

# The Education Report

*A weekly report of public policy issues in American Education from*

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This special edition of Education Report is an examination of the pending reauthorization of the Individuals with Disabilities Education Act (IDEA). We chose IDEA for the topic because it has increasingly become a central feature of the education policy and politics landscape – both in terms of funding and mandate. Its provisions affect virtually every sector of the education community in some way. Because it is on the reauthorization agenda for Congress now, it is likely to impact Congressional consideration of other key laws in the reauthorization pipeline – such as OERI, the Higher Education Act, the Perkins Vocational and Technical Education Act and the Workforce Investment Act. Funding for IDEA will likely continue to be debated in relation to the Labor/HHS/Education Appropriations bills this year, as well.

## **THE REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES ACT: STATUS AND PROSPECTS**

Congress is in the throes of the beginning of reauthorizing the Individuals with Disabilities Education Act (IDEA) – the nation’s 25-year-old special education law. While technically it is only the discretionary provisions of the law that expire on September 30, 2002 (Parts C and D), Congress is examining the \$7.5 billion dollar Part B state grant program, as well. IDEA is intended to ensure that the special educational needs of every child with a disability are met through the provision of a free appropriate public education delivered to each eligible child by an Individualized Education Program (IEP). Both the Senate and the House have held several oversight hearings this year and the President’s Commission on Excellence in Special Education has issued its final report. While neither chamber has introduced a reauthorization bill yet, both have promised to do so in September. This report examines key issue areas that are dominating the reauthorization agenda this year and considers the roadmap for the foreseeable future.

## **HOT BUTTON ISSUES**

### **1) Funding**

Federal special education spending has been a hot button issue for several years. When the law was enacted, the framers agreed that federal spending for Part B would be authorized at up to 40% of the average per pupil expenditure. The current rate of 17% is the highest yet achieved by the federal government. Increases in the last few years have been significant, and the President, the House Budget and the Senate Committee Appropriations bill are all calling for a \$1 billion increase for FY 2003. Despite recent

increases, many education organizations argue that it is unfair to continue to hold local education agencies responsible for making up the federal share. It is time for the federal government to deliver on its 25-year-old promise, they argue.

Many have called upon the Congress to move special education spending from the “discretionary” side of the ledger to the “mandatory” side, thus mandating the amount that Congress would spend on special education every year. In other words, instead of legislators determining the annual amount of funding, a mandatory trigger mechanism would require that a pre-determined amount of funds would be available; much like is done for Medicaid. Proponents argue that by moving the spending to the mandatory side of the ledger, those funds currently spent on special education would be freed up to be available for much needed other education spending, such as Title I of the No Child Left Behind Act. Virtually all education and disability organizations support the notion of mandatory Part B spending.

Last year Senators Harkin (D-IA) and Hagel (R-NE) promoted an amendment that would ensure such mandatory spending and result in full funding for IDEA (a total of \$22.23 billion of federal spending) by FY 2008. The conference committee of No Child Left Behind narrowly rejected it.

Opponents of mandatory spending argue that it would take away from a legislator’s decision-making authority needed to determine on an annual basis what is the best distribution of funds given current circumstances in the nation. The Bush Administration, the President’s Commission on Excellence in Special Education and the Chairman of the House Education and the Workforce Committee, Rep. John Boehner (R-OH) are opposed to mandatory funding, however there is virtually total consensus on the need for significant increases in funding. Republicans are quick to point out that Part B funding for IDEA has increased 224% since 1995 and that President Bush has requested an increase of \$1 billion for each of the last two years. Rep. Boehner and Rep. Nussle (R-IA) have called for an increase of \$1 billion per year for the next 10 years contingent upon reforms to IDEA that will improve student results.

Funding for the Part D programs has received significantly less attention. The Part D programs form the infrastructure to support the Part B state grant program. FY 2002 funding levels for the programs are:

State Improvement Grants.....	\$51.7 million
Personnel Preparation.....	\$90 million
Parent Information Centers.....	\$26 million
Technical Assistance and Dissemination.....	\$53.4 million
Research and Innovation .....	\$78 million
Technology and Media Services .....	\$32.7 million

Totaling \$332 million in spending, these programs represent less than one tenth of one percent of all public spending on special education. Yet they provide the research, technical assistance and training support for all of IDEA. Their funding has remained

virtually stagnant for the last decade. Many national disability organizations have promoted the notion of indexing funding of Part B to Part D at a level of 10 percent. In other words, Part D programs would be funded at the amount of 10 percent of whatever Part B receives. This link would ensure that the national support programs would grow so they could adequately support the Part B state grant program. Efforts have been made to add Part D to IDEA Part B full funding amendments, however they have been rejected to date.

Part C of IDEA is the infants and families program. It provides formula grants to states to provide early intervention services to children with disabilities, ages 2 and under, and their families. It is funded at \$417,000,000 for FY 2002.

## **2) Discipline**

Discipline has been a hot button issue under IDEA since before the last reauthorization in 1997. In the 1997 amendments, a compromise provision was included which provides a delicate balance between those seeking increased decision-making authority by local school officials and those concerned about ensuring that no student with disabilities will be denied access to a Free Appropriate Public Education. The provision has been criticized by those seeking increased local decision-making authority, as complex, burdensome and establishing a more lax discipline standard for students with disabilities. However, the General Accounting Office conducted a study at the request of Congress which indicated that the vast majority of school administrators were effectively implementing the provision.

An amendment to the IDEA discipline provisions that would have made it easier for school administrators to remove IDEA students from classrooms was narrowly defeated during the conference of the No Child Left Behind Act last year. However the issue is still very much alive during current reauthorization discussions. Senator Clinton (D-NY) has taken the lead among Democrats calling for changes in the discipline provisions, along with Sen. Sessions (R-A). Provisions requiring additional behavior management support to teachers and increased access to alternative placements are under discussion.

## **3) Vouchers**

The June 2002 Zelman Supreme Court decision supporting the use of vouchers for private schools (including religious schools) with public education dollars has reinvigorated voucher supporters who are looking to amend IDEA. Sen. Craig (R-ID) recently introduced S. 2883, which would allow states to use IDEA funds for private school vouchers. The report of the President's Commission on Excellence in Special Education recommends increasing parental choice in relation to IDEA funds so that students with disabilities may attend schools of their family's choosing. The Commission heard testimony from the Florida McKay scholarship program, which is a voucher program for special education students using state funds. Most education organizations will vigorously oppose provisions to allow IDEA funds to be used as vouchers for private schools.

## **OTHER POLICY ISSUES**

### **1) Reducing Paper Work**

Many stakeholders have identified excessive paperwork as a key concern. It is argued that IDEA has become more focused on paperwork compliance than on achievement for children. Large proportions of special education teachers who leave the field cite excessive paperwork, including administrative forms and documentation, as a reason. Instead of spending time on instruction, they are spending time on paperwork. The President's Commission indicates that reported violations of legal requirements often result in local schools and agencies developing yet additional paperwork, rather than truly addressing the violations.

Despite the agreement on the problem, there is no agreement on the extent to which it is federal requirements that generate the paperwork. Some argue that it is state and local requirements that are the culprit. The Commission calls for a provision allowing up to 10 states to propose paperwork reduction strategies to the Secretary of Education. Sen. Rick Santorum (R-Pa) and Sen. Zell Miller (D-GA) have introduced S. 2653, The Teacher Paperwork Reduction Act of 2002. It calls for a study on the paperwork burden on special education teachers by the Comptroller General and requires the Department of Education to reduce the amount of special education paperwork by not less than 50% within 18 months.

### **2) Over identification of Minority Students**

A recent National Research Council report indicates that minority students are over represented in some special education categories, most notably mental retardation and emotional disturbance. African-American children are twice as likely as white children to be labeled mentally retarded and placed in special education. Factors contributing to this over-representation include the cultural bias of IQ tests and behavioral characteristics associated with cultural contexts in which minority children may be raised. The role of teacher referral is critical, in that many general education teachers may be unprepared to teach students who may be at risk because of behavior or learning in general education settings.

Last year the House Committee on Education and the Workforce raised this issue as a critical flaw in IDEA and opposed mandatory full funding until IDEA was reformed to address this problem.

### **3) Increase in Students with Learning Disabilities**

Students with learning disabilities represent half of all students served under IDEA. Between 1990-91 and 1999-2000, the number of students in this category increased by 34%. The Commission report asserts that 80% of these students are identified as learning disabled because they have not learned how to read. The report further asserts that up to 40% of learning disabled students are in special education because they were never taught how to read.

The “discrepancy model” of determining learning disability has been criticized as a “wait to fail model.” Current IDEA regulations call for determining a discrepancy between potential and achievement in order to document a learning disability. This requirement often results in students proceeding to fail from grade to grade in order to demonstrate that there is a discrepancy. Many advocate changing this identification process to focus on a child’s response to instruction utilizing performance measures and progress monitoring.

Policy makers will put forward early intervening initiatives intended to identify students very early on who are not learning to read. Regulations supporting the discrepancy model will likely be changed.

#### **4) Decreasing Litigation and Adversity in the System**

Many believe that the culture that surrounds IDEA is too adversarial and combative, pitting parents and school systems against each other unnecessarily. Too much time and energy is spent in disputes and litigation, they assert. Numerous suggestions have been made that are intended to decrease and avoid disputes, including: using trained facilitators to run IEP meetings, adoption of voluntary binding arbitration procedures and increased use of mediation. Amendments are routinely offered to the DC Appropriations bill to cap the amount of attorneys’ fees awards in special education cases.

#### **5) Improving Transition Services**

Students with disabilities are significantly less likely to graduate from high school, less likely to find jobs and less likely to participate in post-secondary education than their non-disabled peers. These outcomes have driven many policy makers to look at improving services to support students in their transition from school to the adult world. The Commission report recommends simplifying transition requirements, mandating federal interagency coordination of resources and supporting higher education faculty and administrators to better meet the needs of students with disabilities. Adding provisions to the Vocational Rehabilitation Act to ensure that rehabilitation counselors participate with school personnel in supporting an effective transition have also been discussed.

#### **6) Personnel Issues**

The shortage of qualified special education teachers has now matched the shortage of math and science teachers. Ninety-eight percent of school districts report shortages of special education teachers. Unqualified teachers fill approximately 40,000 special education positions. Special education teachers who are not qualified to serve them serve over 600,000 students with disabilities. About 200,000 new special educators will be needed in the next five years, however colleges and universities prepare about half that number. Special education teachers leave special education at twice the rate of general education teachers, making retention a significant aspect of the shortage.

School systems increasingly experience shortages of related services personnel. Many related services personnel, including school counselors and speech-language pathologists, report significant increases in their caseloads, thus spreading them quite thin and

decreasing the amount of time they can deliver services to students with disabilities, who are often among the most needy.

Most general educators, including teachers and administrators, indicate that they are not well prepared to work with students with disabilities. In a 1998 survey only 21 percent of public school teachers indicated that they felt very well prepared to address the needs of students with disabilities.

Colleges and universities are experiencing significant faculty shortages in special education and related services. Approximately one third of vacancies for special education faculty go unfilled every year. This shortage curtails the national training and research capacity in special education.

IDEA reauthorization will address how the “highly qualified teacher” provision of No Child Left Behind will apply to special education teachers. Proposals are likely to be advanced that target recruitment and retention of newly trained teachers. The State Improvement Grants may be further targeted to address personnel development in the states. Incentives to train doctoral level special educators and related services personnel will likely be advanced.

#### **7) Early Childhood Programs**

IDEA includes two programs targeted to young children – the early intervention program, -- Part C of IDEA -- and the preschool program, a separate state grant program included under Part B of IDEA. The early intervention program serves about 206,000 children and families, or 1.8% of the nation’s infants and toddlers. The preschool program serves about 600,000 3-5 year olds.

Issues related to these programs include the fact that so few infants and toddlers are served when there is evidence to indicate the significant prevention effectiveness of providing services to children at such a young age. Because so many agencies are often involved in delivering these services, bureaucratic challenges and jurisdictional complexities often leave families without the services they need.

The Commission report calls for the assurance of a seamless system for infants, toddlers, children and youth from birth to age 21. The possibility of merging the early intervention and preschool programs has been put forward, however several issues would need to be addressed, such as the fact that many agencies other than education agencies run early intervention programs.

#### **8) Aligning IDEA with No Child Left Behind (NCLB)**

The Department of Education announced that it would be issuing a blueprint for the reauthorization of IDEA in the fall. The blueprint will adhere to the same four principles promoted in NCLB—accountability, flexibility, parental choice and research-based practices. The Commission report will be used to develop the key components of the blueprint.

The Commission report calls for setting high expectations for special education and holding LEAs accountable for results, in accordance with NCLB. In particular, it calls for aligning special education performance goals required by IDEA with “adequate yearly progress” (AYP) required by NCLB, measuring and reporting on the achievement of these goals and taking action when LEAs fail to make progress. NCLB currently requires schools to demonstrate AYP for all students with disabilities in reading and math. All students with disabilities are required to be included in statewide assessment and accountability systems. For the few who require alternative assessments, they too should be included in state accountability systems.

### **PROSPECTS FOR ACTION**

It was anticipated that the political model used to create No Child Left Behind might be adopted in reauthorizing IDEA. The Administration worked closely with both the House and the Senate, both the Republicans and the Democrats, in crafting NCLB. The process was bi-partisan throughout. All parties labored together from beginning to end. It is unclear if this will be the case with IDEA.

Both the Senate and the House have announced that they will introduce reauthorization bills in September. The Senate appears to be furthest along in drafting, having worked in bi-partisan workgroups for several months. The House efforts do not appear to be so bi-partisan. It is unclear whether the House will put forward a bi-partisan bill or two separate bills – one from the Democrats and one from the Republicans. Senate Staff indicate that their bill will be bi-partisan and will include as much as both sides can agree on, possibly leaving the most controversial issues – such as funding and discipline – for later debate and amendments.

Given the short amount of time left in the 107<sup>th</sup> Congress, it is highly unlikely that IDEA will be reauthorized by the end of the year. The reauthorization process will likely gear up in full force in 2003.

### **107th CONGRESS, 2nd SESSION**

#### **TENTATIVE SENATE CALENDAR 2002/ NON-LEGISLATIVE PERIODS**

**Tom Daschle**, Majority Leader

**August 5 - September 2** *Senate not in session (August Recess)*

**September 2** *Labor Day*

**September 3 (Tues.)** *Senate reconvenes*

**September 16 (Mon.)** *Yom Kippur (NO VOTES)*

**October 4** *Target adjournment*