



## NATIONAL EDUCATION ASSOCIATION

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March 12, 1998

**Facsimile**

TO: Greg Williamson, Senator Murray, FAX: 224-0238  
Danica Petroschius, HELP Committee, FAX: 228-0924  
Joan Huffer, Sen. Daschle, FAX: 228-5645  
Amy Abraham, Sen. Budget, FAX: 228-3898  
Craig Hanna/Andi King, House DPC, FAX: 226-0938  
Melissa Narins, House DPC, FAX: 226-6863  
June Harris/Alex Nock/Mark Zuckerman, FAX: 225-3614  
Jerry Hartz, Democratic Whip, FAX: 225-5786  
Amy Burgess, Rep. Wu, FAX: 225-9497  
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**PLEASE DELIVER TO PERSON LISTED ABOVE**

FROM: Joel Packer  
National Education Association  
202-822-7329

FAX 202-822-7309

# Pages 3 (including this page)

COMMENTS: FYI - Most recent NEA press release on class size/Ed-Flex. Also, NGA letter urging full funding of IDEA, in case you haven't seen it.

NEA recommends the White House and Democrats offer a supplemental funding request for IDEA (\$1 billion?), and try and tack it onto the FY 99 supplemental working its way through Congress.

If you did not receive all pages, please call the sender as soon as possible. If this facsimile was sent to the wrong number, we would appreciate a call so we can send the fax to the correct number.

MAR 09 '99 01:09PM NAT'L GOVERNORS' ASSOCIATION

P. 2/2

**NATIONAL  
GOVERNORS'  
ASSOCIATION**

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March 9, 1999

The Honorable Pete V. Domenici  
Chairman, Committee on the Budget  
United States Senate  
Washington, D.C. 20510-6100

Dear Mr. Chairman:

As you prepare the budget resolution for the coming fiscal year, the nation's Governors urge Congress to live up to agreements already made to meet current funding commitments to states before funding new initiatives or tax cuts in the federal budget.

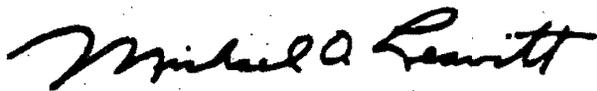
The federal government committed to fully fund— defined as 40 percent of the costs— the Individuals with Disabilities Education Act (IDEA) when the law, formerly known as Education of the Handicapped Act, was passed in 1975. Currently, the federal government's contribution amounts to only 11 percent, and states are funding the balance to assist school districts in providing special education and related services. Although we strongly support providing the necessary services and support to help *all* students succeed, the costs associated with implementing IDEA are placing an increased burden on states.

We are currently reallocating existing state funds from other programs or committing new funds to ensure that students with disabilities are provided a "free and appropriate public education." In some cases, we are taking funds from existing education programs to pay for the costs of educating our students with disabilities because we believe that all students deserve an equal opportunity to learn. Therefore, Governors urge Congress to honor its original commitment and fully fund 40 percent of Part B services as authorized by IDEA so the goals of the act can be achieved.

This is such a high priority for Governors, that at the recent National Governors' Association Winter Meeting, it was a topic of discussion with the President as well as the subject of an adopted, revised policy attached. Many thanks for your consideration of this request.

Sincerely,

  
Governor Thomas R. Carper

  
Governor Michael O. Leavitt

  
Governor James B. Hunt, Jr.  
Chair, Committee on Human Resources

  
Governor Mike Huckabee  
Vice Chair, Committee on Human Resources

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**FOR IMMEDIATE RELEASE**

**March 11, 1999**

**Statement by NEA President Bob Chase in Response  
to Senate Refusal to Fund Class Size Initiative**

We are deeply disappointed with the House and Senate votes to reject authorizing full funding to hire 100,000 new teachers to reduce class sizes nationwide. We are equally disappointed with the Senate's approval of Sen. Lott's amendment allowing class size funding to be diverted to special education.

The Senate is asking America's schools to make a false choice between smaller class sizes and additional funding for special education. In fact, both are important priorities, and both need additional funding in order to best serve our students. Forcing school districts to choose between smaller class sizes and special education will only dilute the effort to strengthen both programs.

Smaller class sizes should be a non-partisan issue. Yet today's Senate vote rejecting full authorization of class size funding is a strong indication that a majority in Congress apparently are willing to renege on last fall's promise to reduce class sizes in America's public schools.

School districts are already making plans to hire new teachers for next year, but today's votes tell them Congress may leave them hanging without the resources needed to employ those new teachers after the first year. NEA continues to support the Ed Flex proposal, but we will work tirelessly to convince House and Senate conferees to authorize full funding for smaller class sizes for the nation's students.

###

DRAFT  
MAY 12, 1999  
3:10 PM

*Handwritten:*  
Educ-  
IDEA

I am writing to express my strong opposition to an amendment that I understand Senator Ashcroft may offer to S. 254, the juvenile crime bill that the Senate is now considering. This amendment, which Senator Ashcroft has also separately introduced as S. 969, 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 intervention services, and without the impartial hearing now required by the Individuals with Disabilities Education Act (IDEA), for carrying or possessing a weapon to, or at, a school function or for threatening to carry or possess a weapon to, or at, school or a school function.

There is no need for the Congress to address the particular issue that is the subject of the Ashcroft amendment, because it amended the IDEA just two years ago to give school officials new tools to address the precise issue of children with disabilities bringing weapons to school or otherwise threatening teachers and other students. For example, school officials may remove, for up to 45 days, a child with a disability who takes a weapon to school, and may request a hearing officer to similarly remove a child who is substantially likely to injure himself or others. Furthermore, the IDEA allows hearing officers to keep these students out of the regular educational environment beyond 45 days if they continue to pose a threat to the rest of the student body. As an active participant in the bipartisan 1997 reauthorization of the IDEA, and in crafting the final IDEA regulations we recently released, I am convinced that these new tools will be effective if given a chance to work.

I am firmly committed to ensuring that all our schools are safe and disciplined environments where all our children, including children with disabilities, can learn without fear of violence. But we should not let the tragic school shootings in Littleton, Colorado and other communities lead us to hasty and inappropriate responses, such as the Ashcroft amendment, that will harm children with disabilities.

First, the Ashcroft amendment would deny vital educational services to children with disabilities who are removed from school, including behavioral interventions that are designed to prevent dangerous behavior from recurring. Continued provision of educational services, including these behavioral interventions, offers the best chance for improving the long-term prospects for these children. Discontinuing educational services is the wrong decision in the short run and, in the long run, will result in significant costs in terms of increased crime, dependency on public assistance, unemployment, and alienation from society. We cannot afford to throw away a single child.

Second, permitting schools to suspend children with disabilities for making threats gives school personnel enormous authority to make subjective decisions about the behavior of these children. When Congress amended the IDEA in 1997, it gave school personnel additional authority to remove disabled children who brought weapons to school in order

to provide for the safety of others, and provided hearing officers with the authority to remove students with disabilities who are substantially likely to injure others, but stopped short of giving school officials unilateral authority to remove children with disabilities on the basis of subjective determinations—primarily to guard against inappropriate exclusion of these children from school. Such authority could easily lead to the unlawful exclusion of children whom schools regard as too expensive or difficult to educate.

Finally, the Ashcroft amendment would undo vital protections in the IDEA that were included to protect children with disabilities from widespread abuses of their civil rights. Under this amendment, for example, the IDEA would no longer require schools to determine, when suspending or expelling a child with a disability, whether the behavior of the child in carrying or possessing a weapon, or threatening to do so, is related to the child's disability. Such a determination, which can currently be made while the child has been removed from school, is needed to ensure that children are not unjustly denied educational services during their removal without considering the effects of the child's disability on their behavior. The manifestation determination required by the IDEA is an important tool schools use to appropriately understand the relationship between a child's behavior and their disability in order to best implement behavior intervention strategies.

We should be making every effort to appropriately reach out to our children and help prevent them from endangering themselves and others. It is equally important that we appropriately address the needs of children who have gone astray, violated the rules, and put others at risk. The exclusion of children with disabilities from school—without the impartial due-process hearing and the continued services that the IDEA now requires—is the wrong response.

I urge you to vote against the Ashcroft amendment.

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.

Sincerely,

Richard Riley

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>

GRUC - IDEA

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:</p> <p>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>

3-2-99

THE WHITE HOUSE  
WASHINGTON

February 27, 1999

Copied  
Lew  
Reed  
Kagan  
Podesta

## 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. 2

*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.