

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)ⁱ 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 6.8 million students through IDEA was roughly 16 percent (\$11.9 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 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 previous fiscal years are listed below, which reflect roughly 16 percent of the average per pupil expenditure (noted as \$11,666 by the U.S. Department of Education in its FY18 budget justifications) and average less than \$1,760 per student.

2011.....	\$11.46 billion
2012.....	11.57 billion
2013.....	10.97 billion
2014.....	11.47 billion
2015.....	11.49 billion
2016.....	11.91 billion
2017.....	11.90 billion
2018.....	11.90 billion

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; and,
- 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.
- Always place the burden of proof in challenges to a student’s Individualized Education Program (IEP) upon the party bringing the challenge.
- Establish a reasonable limitation on attorney’s fees.

- Refrain from federal mandates regarding seclusion and restraint, so that state and local standards can be applied by the IEP team. 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:

- Limit responsibilities for child find and evaluation of students with disabilities to only those students who reside within the boundaries of the local school district.
- Prohibit any court, administrative body or other entity from requiring a school board or state within the United States to provide for a child's education, residential cost or the cost of any other services provided outside the United States.
- Permit school district-paid independent educational evaluations only upon a showing that the school's evaluation failed to comply with IDEA requirements.
- Prohibit tuition reimbursement for students with disabilities unilaterally placed by their parents in private schools.
- Include a mechanism for families to bring state agencies to the table and to discuss home based behaviors requiring state assistance.
- Ensure that due process provisions are collaborative, effective and efficient and require the parties to engage in mediation before a hearing.
- 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.
- Create alignment with other federal statutes directly impacting LEA's provision of resources and services to students with disabilities, including Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and its amendments, and the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act.
- Allow school districts flexibility to apply Maintenance of Effort (MOE) under IDEA.

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i. Children and Youth with Disabilities, U.S. Department of Education Institute of Education Sciences National Center for Education Statistics (Last Updated: May 2015), available at http://nces.ed.gov/programs/coe/indicator_cgg.asp.