

**NLWJC - Kagan**

**DPC - Box 020 - Folder 004**

**Education - IDEA**

# Withdrawal/Redaction Sheet

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. release	Phone No. (Partial) (1 page)	09/08/1997	P6/b(6)

### COLLECTION:

Clinton Presidential Records  
Domestic Policy Council  
Elena Kagan  
OA/Box Number: 14361

### FOLDER TITLE:

Education - IDEA

2009-1006-F  
ke671

### RESTRICTION CODES

#### Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

#### Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Sandra Yamin  
05/20/99 08:53:42 AM

Record Type: Record

To: See the distribution list at the bottom of this message  
cc: Mindy E. Myers/WHO/EOP@EOP  
Subject: URGENT -- POTUS Letter/Harkin - DRAFT

Please provide any comments to me no later that 10:00AM TODAY. Thank you!

----- Forwarded by Sandra Yamin/OMB/EOP on 05/20/99 08:51 AM -----

Sandra Yamin  
05/20/99 08:47:01 AM

Record Type: Record

To: See the distribution list at the bottom of this message  
cc:  
Subject: URGENT -- POTUS Letter/Harkin - DRAFT

**Please provide comments to the attached letter ASAP. WHLA has requested clearance for the POTUS signature and transmittal by 11:30AM. Please provide comments and sign-off to me no later than 10:00AM TODAY Thanks.**

----- Forwarded by Sandra Yamin/OMB/EOP on 05/20/99 08:38 AM -----



Mindy E. Myers

05/20/99 12:31:53 AM

Record Type: Record

To: See the distribution list at the bottom of this message  
cc: Janet Murguia/WHO/EOP@EOP, Broderick Johnson/WHO/EOP@EOP, scott\_fleming@ed.gov@inet  
Subject: POTUS Letter/Harkin - DRAFT



potus0519.doc Attached is the draft Harkin letter prepared by Scott Fleming at Dept. of Ed. He has circulated it to the Department's General Counsel's office and OSERS who have not seen it as yet this evening.

Sandra - Can you help us vet this?

----- Forwarded by Mindy E. Myers/WHO/EOP on 05/20/99 12:22 AM -----



---

Mindy E. Myers

---

05/19/99 09:56:33 PM

---

Record Type: Record

To: See the distribution list at the bottom of this message  
cc: Janet Murguia/WHO/EOP@EOP, Broderick Johnson/WHO/EOP@EOP  
Subject: POTUS Letter - Harkin

Janet is up on the Hill and asked that I give you the heads up that Sen. Harkin has requested a POTUS letter against the Frist-Ashcroft amendment and supporting the Harkin amendment regarding IDEA on the Juvenile Justice bill. Education is currently drafting the letter and substantatively, it is expected to be similar to a letter Sec. Riley sent to the Senate Leadership on May 17. I think that this is going to be a priority and we will need a quick turn around.

Karen/Sara - Larry spoke with Harkin's COS and is expected to raise this in the 8:30am. Thx.

Message Sent To:

---

Phillip Caplan/WHO/EOP@EOP  
Sean P. Maloney/WHO/EOP@EOP  
David R. Goodfriend/WHO/EOP@EOP  
Barbara Chow/OMB/EOP@EOP  
Tanya E. Martin/OPD/EOP@EOP  
Sandra Yamin/OMB/EOP@EOP  
Eli P. Joseph/WHO/EOP@EOP  
Tracey E. Thornton/WHO/EOP@EOP  
Sara M. Latham/WHO/EOP@EOP  
Karen Tramontano/WHO/EOP@EOP  
Caroline R. Fredrickson/WHO/EOP@EOP  
Carolyn E. Cleveland/WHO/EOP@EOP

Message Sent To:

---

May 20, 1999

Dear Mr. Leader:

As the Senate further considers the Frist/Ashcroft amendment to the pending juvenile crime bill, S. 254, I want to make very clear my strong objection to that amendment. If enacted, it would allow school personnel to suspend or expel children with disabilities from their schools for unlimited periods of time without any educational services, including behavioral interventions, for carrying or possessing a gun or other firearm to, or at, a school function. Just two years ago the Senate overwhelmingly approved the Individuals with Disabilities Education Act which gave school officials new tools to address situations of this type.

I urge the Senate to approve the Harkin amendment to make clear that nothing prevents school officials from reporting any crimes to appropriate legal authorities or precludes appropriate penalties from being imposed by law enforcement officials. Importantly, the Harkin amendment would ensure that schools provide appropriate interventions and services for all children removed from school for violent behavior and would authorize funds to cover those required services.

I am committed to ensuring that all our schools are safe, disciplined environments. A school free from the fear of violence is

essential to enabling all children to learn to high standards. But experience has shown us that simply suspending or expelling a troubled young person without responding to their behavioral and educational needs does not protect our society. We only need to remember the tragedy last year in Springfield, Oregon, where a young person who had been removed from school returned the next day armed and ready to kill.

Our response to these tragedies cannot be to deny young people the educations and interventions they need. Instead, we must act to ensure that troubled youth receive those services to help them and to protect others in their communities.

I recommend the Senate reject the Frist amendment and, instead, adopt the Harkin amendment which offers real and constructive help in averting further tragedy. In the event the Frist/Ashcroft amendment is before the conferees on this legislation, my Administration will work vigorously to see that it is dropped in conference so that a strong juvenile justice bill can quickly become law.

Sincerely,

The Honorable Trent Lott  
Republican Leader  
United States Senate  
Washington, D.C. 20510

IDEA/Medicaid ruling

SC+ ruling

Schools must ensure provide<sup>or</sup> of health services that can be provided by a non-physician to enable a child to attend school.

Stat - ensure approp services at no cost to child's family.

States must have systems to ensure schools can access benefits. Others are req'd to provide

ultimately, school district is responsible for payment if unable to get it from other payors.

~~444~~  
50% of IDEA students -  
Medicaid - eligible

DOJ filed amicus brief on behalf of child.

Educ - IDEA

and

Tob - rec - state money



Cynthia A. Rice

03/11/99 07:52:34 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP

cc: J. Eric Gould/OPD/EOP, Tanya E. Martin/OPD/EOP, Jonathan H. Schnur/OPD/EOP

Subject: Tobacco recoupment language with IDEA

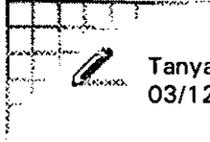


med\_idea.wpd Here's the Chafee language with tobacco prevention at 20% and IDEA at 37% (see bottom of page 2).

With state tobacco settlement funds at about \$8 billion a year, this would add \$3 billion a year in federal funds to IDEA. According to figures Tanya got from OMB, an additional \$11 billion would need to be added to reach a federal share of 40 percent. )

Current spending: federal govt pays \$4.3 billion or 11% of about \$39 billion in cost. )

With this amendment: federal govt pays \$7.3 billion or 19% of about \$39 billion in cost. )



Tanya E. Martin  
03/12/99 01:06:31 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP

cc: See the distribution list at the bottom of this message

Subject: Re: Tobacco recoupment language with IDEA

I'd recommend one change to the IDEA legislative cite (in bold below):

"(ii) certifies that at least 37 percent of such amounts received during the fiscal year will be expended on activities required by the **Part B** of the Individuals with Disabilities Act (20 U.S.C. 1411 et. seq.).

"Part B" is the specific section that covers the provision of funds to states and school districts to help pay for the additional costs of services that are needed to educate children with disabilities. I recommend limiting the above cite to Part B -- if the entire bill is referenced states could direct these funds to personnel training , infant and toddler intervention programs -- and a host of other good things that are not directly related to the (up to 40%) federal commitment to help states and local school districts with funding for special education services.

Message Copied To:

Bruce N. Reed/OPD/EOP  
Elena Kagan/OPD/EOP  
Laura Emmett/WHO/EOP  
J. Eric Gould/OPD/EOP  
Jonathan H. Schnur/OPD/EOP

The following resolution will be considered by the DNC Executive Committee at its meeting March 19, 1999, in conjunction with the meetings of the Democratic National Committee, March 18-20, 1999.

Submitted by: Amy Burks, Alabama  
Bob Ream, Montana

---

*A Resolution Urging an Increase in Funding for Special Education*

**WHEREAS**, special education programs serving students with disabilities provide essential services to children and their families; and

**WHEREAS**, state and local educational agencies are mandated by federal law to provide a free appropriate public education for children with disabilities; and

**WHEREAS**, costs associated with serving children with disabilities continue to rise, and meeting those substantial costs requires a strong partnership between local, state, and federal governments; and

**WHEREAS**, underfunding of special education programs affects the quality of services provided to children with disabilities; and

**WHEREAS**, underfunding results in local school districts redirecting resources that could otherwise be used for all children; and

**WHEREAS**, the federal commitment to states and localities under the federal Individuals with Disabilities Education Act to contribute 40 percent of the excess costs of providing a free appropriate public education has never been fulfilled; and

**WHEREAS**, despite recent large increases in federal special education funding, the federal share is still less than one-half the original commitment to state and localities;

**THEREFORE BE IT RESOLVED**, that the Democratic National Committee urges President Clinton and the United States Congress to increase funding for special education so that the statutory goal of providing up to 40 percent of the national average per pupil expenditure required to serve children and youth with disabilities be achieved within the next three years.

Tom

**Welcome**  
**Moderator, Corinne Russell**

02 - 04

Good afternoon, and welcome to the first *Ideas That Work* teleconference. I'm Corinne Russell, and I'm here at Gallaudet University in Washington, D.C. I'll be moderating today's discussion about the Individuals With Disabilities Education Act, which is known to many of us as IDEA.

Over the next two hours we're going to share information from the U.S. Department of Education's Office of Special Education and Rehabilitative Services about IDEA '97 – and strategies and approaches that can make implementation smoother and more effective for the more than ~~50~~<sup>6</sup> million children with disabilities in American classrooms today.

I'm joined here in the studio by Judy Heumann, Assistant Secretary, Office of Special Education and Rehabilitative Services, and by Thomas Hehir, Director of the Office of Special Education Programs. Judy and Tom will give us an overview of the new regulations and

kick off our discussion about how IDEA can be a productive instrument to improve services for children with disabilities.

We'll also be spending some time with representatives of OSEP's partner organizations, who have contributed a great deal of time and energy into the creation of the *Ideas That Work* series. Following the overview of the regulations from Tom and Judy, several of these representatives will tell us about the role their organizations are playing to support families, educators and virtually everyone who works with children with disabilities.

We're also going to hear from a variety of researchers and educators – some of whom you've been briefly introduced to in our opening video. They have pioneered some of the strategies that have made enormous differences in the lives of children with disabilities. They will tell you what works, and why. Their knowledge will help you with some of the issues you will face as you include children with disabilities in state-wide assessments, involve their general education teachers in the development of the IEP, and provide them opportunities to be engaged in the general education curriculum.

Next week, on March 10, we will go into detail about other issues, such as serving children with ADD and ADHD and developmental delay, as well as new developments pertaining to high school graduation and to services for children who have been placed by their families into private schools and public charter schools.

The issues we're delving into today are the foundation for the statute, as well as the issues we'll be discussing on March 10.

During the second hour of the program, we're going to take the opportunity to learn from you – to take your questions about IDEA . . . and about the approaches and strategies you can take to turn them into *Ideas That Work*.

Those of you who have received our collateral materials from the \_\_\_\_\_ Web site should already be familiar with the variety of ways you can get your questions to us. If you'd like to reach us by telephone, you can call toll-free at 1 800 \_\_\_\_\_. If you'd like to submit your question by TDD, you can dial \_\_\_\_\_. Questions

---

submitted by e-mail should go to: \_\_\_\_\_ . And questions sent via fax should be sent to \_\_\_\_\_. We're anticipating that there will be quite a number of questions. Therefore we may not be able to answer every one. However, all questions will be logged so we can provide answers in the extensive Q and A package that will be developed following the release of the regulations.

From time to time during the program we will review this information again. We have reserved most of the final hour of the program to take your questions, and will provide additional information about how to send additional questions if we run short of time. We are committed to helping you in every way possible to successfully implement IDEA.

Now I'd like to introduce Judy Heumann, who will open our program with a few words about the incredible journey that we have taken to improve the lives of children with disabilities. Judy?

**Judy Heumann Presentation****05-15**

Thank you, Corinne. On behalf of all of us here at the Office of Special Education and Rehabilitative Services – better known to many of you as OSERS – I'd like to offer my own welcome and appreciation for everyone who has tuned in to be with us today.

Months ago, when we began planning the *Ideas That Work* information series, we had a very candid discussion about our mission and goals. We wanted to do more than simply transmit information about regulations and rules. We wanted to expand on our equally important role as a resource – to serve as a source of information for the millions of dedicated families, educators, and advocates who are working so hard – and so successfully – to boost the educational achievement of all students, every day.

We decided to do something we've never done before – to create the *Ideas That Work* information series as a forum to provide you with the knowledge and expertise to get the results that we all want.

Fortunately, we had some very powerful material to work with. To begin with we had a very strong statute from Congress, passed on June 4, 1997, as the foundation for our work. We also benefited from the views of many of you here today. During the past year and a half we have received input from thousands of individuals, public agencies and organizations who have shared with us concerns about what the upcoming regulations should address. We have also learned from the outstanding investments we've made in research and development to determine which practices are working, and why.

By combining your knowledge of what happens in real classrooms with our resources to support your efforts, we have been able to create approaches that will drive our students' performance to new heights.

Which gets us back to the main reason we're here: to talk about *Ideas That Work* for helping more of our students reach higher standards of achievement than ever before. When IDEA first came into being over 23 years ago, the world of children with disabilities and the world of their peers were very different places. At that time,

more than one million children with disabilities were receiving an inferior education, and, in some cases, no education at all. Today, those two worlds have merged. Today, with IDEA, more than 6 million children are receiving the appropriate education they deserve, many in general classrooms in their neighborhood schools. Success tends to follow these young people into higher education, where nearly half of them complete college-level coursework; and enter the workforce. There, compared to their predecessors, twice as many students served under IDEA are employed. We have accomplished these things because we have worked together in partnership. And we all deserve congratulations for these successes. However, there are still challenges that have to be met before all of these children reach their potential.

Unfortunately there are still challenges that have to be met.

Many children with disabilities are still excluded from the curriculum and assessments used with their non-disabled classmates – which greatly limits their potential for performing to higher standards.

Disabled children are twice as likely to receive low scores on assessments, and are far less likely to reconnect with higher education if they have dropped out. This is serious. In contrast to the more than 134,000 students with disabilities 14 years and older who received a regular diploma during the 1996-97 school year, more than 82,000 dropped out of school. As we all know, those who do face great difficulty in getting good jobs.

At a time when education ranks at the top of virtually every survey of the most compelling public concerns, families and educators alike are finding agreement on a number of issues. Higher standards, better qualified teachers, an end to social promotion. . . these are the goals we're aiming for as we build nationwide momentum for higher student achievement. Children with disabilities should not be left behind.

With a clear view of both the accomplishments and the remaining challenges of IDEA, and with input and support from OSERS and hundreds of our partner organizations, Congress has taken significant steps to improve the legislation. During that summer ceremony of

---

1997 it was re-authorized in a White House ceremony that will be remembered by many of you here today.

-- ROLL FOOTAGE AND ACTUALITIES FROM WHITE HOUSE SIGNING CEREMONY, INCLUDING ACTUALITIES FROM JOSH --

As we saw from that remarkable statement by Josh \_\_\_\_\_, there really is magic in having high expectations. By expecting disabled children to perform better, we're finding – not surprisingly – that they are performing better.

Still, we know we can do better too. We cannot have an educational system defined by low expectations for any child. We need to aim higher for all children, and especially for the young people who are striving to meet higher standards because of IDEA.

IDEA spells out how we can achieve these higher standards, and presents the new requirements in a simple and straightforward manner. First, the legislation makes it clear that children with disabilities have a right to be in the classroom, and be included in the

field trips, work experiences and all other activities that are part of the educational experience.

It also requires that children with disabilities learn from the same curricula and take the same assessments as other children, so that, like other children they can strive to higher standards of performance than ever before.

Recognizing the critical role that teachers play for driving this high performance, IDEA also helps teachers gain the full range of skills they need to allow disabled children to do their best.

And, of course, IDEA supports the collaborative role of families, who have a tremendous impact on every child's success. Many of you have heard about the role played by my family in demanding my place in the regular classroom. Many of you have also heard me speak in no uncertain terms about the high standards that my family – and most of my teachers – expected me to achieve. I sit here today as proof that high standards can and should be applied to all children, that

---

stereotypes about children with disabilities as low achievers are simply wrong.

IDEA is a working reality, not a promising experiment. We have hundreds of thousands of successful students with disabilities who have demonstrated their ability to achieve at high levels. Families, educators, students with disabilities and their classmates can all achieve higher goals by working together. And OSERS is committed to serving as a resource not only during the preschool to high school years, but in the transition to higher education and employment beyond. In today's high speed, demanding workplace, it is imperative that these young people are prepared to meet the challenges they share with their peers. We do them no favors when we hold them accountable for less.

To that end, we at OSERS know it's not enough to simply issue regulations and then pat ourselves on the back and go home. These teleconferences and the *Ideas That Work* information series are designed to help you make IDEA work better in our classrooms and communities.

In a few minutes, my colleague Tom Hehir and I are going to talk briefly about some aspects of IDEA '97 that we know are important to you. Then we're going to learn from a variety of researchers and organizations about how we might make IDEA more effective in the real-life settings you work in every day. Like all good dialogue, this is a two-way conversation. As Corinne mentioned, in today's teleconference and on March 10, we're giving you the opportunity to communicate with us – to ask specific questions and learn about approaches that help children with disabilities reach the highest levels of achievement in the classroom and beyond.

To that end, let me say a few words about the upcoming regulations themselves. Within the new rules, you can expect to find:

- Clearer language;
  - Simple definitions for terms some of you said were vague or disputable;
  - Action items deleted from notes and incorporated into the regulations themselves;
-

- Unnecessary notes removed; and
- A user-friendly tone and format that make compliance a reasonable goal and not a lucky guess.

IDEA does not require the impossible. As a brand new addition to our staff recently commented, if you want to find something in these regulations it won't take all day. We knew we had to make these regulations an important tool for all of us – a tool you don't need a law degree to use.

So today, and in our teleconference on March 10, we look forward to answering as many of your questions as possible. Because of the large number of people tuning in today, we need to keep the questions focused on the major points that will be discussed in this program. This will ensure that we do justice to these issues. Questions related to additional regs-related issues should be discussed in our March 10 event.

As we've stated, IDEA '97 is a major milestone in the history of American education. It's the first major revision to the Act in more

---

than 23 years. It offers a framework for virtually all of the decisions and practices that we use to get the best results for our children – but its foundation rests on two major points.

First, the substance of IDEA has not changed. IDEA 97 retains the basic right to a free, appropriate public education for all children with disabilities. The Act provides procedural safeguards for these children and their families, and offers a clear road map for navigating those procedures in our classrooms and communities.

Second, we have a renewed emphasis on improving results. This includes provisions to ensure that these children are directly connected to the general curricula through their Individual Education Programs. IDEA 97 also ensures that children with disabilities are included in the reform efforts that are creating unprecedented accountability and high expectations for all children. And, it requires that children with disabilities be included in state and district-wide assessment activities. We cannot leave these children behind. The stakes for their futures are simply too high.

Now, I'd like to talk briefly about the regulations themselves. As many of you know, the U.S. Department of Education published a Notice of Proposed Rulemaking in the Federal Register in October of 1997 to invite public comment on the changes that were proposed for Part B of the statute. We published the full text of the regulations as they would be amended because we wanted to provide a meaningful way for families, agency officials and the general public to review these changes within the context of the existing regulations. We also wanted to invite comments on both the existing regulations and the proposed changes.

Well, we got our wish. During a 90 day comment period that included 7 public hearings, we received close to 6,000 comments on the regulations. These comments were enormously helpful. They allowed us to learn a great deal from the extraordinary work that's being done in this field every day. All of the comments were carefully reviewed and analyzed. The result: nearly 60 percent of the sections included in the NPRM reflect technical or substantive changes based on the recommendations we have received.

Now I'd like to say a few words about the Final Regs Package.

(NOTE: THIS WILL BE TURNED INTO A SLIDE THAT WILL FILL THE SCREEN AS JUDY TALKS)

The regulations will be composed of 8 parts.

- A preamble – which serves as an Executive Summary
  
- The regulations for Part B of IDEA;
  
- Appendix A, which provides notice of interpretation on Individual Education Programs and other provisions of IDEA;
  
- Appendix B, which offers an index to the regulations of Part B of IDEA;
  
- Attachment 1, which is an analysis of the Comments we received and the changes we made – which is fairly large when you consider that we received upwards of 6,000.

- Attachment 2, which is an assessment of the costs and benefits of these final regulations;
- Attachment 3, which includes a table showing where the Notes that were in the Proposed regulations for Parts 300 and 303 can be found in the final regulations; and, finally,
- The Conforming Regulations for the Early Intervention Program under Part C of IDEA that are included in the Part B final regulations package.

The final regs package includes 3 broad categories: (SHOW ON SCREEN)

- The "text" of the regulations makes up about 25 percent of the entire package, mainly because 126 notes included in the proposed regulations have been removed.

- The analysis of the public comments, including a description of the changes we've made, as well as the Costs and Benefits information.
  
- Technical Assistance Documents, which provide, among other things, useful guidance and clarifying information for families, teachers, students and administrators on effective implementation of the new IEP requirements.

Now Tom Hehir and I are going to talk specifically about some of the changes in the regulations, including:

- The role of regular education teachers in developing IEPs
  
- The link between high achievement and student assessments
  
- The role of the general curriculum in the education of children with disabilities

During this portion of our program, we'll also spend some time with researchers and educators who have developed some remarkably successful strategies for the implementation of IDEA in real-life classroom and community settings.

Tom?

**Tom Hehir Presentation****16 - 35**

Thank you, Judy. It's a pleasure to be here today. I know that many of you have spent a great deal of your time advising us on the IDEA-related issues that are important to you. I second Judy's assertion that we have taken those concerns very seriously.

As I move into the discussion about how we've responded, I want to reiterate some basic tenets of IDEA 97 that have guided our thinking. It's all connected directly to the regulations, which are designed to help all of us do a better job for students with disabilities.

Number one, we need to recognize that the *first days of a child's life* can be the *most important days*. We need to make sure we reach infants and toddlers with services as soon as we realize they need them, and we need to find a better way to track those services so children and their families get the support they need.

Second, We need to make preschool through high school a rigorous and vigorous experience. We've already got a head start on this. In 1986, for example, only 24 states had preschool programs for children with disabilities. Now every state does, and we have doubled the number of children served.

Still, there are way too many children in separate programs, and too many children with disabilities have been shut out of the general curriculum. Simply put, children with disabilities should be learning what other children are learning. . .and schools must be accountable for all children. That's what IDEA is all about.

Third, We've got to stop playing catch-up when it comes to reading help and behavior intervention strategies. Too often we do not address these problems until the intermediate or middle grades – and that's often too late.

Finally, we need to recognize that higher education and lifelong learning are stepping stones for everyone – something that more students with disabilities and their families should strive for as they

plot their course for the road ahead. For students who go straight from high school to the job market, we have to recognize that education and employment go hand-in-hand. We need to prepare our students to earn their way to success.

Now I'd like to talk about some of the specific elements of the regulations that are the foundation for all others: the format, the role of regular education teachers in the development of IEPs, the importance of the regular education curriculum and student assessment.

First, I'll talk about the "Notes." Traditionally, the Part B regulations have included "Notes" following certain sections of the regulations, to clarify a specific provision or to provide guidance on how to interpret the requirement.

We received extensive public comments on these notes, and I assure you we paid close attention to what we learned. The commenters expressed concern that there were too many, and some of them went so far as to say we were regulating by notes! In general, folks said

---

that (1) notes that should have been part of the document should be incorporated into the text – meaning that they should be part of the regs. . . (2) that all notes should be deleted or otherwise moved to a technical assistance document. . . and (3) that notes that are retained should be used only for providing guidance or clarifying information.

-- SHOW POWERPOINT SLIDE ON THE NOTES --

As you'll see in the slide before you, the "Notes" that were in the NPRM have been removed.

The substance of any note that should be a requirement has been added to the text of the regulations.

The substance of notes directly related to the IEP has been included in Appendix A.

The substance of any note that provides useful guidance has been added to the discussion in Attachment 1. The rest have been removed.

Too many people told us that the notes confused them. Our ultimate objective here is to provide a clear, concise document that guides readers directly to the information they want to know.

Now I'd like to talk about the role of regular education teachers as members of Individual Education Programs, or IEP teams as most of us call them. This is one of the areas where we received the most comments. And it's apparent from those comments that teachers, principals and superintendents want clear guidance on this front.

-- SHOW POWERPOINT SLIDE ON IEPS --

We understand the tension here, and we've tried to be clear and concise about what this regulation requires, and why.

In official terms, I'll tell you that the final Part B regulations to implement the requirements of IDEA '97 incorporate the statutory requirement that the IEP team for each child with a disability must include at least one of the child's regular education teachers if the

child is, or may be, participating in the regulation education environment. In simpler terms, I'll also tell you that this is a great thing – that many states are already demonstrating a lot of success by doing this. As we all know, most children with disabilities are now in general education classes. And regardless of how much experience in disability issues regular ed teachers may or may not have, they usually have a very good understanding of a child's learning style and needs. We have to remember that special education is not a place – it's a service. Regular ed teachers need to know what accommodations a child needs for involvement – and success – with the general education curriculum.

This is why these regular ed teachers must participate in the development, review and revision of the child's IEP. They need to be part of the process for determining the appropriate positive behavior interventions, technology, services and supports for school personnel that will help that child succeed. For children with limited English proficiency, this includes consideration of the language needs as they are related to the IEP.

This doesn't necessarily mean that the regular education teacher has to participate in discussions about certain other matters in the IEP meeting in which they have little relevance – such as implementing the physical therapy needs of the child – if the teacher isn't responsible for implementing that portion of the IEP. We know teachers have limited time and unlimited tasks, and we certainly don't want to increase their burdens.

Determining whether the teacher must be physically present at each meeting is a matter that must be decided on a case-by-case basis by the school district, the families and the other members of the IEP team.

As everyone who works in schools knows, we have more children and families with limited English proficiency than ever before. Under IDEA, school districts will be required to communicate with children in their native language or other mode of communication. For deaf children, for example, this could mean having interpreters present during IEP meetings if appropriate.

Now I'd like to share some special insight from David Chard on the inclusion of children with disabilities in the general curriculum.

Professor Chard is with the University of Texas at Austin, where he's been very active with Project Bridge, which is one of the many initiatives that OSERS has funded to help move research into practice.

Project Bridge addresses early literacy development for children with learning disabilities. These children are increasingly taught in regular education classrooms with regular and special education teachers working together. The project provides in-service training for teachers on a number of topics, including reading improvement strategies, behavior management, special education and other ways of designing instruction to meet the needs of a broad range of learners.

We talked with David in advance of this program about how Project Bridge has addressed the needs of general education teachers. He's going to be available by telephone and TDD during the question and

answer portion of our program so you can talk with him specifically about how its principles may be implemented in your schools.

-- ROLL DAVID CHARD FOOTAGE/INTERVIEW --

You can see that David's work focuses on preparing teachers to meet the needs of diverse learners. Now I'd like to introduce you to Ed Kameenui, who developed Project Bridge and who administers a program with similar goals. Ed is also the Director of the University of Oregon's Institute for the Development of Educational Achievement -- also known by the acronym IDEA -- which helps school districts, families and professional organizations improve student achievement.

-- ROLL ED KAMEENUI FOOTAGE/INTERVIEW --

Involving children with disabilities in the general curriculum presents a different set of issues.

This is one of the most profound elements of IDEA 97, underscored by Congress because of its vital role to increased student

achievement. From a variety of research projects funded under IDEA, we have learned that unfortunately large numbers of children with disabilities are not learning what other children are learning. Many are discouraged from taking rigorous course work and too many more are assumed to lack the ability to keep up with their peers.

This can, and must, be changed. We know that if we expect kids to reach higher levels, they will stretch until they do so. If we relegate students with disabilities to a second rate curriculum we will only get second rate results for them. The stakes for these kids are too high. We need to ensure that children with disabilities are held to high standards, and we need to make sure that the curriculum – with appropriate accommodations and supports – is taught to these students as well.

We know this is another issue that hits home with many of you across the country, and we've spent a great deal of time and energy investing in research to identify and demonstrate the principles and practices that are succeeding.

As you're about to see, David Chard will discuss some of these.

-- ROLL SECOND DAVID CHARD FOOTAGE/INTERVIEW --

Now I'd like to turn the mike back over to Judy, who will talk about how student assessment can ratchet up the rigor of the curriculum for children with disabilities. Judy?

**Judy Heumann Presentation 2****36 - 45**

Thank you Tom. I'll start out by reiterating that IDEA '97 makes it clear that students with disabilities must be included in State and district-wide assessment programs – with appropriate accommodations and modifications where necessary. Examples of these accommodations may include – but aren't limited to – oral administration, large print, Braille versions, individual and separate room accommodations, extended time and multiple test sessions. The determination about whether a child will participate in a regular assessment, and the accommodations that are appropriate, should be addressed in the IEP.

As we address this issue, we need to keep in mind two other important points. One, flexibility is allowed, and encouraged. With this issue and many others, we need to recognize that compliance and innovation go hand in hand. OSERs currently working with many state and local school personnel, families, experts and other interested in the area of assessment to determine the best practices.

You can look forward to a technical assistance document from us very soon.

**-- SHOW POWERPOINT SLIDE ON ASSESSMENT --**

We have one major objective: to ensure that the standards for assessment, administration and reporting of results for students with disabilities are the same as those for non-disabled students. State Education Agencies must report to the public on assessment performance of children with disabilities with the same frequency and in the same detail that is reported on assessments for non-disabled children.

We know this is important for several reasons – all students need to work toward the same high standards in order for us to raise the quality of education for all children, and excluding kids with disabilities from high stakes assessments has negative consequences for them.

Now, to tell us more about the challenges and opportunities of student assessment, I'd like to introduce you to Jim Ysseldyke, from

the University of Minnesota at Minneapolis. Jim is director of the National Center for Educational Outcomes, otherwise known as NCEO, which identifies guidelines for accountability, assessment and testing for all students, including those with disabilities. Funded by the Office of Special Education and Rehabilitative Services, NCEO addresses the participation of students with disabilities in national and state assessments, standards-setting efforts and graduation requirements – and works with general and special education systems to increase accountability for all student learning.

-- ROLL JIM YSSELDYKE FOOTAGE/INTERVIEW --

I hope you'll take advantage of the work of the National Center for Educational Outcomes and contact them as you move forward in your student assessment efforts. And there are other resources on assessment and other issues as well. There are the OSERS and OSEP Web site, which offer easy-to-follow tips from our research to practice division. Here we have full teams that focus on every step of the educational process, from early childhood to elementary and middle school to the transitions to higher education and the

workplace. OSERS also funds regional resource centers that provide guidance in the area of assessment, and works with more than 140 partner organizations as a resource as you implement IDEA in your classrooms and communities.

In a few minutes, Jim, David and Ed will all be available by telephone to answer your questions about Ideas That Work. But first I'd like to turn the mike back over to Corinne, who will introduce some of our other guests. Corinne?

THE PRESIDENT HAS SEEN

3-2-99

Education - IDEA

99 FEB 28 PM 3:17

THE WHITE HOUSE

WASHINGTON

Copied

Lew

Reed

Kagan

Podesta

February 27, 1999

*OK - diff. Benoit  
under BK*

MEMORANDUM FOR THE PRESIDENT

FROM: Jacob J. Lew  
Bruce Reed

SUBJECT: Individuals with Disabilities Education Act Regulation

OMB has before it for final clearance regulations to implement the 1997 amendments to the Individuals with Disabilities Education Act (IDEA). The initial proposed rulemaking in 1997 generated substantial adverse reaction from the majority in Congress, from schools, and from States, primarily centered on the administrative burdens the draft rule would have imposed. The current version is a reflection of a lengthy process of public comment and negotiation with Congressional staff and represents substantial compromise from the earlier version. States and Congress have also complained about the delay in publication of the final rule. In response to State and Congressional concerns over delay in publication, Secretary Riley has publicly committed to publication by March 5th.

We believe the current rule offers a balance between protecting children with disabilities and mitigating burden on the States and the schools within the context of a law which all agree is highly prescriptive. Involved majority Congressional staff have given preliminary indications that they believe this version of the rule is an adequate response to their concerns, but they note that some members may still attack the rule as providing insufficient local flexibility. While the NGA and its staff did not comment on the proposed rule, there is no guarantee they will support the final version; indeed, we would not be surprised if some Governors criticize the rule as overly prescriptive. On the other side of the issue, the disability community will be unhappy with some of the compromises the Department of Education has made since the proposed rule, and would object to any further significant changes. This memorandum explains the issues in more detail, describes the improvements made to date, and at the end, summarizes the equally contentious issue of IDEA funding.

**Background**

In 1975, Congress passed the Education for All Handicapped Children Act, which guaranteed a "free appropriate public education" for all students with disabilities, and outlined the required procedures States and local school districts must follow in implementing their Special Education programs. That law, now known as the IDEA, has been amended several times since, most recently in 1997.

The IDEA Amendments of 1997 were the result of extensive bipartisan negotiation with Congress. The reauthorization retained the civil rights component of the law that requires States to provide all children with disabilities (also referred to as special education students) with a free appropriate public education designed to meet their individual needs. This requirement applies without regard to the cost of the services or the size of the federal appropriation. The 1997 amendments added a focus on improving educational outcomes for children with disabilities. For instance, they required States to develop educational achievement goals for children with disabilities, and to include children with disabilities on State and district-wide assessments.

IDEA has always been controversial because it imposes prescriptive and costly administrative requirements on States. Because of these statutory requirements, States want the federal government to pay a larger share of special education costs. In recent years, controversy has centered on IDEA's requirements regarding the discipline of special education students. States are not required to accept IDEA funding and its related federal mandates, but none have seriously threatened to withdraw from participation.

### **IDEA Regulation Generally**

The regulatory development process for this rule has been lengthy and contentious. After publishing the Notice of Proposed Rulemaking (NPRM) in October 1997, the Department of Education (ED) received extensive criticism from State lawmakers, school officials, and the majority in Congress. State lawmakers and school officials complained that the proposed rule was complex and difficult to understand, limited flexibility at the local level, and created overly prescriptive and costly requirements. The majority in Congress echoed these concerns, and charged that the rules created policies inconsistent with the carefully worked out bipartisan agreements that had been struck during the enactment of the IDEA Amendments of 1997.

In response to these concerns, the Department reviewed the entire rule to find ways to ease requirements, and to make the final rule easier to understand. The Department's rewrite of the rule involved extensive consultations with the Hill and members of the public, and resulted in a significantly different document. Nonetheless, the rule remains complex and prescriptive, largely (though perhaps not entirely) because the statute itself is of this nature.

ED hopes to publish the final rule in early March. Both Hill members and school officials have put great pressure on the Department to publish the rule as soon as possible. Without the rule, schools must implement their special education programs based only on their own interpretations of the IDEA statute. The rule will help forestall litigation resulting from local disputes over statutory interpretation.

The Department believes, and we concur, that the final rule strikes an appropriate balance among the interested parties, including the disability community, school officials, State lawmakers, and members of Congress in both parties. As always, however, not all the interested parties will see things in this way. Some (mostly Republican) members of Congress and State officials will view the rule as skewed in favor of the disability community and/or as creating a need for additional IDEA funding. Conversely, the disability community will express some disappointment about changes made since the NPRM and would vehemently object to further retrenchments.

### **Specific Regulatory Issues**

Criticism of the draft rule focused on three issues: (1) discipline of disabled students who are violent or troublesome; (2) placement of disabled students during adjudication of disputes over current placement ("pendency"); and (3) services required after graduation. In discussion on the rewrite of the final rule, a final issue emerged concerning the inclusion of special education students in regular education classrooms. Each issue is discussed below.

*Discipline:* The IDEA amendments allow school personnel to suspend students with disabilities for up to 10 school days before the suspension is deemed a "change in placement." The amendments further require that when a "change in placement" occurs, the school district must convene the student's special education teacher, parent, regular education teacher, and principal to: (1) reevaluate the type and extent of educational services the student should receive during his/her suspension in order to best allow the student to achieve the goals in their Individualized Education Plan (IEP); (2) establish a "behavioral assessment plan" for the student (i.e., a set of services and strategies designed to address and improve the student's behavior), if one does not already exist; and (3) determine whether the student's behavior is a manifestation of his or her disability.

The statute does not specify whether the 10-day trigger for a "change in placement" refers to 10 consecutive days (e.g., a suspension of 10 or more days in a row) or 10 cumulative days over the course of a school year (e.g., five separate two-day suspensions). Under past practice, this language was interpreted to mean that "change in placement" services were not required unless the suspension was for 10 consecutive days or there was a "pattern of short-term removals." This consecutive interpretation, of course, was favored by most school officials, who wish to provide "change of placement" services in only the most extreme cases. Under this standard, however, school officials could abuse the "10 consecutive day" trigger by repeatedly suspending a student for less than 10 days to circumvent the "change in placement" requirement. Although the "pattern of short term removal" standard was supposed to protect against such abuses, ED found that it was rarely invoked and did not provide sufficient protection.

In response to these concerns, ED defined "10 days" in the NPRM as meaning 10 cumulative days in a school year. Thus, under the NPRM, schools would have to provide "change in placement" services after 10 cumulative days of suspension, without regard to the "pattern of short term removal" concept. Not surprisingly, school officials and the majority in Congress strongly objected to this "cumulative day" definition because it would have triggered the expensive "change in placement" services more frequently.

As a compromise, the final rule requires the full panoply of "change in placement" services only after 10 consecutive days or a pattern of removals, but requires a less burdensome, streamlined set of services designed to address behavior problems after 10 cumulative days of suspension. For example, under this streamlined procedure, schools will no longer have to determine whether the student's behavior is a manifestation of their disability. This compromise results in significant cost savings to schools compared to the NPRM scheme; it does, however, impose more costs than under prior practices, because it requires some (albeit streamlined) procedures when separate suspensions total more than 10 days. Conversely, the compromise provides the disability community with some services in the 10 cumulative day case; but the streamlined services are far less extensive than the full services promised in the proposed rule and will strike the community as inadequate.

In addition to these significant changes, the final rule also clarifies the following discipline issues which were points of confusion in the proposed rule: (1) school officials can suspend disabled children for more than 10 days in a school year; and (2) school officials do not need to provide any services to disabled children during the first 10 days of a suspension.

*Pendency:* The IDEA statute sets up a hearing process to arbitrate between a parent and a school when they disagree over a child's placement (e.g., whether a child should be moved from a special education class to a regular education setting). Until the disagreement is settled, the statute requires the child to remain in his/her current placement unless the school and parent agree otherwise.

The contentious provision in the proposed rule would have provided the following: in the event that a parent sought to change the child's placement, and the hearing officer agreed with the parent, the child is immediately moved to the new placement. However, in the event that a school sought to change the child's placement, and the hearing officer agreed with the school, the child would remain in the original placement pending further review. Thus, hearing officer agreements with parents were to carry more weight than hearing officer agreements with schools. Proponents of this provision argued that it was needed to equalize the balance of power between schools and parents in the implementation of special education services for children; opponents argued that the asymmetrical system was inconsistent with the statutory language and in fact skewed that balance.

As a compromise, the final rule applies this asymmetrical "pendency" provision only if a child's case reaches a State (rather than district or county) hearing officer -- a level of review that occurs far less frequently. In all other cases, the child would remain in his/her original placement pending appeal, regardless of whether the child or the school won the initial decision.

27

*High School Graduation:* In the proposed rule, ED required that schools reevaluate all graduating students to determine whether additional services should be provided; ED also provided non-binding guidance that schools could terminate services only if a student graduated with a regular diploma (i.e., not a certificate of attendance). ED included these requirements because of the concern that some school districts were "graduating" students with a less-than-regular high school diploma in order to stop providing services to them. However, schools do not have to provide any services to students once they "age out" of eligibility under state law. The "age-out" threshold varies among States -- ranging from age 18 to 21.

In response to complaints about this policy, the final rule eliminates the reevaluation requirement when students graduate with a regular high school diploma. The final rule, however, continues to maintain that schools may not terminate services to students who graduate with less than a high school diploma.

*"Least Restrictive Environment":* A fundamental part of the IDEA statute is the belief that special education children should be placed, to the maximum extent possible, in the "least restrictive environment" -- which means in the general education environment. This requirement is designed to provide special education students with an opportunity to socialize with regular education students and to strive for the same academic goals as their nondisabled peers. At the same time, the statute reflects some understanding that placing some special education students in regular classrooms is too disruptive, because it requires teachers to spend a disproportionate amount of time with special education students. The statute requires that: (1) whenever appropriate, special education students should be placed with their nondisabled peers; (2) schools can remove special education students from general education classrooms if it is found that the student is not making satisfactory educational progress, even with supportive special education services.

To prevent abuse of the second requirement, the Department added to the final rule a provision (not in the NPRM) prohibiting schools from removing special education students from a general classroom only because teaching the student would require a modification to the standard curriculum. Majority Congressional staff initially opposed this change, but appear to have dropped their objections; minority staff support the provision.

## **Special Education Funding**

Most of the Governors and some members of Congress argue that the federal government is failing to live up to its "commitment" to provide States with 40 percent of the average per pupil expenditure for each disabled student. In fact, however, IDEA makes no such commitment; it only limits the maximum grant a State can receive in a year to this 40 percent level. The highest percentage ever reached was 12.5 percent in 1979; 1999 funding should cover about 11.2 percent.

Federal funding for special education State Grants (the primary federal special education program) has increased by \$2.2 billion or 110 percent during this Administration, from \$2.1 billion in FY 1993 to \$4.3 billion in FY 1999. These increases are much larger than the increases requested by this Administration. Congressional Republicans in recent years have seized on IDEA as a defining issue, which enables them to complain about "unfunded mandates" and "regulatory burdens" while supporting education funding. We believe this pattern will be repeated for FY 2000.

Whatever amount we might propose for IDEA, the Republicans will always be able to offer more, because they do not care about funding our other education and training priorities at the levels we seek. In response to Republican claims that we are underfunding IDEA, we have argued that many of our other high priority investments substantially aid children with disabilities. These children benefit, for example, from the smaller classes in our Class Size Reduction initiative, from modern school facilities in our School Modernization Bonds proposal, and from our early intervention initiatives such as America Reads and Head Start.

In the FY 2000 budget, we propose a targeted increase for special education of \$116 million to expand early intervention programs and to help States take advantage of research on effective practices, but virtually no increase for the major state grant. The total budget request for all parts of IDEA is \$5.4 billion, of which \$4.3 billion is for the state grant.

It should also be noted that the IDEA Amendments of 1997 provided that when federal funding reached \$4.1 billion, an LEA could divert up to 20 percent of the federal funds it receives in a year that exceeds the amount it received in the previous year (i.e., 20 percent of their annual increase in federal funds) away from special education. Therefore, federal IDEA increases do not increase spending on children with disabilities dollar for dollar.

### **Likely Reactions to Rule**

As noted above, some Governors and members of Congress will criticize the final rule as overly prescriptive and/or will argue that it provides yet another reason for more Federal funding. Further substantial changes to the rule, however, would generate an equally negative reaction from disability advocates (who may already be unhappy about changes from the NPRM). Further changes also would require further delay which will generate criticism from all sides.

## **Recommendation**

We propose to release the final rule early in the week of March 1st unless you wish to discuss it further. Secretary Riley would like to announce the rule publicly on or before March 5th.

# EDUCATION DAILY

The education community's independent daily news service

## Riley Sparks GOP Objections With Ode To Small Classes

Education Secretary Richard Riley last week urged Senate lawmakers to pass a bill expanding an existing K-12 regulatory flexibility program, but only with an amendment to continue the administration's expensive class-size reduction program.

The Senate tomorrow will start debate on S. 280, a bill to expand the Education Flexibility Demonstration Program (Ed Flex) from 12 states to all 50.

While Republicans tout Ed Flex as a no-cost means to promote educational innovation at the local level, Riley and Senate Democrats insist that reducing student-teacher ratios in early grades is a higher priority, and one Republicans should back now, not later.

"Passing Ed Flex will be helpful ... But I can tell you that the much bigger and more pressing issue for America's parents and teachers is any help that we can give them to reduce class size," Riley said at a Senate news conference Thursday.

The administration forced the GOP to agree to the first year of its class size program last fall, getting \$1.2 billion for the new initiative (ED Oct. 27, 1998). Sens. Edward Kennedy, D-Mass., and Patty Murray, D-Wash., will co-sponsor an amendment this week to continue the teacher-hiring program for six years.

### Disability Issues?

Republicans long have argued that increased education funding should first be directed at special education, not at cutting class size or other new programs.

Riley challenged their point last week, saying a "well-qualified teacher who teaches in a small class can make an enormous difference for children who might not have to become part of the special ed system."

(more on p. 2)

<i>In This Issue</i>	
Vol. 32, No. 38 ■ Monday, March 1, 1999	
Maryland Sets High Bar For Beginning Teachers.....	Page 3
Texas A&M Officials Absolved In Hazing Case.....	Page 5
Legislative Update.....	Page 6

## House Staff Not Pleased By Glimpse Of IDEA Rules

Despite ongoing Republican objections, the Education Department is poised to issue special education rules maintaining its stand against harsh penalties for disruptive disabled students, House staffers say.

Release of the regulations has been delayed by congressional objections over the discipline issue, House and Education Department sources say. Although neither ED nor House staffers would describe language in the forthcoming regulations—now slated for release on Friday—the House staffers indicated the rules will call for applying a 10-day limit on disabled student suspensions to the entire school year.

But "there's been some tinkering, going back and forth, but I can't get into who's been involved," ED spokesman Jim Bradshaw said Friday.

### Clarifying 10-Day Suspensions

The Individuals with Disabilities Education Act (IDEA), passed in 1997, calls for 10-day limits, but does not make clear whether the limit applies to each suspension or the yearly total. School administrators who want more flexibility in dealing with disruptive disabled students support the 10-days-per-case penalty.

(more on p. 3)

## House Staff Not Pleased By Glimpse Of IDEA Rules (Cont from p. 1)

Last week, top ED officials, including Judith Heumann, the department's assistant secretary for special education, summarized the regulations at a private meeting with staffers from the House Education and the Workforce Committee, chaired by Rep. Bill Goodling, R-Pa.

The Republicans were not pleased with what ED is proposing on the 10-day discipline issue, sources say.

School administrators had hoped, but did not expect, that ED would clarify that the law applies the 10-day cap to each offense.

For months, most lawsuit-weary districts have played it safe and assumed ED would apply the 10-days-per-year standard in the regulations.

When ED officials briefed them on the regulations, House committee staffers pushed hard for some changes, said a source. ED agreed to take another look, resulting in the rules' release being delayed at least by a few days—ED was planning on issuing them today or tomorrow.

Bradshaw now says the "current plan" is to release the rules by Friday.

Republicans, never expecting ED to toughen penalties, have spoken of amending IDEA either through a separate bill or while reauthorizing the Elementary and Secondary School Education Act (ESEA) later this year.

Last month, Rep. John Cooksey, R-La., introduced H.R. 636, which would amend IDEA by giving local education agencies flexibility in moving violent disabled children to alternative education settings.

Cooksey was following the lead of his former colleague in the Louisiana delegation, Republican Rep. Bob Livingston, who last year introduced similar legislation.

Livingston's bill was withdrawn after Democrats, who have largely resisted amending IDEA, agreed to a General Accounting Office review of the issue. GAO's initial findings are due this month.

But it has not just been Republicans who have been beating the drum on the absentee regulations, which initially were due last fall. New rules were needed because IDEA was reauthorized in 1997.

When Education Secretary Richard Riley testified last month before the Senate education committee, Sen. Patty Murray, D-Wash., was among those demanding a prompt release of the regulations.—Rob Jennings

## Maryland Sets High Bar For Beginning Teachers

In an effort to boost teacher quality, Maryland last week scrapped its outdated teacher licensing exams and adopted cut-off scores among the highest in the nation for new tests.

Last Wednesday, Maryland's state education board voted to overhaul its licensing system by replacing the National Teacher Exam (NTE) with the new Praxis exam. Cut-off scores for the Praxis exam will be much higher than on the NTE, which 90 percent of teachers passed, officials said.

"This action marks another important step in our rigorous school reform journey," said Nancy Grasmick, state superintendent of schools. "We have moved ahead to ensure Maryland students receive high-quality instruction from high-quality teachers."

The plan calls for second-year college students seeking admission to teacher education programs in Maryland to take the Praxis I exam, which measures basic skills in math, reading and writing.

The state's cut-off scores for Praxis I's math and reading portions are the second highest in the nation, while the qualifying score for the writing portion is fourth-highest in the nation. Two years ago, when Virginia raised its cut-off scores to a similarly high level, about 35 percent of 5,000 prospective teachers failed the writing portion, 35 percent failed math and 20 percent failed reading.

(more)

**Special Education Q&A**  
**February 22, 1999**

**Q: Shouldn't the federal government fund existing mandates for special education before it imposes more federal education requirements?**

A. First, the Administration has requested \$5.4 billion for special education, an increase of \$116 million over last year. Just since 1996, grants to states for special education have increased almost 85 percent. So states are getting substantially increased funds for this purpose, as a result of bipartisan support in Congress.

Second, the President's other education proposals go hand-in-hand with this increased funding for special education. The President's request to expand resources for states to reduce class sizes, train teachers, and start after-school programs -- to name just a few examples -- will reduce the need for special education services by enabling schools to identify more quickly, and provide intensive services to, students who are having difficulties. And of course, the President's accountability proposals will serve special education students as well as all others. None of our children, especially children receiving special education services, should be taught by an unprepared teacher, trapped in a failing school, or passed from grade to grade without receiving the help they need to learn the materials. The President's call for more effective accountability for the funds the federal government provides will ensure that no child in America is educated under such inadequate conditions.

Educ - IDEA

Statutory Provision	NPRM	Hill Position	Final Rule Outcome
<b>Discipline</b>			
<p>School personnel have the authority to remove child with a disability for not more than 10 school days before a change in placement occurs.</p>	<p>Defines 10 school days as cumulative within a given year. Thus, once a child is suspended for an 11th day in a given year, the following services must be provided:</p> <ul style="list-style-type: none"> <li>- education services as decided by the IEP team</li> <li>- a behavioural assessment plan must be put into place by the IEP team</li> <li>- a manifestation determination must be conducted to determine whether the child's behavior was a manifestation of the disability</li> </ul> <p>In the event of subsequent removals after the 11th cumulative day, the following would have to occur for each removal:</p> <ul style="list-style-type: none"> <li>- education services determined once again by IEP team</li> <li>- behavioral assessment plan must be redone each time by the IEP team</li> <li>- new manifestation determination required</li> </ul>	<p>Strong objections to ED triggering all these services on the 11th cumulative day.</p> <p>ED should not regulate beyond what is explicitly in the statute.</p> <p>What the statute would hold is:</p> <ul style="list-style-type: none"> <li>- A change in placement (triggering all the services) would occur if there was a removal of more than 10 consecutive days</li> <li>- No services are mandated on the 11th cumulative day, and no services are mandated for each subsequent removal unless and until there has been a change in placement.</li> <li>- Local school personnel would have flexibility to decide whether a series of short term suspensions were eventually amounting to a pattern that qualified as a change in placement which would trigger all the services.</li> </ul>	<p>The following limited services are available on 11th cumulative day:</p> <ul style="list-style-type: none"> <li>- education services, if any are needed, as decided by school personnel in consultation with the special ed teacher (i.e., NOT the IEP team)</li> <li>- a behavioural assessment plan must be put in place by the IEP team, if one does not already exist, within 10 days of the 11th cumulative day. (In other words, the clock begins ticking on the 11th cumulative day... giving the IEP team 10 days to put the plan in place)</li> <li>- no manifestation determination required</li> </ul> <p>In the event of subsequent removals after the 11th cumulative day, the only service that would need to be provided would be a review of the behavioural assessment plan which could be done without an IEP team meeting.</p> <p>A change in placement, which triggers all the services (e.g., manifestation determination) would occur in the following situations:</p> <ol style="list-style-type: none"> <li>(1) there is a removal for 10 consecutive days</li> <li>(2) there is a removal for 11 cumulative days</li> </ol> <p>AND there exists a pattern of removals that evidence a change in placement.</p>

Statutory Provision	NPRM	Hill Position	Final Rule Outcome
<b>Exceptions from Services For Children of Certain Ages [or, exceptions to Free and Appropriate Public Education (FAPE)]</b>			
<p>Statute provides for specific exceptions for 18-21 year olds dependent on state law as to non-disabled children. Makes no mention of graduation.</p>	<p>Graduation is a change in placement which requires certain services (e.g., a re-evaluation).</p> <p>ED provided non-binding guidance that a student would have to graduate with a regular diploma (i.e. not a lesser degree like a certificate of attendance) in order for eligibility of services to terminate.</p>	<p>No reevaluation should be required.</p> <p>Graduation with a regular diploma or with a lesser diploma (e.g., certificate of attendance) should end the right to FAPE.</p>	<p>ED regulates on the following: Graduation with a regular high school diploma or aging out of eligibility (age depends on state law) means the following:</p> <ul style="list-style-type: none"> <li>- no more services need to be provided (e.g., no re-evaluation is necessary) ✖</li> <li>- because this is a change in placement, parents must be provided notice</li> </ul> <p>Graduation with anything less than a high school diploma (e.g., a certificate of attendance) means that services must still be provided.</p>
<b>Involvement of the Regular Education Teacher</b>			
<p>The regular Ed teacher must be a member of the IEP team</p>	<p>Only issue that ED regulated on was: other regular ed teachers that do not attend the IEP meeting must be informed of what decisions were made at the meeting.</p> <p>No further guidance was given.</p>	<p>ED should have provided a clearer picture of what it means to be a member of an IEP team. In providing this clear picture, ED should ensure that burden on local processes is minimized. For example, ED could point out that a teacher does NOT have to attend every IEP meeting in order to be a member of the IEP team.</p>	<p>ED provides non-binding guidance in a Q and A section that the reg ed teacher does not need to be at the entire meeting and does not need to take part in all the decisions... but it is implied that the reg ed teacher must attend at least a part of every meeting.</p> <p>No change to the regulatory provision.</p>
<b>Pendency (placement of child during a proceeding)</b>			
<p>Child remain in their current placement while proceedings go on, unless the school and parent agree otherwise.</p>	<p>If the first hearing officer determination sides with the parent, then the child remains in (or moves to) the placement the parent had desired.</p> <p>If the first hearing officer determination sides with the school, then the child remains in its current placement until all remaining proceedings are decided.</p>	<p>Lack of symmetry between treatment of parents and schools.</p> <p>Schools need more flexibility on placement decisions and should not be handcuffed by parent demands, especially after hearing officer rules in favor of school.</p>	<p>Same as NPRM with one change:</p> <ul style="list-style-type: none"> <li>- The hearing officer determination that triggers the pendency provision must be at the state level. Thus, lower level hearing officer determinations (e.g. at the district level) would not trigger pendency.</li> </ul>

solidly because ~~the~~ child ~~is~~ needs a motivation to be general  
curriculum ~~to~~ <sup>in order to</sup> ~~provide~~ ~~in~~ ~~the~~ make satisfactory education  
progress in that reg classroom

Mtg w/ Huemann

I. Discipline

- a. Poss interp - need to provide servs in 1st day
  - a: new provision - no req of any servs in 1st 10 days.
- b. Note that schools not think can only suspend student for 10 days - then no more
  - a: 320a1 w/ 1st P of ans. 4 in preamble - more suspensions OK.
- c. They said take out "within 1 yr"
  - 1st change should address/explain to her.

→ Take some more out of 2 + a - put them into reg? They will look.

II. P. 271-552e-

Dems said: do not change  
 Poss - could we put greater explan. in.  
 Fundamental concept of disabil policy.  
 "if there's a requirement to ensure" ??  
 some kind of standard-y language

III. Private health insurance-

Want to do fix - not take out.

IV. "Proficiency language"

Reg supposed to be <sup>law</sup> 2nd.  
 many know.  
 Now know pulled

Hearing on ESEA.  
 Secy - Next Friday - 5th

next Wednesday

Dunkin's scheduled for 3rd + 10th.

↳ teleconference w/ 100s/1000s of people

Could put this out on web -  
doesn't have to be published.

⇒ EEL-Flex debate next wk!!

regs take effect 60  
days later

July 1 - formula goals issued

↓  
need to give assurances

↳ review!

↓  
that they're  
in compliance

~~to~~ secretary's credibility

Canv w/ Sheppach -  
Tudy will call.

February 27, 1999

## MEMORANDUM FOR THE PRESIDENT

FROM: Jacob J. Lew  
Bruce Reed

SUBJECT: Individuals with Disabilities Education Act Regulation

OMB has before it for final clearance regulations to implement the 1997 amendments to the Individuals with Disabilities Education Act (IDEA). The initial proposed rulemaking in 1997 generated substantial adverse reaction from the majority in Congress, from schools, and from States, primarily centered on the administrative burdens the draft rule would have imposed. The current version is a reflection of a lengthy process of public comment and negotiation with Congressional staff and represents substantial compromise from the earlier version. States and Congress have also complained about the delay in publication of the final rule. In response to State and Congressional concerns over delay in publication, Secretary Riley has publicly committed to publication by March 5th.

We believe the current rule offers a balance between protecting children with disabilities and mitigating burden on the States and the schools within the context of a law which all agree is highly prescriptive. Involved majority Congressional staff have given preliminary indications that they believe this version of the rule is an adequate response to their concerns, but they note that some members may still attack the rule as providing insufficient local flexibility. While the NGA and its staff did not comment on the proposed rule, there is no guarantee they will support the final version; indeed, we would not be surprised if some Governors criticize the rule as overly prescriptive. On the other side of the issue, the disability community will be unhappy with some of the compromises the Department of Education has made since the proposed rule, and would object to any further significant changes. This memorandum explains the issues in more detail, describes the improvements made to date, and at the end, summarizes the equally contentious issue of IDEA funding.

**Background**

In 1975, Congress passed the Education for All Handicapped Children Act, which guaranteed a "free appropriate public education" for all students with disabilities, and outlined the required procedures States and local school districts must follow in implementing their Special Education programs. That law, now known as the IDEA, has been amended several times since, most recently in 1997.

The IDEA Amendments of 1997 were the result of extensive bipartisan negotiation with Congress. The reauthorization retained the civil rights component of the law that requires States to provide all children with disabilities (also referred to as special education students) with a free appropriate public education designed to meet their individual needs. This requirement applies without regard to the cost of the services or the size of the federal appropriation. The 1997 amendments added a focus on improving educational outcomes for children with disabilities. For instance, they required States to develop educational achievement goals for children with disabilities, and to include children with disabilities on State and district-wide assessments.

IDEA has always been controversial because it imposes prescriptive and costly administrative requirements on States. Because of these statutory requirements, States want the federal government to pay a larger share of special education costs. In recent years, controversy has centered on IDEA's requirements regarding the discipline of special education students. States are not required to accept IDEA funding and its related federal mandates, but none have seriously threatened to withdraw from participation.

### **IDEA Regulation Generally**

The regulatory development process for this rule has been lengthy and contentious. After publishing the Notice of Proposed Rulemaking (NPRM) in October 1997, the Department of Education (ED) received extensive criticism from State lawmakers, school officials, and the majority in Congress. State lawmakers and school officials complained that the proposed rule was complex and difficult to understand, limited flexibility at the local level, and created overly prescriptive and costly requirements. The majority in Congress echoed these concerns, and charged that the rules created policies inconsistent with the carefully worked out bipartisan agreements that had been struck during the enactment of the IDEA Amendments of 1997.

In response to these concerns, the Department reviewed the entire rule to find ways to ease requirements, and to make the final rule easier to understand. The Department's rewrite of the rule involved extensive consultations with the Hill and members of the public, and resulted in a significantly different document. Nonetheless, the rule remains complex and prescriptive, largely (though perhaps not entirely) because the statute itself is of this nature.

ED hopes to publish the final rule in early March. Both Hill members and school officials have put great pressure on the Department to publish the rule as soon as possible. Without the rule, schools must implement their special education programs based only on their own interpretations of the IDEA statute. The rule will help forestall litigation resulting from local disputes over statutory interpretation.

The Department believes, and we concur, that the final rule strikes an appropriate balance among the interested parties, including the disability community, school officials, State lawmakers, and members of Congress in both parties. As always, however, not all the interested parties will see things in this way. Some (mostly Republican) members of Congress and State officials will view the rule as skewed in favor of the disability community and/or as creating a need for additional IDEA funding. Conversely, the disability community will express some disappointment about changes made since the NPRM and would vehemently object to further retrenchments.

### **Specific Regulatory Issues**

Criticism of the draft rule focused on three issues: (1) discipline of disabled students who are violent or troublesome; (2) placement of disabled students during adjudication of disputes over current placement (“pendency”); and (3) services required after graduation. In discussion on the rewrite of the final rule, a final issue emerged concerning the inclusion of special education students in regular education classrooms. Each issue is discussed below.

*Discipline:* The IDEA amendments allow school personnel to suspend students with disabilities for up to 10 school days before the suspension is deemed a “change in placement.” The amendments further require that when a “change in placement” occurs, the school district must convene the student's special education teacher, parent, regular education teacher, and principal to: (1) reevaluate the type and extent of educational services the student should receive during his/her suspension in order to best allow the student to achieve the goals in their Individualized Education Plan (IEP); (2) establish a “behavioral assessment plan” for the student (i.e., a set of services and strategies designed to address and improve the student’s behavior), if one does not already exist; and (3) determine whether the student’s behavior is a manifestation of his or her disability.

The statute does not specify whether the 10-day trigger for a “change in placement” refers to 10 consecutive days (e.g., a suspension of 10 or more days in a row) or 10 cumulative days over the course of a school year (e.g., five separate two-day suspensions). Under past practice, this language was interpreted to mean that “change in placement” services were not required unless the suspension was for 10 consecutive days or there was a “pattern of short-term removals.” This consecutive interpretation, of course, was favored by most school officials, who wish to provide “change of placement” services in only the most extreme cases. Under this standard, however, school officials could abuse the “10 consecutive day” trigger by repeatedly suspending a student for less than 10 days to circumvent the “change in placement” requirement. Although the “pattern of short term removal” standard was supposed to protect against such abuses, ED found that it was rarely invoked and did not provide sufficient protection.

In response to these concerns, ED defined “10 days” in the NPRM as meaning 10 cumulative days in a school year. Thus, under the NPRM, schools would have to provide “change in placement” services after 10 cumulative days of suspension, without regard to the “pattern of short term removal” concept. Not surprisingly, school officials and the majority in Congress strongly objected to this “cumulative day” definition because it would have triggered the expensive “change in placement” services more frequently.

As a compromise, the final rule requires the full panoply of “change in placement” services only after 10 consecutive days or a pattern of removals, but requires a less burdensome, streamlined set of services designed to address behavior problems after 10 cumulative days of suspension. For example, under this streamlined procedure, schools will no longer have to determine whether the student’s behavior is a manifestation of their disability. This compromise results in significant cost savings to schools compared to the NPRM scheme; it does, however, impose more costs than under prior practices, because it requires some (albeit streamlined) procedures when separate suspensions total more than 10 days. Conversely, the compromise provides the disability community with some services in the 10 cumulative day case; but the streamlined services are far less extensive than the full services promised in the proposed rule and will strike the community as inadequate.

In addition to these significant changes, the final rule also clarifies the following discipline issues which were points of confusion in the proposed rule: (1) school officials can suspend disabled children for more than 10 days in a school year; and (2) school officials do not need to provide any services to disabled children during the first 10 days of a suspension.

*Pendency:* The IDEA statute sets up a hearing process to arbitrate between a parent and a school when they disagree over a child’s placement (e.g., whether a child should be moved from a special education class to a regular education setting). Until the disagreement is settled, the statute requires the child to remain in his/her current placement unless the school and parent agree otherwise.

The contentious provision in the proposed rule would have provided the following: in the event that a parent sought to change the child’s placement, and the hearing officer agreed with the parent, the child is immediately moved to the new placement. However, in the event that a school sought to change the child’s placement, and the hearing officer agreed with the school, the child would remain in the original placement pending further review. Thus, hearing officer agreements with parents were to carry more weight than hearing officer agreements with schools. Proponents of this provision argued that it was needed to equalize the balance of power between schools and parents in the implementation of special education services for children; opponents argued that the asymmetrical system was inconsistent with the statutory language and in fact skewed that balance.

As a compromise, the final rule applies this asymmetrical “pendency” provision only if a child’s case reaches a State (rather than district or county) hearing officer -- a level of review that occurs far less frequently. In all other cases, the child would remain in his/her original placement pending appeal, regardless of whether the child or the school won the initial decision.

*High School Graduation:* In the proposed rule, ED required that schools reevaluate all graduating students to determine whether additional services should be provided; ED also provided non-binding guidance that schools could terminate services only if a student graduated with a regular diploma (i.e., not a certificate of attendance). ED included these requirements because of the concern that some school districts were “graduating” students with a less-than-regular high school diploma in order to stop providing services to them. However, schools do not have to provide any services to students once they “age out” of eligibility under state law. The “age-out” threshold varies among States -- ranging from age 18 to 21.

In response to complaints about this policy, the final rule eliminates the reevaluation requirement when students graduate with a regular high school diploma. The final rule, however, continues to maintain that schools may not terminate services to students who graduate with less than a high school diploma *unless ~~and~~ they have aged out of the system.*

*“Least Restrictive Environment”:* A fundamental part of the IDEA statute is the belief that special education children should be placed, to the maximum extent possible, in the “least restrictive environment” -- which means in the general education environment. This requirement is designed to provide special education students with an opportunity to socialize with regular education students and to strive for the same academic goals as their nondisabled peers. At the same time, the statute reflects some understanding that placing some special education students in regular classrooms is too disruptive, because it requires teachers to spend a disproportionate amount of time with special education students. The statute requires that: (1) whenever appropriate, special education students should be placed with their nondisabled peers; (2) schools can remove special education students from general education classrooms if it is found that the student is not making satisfactory educational progress, even with supportive special education services.

To prevent abuse of the second requirement, the Department added to the final rule a provision (not in the NPRM) prohibiting schools from removing special education students from a general classroom only because teaching the student would require a modification to the standard curriculum. Majority Congressional staff initially opposed this change, but appear to have dropped their objections; minority staff support the provision.

## **Special Education Funding**

Most of the Governors and some members of Congress argue that the federal government is failing to live up to its “commitment” to provide States with 40 percent of the average per pupil expenditure for each disabled student. In fact, however, IDEA makes no such commitment; it only limits the maximum grant a State can receive in a year to this 40 percent level. The highest percentage ever reached was 12.5 percent in 1979; 1999 funding should cover about 11.2 percent.

Federal funding for special education State Grants (the primary federal special education program) has increased by \$2.2 billion or 110 percent during this Administration, from \$2.1 billion in FY 1993 to \$4.3 billion in FY 1999. These increases are much larger than the increases requested by this Administration. Congressional Republicans in recent years have seized on IDEA as a defining issue, which enables them to complain about “unfunded mandates” and “regulatory burdens” while supporting education funding. We believe this pattern will be repeated for FY 2000.

Whatever amount we might propose for IDEA, the Republicans will always be able to offer more, because they do not care about funding our other education and training priorities at the levels we seek. In response to Republican claims that we are underfunding IDEA, we have argued that many of our other high priority investments substantially aid children with disabilities. These children benefit, for example, from the smaller classes in our Class Size Reduction initiative, from modern school facilities in our School Modernization Bonds proposal, and from our early intervention initiatives such as America Reads and Head Start.

In the FY 2000 budget, we propose a targeted increase for special education of \$116 million to expand early intervention programs and to help States take advantage of research on effective practices, but virtually no increase for the major state grant. The total budget request for all parts of IDEA is \$5.4 billion, of which \$4.3 billion is for the state grant.

It should also be noted that the IDEA Amendments of 1997 provided that when federal funding reached \$4.1 billion, an LEA could divert up to 20 percent of the federal funds it receives in a year that exceeds the amount it received in the previous year (i.e., 20 percent of their annual increase in federal funds) away from special education. Therefore, federal IDEA increases do not increase spending on children with disabilities dollar for dollar.

## **Likely Reactions to Rule**

As noted above, some Governors and members of Congress will criticize the final rule as overly prescriptive and/or will argue that it provides yet another reason for more Federal funding. Further substantial changes to the rule, however, would generate an equally negative reaction from disability advocates (who may already be unhappy about changes from the NPRM). Further changes also would require further delay which will generate criticism from all sides.

## **Recommendation**

We propose to release the final rule early in the week of March 1st unless you wish to discuss it further. Secretary Riley would like to announce the rule publicly on or before March 5th.

1. IRID - ed servs for 1 year
2. "10 school days in 1 year"

(Getbuds)

Discipline - think that policy is best way to go.

way it's expressed may not be as good as it could be. need a std that allows educators to consider whether interruption of ed services is detrimental

long -- phrase "in a school year" -- may cause some to think ed servs. always required for less than 10-day suspensions. need to make clear this is not so.

⇒ replace <sup>with</sup> "more than 10 consecutive days or a pattern of removals that constitutes a change in placement"

Linjoy (Goodling) - if put aside disc, you've time in some other way to doing all we want.

But disc. will overwhelm - become major prob all over country + up here.

Says you have to provide ed servs for less than 10 days.

prob is ref back to 521(a)

need to fix today - totally diff change of policy.

Don staff - parent well taken

Can we fix prior to those getting out?

PH: We all agree about policy.

Should go back - look at refs - get back to you ASAP.

Linjoy: If you had put 521a in refs, I'd be OK. They do what we all agreed to.

PH: We need to be able to spk in unified way when this becomes public. We're willing to help in ed. process. But we need same message - need to be able to ~~say~~ say 1 thing

Goodling: Q+A #4 - additional suspensions. This is good. (codilloe treatment)  
Some flexibility after 10 days: only a "pattern" triggers.  
But this is NOT in reg.

JH: We're OK on the policy here too.

It's just a 2. of some saying it's not clear in reg

Hyp: We're very near, but need to have these "technicals" made. That's the only way we're going to defeat the people who want to kill.

GOODLING: Risk to level of heart failure:

p. 271-552e - says can never remove kid from algebra if age approp.  
Totally new concept.  $\rightarrow$  If kid can't learn something (e.g. calculus)

JH: That's not what

Goodling: Doesn't say that

Perhaps: Others interpret this as Sally (Goodling) does. Red flag situation

$\downarrow$   
go back to statutory language

this comes out of nowhere

not even in proposed reg - will be litigated like crazy.

JH: Can use 2 + a to clarify this

p. 251 - 523f - also new.

"deficiencies in IEP." Someone will always find such a deficiency.

Perhaps - you don't need 523f. Overkill. Invites litigation.

Ed: This only refers to deficiency found by public agency.

Goodling: Others will use this - themselves argue that IEP is deficient.

[Not sure what problem is, but seems pretty small]

125 Private health insurance

We should recommend you be silent.

This instead expands on proposal of.

Makes it harder for schools to access private insurance.

Methods - Also press burden on schools to review & evaluate indiv health ins. policies.

Goodling - NOT mentioned in statute at all opens huge hornet's nest.

Ed: This is same as policy interp for 25 yrs.

→ We decided not to deal w/ This in the statute  
Kennedy - Agree that best approach to private insurance is to be silent. Agree that school people can't do this.

Methods 106c - grades to grade.

Don't understand what this is supposed to do.

↓

NOT  
REALLY  
AN  
ISSUE?

GOODLING - 171 - charter schools that aren't in CEA

Ensure that someone is accountable to provide services.

GOODLING 206 - "same status as public schools" | Also 207 -

Ed Again, limited meaning

GOODLING - you should clarify.

GOODLING - Def of parent training p. 94 67ii:

has to provide assistance to litigate.

Ed - Nope.

DEW - Too broad.

↓  
New concept introduced in final up that is not in statute.

168 Assistive technology

Seems OK

Back to discipline - 121b

But it doesn't say a "pattern," so we will think they have any flexib. after 10 days.

 Mickey Ibarra  
02/22/99 05:37:20 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Joseph P. Lockhart/WHO/EOP, Amy Weiss/WHO/EOP

cc:

Subject: NGA Special Ed Message

----- Forwarded by Mickey Ibarra/WHO/EOP on 02/22/99 05:36 PM -----

  05:32:03 PM

Record Type: Record

To: Mickey Ibarra/WHO/EOP, Fred DuVal/WHO/EOP, Tanya E. Martin/OPD/EOP

cc:

Subject: NGA Special Ed Message

Obviously, the GOP Governors are trying to push their message that there should be "no new initiatives (class size, school construction) unless current federal commitments (IDEA at 40 %) are fully funded." Jonathan Jones (Carper) has inserted into NGA policy a helpful and important twist: "No new iniatives OR TAX CUTS unless federal commitments are fully funded."

Statutory Provision	NPRM	Hill Position	Final Rule Outcome
<b>Exceptions from Services For Children of Certain Ages [or, exceptions to Free and Appropriate Public Education (FAPE)]</b>			
Statute provides for specific exceptions for 18-21 year olds dependent on state law as to non-disabled children. Makes no mention of graduation.	Graduation is a change in placement which requires certain services (e.g., a re-evaluation).  ED provided non-binding guidance that a student would have to graduate with a regular diploma (i.e. not a lesser degree like a certificate of attendance) in order for eligibility of services to terminate.	No reevaluation should be required.  Graduation with a regular diploma or with a lesser diploma (e.g., certificate of attendance) should end the right to FAPE.	ED regulates on the following: Graduation with a regular high school diploma or aging out of eligibility (age depends on state law) means the following: - no more services need to be provided (e.g., no re-evaluation is necessary) ✚ - because this is a change in placement, parents must be provided notice  Graduation with anything less than a high school diploma (e.g., a certificate of attendance) means that services must still be provided.
<b>Involvement of the Regular Education Teacher</b>			
The regular Ed teacher must be a member of the IEP team	Only issue that ED regulated on was: other regular ed teachers that do not attend the IEP meeting must be informed of what decisions were made at the meeting.  No further guidance was given.	ED should have provided a clearer picture of what it means to be a member of an IEP team. In providing this clear picture, ED should ensure that burden on local processes is minimized. For example, ED could point out that a teacher does NOT have to attend every IEP meeting in order to be a member of the IEP team.	ED provides non-binding guidance in a Q and A section that the reg ed teacher does not need to be at the entire meeting and does not need to take part in all the decisions... <del>but it is implied that the reg ed teacher must attend at least a part of every meeting.</del>
<b>Pendency (placement of child during a proceeding)</b>			
Child remain in their current placement while proceedings go on, unless the school and parent agree otherwise.	If the first hearing officer determination sides with the parent, then the child remains in (or moves to) the placement the parent had desired.  If the first hearing officer determination sides with the school, then the child remains in its current placement until all remaining proceedings are decided.	Lack of symmetry between treatment of parents and schools.  Schools need more flexibility on placement decisions and should not be handcuffed by parent demands, especially after hearing officer rules in favor of school.	Same as NPRM with one change: - The hearing officer determination that triggers the pendency provision must be at the state level. Thus, lower level hearing officer determinations (e.g. at the district level) would not trigger pendency.

Educ - IDEA

Statutory Provision	NPRM	Hill Position	Final Rule Outcome
<b>Discipline</b>			
<p>School personnel have the authority to remove child with a disability for not more than 10 school days before a change in placement occurs.</p>	<p>Defines 10 school days as cumulative within a given year. Thus, once a child is suspended for an 11th day in a given year, the following services must be provided:</p> <ul style="list-style-type: none"> <li>- education services as decided by the IEP team</li> <li>- a behavioural assessment plan must be put into place by the IEP team</li> <li>- a manifestation determination must be conducted to determine whether the child's behavior was a manifestation of the disability</li> </ul> <p>In the event of subsequent removals after the 11th cumulative day, the following would have to occur for each removal:</p> <ul style="list-style-type: none"> <li>- education services determined once again by IEP team</li> <li>- behavioral assessment plan must be redone each time by the IEP team</li> <li>- new manifestation determination required</li> </ul>	<p>Strong objections to ED triggering all these services on the 11th cumulative day.</p> <p>ED should not regulate beyond what is explicitly in the statute.</p> <p>What the statute would hold is:</p> <ul style="list-style-type: none"> <li>- A change in placement (triggering all the services) would occur if there was a removal of more than 10 consecutive days</li> <li>- No services are mandated on the 11th cumulative day, and no services are mandated for each subsequent removal unless and until there has been a change in placement.</li> <li>- Local school personnel would have flexibility to decide whether a series of short term suspensions were eventually amounting to a pattern that qualified as a change in placement which would trigger all the services.</li> </ul>	<p>The following limited services are available on 11th cumulative day:</p> <ul style="list-style-type: none"> <li>- education services, if any are needed, as decided by school personnel in consultation with the special ed teacher (i.e., NOT the IEP team)</li> <li>- a behavioural assessment plan must be put in place by the IEP team, if one does not already exist, within 10 days of the 11th cumulative day. (In other words, the clock begins ticking on the 11th cumulative day... giving the IEP team 10 days to put the plan in place)</li> <li>- no manifestation determination required</li> </ul> <p>In the event of subsequent removals after the 11th cumulative day, the only service that would need to be provided would be a review of the behavioural assessment plan which could be done without an IEP team meeting.</p> <p>A change in placement, which triggers all the services (e.g., manifestation determination) would occur in the following situations:</p> <ol style="list-style-type: none"> <li>(1) there is a removal for 10 consecutive days</li> <li>(2) there is a removal for 11 cumulative days</li> </ol> <p>AND there exists a pattern of removals that evidence a change in placement.</p>

---

---

Diana Fortuna

07/27/98 11:43:10  
AM

---

---

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: See the distribution list at the bottom of this message

Subject: FYI from National Council on Disability to Chuck Ruff

The issues Marca raises to Ruff are not ones we are looking to be out front on publicly.

### MEMORANDUM

TO: Charles F. C. Ruff  
Counsel to the President

FROM: Marca Bristo  
Chairperson, National Council on Disability

RE: Congressional Attacks on Civil Rights Laws for People with Disabilities

DATE: July 24, 1998

CC: Minyon Moore, Assistant to the President and Director of Public Liaison

---

Minyon Moore suggested that I be in touch with you regarding ongoing Congressional efforts to undermine three critical laws that protect the civil rights of people with disabilities, the Americans with Disabilities Act (ADA), the Rehabilitation Act, and the Individuals with Disabilities Education Act (IDEA). As a long-term adviser to the President on disability issues, I want to call your attention to these threats in the hope that you can help shore up Administration support for opposing any weakening amendments to civil rights laws.

On Sunday, we will celebrate the eighth anniversary of the signing of the ADA, and it is critical that the President and this Administration continue to support this ground breaking law and oppose any attempts to weaken it. The anniversary may focus attention on the issues raised in this letter for the press. Recently, Senators Thurmond and Helms introduced legislation in the Senate that would amend the ADA and the Rehabilitation Act to eliminate the protections these laws afford to people in prison, including prison employees.

This proposed legislation, the "State and Local Prison Relief Act" (S. 2266), is a response to the Supreme Court's unanimous decision this term in Pennsylvania Department of Corrections

v. Yeskey, which held that Title II of the ADA does apply to state and local prison facilities. I recognize that the civil rights of prisoners and prison employees with disabilities may not be an issue of great concern to many voters, but I want to emphasize that any amendment to the civil rights protections in the ADA and the Rehabilitation Act would be considered unacceptable by the leadership of the disability community. The Administration supported the application of the ADA to state and local prisons in its brief in the Yeskey case, and I am hopeful that the President will oppose and veto if necessary any legislation that would amend the ADA in this area.

In a related vein, Congressmen Livingston and Riggs and others have been working to weaken the protections provided to children with disabilities in IDEA. Under IDEA, just reauthorized last year, children with disabilities are entitled to a free and appropriate public education in the least restrictive environment consistent with their educational success from birth until they turn 22. Congressman Riggs has attached language to the House appropriations bill for the Department of Education that would remove this entitlement for some youth over age 18 who are in adult prison facilities.

In a separate amendment to the same appropriations bill, Congressman Livingston seeks to dramatically expand the ability of public schools to remove undesirable students with disabilities from the classroom without having to go through due process procedures. The most recent reauthorization of IDEA, signed by the President just last year, already includes a compromise on the contentious issue of discipline that expanded the ability of schools to remove children with disabilities from the classroom when they bring a weapon or drugs to school. Congressman Livingston and others are dissatisfied with the bipartisan compromise on discipline and are trying to reopen this thorny issue in the context of the appropriations process.

Parents of children with disabilities are fighting hard to hold the line on IDEA, but they may need a veto from the President if the Riggs, Livingston, or other amendments make it through the Congress. Secretary Riley has fought hard to protect students with disabilities and not to reopen the issue of school discipline in this Congress. When the President hosts the White House conference on School Safety in the fall, it would not be surprising for educators, particularly school boards, to fight for more "flexibility" in IDEA so that schools can more easily expel "unruly" children from the classroom. It is critical that the President not succumb to the push for more flexibility on discipline, which will translate into even more children with disabilities leaving school early without the skills they need to live independently and pursue meaningful careers.

As a disabled Clinton appointee, I see the most recent attacks on ADA, the Rehabilitation Act, and IDEA as related and highly partisan. Civil rights protections for people with disabilities are not well understood and easily mischaracterized by opponents. If Congress is successful in weakening any of these laws before they go home, we can count on more attempts to chip away at the federal protections offered children and adults with disabilities in the next Congress. I am hoping that you will be an advocate for the President to continue to hold the line on these civil rights laws, even if it means expending some political capital to do it.

Given the President's strong civil rights record on disability issues, I am confident that he will fight attempts to weaken federal civil rights protections for children and adults with disabilities.

I am going to be in town on Wednesday, July 29 for a meeting with the President and the Task Force on Employment of Adults with Disabilities, and would love an opportunity to meet with you if your schedule permits. I will be in touch to see if we can arrange a meeting. If we cannot get together next week, I hope we will have an opportunity in the near future. Thank you for your attention to these matters.

Message Copied To:

---

Cynthia A. Rice/OPD/EOP  
Michael Cohen/OPD/EOP  
Tanya E. Martin/OPD/EOP  
Jose Cerda III/OPD/EOP  
Leanne A. Shimabukuro/OPD/EOP  
Robert M. Shireman/OPD/EOP

---

---

Diana Fortuna

05/01/98 03:58:53

PM

---

---

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Tanya E. Martin/OPD/EOP, Jose Cerda III/OPD/EOP, Leanne A. Shimabukuro/OPD/EOP, Laura Emmett/WHO/EOP

Subject: Veto threat Dept of Ed wants on disabled youth in prisons issue; can you look at this today?

We are supposed to decide on this today. Riley wants to send a letter to the Hill saying he'll recommend a veto of a bill by Riggs. The bill is scheduled for a markup next Wed. in the House. There is no companion Senate bill at this time.

Disabled children have a federal civil right to an education until they are 21. California doesn't want to honor this right for juveniles in adult prisons. Before last year's IDEA amendments, the penalty for this was (1) withholding all special funds and (2) taking action in court. Under the deal struck last year when IDEA was reauthorized, the first penalty was reduced to withholding only the small amount of funds associated with these students. The second penalty was not touched.

(Education made one other noteworthy compromise on this last year: Under last year's IDEA deal, youth only have rights if they had previously been identified as disabled. If they are identified as disabled in prison, the state is no longer under any obligation to education them.)

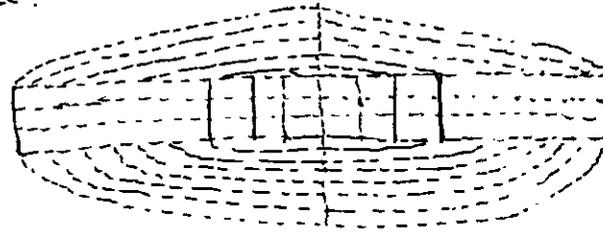
Education is now going after California in court. Riggs is mad, because he thought he reduced the penalty to the lesser monetary sanction. Education's position is that last year's deal didn't affect their right to take court action. Riggs' current bill would take away Education's power to go after California in court.

I think all of us in DPC basically support Riley making the argument in strong terms that this was a deal where we made compromises last year, and we don't want to reopen it. But we are not comfortable with the veto threat. Education will probably appeal this; my guess is that OMB will side with Education. Let us know if you agree with us. Colleagues, let me know if I've misstated any of your positions.

Bill Schultz - 301-827-3370

Thank him

Concerned - what was his impression -  
totally collaborative  
super corp while maintaining its objectives  
apprec. how they've cooperated.



Raidi mtg - general cotel - up a FDA

Report language - done

~~Hutchinson~~ is worked out.

4:00 - Kennedy people -

Also, on FDA.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

6  
Educ - school construction  
and  
Educ - block grants  
and  
Educ - IDEA

**STATEMENT OF ADMINISTRATION POLICY**

**TO:** RAHM EMANUEL  
LARRY STEIN  
TRACY THORNTON  
CHUCK BRAIN  
JOHN PODESTA  
SYLVIA MATHEWS  
GENE SPERLING  
BOB SHIREMAN  
BRUCE REED  
MIKE COHEN  
RON KLAIN  
JOHNSON BRODERICK  
JASON GOLDBERG

*Elana -  
Should have  
included you  
this list. EJ*

**CC:** DEPUTY DIRECTOR LEW  
CHARLES KIEFFER

**FROM:** Alice Shuffield  
**DATE:** April 17, 1998  
**SUBJECT:** FOR YOUR CLEARANCE --  
Letters on S. 2646 - The Education Savings Account Legislation

Attached are the following two draft letters regarding H.R. 2646, the Education Savings Account Bill, which will be considered on the Senate floor on Monday:

**POTUS ltr:** The draft Presidential letter supports the Moseley-Braun amendment to replace the "A-Plus accounts" provision with a provision to invest in school construction. The letter issues a Presidential veto on the bill if it contains the A-Plus account provision (elevation from the previous Secretarial level veto threat).

**Riley letter:** The second letter, from Secretary Riley, would go to the Hill after the President's letter. (We would add appropriate language to reference the President's letter.) In addition to referencing the President's veto threat on the A-Plus Accounts provision, the Secretary would also issue a veto threat on the [provisions regarding Block Grants and IDEA.]

**Clearance:** Staff at OMB, NEC, and Education are comfortable with the letters. Treasury prefers to omit the 2nd paragraph on the A-Plus Accounts in the Ed letter, as noted.

**Timing:** We aim to send the President's letter on Monday, and the Education letter would likely follow late Monday or early Tuesday.

Please contact Alice Shuffield or Kate Donovan at 5-9139 with your comments by noon Monday.

April 20, 1998

Draft Potus Letter

Honorable \_\_\_\_\_  
United States Senate  
Washington, DC 20510

Dear Senator \_\_\_\_\_:

In the next few days, you will have the opportunity to vote for the first time on a version of my proposal to help build and modernize more than 5,000 schools across America. I am writing to ask for your support for this important effort.

Never before have the education infrastructure needs of the Nation been so great. In order to accommodate record enrollments and small class sizes, to repair aging buildings, to take advantage of new technologies, and to better educate children with disabilities, States and localities are faced with unprecedented inventories of construction and renovation needs. The Federal government helps build roads, bridges, and other infrastructure needs, but none of that will matter much if we let the education infrastructure come crumbling down on our children. We must be part of the solution.

The amendment that I understand will be offered by Senator Moseley-Braun to H.R. 2646 would allow communities to issue nearly \$22 billion in bonds. Because bond purchasers would receive interest payments through a Federal tax credit, communities' costs would be reduced by one-third or more.

The Moseley-Braun amendment would replace a provision in the bill that is both bad education policy and bad tax policy. The so-called A-Plus accounts in the reported bill would divert needed resources from public schools, and would disproportionately benefit the most affluent families. Replacing the A-Plus accounts with the school modernization plan would make this a bill that I would be proud to sign. If, however, the bill contains the A-Plus accounts provision, then I would veto it.

Our children deserve schools they can be proud of. I urge you to help our schools provide a learning environment that will prepare our children for the challenges of tomorrow by supporting the Moseley-Braun amendment.

Sincerely,

Draft Ed Letter

DRAFT  
APRIL 17, 1998  
6:00 PM

Honorable \_\_\_\_\_  
United States Senate  
Washington, DC 20510

Dear Senator \_\_\_\_\_:

I am writing to reiterate my strong objections to the regressive proposal for "A-Plus Accounts" in H.R. 2646, now awaiting action by the Senate, and to express my equally strong objections to possible amendments to that bill that would convert Federal education programs to block grants and revise the Individuals with Disabilities Education Act. I would recommend that the President veto this legislation if it were to reach him with any of those provisions included.

A-Plus Accounts

As the Administration has noted on several prior occasions, the Coverdell/Archer proposal to accord tax benefits to expenses of elementary and secondary education through individual retirement accounts is both bad education policy and bad tax policy. Instead of targeting limited Federal resources to build stronger public schools, which would help ensure that all our Nation's children receive the education they need to become the most productive citizens possible, the bill would divert needed resources from these schools.

 [ED would like to keep the following paragraph from its 4/15 draft unless it is included in the President's letter or in a letter from Secretary Rubin:

H.R. 2646 would disproportionately benefit the most affluent families and provide little benefit to lower- and middle-income families or to families whose children attend public schools. Families in the highest income bracket that saved the maximum amount permitted by H.R. 2646 would receive more than twice the benefit of families in the lowest tax bracket that saved the same amount. Moreover, the bill would not create a significant incentive for families to increase their savings for educational purposes; it would instead reward families, particularly those with substantial incomes, for what they already do. Finally, a recent analysis by the Congressional Joint Committee on Taxation shows that taxpayers with children in public schools would receive an average benefit of only \$7 under this proposal in 2002. This is not the way to improve education.]

I understand that Senator Moseley-Braun will propose a substitute amendment, which would devote revenue from this bill to help finance bonds for the construction and renovation of public schools. We must help to ensure that our children are educated

Page 2 - Honorable \_\_\_\_\_

in safe, modern, and well-equipped schools. I also note that several other possible substitute amendments would do far more to improve education than would the A-Plus Accounts now in H.R. 2646.

### Block grants

I would also strongly oppose any amendments to the bill that would convert Federal education programs into block grants. As the President noted last fall, such a step would halt many of our most successful efforts to improve education, including our efforts to raise educational standards, make computers available in every classroom, establish more charter schools, and keep our schools safe and free of drugs. It could also seriously harm the ESEA, Title I program, which provides extra help to low-income students so that they can master the basic skills of reading and math, paving the way for them to reach high academic standards.

The American people rightly look to the Federal Government to focus its efforts not on general aid to school districts, but on national priorities, such as improving educational opportunities for poor children and other children with special needs, combating youth drug-abuse and school violence, and researching and disseminating information on what works. This Administration has worked diligently to eliminate unnecessary regulations and take other steps to promote State and local flexibility in carrying out these targeted efforts, while supporting strong accountability mechanisms, such as the Government Performance and Results Act of 1993, that ensure program effectiveness and results and that justify continued support by the taxpayers. Block grants would replace these worthy efforts with general aid, providing no focus, no accountability for results, and no rationale for ongoing support.

The issue here is not about who controls public education -- we all agree that that responsibility rests at the local and State levels. The question, rather, is whether the Federal Government will maintain its long-standing, bipartisan commitment to helping local communities strengthen accountability, raise standards, and improve student achievement, by providing assistance that focuses on our neediest children and schools and on activities in which national leadership can play a critical role.

### Individuals with Disabilities Education Act (IDEA)

As you know, it was less than a year ago that the President signed the IDEA Amendments of 1997 into law. That legislation was the product of comprehensive bipartisan negotiations involving both chambers of Congress and the Administration, with broad public input from many other individuals and interested organizations. The final product involved compromises on many important and sensitive issues, including disciplining children

Page 3 - Honorable \_\_\_\_\_

with disabilities, and was widely recognized as a significant improvement of P.L. 94-142, the landmark legislation from 1975 that guarantees a free appropriate public education to our Nation's children with disabilities. By passing this legislation overwhelmingly less than a year ago, the Congress expressed its strong support for improving educational results for children with disabilities.

Because I firmly believe that last year's agreement on the IDEA should be honored, I strongly oppose revisiting any aspect of the Act this year. I therefore deeply regret that some would seek to reverse the substantial progress that we made last year by proposing to amend the new IDEA, particularly in complex areas such as discipline. After intense negotiations among all interested parties, the new IDEA gives teachers and schools the tools they need to ensure that our schools and classrooms are safe places of learning, while [scrupulously?] protecting the rights of children with disabilities to due process and an appropriate education. I view with great alarm the proposed amendment by Senator Gregg, which could return us to the days when disciplinary measures were used to remove children with disabilities simply because they were more difficult to educate. [Note: ED's prior draft included "scrupulously", as did the President's statement on signing the new IDEA last June. See p. 833 of the 1997 Weekly Compilation of Presidential Documents.]

I urge you to sustain the major achievements embodied in the bipartisan 1997 IDEA legislation, and to reject any efforts to undermine those achievements by amending the IDEA.

#### Summary

I urge you to oppose the unwarranted and harmful authority for A-Plus Accounts in H.R. 2646, as well as any amendments that may be offered to convert Federal education programs into block grants or to undo last year's IDEA agreement. I would recommend that the President disapprove this bill if it contains those features. The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program and that enactment of H.R. 2646 with the objectionable features I have described would not be in accord with the President's program.

Yours sincerely,

Richard W. Riley

*Administration of William J. Clinton, 1997 / June 5*

833

~~approved June 4, was assigned Public Law No. 105-17.~~

**Statement on Signing the Individuals With Disabilities Education Act Amendments of 1997**

*June 4, 1997.*

It is with great pleasure that I have today signed into law H.R. 5, the "Individuals with Disabilities Education Act Amendments of 1997." This Act reaffirms and strengthens our national commitment to the education of children with disabilities and their families.

Since the enactment of Public Law 94-142 over 20 years ago, the Individuals with Disabilities Education Act (IDEA) has made it possible for millions of children with disabilities to receive an education, helping them become productive adults. The bill before me today builds on that success story by:

- putting an even sharper focus on improving educational results for these children through greater access to the general curriculum and inclusion in State and districtwide assessments;
- giving parents more information, including regular reports on their children's progress, and a greater role in decisions affecting their children's education;
- reducing paperwork and increasing administrative flexibility;
- asking children with disabilities, along with schools, teachers, and parents to assume greater responsibility for the children's success, and
- promoting the use of mediation to resolve disagreements between parents and schools.

This bill also gives school officials the tools they need to ensure that the Nation's schools are safe and conducive to learning for all children, while scrupulously protecting the rights of children with disabilities. It also includes a substantial commitment from the Federal Government to support the professional development of special and regular education teachers who work with children with disabilities, research and technological innovations to improve their education, the training of

parents, and the provision of technical assistance.

This bipartisan legislation is the result of a unique process involving the Congress, the Department of Education, parents, educators, the disability community, and other interested parties. I thank all who played a part in this great achievement. Successful implementation of the revised IDEA is the key to the future for children with disabilities and it will help them become successful and contributing members of their communities.

William J. Clinton

The White House,  
June 4, 1997.

*Note: H.R. 5, approved June 4, was assigned Public Law No. 105-17.*

**Statement on Supplemental Disaster Assistance Legislation**

*June 4, 1997*

In moving ahead on this flawed legislation, the Republican leadership is once again delaying the disaster assistance needed by people and communities in the Dakotas, Minnesota, and 30 other States. With individuals, families, and businesses awaiting the assistance they need to rebuild, I urge the Republican leadership to cut political aside and pass a clean disaster assistance bill.

If the Republican majority is set on this course of adding contentious and extraneous provisions, they should send me this bill as quickly as possible. I will veto it as soon as it arrives and send it back so they can send me a clean disaster assistance bill immediately that keeps aid flowing to those in need. Americans in need should not have to endure this unnecessary delay.

**Letter to the Federal Election Commission Seeking To End the Soft Money System in Domestic Politics**  
*June 4, 1997*

*To the Members of the Federal Election Commission:*

I am writing to you, pursuant to 11 CFR Part 200, to request that you take action



**FORTUNA D @ A1**  
02/03/98 11:41:00 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: BUDGET SHORTCHANGES DISABLED, CRITICS SAY

Date: 02/03/98 Time: 08:31

EBudget shortchanges disabled, critics say

WASHINGTON (AP) The proposed education budget for 1999 would give less than a 1 percent increase to special education programs for millions of disabled children despite an overall spending increase of more than 10 percent and new programs to hire teachers and build schools.

The tiny increase in grants and other aid to carry out the Individuals with Disabilities Education Act prompted complaints Monday from Republican members of Congress and advocacy groups for the disabled.

Republican lawmakers say IDEA typifies federal laws that require billions of dollars of state and local spending. Federal taxpayers pay about 9 percent of the cost of the law despite legislative authority to pay 40 percent.

GOP lawmakers have already proposed a \$9.3 billion increase in IDEA spending over six years, and Congress last year voted to spend more than the administration had proposed. Clinton's budget seeks just \$23 million more, an increase of 0.5 percent, for a 1999 total of \$4.6 billion.

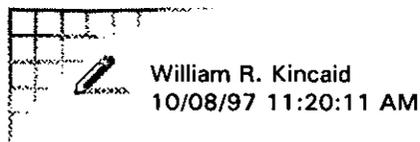
"We know that it will remain a huge unfunded mandate to the states and local school districts until we boost funding for it," said Rep. Bill Goodling, R-Pa., chairman of the House Education and Workforce Committee.

Advocates for the disabled say a 1997 rewrite of the law created additional requirements that will make carrying out IDEA even more expensive.

"In essence, the Clinton administration has sacrificed special education to promote its new education initiatives," said Joseph Ballard, director of public policy at the Council for Exceptional Children, an advocacy group.

Education Secretary Richard Riley, defending the static budget request, said the budget for disabled education has risen 64 percent in the last three years. He said disabled students will benefit from smaller class sizes and renovated classroom buildings being sought for all schools in the budget.

APNP-02-03-98 0841EST



Record Type: Record

To: Elena Kagan/OPD/EOP  
cc: Laura Emmett/WHO/EOP, Michael Cohen/OPD/EOP  
Subject: IDEA case Q&A

Attached, for your review, is a brief draft Q&A on the Supreme Court's request for the Administration's views on a pending case under the IDEA. Mike, Diana, and Rob Weiner all have reviewed and ok'd, and Rob also got sign-off from DOJ. At this point, it is probably less than likely that we will get a Q on this, but I'd like to get something to the press office just in case.

The AP story on this is below, as well.



Subject: COURT ASKS ADMINISTRATION OPINION ON NURSES FOR ...

Date: 10/06/97 Time: 10:55

SCourt asks administration opinion on nurses for disabled students

WASHINGTON (AP) The Supreme Court today asked the Clinton administration whether it thinks public school districts must pay for nurses to accompany some disabled students throughout the school day.

The court wants to hear Justice Department lawyers' view of rulings that require a Cedar Rapids, Iowa, school district to pay for the nursing services needed by a teen-age boy identified in court papers as Garret F.

The justices are not expected to say whether they will grant full review to the Iowa case until hearing from the government lawyers, which could take months.

At issue is the scope of the federal Individuals with Disabilities Education Act. The law provides that all children with disabilities receive a "free appropriate public education."

Under the law, public schools are required to provide various "special education and related services." But an exception is made for medical services.

Garret, injured in a motorcycle accident at age 4, is a quadriplegic and ventilator dependent. His mental abilities were unaffected, and he is now in the ninth grade.

During the school day, he requires a personal attendant to see to his health-care needs. Through most of his schooling, a licensed practical nurse has served as that attendant.

In 1993, Garret's mother asked the school district to pick up

the costs of providing an attendant for Garret.

She said such costs are to be free ``related services'' provided under the federal law. But school officials said one-on-one nursing services are medical, not educational, and do not have to be provided at taxpayer expense.

A federal trial judge and the 8th U.S. Circuit Court of Appeals ruled for Garret and against the school district.

The appeals court relied heavily on a 1984 Supreme Court ruling that said public school officials had to pay for and provide a special procedure for a child disabled by spina bifida and unable to urinate by herself.

Such services, the high court said then, ``are no less related to the effort to educate than are services that enable the child to reach, enter or exit the school.''

But that 1984 opinion added: ``It bears mentioning that not even the services of a nurse are required.''

In the appeal acted on today, lawyers for the Cedar Rapids school officials noted that three other federal appeals courts have ruled that schools don't have to pay for continuous services provided by licensed nurses.

The case is Cedar Rapids Community School District vs. Garret F., 96-1793.

APNP-10-06-97 1058EDT

# Withdrawal/Redaction Marker

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. release	Phone No. (Partial) (1 page)	09/08/1997	P6/b(6)

### COLLECTION:

Clinton Presidential Records  
Domestic Policy Council  
Elena Kagan  
OA/Box Number: 14361

### FOLDER TITLE:

Education - IDEA

2009-1006-F  
ke671

### RESTRICTION CODES

#### Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

#### Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Educate - IDEA

CC Elena Kagan  
 Mike Cohen  
 Bill Kincaid  
 Barry White 5.7752  
 Larry Haas, OMB  
 Diana

Post-it* Fax Note	7671	Date	9-8	# of pages	5
To	Bill White	From	Patly Smith		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #	456-6218	Fax #			

# Press Release

For Immediate Release  
Revised

Contact: Lynda Voyles  
 703-264-9478 (O)  
 P6/(b)(6) (H) [001]

## President Clinton Short Changes Special Education

### *Undermines Tax Relief for Special Education Costs*

RESTON, VA, SEPTEMBER 8, 1997—Despite public statements supporting children with disabilities, President Clinton is giving the education of such children short shrift in his funding recommendations. In his 1998 proposal, the president requested \$4.2 billion for special education, compared to \$4.35 billion proposed by the House and \$4.95 billion by the Senate.

In addition, the president's Office of Management and Budget, in a September 2 Statement of Administration Policy, "strongly urge[d]" the Senate to reduce its proposal for "lower priority" programs--which includes special education. The administration says these programs would be "adequately funded" at the administration-requested level.

50 prog's  
 adequately  
 funded  
 at the  
 request  
 level

President Clinton's funding recommendations contrast sharply with statements he made during his campaign and signing of the Individuals with Disabilities Education Act of 1997 (IDEA). In response to CEC questions about funding, he said, "I know how much IDEA means to millions of students with disabilities and their parents. I am committed to maintaining IDEA so that every American student with a disability will receive excellent educational opportunities."

-more-

**President Shortchanges Special Education, Pg. 2**

In sharp contrast to the president's goal of ensuring that all children can read by the end of the fourth grade, he requested only a 4.5 percent increase in the Part B program for children with disabilities -- *barely enough to cover inflation*. House members proposed a 7.7 percent increase for this program, and the Senate acknowledged the cost of implementing IDEA with its 27 percent increase. Children who have difficulty learning to read due to a disability need teachers and programs that meet their learning needs. In order to meet the overall objective of "America Reads," IDEA is essential to the needs of the 10 percent of children with challenges such as blindness, learning disability, or other impairment.

"While The Council for Exceptional Children appreciates the President Clinton's commitment to education in general," said Joseph Ballard, CEC's Director of Public Policy, "we regret that he does not appear to be as sensitive to the needs of children with disabilities, nor the needs of taxpayers for relief, as do members of Congress on this particular issue."

The newly reauthorized IDEA would, for the first time, offer local tax relief from the cost of educating children with disabilities. These provisions were championed by school boards, administrators, and parents, as well as special education oriented organizations such as CEC. For tax relief to be triggered, IDEA must be funded above \$4.9 billion. By proposing a lower figure, the president denies local tax relief.

The Council for Exceptional Children, the largest professional association for special educators, works to improve the educational success of students with disabilities and/or gifts and talents. CEC represents members serving more than 5 million students with disabilities and 2.5 million gifted students in the United States.

####



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

September 2, 1997  
(Senate Floor)

## STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

### S. 1061 – DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION, AND RELATED AGENCIES APPROPRIATIONS BILL, FY 1998

(Sponsors: Stevens (R), Alaska; Specter (R), Pennsylvania)

This Statement of Administration Policy provides the Administration's views on S. 1061, the Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations Bill, FY 1998, as reported by the Senate Appropriations Committee.

The Committee has developed a bill that provides requested funding for many of the Administration's priorities. We are pleased that the Committee has fully funded Bilingual and Immigrant Education, School to Work, and Education Technology Programs. The Administration is also pleased that the Committee has limited the number of appropriations riders, consistent with the terms of the Bipartisan Budget Agreement. The Senate is urged to continue this practice. As discussed below, the Administration will seek restoration of certain of the Committee's reductions.

The Administration is committed to working with the Senate to identify reductions in the bill in order to find offsets for the restoration of funds that the Administration seeks. For example, the Committee bill provides nearly \$1.5 billion more than the President has requested for three dozen authorities in the Department of Education, while cutting the President's request by almost \$2 billion. Similar reallocations are made in other sections of the bill. We strongly urge the Senate to reduce funding for lower priority programs, or for programs that would be adequately funded at the requested level, and to redirect funding to programs of higher priority, particularly those specified in the Bipartisan Budget Agreement, as noted below.

Unfortunately, the Administration understands that a number of controversial amendments may be offered, such as an amendment to halt the President's national testing initiative, an amendment to prohibit the use of funds in the Act for supervising the Teamster's election, an amendment to enable states to privatize the administration of public assistance programs, and another amendment to provide that welfare recipients in workfare can be paid at rates below the minimum wage. In addition, a number of these proposals, as well as certain provisions of the Committee bill, such as the lack of funding for the President's America Reads Challenge, are contrary to the Bipartisan Budget Agreement. If such policies were adopted, particularly in light of other concerns raised in this Statement of Administration Policy, the President's senior advisers would be forced to recommend that the President veto the bill.

Education - IDEA

Please wait in  
- copy ASBP,cc Bill Kincaid  
This came from  
Pat Lewis.  
-DianaOVERVIEWThe Progress

The Individuals with Disabilities Education Act (IDEA) has a long history. Prior to its implementation in 1975, approximately 1 million children with disabilities were shut out of schools and hundreds of thousands more were denied appropriate services. Since then, the legislation changed the lives of these children. Many are learning and achieving at levels previously thought impossible. As a result, they are graduating from high school, going to college and entering the workforce as productive citizens in unprecedented numbers.

Ninety percent of children with developmental disabilities were previously housed in state institutions. Today, they are no longer in those settings. As compared to their predecessors, three times the number of young people with disabilities are enrolled in colleges or universities, and twice as many of today's twenty-year olds with disabilities are working.

Unfulfilled Promises

While this is significant progress, we can and must do better. The status of children with disabilities still falls short of our expectations for them.

- Twice as many children with disabilities drop out of school.
- Drop outs do not return to school, have difficulty finding jobs and often end up in the criminal justice system.
- Girls who drop out often become young unwed mothers—at a much higher rate than their non-disabled peers.
- Many children with disabilities are excluded from the curriculum and assessments used with their non-disabled classmates, limiting their possibilities of performing to higher standards of performance.

Strategies for Success

The new IDEA legislation is an attempt to remedy these and other problems that contribute to the barriers children with disabilities face.

IDEA will make these changes by:

- Raising expectations for children with disabilities;
- Increasing parental involvement in the education of their children;
- Ensuring that regular education teachers are involved in planning and assessing children's progress;
- Including children with disabilities in assessments, performance goals, and reports to the public;
- Supporting quality professional development for all personnel who are involved in educating children with disabilities.

### IDEA Accomplishments

Over the past four decades, special education research has provided practical answers to questions about how best to educate infants, toddlers, children and youth with disabilities. These accomplishments have translated into benefits for all our citizens.

- Over 1 million children, many of whom would have been placed in separate schools and institutions 25 years ago, are being educated in neighborhood schools, saving an average of \$10,000 per child per year.
- Nine percent more children with disabilities graduated from high school between 1984 and 1992.
- Youth served under IDEA are employed twice as often as their predecessors, older Americans with similar disabilities who were not served under the law.
- Nearly half of all adults with disabilities have successfully completed course-work in colleges and universities.
- Although less than 1% of the annual expenditures to educate children with disabilities is spent on research and development to improve practice, these dollars have had exponential results. They support programs that allow children with disabilities to become independent learners and self-supporting adults.
- New knowledge has resulted in technologies that have enriched all our lives. For example, the Kurtzweil Machine, originally developed for taking written text and translating it into Braille and speech was the forerunner of the fax machine. Captioning, an aid for the deaf, has become a boon for older Americans with poor hearing and for those who are learning to read and speak English.

## THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

June 4, 1997

A Strong Commitment to Disabled Children and Their Parents. Today President Clinton will sign legislation reauthorizing the Individuals with Disabilities Education Act (IDEA), strengthening and reaffirming our Nation's 20-year commitment to disabled children and their parents. The IDEA demonstrates the Administration's strong support for people with disabilities, helping ensure that children with disabilities are included in all facets of community life and are able to become independent and productive citizens.

Continuing Progress on Raising Standards in American Education. The new law is a step forward for the President's efforts to raise standards and improve American education. The upgraded IDEA reflects key principles from the Administration's reauthorization proposal, with a stronger emphasis on educational results and better support for parents. The reauthorization also protects the safety of all students in the classroom while retaining the essential rights and protections of disabled students. In addition, the new IDEA has a modified funding formula to reduce incentives to inappropriately identify children as having a disability.

Bipartisan Cooperation to Achieve Important National Goals. In his State of the Union address, the President stated that "politics must stop at the schoolhouse door." The legislation the President is signing today shows what is possible when Democrats and Republicans put aside their differences and work to prepare America for the 21st Century.

IDEA: Building on a History of Success. Prior to enactment of IDEA as the Education for the Handicapped Act in 1975, approximately 1 million children with disabilities were shut out of schools and hundreds of thousands more were denied appropriate services. The legislation has changed the lives of these children. Many are learning and achieving at levels previously thought impossible. As a result, they are graduating from high school, going to college and entering the workforce as productive citizens in unprecedented numbers.

- Nine percent more children with disabilities graduated from high school between 1984 and 1992.
- Nearly half of all adults with disabilities have successfully completed course-work in colleges and universities.
- Youth served under IDEA are employed twice as often as their predecessors, older Americans with similar disabilities who were not served under the law.

Strengthening IDEA for the Future. While IDEA has achieved a great deal, we can and must do better. The new legislation strengthens IDEA in several ways:

- Higher expectations and a stronger emphasis on educational results. The new IDEA revises Individual Education Plans for students to better focus on enabling disabled children to participate and progress in the general curriculum. The new law also

reaffirms that all children with disabilities must be included in State and district assessments of student learning, with appropriate accommodations where necessary. In addition, the reauthorized IDEA ensures regular education teachers will be involved in planning and assessing children's progress and supports quality professional development for all personnel involved in educating children with disabilities.

- More information and better support for parents. Under the new IDEA, schools will be required to include parents in meetings to determine student placements. Moreover, the new law requires that parents receive report cards on the progress of their children as frequently as parents of non-disabled children.
- Protecting the safety of all students in the classroom while retaining the essential rights and protections of disabled students. As proposed by the Administration, the new IDEA expands the authority of school officials to remove a child for up to 45 days for misconduct involving weapons or illegal drugs. The new law gives hearing officers the authority now reserved to courts to remove a child whose continued presence would pose a substantial risk of injury to the child or others. The reauthorization also makes clear that educational services may not be terminated for any child with a disability, overriding a recent 4th Circuit decision on cessation of services.
- Reduced costs, paperwork, and litigation. The new IDEA gives school districts financial relief through new cost-sharing provisions, and reduces paperwork for teachers, school districts and States. In addition, parents and school authorities will be able to resolve disputes through new mediation mechanisms.
- Improved funding formula. As proposed by the Administration, the reauthorization makes changes in the IDEA funding formula to diminish incentives to inappropriately identify children as having a disability, although these changes would only take effect in future years as appropriations reach higher levels.

▶ Diana Fortuna  
06/03/97 11:37:50 PM  
.....

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:

Subject: My comments on IDEA speech draft for event this morning FYI; draft needs work

Kincaid is still doing his comments, but we agree it has a ways to go in a short time.

----- Forwarded by Diana Fortuna/OPD/EOP on 06/03/97 11:36 PM -----

▶ Diana Fortuna  
06/03/97 11:24:48 PM  
.....

Record Type: Record

To: Jordan Tamagni/WHO/EOP

cc: Michael Cohen/OPD/EOP, William R. Kincaid/OPD/EOP, Lucia A. Wyman/WHO/EOP, William H. White Jr./WHO/EOP

Subject: Speech draft comments 

Here are my specific line comments on the speech draft in bold. In a more general vein, it would be good to highlight how this agreement was the result of an extraordinary bipartisan process that augurs well for future bipartisan efforts, and how this furthers the President's overall efforts to improve standards and excellence in education.

Thank you, Joshua Bailey, for that introduction, and for sharing your story. I also want to thank the other children, their families and teachers, and all of you who have joined us here today. I thank Secretary Riley for his leadership, and the Department of Education. I especially want to thank Assistant Secretary of Education Judy Heumann, for her personal strength (**could offend, as disabled don't like implication that they are stronger/braver than others; I would recommend "lifetime of leadership" or something like that instead**) and commitment to help disabled children reach their highest potential. And I want give special recognition to the many parents, disability advocates, and education leaders who worked together to make IDEA a reality. (say: "these improvements to IDEA a reality")

To the bipartisan leadership in Congress, especially Senator Jeffords and Representative Goodling; Senator Kennedy, Senator Harkin, Representatives Clay, Martinez, and Riggs, to David Hoppe [HOP-ee], Senator Lott's Chief of Staff, and Bobby Silverstein [silver-steen] on Senator Harkin's staff, and to all the members here today: You are proving once and for all that politics must stop at the school house door, and I thank you for coming together to expand (I would say "strengthen"; not clear what "expand" means) the IDEA.

Lucia: We're not thanking Lott himself?

We have come a long way since the days Judy just described -- days when President Franklin Roosevelt felt he had to hide his disability from the public; days when children like Joshua and the other young people here today had to fight for their right to equal opportunity. **(Advocates say they still have to fight for this today but now law is on their side; in the old days, they couldn't even fight; say instead "days when children...had no opportunity to reach their full potential" or something like that )**

For 22 years, the IDEA has been the driving force behind that progress. Because of that landmark legislation, disabled children all over our country have a better chance than ever before to reach their highest potential. And we have the same obligation to help them make the most of that God-given potential as we do for every other child in America.

We are here today to do exactly that. The expanded IDEA will give our disabled children the educational opportunity that is at the very heart of the American Dream.

Education is the embodiment of everything we must do to prepare our country -- and all our people -- for the 21st century. That is why I have made education my number one priority as President. Last month, I was proud to reach a bipartisan agreement to balance the budget for the first time since President Johnson was in the White House. This budget brings the deficit down to zero over the next five years, but it also reflects our values, preserving Medicare and Medicaid, expanding health care coverage to five million uninsured children, and helping move people from welfare to work.

Most important, this balanced budget makes an historic investment in education -- the most significant increase in education funding in 30 years. It funds the America Reads program that will mobilize a citizen army of one million volunteers to help children all over the country learn to read. It will give millions of families a tax cut to help pay for college. It will give hundreds of thousands more students Pell Grant college scholarships; and it will help tens of thousands of schools across America to wire their classrooms to the Internet. **(It is a VERY sore point in the disability community that the President's education budget priorities do not extend to IDEA, since we have proposed modest increases in IDEA vs. the huge increases in regular ed. Last year, Congress increased IDEA spending by 25%, but everyone knew it was their doing, not ours. So not sure this point works.)**

We know that education is the key to opportunity. But as we just heard from Judy, for far too long, disabled children were closed out of the classroom by ignorance, fear, and just plain prejudice. Their parents were forced to wander in a system without guideposts, a system influenced by stereotypes that disabled children could not be taught to higher standards, could not learn on a par with their peers, and could not become productive, successful members of society.

Then, in 1975, Congress enacted the IDEA. For millions of families across America, it meant the difference between seeing their children's potential languish, and watching it flourish.

For millions of children, it has meant the right to receive the education they deserved: to sit in the same classrooms with their peers, to be held to the same expectations, and to dream the same dreams. And for the millions of students who sat next to them in those classrooms, it has meant the end of ignorance -- and the damaging stereotypes it has produced -- and the beginning of understanding.

**(FYI, this makes it sound like everything was fine as soon as IDEA passed in 1975. In fact, all it meant was kids could go to segregated classrooms. Things have slowly gotten better since then, with disabled kids moving into regular ed classrooms. That "inclusion" is the new frontier in IDEA that we are still working on.)**

Since then, 90% fewer developmentally disabled children are living in institutions. Hundreds of thousands of disabled children are attending public school in regular classrooms. Three times as many disabled young people are enrolled in colleges and universities. And twice as many disabled people in their 20s are in the American workplace, helping to keep our economy growing and maintaining their sense of self-worth.

We must continue to do everything we can to encourage our disabled children, not only to dream of achieving great things, but to achieve those great dreams. Because our job is not yet done. Despite our progress, disabled young people still drop out of high school -- and into uncertain futures -- at twice the rate of their peers. For those who stay in school, lowered expectations and exclusion are still far too common. And too many parents still find themselves fighting for educational resources and services that are their children's right . . . and their hope for a brighter future. We have to do better than this.

Today, I am proud to say that we are taking the next step, and making a good law even better. The expanded IDEA reaffirms and strengthens our national commitment to providing a world class education for all of our children. And it ensures that our nation's schools are safe and conducive to learning while scrupulously protecting the rights of our disabled children.

First, this bill makes it clear once and for all that disabled children have a right to be in the classroom (**I would check this with Heumann; I don't think the prior law was unclear on this**), and to be included in school activities like class trips and special outings. It requires states and school districts to help get disabled children ready to come to school, and to accommodate them once they are there with services ranging from preschool therapy to interpreters to special education tutors. (**This was true of prior law, too; and it stresses the mandate on states. I would say instead "ensures kids with disabilities have the supports they need in the classroom to learn, such as tutors or interpreters or preschool therapy..."**)

Second, this legislation mandates that disabled children learn the same things, with the same curricula, and the same assessments, as all of our children (**say "can learn"? Because some students have cognitive impairments**). We know that children rise to the expectations we set for them -- and disabled children are no exception. I have called for high national standards for all of our children, and so far, ## school systems from California to North Carolina have agreed to adopt those standards. Today, I call on those states -- and every other state -- to hold every child who has the capacity to meet those same high standards.

Third, we know our children's success depends on the quality of their teachers, and the involvement of their parents. This legislation will help more regular classroom teachers get the full range of teaching skills they need to teach disabled children. And it will require teachers to develop individual educational plans to help disabled children to succeed in the regular classroom. (**Check with Heumann; IEP's have long been required; I think the change is that regular ed teachers have to be involved?**) This legislation will also give parents a greater voice in their children's education. And at long last, it will give them something else that other parents have expected from their schools for decades: regular report cards on their children's progress.

High school is a make or break time for all young people, but disabled teenagers often need more help to succeed as they make the transition from school to work. This legislation will require schools to (**safer to drop phrase "require schools to"?)** give them that help by developing individual plans that may include independent living skills, job training, and preparation for higher education. And because acquiring these skills may take extra time, these plans must be in place by the time disabled students reach the age of 14.

That is what the expansion of the IDEA will achieve, and in a few moments, I will sign this vitally important legislation into law. As I do, I want all of you to think about what we are

accomplishing here today. To the millions of children whose futures are in the balance, we are saying: we believe in your potential and we will do everything in our power to develop it. To the millions of families who are depending on us to help them prepare their children to take their place in the world, we are saying: we will help you meet that challenge. To the American people, we are saying that we will not rest until we have conquered the ignorance and prejudice that hurt us all. And to the world we are sending a message, the same message that the FDR Memorial I was honored to dedicate last month makes so clear: in America, you are measured by what you are and what you have achieved. **(The disabled protested that the FDR memorial does not make that point clear; President called for modifications because he agreed.)** In America, the American dream is alive for all of our people.

And now I invite the Members of Congress here with us today, and Tom Hehir [hair], the Director of the Office of Special Education, to join me as I sign into law the Individuals with Disabilities Education Act Amendments of 1997.

## STATEMENT BY THE PRESIDENT

It is with great pleasure that I approve today H.R. 5, the "Individuals with Disabilities Education Act Amendments of 1997." This Act reaffirms and strengthens our national commitment to the education of children with disabilities and their families.

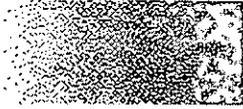
Since the enactment of Public Law 94-142 over 20 years ago, the Individuals with Disabilities Education Act (IDEA) has made it possible for millions of children with disabilities to receive an education that helped them to become productive adults. The bill before me today builds on that success story by:

- putting an even sharper focus on improving educational results for these children through greater access to the general curriculum and inclusion in State and districtwide assessments;
- giving parents more information, including regular reports on their children's progress, and a greater role in decisions affecting their children's education;
- reducing paperwork and increasing administrative flexibility;
- asking schools, teachers, parents, and the children themselves to assume greater responsibility for the success of these children; and
- promoting the use of mediation to resolve disagreements between parents and schools.

H. R. 5 also gives school officials the tools they need to ensure that the Nation's schools are safe and conducive to learning for all children, while scrupulously protecting the rights of children with disabilities. It also includes a substantial commitment from the Federal Government to support the professional development of special and regular education teachers who work with children with disabilities, research and technological innovations to improve their education, the training of parents, and the provision of technical assistance.

This bipartisan legislation is the result of a unique process involving the Congress, the Department of Education, parents, educators, the disability community, and other interested parties. I thank all who played a part in this great achievement. Successful implementation of the revised IDEA is the key to the future for children with disabilities and it will help them become successful and contributing members of their communities.

Educatic - IDEA



---

Barry J. Toiv

---

05/12/97 06:26:12 PM

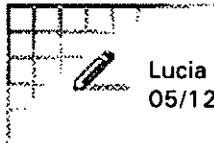
---

Record Type: Record

To: See the distribution list at the bottom of this message  
cc: Elena Kagan/OPD/EOP  
Subject: Re: IDEA statement

We'll do this tomorrow, unless there's a problem.

----- Forwarded by Barry J. Toiv/WHO/EOP on 05/12/97 06:24 PM -----



Lucia A. Wyman  
05/12/97 06:19:32 PM

Record Type: Record

To: Barry J. Toiv/WHO/EOP  
cc:  
Subject: Re: IDEA statement

Both the House and Senate vote tomorrow. House takes bill up on suspension at 2:00 pm; the vote will be at 5 pm tomorrow. Senate debated today and will return to debate tomorrow at 2:15pm. They will vote sometime tomorrow after the House votes. Statement would be good tomorrow after passage in both Houses. Also, I have requested a signing ceremony for 5/16 or 5/21.

Message Sent To:

---

Michael D. McCurry/WHO/EOP  
MCHUGH\_L @ A1 @ CD @ LNGTWY  
Mary E. Glynn/WHO/EOP  
April K. Melody/WHO/EOP  
Joshua Silverman/WHO/EOP  
Darby E. Stott/WHO/EOP

Educatic -  
IDEA

**THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)**  
**DRAFT -- May 13, 1997**

For over 20 years, the IDEA has guaranteed a free, appropriate public education to students with disabilities; IDEA currently assists over 5.7 million students across the U.S. to reach their full potential. *IDEA has greatly decreased the number of children in institutions and has significantly increased the number of young adults with disabilities going on to higher education and employment.* The reauthorization legislation approved by the House and Senate today, with the strong support of the President, strengthens and reaffirms our Nation's commitment to disabled children and their parents.

The new legislation upgrades the IDEA in several ways:

- A stronger emphasis on educational results. The new IDEA revises the content of student Individual Education Plans to better focus on enabling disabled children to participate and progress in the general curriculum. In addition, the new law reaffirms that all children with disabilities must be included in State and district assessments, with appropriate accommodations where necessary.
- Better support for parents. Under the new IDEA, ~~P~~arents will be more fully involved in student placement decisions. Moreover, the new law requires that parents receive report cards on the progress of their children as frequently as parents of non-disabled children.
- Protecting the safety of all students in the classroom while retaining the essential rights and protections of disabled students. As proposed by the Administration, the new IDEA expands the authority of school officials to remove a child for up to 45 days for misconduct involving weapons or illegal drugs. The new law gives hearing officers the authority now reserved to courts to remove a child whose continued presence would pose a substantial risk of injury to the child or others. However, the reauthorization overrides a recent 4th Circuit decision on cessation of services, making clear that educational services may not be terminated for any child with a disability.
- Reduced costs, paperwork, and litigation. The new IDEA gives school districts financial relief through new cost-sharing provisions, and reduces paperwork for teachers, school districts and States. In addition, parents and school authorities will be able to resolve disputes through new mediation mechanisms.
- Improved funding formula. As proposed by the Administration, the reauthorization makes changes in the IDEA funding formula to diminish

incentives to wrongly identify children as having a disability, although these changes would only take effect in future years as appropriations reach higher levels.

The new legislation is the product of a consensus-building process involving congressional Democrats and Republicans, the Department of Education, and representatives of the education and disability communities, and shows how bipartisan cooperation can help achieve important national goals.

#### **Talking Points on the IDEA Reauthorization - DRAFT May 12, 1997**

- The IDEA reauthorization bill that is likely to pass today, with the full support of the President, will strengthen and reaffirm our Nation's 20-year old commitment to disabled children and their parents.
- The new law reflects many of the key principles outlined in the Administration's reauthorization proposal. The upgraded IDEA contains a stronger emphasis on educational results and provides better support for parents. The reauthorization also protects the safety of all students in the classroom while retaining the essential rights and protections of disabled students. In addition, the new IDEA has a modified funding formula to reduce incentives to wrongly identify children as having a disability.
- IDEA legislation died a contentious death at the end of the last Congress, but today's vote shows what is possible when Democrats and Republicans put aside their differences and work to achieve important national goals. We hope to continue in this bipartisan spirit and move forward on the rest of our agenda to improve education and prepare America for the 21st Century.

INTERNAL Q'S AND A'S ON IDEA -- NOT FOR DISTRIBUTION  
DRAFT -- May 13, 1997

Q: Do you think Majority Leader Lott and his staff deserve the credit for passing this legislation this time?

A: The Majority Leader and his chief of staff, David Hoppe, showed considerable leadership throughout this process, but this accomplishment would not have been possible without the hard work of a number of Democrats and Republicans from both the House and the Senate, *and by Secretary Riley* and the Administration negotiating team, led by Assistant Secretary Judy Heumann ("HUMAN"). This group worked very closely with education groups and the disability community to get a consensus bill.

Q: What effect does this legislation have on Virginia's dispute with the Administration over services to disabled students who have been suspended or expelled?

A: The new IDEA has important provisions that protect the safety of all students in the classroom while retaining the essential rights and protections of disabled students. For example, the new law expands the authority of school officials to remove a child from the classroom for misconduct involving weapons or illegal drugs, and gives hearing officers authority (previously reserved to courts) to remove a child whose continued presence would pose a substantial risk of injury. With respect to Virginia, the reauthorization adopts the Administration's position, overriding a recent 4th Circuit decision and making clear that educational services may not be terminated for any child with a disability.

Q: Pete Wilson and others have criticized this bill because it still requires that long-term inmates get services, taking funds away from other students. Should Congress have prohibited services to this population?

A: In a compromise supported by California Republican Congressman Frank Riggs, the new IDEA strikes a reasonable balance on the issue of serving disabled youth in adult correctional facilities, allowing the Governor to transfer responsibility for these services to the State correctional agency and relieving the State from certain requirements of the law.

Q: Is this legislation supported by education groups and the disability community?

A: While nearly all groups involved in the negotiating process had to give up something to reach consensus, the new law has remarkably broad support among both education groups and disability rights advocates.

Q: How much does the Federal government spend on special education?

A: For FY 97, appropriations for State grants under IDEA (parts B and H) total \$3.78 billion, up from \$3 billion in FY 96. The Administration has proposed increasing state grants by an additional 4.3%, to a total of \$3.95 billion, for FY 98.

Q: Some Republicans contend that this bill is an unfunded mandate. Do you agree?

A: *IDEA is not an unfunded mandate. No state has to participate in IDEA; participation is voluntary, and assists states to meet their constitutional obligations to provide equal access to a public education to children with disabilities. States would have these obligations even if they did not receive IDEA funds. Moreover, IDEA is exempted from coverage by the Unfunded Mandates Reform Act of 1995 signed by the President.*

Q: Does the Administration agree with Senator Gregg that the share of IDEA funding should increase to 40% of total costs?

A: The Administration agrees with Senator Gregg that the federal government should contribute more toward meeting the costs of special education, and has consistently sought increases in funding for this program. *However, it is important to support a broad range of programs which will improve educational opportunities for all Americans.*

STATEMENT ON HOUSE AND SENATE PASSAGE OF INDIVIDUALS WITH  
DISABILITIES EDUCATION ACT (IDEA) REAUTHORIZATION LEGISLATION --  
**DRAFT** -- May 13, 1997

I am pleased that the House and Senate today took a major step toward ensuring high quality educational opportunities for students *with disabilities* by voting to reauthorize the IDEA. Over the last 20 years, the IDEA has made it possible for *millions of* young people with disabilities to reach their full potential, and this legislation strengthens and reaffirms our commitment to these children and their parents. This legislation is the result of a remarkable process involving hard work by congressional Democrats and Republicans, the Department of Education, and representatives of the education and disability communities. I look forward to signing this legislation into law, and I hope that we can continue in this bipartisan spirit and move forward on the rest of our agenda to improve education and prepare America for the 21st Century.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

*Educatic - IDEA*

May 12, 1997  
(Senate)

# STATEMENT OF ADMINISTRATION POLICY

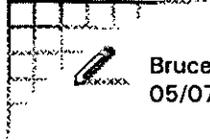
(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

## S. 717 - Individuals with Disabilities Education Act (IDEA) Amendments of 1997 (Sen. Jeffords (R) VT and 17 others)

The Administration strongly supports Senate passage of S. 717 as a major step towards ensuring high-quality educational opportunity for all students. Reauthorization of the Individuals with Disabilities Education Act (IDEA) reaffirms and strengthens this commitment to children with disabilities and their parents. This legislation is the product of comprehensive bipartisan negotiations involving both chambers of the Congress and the Administration, with broad public input from many individuals and organizations. It places a strong emphasis on teaching and learning, and will do much to help improve educational results for the 5.8 million children with disabilities who are served under the IDEA.

\*\*\*\*\*

Education - IDEA



Bruce N. Reed  
05/07/97 01:04:47 PM

Record Type: Record

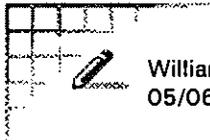
To: Elena Kagan/OPD/EOP

cc:

Subject: IDEA--big day Wednesday

You might talk about this at tomorrow's 7:45

----- Forwarded by Bruce N. Reed/OPD/EOP on 05/07/97 01:10 PM -----



William R. Kincaid  
05/06/97 09:36:34 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: Michael Cohen/OPD/EOP, Diana Fortuna/OPD/EOP, Christa Robinson/OPD/EOP, Lucia A. Wyman/WHO/EOP

Subject: IDEA--big day Wednesday

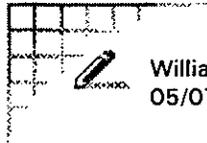
fyi-- Diana may have updated you on this, but the product of the Lott-sponsored bipartisan negotiating process for the IDEA reauthorization will be marked up at the full committee level tomorrow morning in both the House and the Senate. Assuming the mark-ups go smoothly, in the afternoon, Secretary Riley will have a press conference (tentatively 3 pm) to praise the legislation, with probable attendees including Sens Lott, Jeffords, Coats, and Harkin, and Reps Goodling, Riggs, Castle, L. Graham, Clay, Martinez, and Miller. Sen. Kennedy might also participate--see below. Floor action on the bill is expected next week, on Tuesday in the House and on Thursday in the Senate. If all goes without a hitch, we could be looking at the potential for a bill signing as early as May 22 or 23.

The main question mark for tomorrow is Kennedy; late in the process he began pushing to give DOJ authority to investigate IDEA matters without having them referred from Education, as a means of toughening enforcement. There has been lots of back and forth between Kennedy and Lott's staff; as of late today it wasn't clear whether Kennedy would pursue this tomorrow, and if he does (and fails) what it would mean for his support for the bill overall, which is getting praise as very balanced from both education and disability advocacy groups. Meanwhile, Kennedy has irritated the Republicans, notably Riggs, for raising the DOJ issue so late. Riggs has made noises about pushing harder on an issue of his own (having to do with services to students in adult prisons) that had already been raised and addressed in the negotiating process, but ED thinks at this point he probably won't.

On one of the biggest sticking point from the last Congress, cessation of services/discipline, my understanding is that the agreement that has been worked out would overrule the 4th Circuit decision and explicitly require states to provide services to special ed students who had been

suspended or expelled from school.

Educational - IDEA



William R. Kincaid  
05/07/97 02:43:49 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP  
cc: Michael Cohen/OPD/EOP  
Subject: IDEA

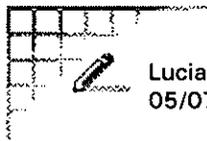
----- Forwarded by William R. Kincaid/OPD/EOP on 05/07/97 02:47 PM -----

Diana Fortuna 05/07/97 02:34:42 PM

Record Type: Record

To: William R. Kincaid/OPD/EOP  
cc:  
Subject: Re: Sec. Riley's Statement on IDEA

----- Forwarded by Diana Fortuna/OPD/EOP on 05/07/97 02:39 PM -----



Lucia A. Wyman  
05/07/97 11:50:55 AM

Record Type: Record

To: Diana Fortuna/OPD/EOP  
cc:  
Subject: Re: Sec. Riley's Statement on IDEA

A few minor and not so minor problems w/IDEA this morning but all worked out and passed out of both the House and Senate Committees. Should go to floor next week. Press Conference at 3pm. Lott goes first/then Sec Riley, then members. Would you let folks know. I've got another bill on floor today. Thanks.

submitted to the Department of Health and Human Services an RFO - or Request For Offers - which would allow private-sector companies to bid for the job of engineering Texas' welfare reform. However, the Clinton Administration met last week with state officials and reportedly denied the RFO.

According to an HHS official, "We met with them, and they want to hire a contractor who will develop a full plan. However, one of the ambitious goals" of the Texas plan involves "re-engineering their eligibility program by taking the three different Federal programs [welfare, Medicaid and food stamps]...and rolling it into one set of eligibility." Added the official: "We told them that in the statute, under determination of eligibility, it says anybody who has discretion to screen in or screen out someone has to be a public-sector employee. So that could not involve private-sector contractors." The official continued: "That's what the law says. It's one way of saying this is a fundamental function of government. And there is a reason the law was written that way. The notion is about protecting the rights of beneficiaries, because those who are not part of the public system might have other interests beyond their intended role here."

Bush's spokesperson said Texas wants "to consolidate the eligibility interviews for all of the programs. We are trying to tap the technological expertise of the private sector. Our state agencies want to team up with private sector companies. We're trying to create a one-stop shop, so that someone who needs help comes in and is interviewed, and we can determine what kind of help that person needs." The Administration official said: "We see their goal is better services, sort of 'one-stop shopping' for benefits, and cost effectiveness. But, although Congress gave the states...unlimited flexibility in how they design their welfare program, they didn't change the laws affecting Medicaid and food stamps. Those two programs' certification of eligibility has to be done by public-sector employees."

Bush's spokesperson said the state has turned to its Federal delegation. "Despite the words of the Clinton Administration that they want to help states get welfare waivers, their actions make it clear they do not," the spokesperson said, adding: "Texas is tired of the double-talk and the runaround, and we are going to proceed with other means."

A Hutchison aide said several members of the delegation are signing a letter, seeking a meeting with Bowles "next Tuesday, Wednesday, or Thursday." The aide said Hutchison is also sponsoring an amendment to allow the bidding process to go forward. If the amendment is not considered during debate on the supplemental bill, the aide said Hutchison "will continue to look for the appropriate legislative opportunity to get Texas the approval."

Meanwhile, an aide to Texas GOP Rep. Bill Archer, chair of the Ways and Means Committee, said Archer "supports" Hutchison's measure, "but he doesn't want to have states coming up [to Capitol Hill] asking for special waivers that have to be written into legislative language. This is something the White House can do on their own, without any involvement by Congress."

- o **New Report Shows States Are Reducing Taxes, Limiting Growth of Spending.** The National Governors Association and the National Association of State Budget Officers released a joint report today which claims "states are tightening their collective budget belts, allowing for modest tax cuts and striving for trimmer, fitter state governments." A summary of the report continued, saying "governors are not calling for program expansions but are adhering to principles of efficiency, austerity and improved management. ... States are responding to the growing public distaste for tax increases. The report shows that for the fourth consecutive year, states are positioning themselves to reduce taxes and fees. If enacted, recommended net tax and fee changes will decrease fiscal 1998 revenues by \$4.4 billion. Twenty-five states are proposing tax reductions, with the most significant reductions in personal income tax. Recommended tax increases are predominantly for cigarette taxes."

- o **Clinton Administration Backs Education Plan For Disabled Kids.** House and Senate committees are today scheduled to complete markup on reauthorization of the Individuals with Disabilities Education Act, a 22-year-old civil rights law guaranteeing "free, appropriate" education to those deemed eligible due to physical, mental, or emotional impairments. House and Senate GOP sources said today that issues ranging from a new funding formula to classroom discipline were worked out before the markups, and the bill is expected to move forward quickly. "The House will go to the floor next week," a GOP

committee source said, adding: "Then the House measure will go to the Senate, to be taken up on the floor, all with the expectation of this thing being signed into law before the Memorial Day recess."

The source said the Clinton Administration "is definitely on board with this," adding: "The Administration has been involved during the development of this bill, along with House and Senate Democrats and House and Senate Republicans." Education Secretary Richard Riley is scheduled to appear at a press conference on the issue this afternoon, along with Senate Majority Leader Trent Lott, Senate Labor and Human Resources Chair James Jeffords, House Education and Workforce Chair Bill Goodling and other lawmakers working on the measure. "There is no veto threat on this one," the source added.

In addition to providing guidelines for classroom discipline, according to a summary compiled by Jeffords' office, the reauthorization will "preserve the right of children with disabilities to a free, appropriate public education;" "continue to provide...early intervention, preschool educational experiences;" "drive more Federal dollars to local school districts;" "bring meaningful accountability to the process of educating children with disabilities;" "expand opportunities for parents, special education, related services, regular education, early intervention service providers, and others to work in new partnerships at both the state and local levels;" and "create incentives to enhance the capacity of schools and other community-based entities to work effectively with children with disabilities." According to the AP, nearly 6 million children currently receive education under the IDEA.

- o **Feingold-Kohl Recall Effort Faces Tough Battle.** With a Senate vote on partial-birth abortion looming, an anti-abortion group is mounting a campaign to recall both Wisconsin senators - Feingold and Kohl - over their positions on the issue. However, state law makes the task of recalling the senators formidable. The First Breath Alliance is trying to round up 390,959 signatures for each senator - 25% of the turnout in the 1994 governor's race - to force a recall election. Their drive began April 4, when the petition was filed with the State Elections Board, and they have just 60 days in which to hit the threshold. If the group gathers enough signatures, which many in Wisconsin and Washington think will be a tough chore, then the elections board would need to certify all the signatures within 31 days. If enough valid signatures are collected, an election would then be scheduled for six weeks later. Both senators have been quiet with regard to the petition effort, only saying that they respect the right of citizens to participate in the democratic process. While officials with the group say the number of signatures is "doable," they will not reveal how many they have to date.

Tom Still of the Wisconsin State Journal in Madison said the task is formidable, noting "the sheer volume" of signatures that are required, and the fact that "Wisconsin voters don't tend to be single-issue voters." Still added, however, that abortion is a contentious issue and with Catholics and Lutherans making up at least half of the state's population, he wouldn't "discount" the recall effort.

The issue is so divisive that even the state's Republican Party is staying out. GOP chairman David Opitz told the Milwaukee Journal Sentinel recently: "We probably have as much to lose as to gain by becoming involved with this effort, as much as your heart goes out with this issue." Opitz added: "We have some major donors who are pro-choice people who would hit the wall" if the GOP got involved. However, Rep. Mark Neumann, who is eyeing a challenge to Sen. Feingold in 1998, supports the petition drive in an effort to persuade the senators to change their positions.

According to a state election official, history and the law, may not be on the group's side. While state law allows senators to be recalled, the US Constitution says senators may be expelled only after a two-thirds vote by the Senate - a scenario that has never occurred.

If the alliance fails, it won't be for lack of trying. The group says it has 7,000 people willing to circulate petitions, and they expect to spend \$100,000 to \$150,000 on the campaign.

- o **Blackwell Moyes Closer To Running For Ohio Governor.** The ghost of Lee Atwater is alive in the state of Ohio, where an eight year-old deal brokered by the late RNC chairman is having its effect on the 1998 race for the GOP gubernatorial nomination. Statehouse legend has it that when Bob Taft and George Voinovich were competing for the 1990 gubernatorial nomination, Atwater convinced Taft to drop out, with the promise that he would have a clear path in the primary eight years later. Voinovich became



Michael Cohen  
05/08/97 07:26:18 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Bruce N. Reed/OPD/EOP

cc: Laura Emmett/WHO/EOP

Subject: weekly report



IDEA.BL

Attached is an update on IDEA for the weekly. It is longer than usual, in order to capture the essence of the bill and to reflect the fact that even in this unusual bipartisan effort there are still outstanding issues that could threaten the trip to final enactment.

I do not yet have the information I need for the summary of the NAB survey of business leaders Bruce requested. I will get that in tomorrow, after I hear from NAB.

## DRAFT -- IDEA REAUTHORIZATION

Wednesday the House Education and the Workforce Committee and the Senate Labor and Human Resources committee approved nearly identical bills reauthorizing the Individuals with Disabilities Education Act (IDEA). The legislation embodies much of the Administration's original reauthorization proposal, which was designed to place a stronger emphasis on teaching and learning and improving educational results for disabled children. For example, the bill requires that Individualized Education Plans (IEP's) be focused on enabling the child to participate in the general curriculum, and reaffirms that disabled students must be included in state and district assessments, with appropriate accommodations where necessary.

The legislation also reflects reasonable compromises on many of the stickiest issues left over from the last Congress, protecting the rights of disabled students and their families while also expanding the authority of teachers and principals to protect the safety of all children in the classroom. In particular, the legislation would make it easier to remove a student from the classroom for bringing a weapon or drugs to school but would overturn the 4th Circuit's decision permitting cessation of services, and require that disabled students continue to receive services even if they have been suspended or expelled. The legislation would also make changes in the IDEA funding formula, using census and poverty counts in order to reduce incentives to wrongly identify children as having a disability (although formula changes would only take effect at substantially increased appropriations levels).

This week's committee action was the culmination of an intensive bipartisan negotiating process, convened by Majority Leader Lott's staff, involving key House and Senate Democrats and Republicans, Administration officials, and education and disability groups, which methodically addressed outstanding issues left over from the last Congress.

There are still some issues that could threaten final passage -- particularly related to the provision of services to imprisoned youth identified as disabled (a concern in California) -- and the schedule for floor action is not yet finalized in either house. At present, the legislation is expected to be approved by the House on Tuesday, and could be given final approval by the Senate as early as Wednesday. There is a very good chance the bill will be ready for signature by the end of month.