

COMPARISON OF KEY PROVISIONS: IDEA '97 AND THE IDEA AS AMENDED (IDEA '04)

On December 3, President Bush signed into law the "Individuals with Disabilities Education Improvement Act of 2004," amending IDEA '97. These amendments continue the focus on educating children with disabilities, to the maximum extent possible, in the general education curriculum and go a step further by aligning many of the provisions with the No Child Left Behind Act (NCLB).

A number of key provisions will be of particular interest to families and the professionals that serve them. These provisions are summarized below:

- ◆ **Evaluation Procedures:** School districts are required to make eligibility determinations within 60 days of parents' consent for evaluation, unless the State has a time line in place already. Parents must give informed consent for provision of services. School districts may no longer provide services without consent.
- ◆ **Specific Learning Disabilities:** School districts are not required to consider whether a child has a severe discrepancy between achievement and intellectual ability in oral, listening or reading comprehension, written expression, basic reading skill, or mathematical calculation or reasoning. In making a determination of eligibility, the district may use a research-based response to intervention process as part of the evaluation procedures.
- ◆ **Highly Qualified Special Education Teachers:** Requirements are established for all special education teachers, as well as specific requirements for teachers of students working under alternate achievement standards and teachers teaching multiple core academic subjects. At a minimum, all highly qualified special education teachers must have State special education certification or a license to teach special education and a bachelor's degree and have not had certification or licensure waived on for any reason. Special education teachers deemed highly qualified under the IDEA also are considered highly qualified under NCLB. All special education teachers must meet these requirements by the end of the 2005-2006 school year.
- ◆ **Early Intervening Services:** School districts are allowed to use up to 15% of their federal funds annually, combined with other funds, for coordinated early intervening services. These services are for students in all grades, with a focus on K-3, who have not been identified as needing special education and related services, but who need extra support on academics or behavior in order to be successful in general education.
- ◆ **Individualized Education Programs:**
 - ◆ **Content:** Benchmarks and short-term objectives are eliminated except for children taking alternate assessments based on alternate achievement standards.
 - ◆ **Multi-Year IEP:** Up to 15 States may participate in a pilot offering parents the option for a multi-year (3-year limit) IEP. The IEP would include measurable progress goals and a means to determine progress and would be reviewed at natural transition points. The district would have to provide a more thorough review at the parents' request or if the district determines that the child is not making sufficient progress.
- ◆ **Flexibility in Using Funds for Part C:** States may allow children who previously received Part C early intervention services and are now eligible for services under the Section 619 preschool program to continue under Part C until they are eligible for kindergarten. States do not have to provide a free appropriate public education (FAPE) to these children, and parents may incur some costs for services, as allowed under Part C. Parents will be provided an explanation of the differences between the services under Part C and the preschool program and will be allowed to choose which program they want.

◆ **Procedural Safeguards:**

- ◆ **Resolution Session:** This is a new pre-hearing meeting requirement. Within 15 days of receiving a complaint and before a due process hearing may be held, the district must hold a meeting for parents to discuss their complaint and to give the district an opportunity to resolve the issue. If the issue is not resolved to the parents' satisfaction within 30 days of receiving the complaint, a hearing may be held and the hearing timelines begin.
- ◆ **Due Process Complaint Notice:** A new notice requirement has been added, and a due process hearing may not be held until the party files this notice. The notice must include the child's name, address, school, a description of the problem, and a proposed resolution.
- ◆ **Attorneys' Fees:** Parents' attorneys may be responsible for fees if the district or State is the prevailing party and the attorney has filed a frivolous, unreasonable, or unfounded action. Parents or their attorneys may be responsible for fees if the action brought was for "any improper purpose," such as harassment or to needlessly increase the cost of the litigation.
- ◆ **Discipline Provisions:** The law continues to allow short-term removals for violations of the conduct code without a manifestation determination. A streamlined version of the manifestation determination is conducted when a change in placement is sought for longer periods, but is not required for removals to interim alternative educational settings involving weapons, drugs, and serious bodily injury. Parents or the district are still allowed an expedited appeal regarding placement, manifestation determination, or concerns about danger to the child or others in the current placement.
- ◆ **Monitoring and Enforcement:** A detailed section has been added outlining Federal and State monitoring and enforcement. States will be required to develop performance plans showing how they are doing on implementing the law and how they can improve. The plan must include monitoring priorities, and States will also monitor districts on these priorities. The provision also includes 3 enforcement levels: "needs assistance," "needs intervention," and "needs substantial intervention" with sanctions that will be imposed at each level.
- ◆ **Research:** Special education research will be moved from the Office of Special Education and Rehabilitative Services (OSERS) to the newly formed National Center for Special Education Research in the Institute for Education Sciences, the overall research arm of the Department of Education. A Commissioner of Special Education Research will be named to direct the Center and will develop a research plan in collaboration with the Assistant Secretary of Education for OSERS.

Provisions Eliminated: Three sections of IDEA '97 were eliminated.

- ◆ **Comprehensive System of Personnel Development (CSPD):** States were required to have a system to ensure enough qualified special and regular education teachers and related services personnel to meet the educational needs of children with disabilities.
- ◆ **Coordinated Services System:** School districts were allowed to use a percentage of their federal funds to implement a system with an interagency focus to improve results for all children, including children with disabilities.
- ◆ **School-Based Improvement Plan:** School districts could allow a school to design a school-based improvement plan, consistent with the State Improvement Plan, to improve educational and transitional results for both children with and without disabilities.

Effective Dates: Most of the new amendments take effect on July 1, 2005. The "highly qualified" requirements go into effect immediately. The research section also takes effect immediately, except that the research plan must be developed by October 1, 2005.



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