REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES ACT

Key Goals and Recommendations of the National School Boards Association’s Council of School Attorneys

NSBA celebrates the extraordinary success of the Individuals with Disabilities Education Act (IDEA), first enacted in 1975 as the Education for All Handicapped Children Act. Throughout its 40-year history, IDEA has provided a framework and federal funding stream to enable states and school districts to collaborate with families of students with disabilities to identify and serve them, and to afford due process procedures for addressing disputes. Today, over six million students with disabilities (approximately 13% of students) have access to a free appropriate public education in the least restrictive environment. As a general matter, families whose students with disabilities are served in public schools work collaboratively with the school system and are satisfied with the services their children receive.

In each reauthorization, however, IDEA has grown to provide increasingly detailed requirements for states, school districts, and families on issues such as discipline, placement, and due process procedures. Although the most recent reauthorization in 2004 saw some changes focused on improving student outcomes, the law and courts interpreting it generally have focused on compliance. At the same time, IDEA’s dispute resolution process has become contentious and has fostered an adversarial atmosphere between some families and the schools serving their children.

Since the law was enacted, NSBA has advocated for full funding of the federal share of costs for IDEA, which has not been appropriated. Under IDEA, the federal share of funding that Congress promised is 40 percent of the average per pupil cost for every student served under the IDEA. However, the 40 percent promise has not been fulfilled; and, the federal share of special education funding has declined in recent years. Last year, the federal share of funding for services provided to approximately 6.5 million students through IDEA was roughly 16 percent ($11.4 billion), rather than the 40 percent originally promised. IDEA helps fund early intervening services for students, individualized education plans (IEPs), speech-language pathology, psychological services, transition services, and related activities. When IDEA was first enacted, it was estimated that the cost to educate children with disabilities was approximately twice as much to educate as other students. Hence, Congress set the maximum federal contribution at 40 percent of the state average per pupil expenditure. However, the costs of educating students with multiple disabilities can be exponentially more.

As a reference, funding levels for IDEA (Part B) grants to states for the past five fiscal years are listed below, which reflect roughly 16 percent of the average per pupil expenditure (noted as $11,057 by the
U.S. Department of Education in its FY16 budget justifications) and average less than $1,750 per student.

<table>
<thead>
<tr>
<th>Year</th>
<th>Funding</th>
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<tbody>
<tr>
<td>2011</td>
<td>$11.46 billion</td>
</tr>
<tr>
<td>2012</td>
<td>$11.57 billion</td>
</tr>
<tr>
<td>2013</td>
<td>$10.97 billion</td>
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<tr>
<td>2014</td>
<td>$11.47 billion</td>
</tr>
<tr>
<td>2015</td>
<td>$11.49 billion</td>
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NSBA’s advocacy efforts include support for the “IDEA Full Funding Act” that would establish a ten-year path to achieving the full federal share of funding. In addition, NSBA has worked closely with congressional staff to develop and introduce “The IDEA High Cost Pool Funding Act” that would enable states to establish high-cost fund pools, or provide additional resources for their respective state pools, to reimburse school districts for “exceptional costs associated with educating high need individuals.”

NSBA, informed by the considerable work of its Council of School Attorneys, puts forward goals and recommendations for revisions to IDEA – changes that refocus the efforts of schools and families to the collaborative process intended from the start, and to positive education outcomes for all students.

**GOALS FOR IDEA REAUTHORIZATION**

- To focus on progress and demonstrable positive outcomes for all students;
- To promote collaboration and trusting relationships between families and schools;
- To reduce complexity of compliance and to provide guidelines and flexibility to schools so they can improve student success by focusing on teaching and learning for all students.
- To fully fund IDEA at the level (40%) promised. Special education cost estimates range from $80 billion to $110 billion per year. The federal contribution has been less than 20% with the states and local school district assuming the balance of the funding burden.

**RECOMMENDATIONS**

Focus on educational outcomes and success; do not over-emphasize compliance issues:

- Continue to enhance the success of early intervention and response to intervention (RTI) programming.
- Promote informed and informal collaboration between families and schools in developing appropriate IEP’s.

Retain current practices that provide flexibility to states and school districts:

- Retain the definition of FAPE as developed by courts and general practice.
- Retain burden of proof standards as provided by state law and recognized by federal and state court practice.
- Retain the authority of a court to award reasonable attorney fees to families and schools, with both sides bearing their own expert fees.
- Retain state control over regulation of seclusion and restraint, allowing IEP Team designation of seclusion and restraint, when appropriate, to protect students, school personnel and school property.
• Retain current requirements stating that the mapping of cochlear implants is to be performed by medical providers, not schools.
• Retain the prohibition of general damages awards by hearing officers, and refrain from expanding remedies to parents or school districts.
• Retain deference to the IEP collaborative process and allow for full opportunity to discuss disagreements prior to unnecessary and expensive litigation.
• Retain the two-year limit to awards of compensatory services and create a shorter statute of limitations period for appeals to court in order to assure the speedy resolution of disputes.

Establish cost-effective measures that focus on saving precious educator time and school funds:
• Permit school district-paid independent educational evaluations only upon a showing that the school’s evaluation failed to comply with IDEA requirements.
• Require a reasonable period of enrollment in the school district’s proposed placement for the student before the family may seek public funding for a unilateral private school placement.
• Limit a school district’s financial obligation for a private or other out-of-district private placement to costs of services that are primarily educational in nature.
• Include a mechanism for families to bring state agencies to the table and to discuss home based behaviors requiring state assistance.
• Require the parties to a dispute arising under IDEA to engage in alternate dispute resolution prior to due process, but allow states to opt-out under certain conditions.
• Require a party bringing an IDEA due process complaint to allege specific facts supporting his or her claim to limit the issues addressed at the hearing.
• Make clear that a student’s “stay put” placement during a dispute is the last agreed-upon placement; and limit a school district’s financial obligation once a court has determined its placement to be appropriate.
• Specify that IDEA supersedes Section 504 and the ADA regarding school districts’ obligation to provide a free appropriate public education to students with disabilities.
• Align ESEA and IDEA regarding assessments.