEAs create and/or enhance high quality alternative education programs and/or sites.

Requires that schools continue providing services that enable students who are disciplined to participate in the general curriculum and meet their IEP goals.

Establishes a new program to develop and enhance behavioral supports in schools while improving the quality of interim alternative education settings.

Other Issues

Eligibility provisions: A child cannot be determined to be eligible for IDEA services—i.e, be deemed a "child with a disability"—if the "determinant factor" is that he or she 1) lacked "appropriate reading instruction;" 2) lacked instruction in math; or 3) is a student with limited English proficiency.

IEP-related provisions: The law requires schools to provide short-term objectives for students who take alternate assessments based upon alternate achievement standards

For all others, short-term objectives are eliminated and replaced with "measurable annual goals, including academic and functional goals..."

For all students, quarterly or other periodic reports to parents on their child's progress toward meeting annual IEP goals and how that progress is being measured. (These reports can be coordinated with the issuance of report cards).

Simplifies the rules for transition services (activities that help a student begin planning for life after high school) by requiring that substantive transition services and planning begin at age 16.

Clarifies existing IDEA regulations that IEP meetings may take place via conference call, video-conference or other means, rather than in person.

Attendance at IEP Meetings: The law clarifies existing regulations by stating that an IEP team member whose area of the curriculum or related services will not be discussed at an IEP meeting need not attend that meeting, so long as the parent and school district agree that the attendance is not necessary. The consent to do this is not required to be put in writing.

Excusal from IEP meetings: The law allows a parent and a school district to agree to excuse a member of the IEP team from attending an IEP team meeting (when that meeting does involve the team member's area of the curriculum or related services), as long as that member submits input in writing prior to the IEP meeting. The consent between the parent and the school district must be documented in writing. (Note: The initial version of the Conferees' recommendations appeared to contain a requirement that the IEP team member seeking to be excused also consent to the excusal. However, in consulting with Congressional staff, the Conferees made the determination that since the IEP is viewed by courts as a contractual document between the parents and the school district, they did not want to confuse long-standing legal precedents by introducing a separate, new right which might also give rise to parents' filing more due process complaints. NEA will work with the U.S. Department of Education to stress the need to clarify in guidance documents that administrators may not use this excusal provision to purposely exclude IEP team members who wish to participate in a meeting from doing so.)

State and local funding issues: It establishes a seven-year (including this fiscal year) path toward fulfilling the federal government's 30-year promise to pay 40% of the costs of educating students with special needs. (NOTE: The authorization level for 2005 is \$12.36 billion; yet, the amount Congress just appropriated was \$10.68 billion – or, \$1.68 billion short)

Due to the federal government's failure to live up to its promise, states and local communities are making up the difference. The new IDEA law will allow local schools, as the federal government moves closer to paying 40 percent of special education costs, to redirect a share of their own, local resources for other educational purposes—in other words, shift them to their general operating budgets for education.

It establishes a state-level risk pool fund to assist local educational agencies in providing FAPE to disabled children with the greatest needs (“low-incidence/high-cost”).

Disproportionality: (Excerpt from Conference Chairman Rep. John Boehner's (R-OH) summary of the IDEA bill) -- “Reducing over-identification/misidentification of non-disabled children, including minority youth. A disproportionate number of minority students are wrongly placed in special education rather than provided intensive educational interventions and positive behavioral interventions....[S]tudies show the proportion of minority students identified in some disability categories is dramatically greater than their share of the overall population. More specifically,

African-American students are labeled as mentally retarded and emotionally disturbed far out of proportion to their share of the student population. For minority students, misclassification or inappropriate placement in special education programs can have significant adverse consequences, particularly when these students are removed from regular education settings or given limited access to the core curriculum. The bill will require districts with significant over-identification of minority students to operate early intervening programs that work to reduce over-identification; reduce the over-reliance on the "IQ-discrepancy" model for identification; introduce a "response to intervention" model that identifies specific learning disabilities before the students are failing at grade level; and encourage greater use of programs that rely on positive behavioral interventions and supports."

Litigation Reduction: The law creates a new "opportunity to resolve" problems before a due process complaint is formally filed. School districts will have 15 days in which to convene a "resolution session" and may not bring a district attorney unless the parents are represented by counsel. The school district then has another 15 days to attempt to cure the problems cited by the parents.

The law requires that complaints to be clear and specific when they are filed, so that school districts have adequate notice and knowledge of the grounds on which parents are basing their complaints.

Agreements reached in dispute resolution and due process will be binding.

The law also establishes competency standards with respect to the training of hearing officers.

The law establishes a 2-year statute of limitations for parents to file complaints (2 years from the date the alleged violation occurred or 2 years from the date the parents should have known the alleged violation occurred.)

Attorneys will be held liable for the costs of frivolous lawsuits. And to address concerns about exorbitant attorney's fees, both parents and school districts will be able to collect the cost of attorney's fees as the prevailing party.

Home-schooled children: The bill also makes it clear that local schools do not need to conduct an evaluation or create an IEP if parents state that they will refuse both the evaluation and services, helping avoid unnecessary and unwanted involvement that can lead to lawsuits.

Medication: The bill prohibits schools from forcing children to be medicated as a condition of attending school, receiving an evaluation, or receiving services. NEA fought to protect educators' First Amendment rights to discuss medication with students' parents.

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Once again, we will be preparing other, more detailed materials which address how to help affiliates and members cope with the implementation of the changes in the IDEA law. Thank you in advance for any suggestions you may have.

NEA Government Relations
November 30, 2004

HIGHLY QUALIFIED DEFINITION FOR SPECIAL EDUCATION TEACHERS

A. For all special education teachers:

- State special education certification or license
- At least a bachelor's degree
- has not had a waiver of licensing requirements "on an emergency, temporary, or provisional basis

B. For new and veteran special education teachers who are "teaching to alternate achievement standards:"

-the above (A), plus

- 1) meet the NCLB requirements for an elementary school teacher (i.e., test of basic skills in multiple core content subjects – which may be the test taken as part of SpEd licensure); OR
- 2) "in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

C. For VETERAN special education teachers teaching multiple subjects (2 or more core academic subjects):

-the above (A), plus the options of

- 1) complying with NCLB, as is; OR
- 2) go through a state HOUSSE, "which may include a single, high, objective, uniform state standard of evaluation covering multiple subjects" (Translation: allows states to develop a multi-subject HOUSSE for special ed teachers)

D. For NEW special education teachers teaching multiple subjects:

-the above (A), plus be highly qualified in one core area (math, language arts, or science) AND THEN

- 1) comply with NCLB, as is, for demonstrating competency in other core subjects they teach; OR
- 2) go through a state HOUSSE, "which may include a single, high, objective, uniform state standard of evaluation covering multiple subjects, not later than 2 years after the date of employment."
(Translation: NEW addition to NCLB--allows states to develop a multi-subject HOUSSE which can be used by NEW special ed teachers)

There is also Conference Report language which reiterates the guidance issued by USED which states that special education teachers who are not providing core content, but are instead providing consultative services to a HQ core content teacher are exempt from the subject matter requirements of the HQ definition in NCLB and IDEA.

Actual statutory language in the IDEA bill (Section 602)

`(10) HIGHLY QUALIFIED-

(A) IN GENERAL- For any special education teacher, the term 'highly qualified' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965, except that such term also--

(i) includes the requirements described in subparagraph (B); and

(ii) includes the option for teachers to meet the requirements of section 9101 of such Act by meeting the requirements of subparagraph (C) or (D).

(B) REQUIREMENTS FOR SPECIAL EDUCATION TEACHERS- When used with respect to any public elementary school or secondary school special education teacher teaching in a State, such term means that--

(i) the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law;

(ii) the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) the teacher holds at least a bachelor's degree.

(C) SPECIAL EDUCATION TEACHERS TEACHING TO ALTERNATE ACHIEVEMENT STANDARDS-

When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, such term means the teacher, whether new or not new to the profession, may either--

(i) meet the applicable requirements of section 9101 of such Act for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(ii) meet the requirements of subparagraph (B) or (C) of section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

(D) SPECIAL EDUCATION TEACHERS TEACHING MULTIPLE SUBJECTS- When used with respect to a special education teacher who teaches 2 or more core academic subjects exclusively to children with disabilities, such term means that the teacher may either--

(i) meet the applicable requirements of section 9101 of the Elementary and Secondary Education Act of 1965 for any elementary, middle, or secondary school teacher who is new or not new to the profession;

(ii) in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or

(iii) in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects, not later than 2 years after the date of employment.

(E) RULE OF CONSTRUCTION- Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular State educational agency or local educational agency employee to be highly qualified.

(F) DEFINITION FOR PURPOSES OF THE ESEA- A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965.