



November 18, 2004

Highlights of the Conference Report to Accompany H.R. 1350, the Individuals with Disabilities Education Improvement Act of 2004

The Conference Report to H.R. 1350, H. Rept. 108-779, was filed on November 17, 2004.

Noteworthy

- H.R. 1350 reauthorizes the Individuals with Disabilities Education Act (IDEA) through 2010. The earlier reauthorization expired in 2002.
- The Conference Report establishes a clear seven-year path to reach the 40-percent funding goal through the discretionary appropriations process by 2011. The “40-percent funding goal” refers to the original 1975 law that called for the federal government to pay up to 40-percent of a state’s additional cost of educating children with disabilities.
- The Conference Report aligns IDEA with the No Child Left Behind Act (NCLB) to raise expectations and accountability for all students, including those with disabilities. The Conference Report ensures that States focus on the goal of improving academic results and functional performance, and requires all special education teachers to be certified or licensed to teach special education, similar to the standards required of all teachers under NCLB.
- The Conference Report addresses the issue of discipline within schools and ensures that an individualized education program contains positive behavioral interventions and supports for a child whose behavior impedes his or her learning, or the learning of others.

Background

The Individuals with Disabilities Education Act (IDEA) was enacted in 1975 to require that children with special education needs have the same access to public education given to other children in this country. IDEA authorizes federal funding to assist states in the provision of a free and appropriate education to all children if they provide it to some. The last reauthorization of IDEA, enacted in 1997, required individualized education plans for each child with a disability, relating programming for the child to achievement in the general education curriculum. The 1997 amendments also created new State and substate formulas in the grants to States and preschool programs, generally basing grant amounts on broader population factors rather than counts of children with disabilities served.

During this reauthorization process, which began in 2002, the Senate Committee on Health, Education, Pensions and Labor (HELP) sought to align IDEA with No Child Left Behind. The guiding principals for reauthorization included stronger accountability for results; simplification of paperwork for states and increased flexibility for all; a focus on doing what works; and increased choices and meaningful involvement for parents. Other goals of this reauthorization included encouraging early informal resolution of problems; reducing the misidentification of students; providing fiscal relief to school districts; and providing increased resources to train teachers and parents better.

Over the past two years, the HELP Committee held four hearings and staff met with over 80 groups to hear their concerns with IDEA and gather their recommendations.

The House passed H.R. 1350 on April 30, 2003, by a vote of 251 to 171. The Senate, on May 13, 2004, incorporated S. 1248 into H.R. 1350, and passed H.R. 1350 in lieu of S. 1248. The Senate vote was 95 to 3.

The House appointed the following conferees on October 8, 2004: Representatives Boehner, Castle, Ehlert, Keller, Wilson (SC), Miller (CA), Woolsey, Owens, Barton (TX), Bilirakis, Dingell, Sensenbrenner, Smith (TX), and Conyers. The Senate appointed conferees on October 11, 2004: Senators Gregg, Frist, Enzi, Alexander, Bond, DeWine, Roberts, Sessions, Ensign, Graham (SC), Warner, Kennedy, Dodd, Harkin, Mikulski, Jeffords, Bingaman, Murray, Reed, Edwards, and Clinton.

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Bill Provisions

Provisions to Improve Discipline and Ensure School Safety

The conferees agreed that behavioral interventions and supports should remain an option for special education students as under current law.

The conferees included a “manifestation determination.” However, the conferees clarified that a child’s behavior is only a manifestation of his or her disability if the conduct in question was caused by or had a direct and substantial relationship to the child’s disability.

The Conference Report clarifies that, with exceptions for drugs, weapons or serious bodily injury, if a child’s behavior is determined to be the direct result of his or her disability, the student will be removed from the classroom for no more than 10 days. For longer suspensions, the student will continue to receive educational services to make progress on his or her Individualized Education Program (IEP).

Teacher Provisions

The conferees agreed to require all special education teachers to be certified or licensed to teach special education. In addition, they agreed to give new special education teachers who teach multiple core academic subjects and who are highly qualified in mathematics, language arts, or science, two years to demonstrate competency in their additional subjects. They also agreed to give new multi-subject special education teachers the option to demonstrate competency in the same way as veteran teachers – by meeting a high objective uniform state standard of evaluation. Special education teachers who provide solely a consultative role (such as adjusting the curriculum and implementing appropriate accommodations for children with disabilities) would only have to be certified in special education. Special education teachers who teach exclusively children with significant cognitive disabilities could demonstrate competency by demonstrating knowledge of the elementary curriculum or a higher standard if a State so chose.

The Conference Report designates 100 percent of State program improvement grants to support preparation and professional development for teachers. Also agreed was the authorization for local educational agencies to use a portion of Part B funds for providing professional development to help teachers deliver scientifically based academic instruction and behavioral interventions in order to help children succeed in school.

Funding Provisions

The Conference Report reauthorizes the Individuals with Disabilities Education Act (IDEA), at the following levels for Part B: \$12.4 billion for FY 2005; \$14.7 billion for FY 2006, \$16.9 billion for FY 2007; \$19.2 billion for FY 2008; \$21.5 billion for FY 2009; \$23.8 billion for FY 2010; \$26.1 billion for FY 2011; and such sums as may be necessary for FY 2012 and beyond.

The conferees adopted the Senate’s approach to simplifying funding formulas, including simplifying the maximum grant formula for States in order to incorporate the permanent formula used for allocating funding increases. The conferees also modified the source of funding for risk pool disbursements to be a portion of the State-level activities

reservation, and retained the Senate's approach of making future years' flexibility amounts more predictable. Finally, the conferees agreed to establish a clear 7-year path to reach the 40-percent funding goal through the discretionary appropriations process by 2011. (The "40-percent funding goal" refers to the original 1975 law that called for the federal government to pay up to 40-percent of a state's additional cost of educating children with disabilities. In FY 2004, Congress allocated 19-percent to school districts.)

Provisions to Reduce Paperwork Burdens

The conferees agreed to a paperwork reduction demonstration program in 15 states that allows the Secretary of Education and participating States to respectively waive Federal and State requirements that might contribute to the paperwork burden but do not assist in improving educational and functional results for children with disabilities. However, requirements pertaining to civil rights and procedural safeguards may not be waived.

The Conference Report reduces the number of times that procedural safeguards notices must be sent out to parents to once a year (in addition to initial referral or parent request for an evaluation) unless the parent registers a complaint or requests a copy.

Agreement was reached to require the Secretary of Education to develop model forms, review paperwork requirements, and provide Congress with proposals to reduce the paperwork burdens on teachers.

The conferees also agreed to a 15-state demonstration program in which three-year IEPs would be allowable for students of all ages. Districts in those 15 states would not be required to offer the three-year IEP. Parents in participating districts would have the option of retaining an annual IEP for their child.

Provisions to Encourage Cooperative Resolution Over Costly Litigation

The conferees agreed to drop voluntary binding arbitration, recognizing that the mediation language in the bill, coupled with common-sense provisions to alleviate misunderstanding between schools and parents, will help make IDEA less litigious. Such provisions include requiring a "resolution session" to resolve problems before going to a due-process hearing, establishing a two-year statute of limitations on filing a complaint, and holding attorneys liable for frivolous or prolonged lawsuits.

The Conference Report also includes a new provision allowing States and local educational agencies to recover the cost of their attorneys' fees if a parent's complaint is frivolous, unreasonable, without foundation, or conducted for an improper purpose.

Provisions to Increase Flexibility and Local Control

The conferees agreed to authorize local districts to reduce local expenditures on certain programs below prior years' 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 are used for activities authorized under the Elementary and Secondary Education Act of 1965.

Provisions Regarding Risk Pools

The conferees gave States the option of using up to 10-percent of State-level activities funds to reimburse local educational agencies (LEAs) for the costs of high-need children whose services cost at least three times the average per pupil expenditure in that state. If a State chooses not to use federal funds for eligible risk pool expenditures, then the amount it may reserve for State-level activities is reduced and the difference is instead distributed by formula to all LEAs in the state.

Provisions to Reduce the Misidentification of Non-Disabled Children

The Conference Report 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 that relies on a “wait to fail” approach. The conferees agreed to provide funds for training school personnel in effective teaching strategies and positive behavior interventions and supports to prevent over-identification and misidentification of children.

Administration Position

Secretary of Education Rod Paige issued the following statement on November 17, 2004 after the conferees approved the IDEA conference report:

"This is a giant step toward promoting educational excellence for America's 6.8 million children and youth with disabilities. By aligning IDEA with the No Child Left Behind Act, we will be raising the standards and expectations for all. Parents can take heart in knowing that this measure provides for highly qualified teachers of their children, thus ensuring that students with disabilities have the best opportunity to succeed. Schools and states will appreciate the opportunities to reduce paperwork called for in this legislation, which was one of the key recommendations of the President's Commission on Excellence in Special Education. This agreement also raises the bar for special education research, studies and evaluations by consolidating research into the Institute of Education Sciences, here at the Education Department. I commend Senators Gregg, Kennedy and Representatives Boehner, Miller and Castle – as well as the rest of the House and Senate conferees – for their diligent work in producing this significant bipartisan agreement."