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## Individuals with Disabilities Education Act Reauthorization Legislation: An Overview

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# Individuals with Disabilities Education Act Reauthorization Legislation: An Overview

## Summary

The Individuals with Disabilities Education Act (IDEA) authorizes several programs to support and improve early intervention and special education for infants, toddlers, children and youth with disabilities. The 105<sup>th</sup> Congress has considered legislation to amend, revise, and extend IDEA. The President signed the Individuals with Disabilities Education Act Amendments of 1997, P.L. 105-17, on June 4, 1997. The amendments are comprehensive in nature and address a wide range of legal and programmatic issues affecting early intervention and special education.

***Discipline.*** Schools have specific statutory authority to remove certain misbehaving students with disabilities from classrooms and place them in alternative settings for up to 45 days. New, but limited, authority is given to hearing officers to change the placement of disabled children.

***Cessation of Educational Services.*** Disabled students are specifically entitled to special educational services, even if expelled from school.

***Attorneys' Fees.*** There are some new limits on the recovery of attorneys' fees by parents of children with disabilities.

***Mediation.*** Before parents could request a formal due process hearing over a dispute about the schooling of their disabled child, they must be offered mediation and encouraged through counseling to try mediation first to resolve the issue.

***Allocation Formulas.*** There are new state and substate formulas in the grants to states and preschool programs. In general, awards are to be based on broader population factors rather than counts of disabled children served. Because of the significant change in formula factors, however, several additional provisions are added to help mitigate shifts in allotment patterns among states.

***Educational Improvement.*** Each disabled child's individualized education program must relate programming for the child to achievement in the general education curriculum. Further, states must establish performance goals and indicators for disabled pupils as well as include disabled pupils in assessments.

***Local Relief.*** When federal appropriations for the grants to states program exceed \$4.1 billion and a school district gets a larger award, the district would be permitted to reduce local spending on special education by a certain amount.

***Special Purpose Programs and Infants and Toddlers Program.*** The 14 discretionary grant programs are consolidated into two new special purpose programs. A third new special purpose program focuses on statewide special education reform. The early intervention program is revised and extended through FY2002.

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# Individuals with Disabilities Education Act Reauthorization Legislation: An Overview

Previously, the Individuals with Disabilities Education Act (IDEA) included a total of 17 programs to support and improve early intervention and special education for infants, toddlers, children and youth with disabilities. The authorization for 15 of these programs expired in FY1995. The 104<sup>th</sup> Congress undertook but did not complete a reauthorization of IDEA. The 105<sup>th</sup> Congress has finished consideration of legislation to revise and extend IDEA — the Individuals with Disabilities Education Act Amendments of 1997 (H.R. 5). The President signed the measure on June 4, 1997 (P.L. 105-17)

This report provides an overview of IDEA and its reauthorization and describes the IDEA Amendments of 1997.

## Background

Prior to the 1997 reauthorization, IDEA included three formula grant programs that assisted states to serve children with disabilities in different age ranges, and 14 special purpose programs that supported early intervention and special education research, demonstrations, technical assistance, and personnel training. (For more information on these programs, see *Individuals with Disabilities Education Act: Summary of Current Programs*, CRS Report 95-675, by (name redacted).) Of the formula grant programs, two are permanently authorized — the grants to states program and the preschool program. The third formula grant program — the infants and toddlers program — expired in FY1995. Of the special purpose programs, all 14 programs expired in FY1995.

Although the authorization of appropriations lapsed, the infants and toddlers program as well as the special purpose programs are funded for FY1997. The Omnibus Consolidated Appropriations Act, 1997 (P.L. 104-208) provides a total of \$4.0 billion for IDEA — both the authorized and expired programs. The U.S. Department of Education (ED) will administer all IDEA programs under prior law, contingent on funding, until the effective date of the IDEA amendments.

IDEA legislation advanced in the 104<sup>th</sup> Congress but ultimately did not become law. (For information on activities in the 104<sup>th</sup> Congress on IDEA, see *Special Education: Programmatic Issues in the Individuals with Disabilities Education Act*, CRS Report 97-6, by (name redacted).) The 105<sup>th</sup> Congress resumed efforts to reauthorize IDEA. H.R. 5, the IDEA Improvement Act of 1997, was introduced on January 7, 1997. S. 216, the Individuals with Disabilities Education Act Amendments of 1997, was introduced on January 28, 1997. The Senate Committee on Labor and

Human Resources held a hearing on IDEA on January 29, 1997.<sup>1</sup> The House Subcommittee on Early Childhood, Youth and Families held hearings on IDEA on February 4 and 6, 1997.<sup>2</sup>

**Committee consideration** of IDEA bills took place in both chambers on May 7, 1997:

- The Senate Committee on Labor and Human Resources marked up S. 717. (S. 717, the Individuals with Disabilities Education Act Amendments of 1997, was introduced on May 7, 1997.) The Committee adopted four amendments en bloc. As amended, the Committee approved S. 717 by voice vote.<sup>3</sup>
- The House Committee on Education and the Workforce marked up H.R. 5. The Committee adopted a substitute amendment as well as four amendments en bloc; the Committee rejected two amendments. As amended, the Committee approved H.R. 5 by voice vote.<sup>4</sup>

The Committee versions of H.R. 5 and S. 717 were identical, including their short title — the IDEA Amendments of 1997.

**Floor consideration** of H.R. 5 and S. 717 followed committee action:

- On May 13, 1997, the House passed H.R. 5 under suspension of the rules by a roll call vote of 420-3.
- On May 14, 1997, the Senate passed H.R. 5 by a roll call vote of 98-1 (after debating S. 717). The Senate accepted two technical amendments and rejected two amendments to S. 717 prior to passage of H.R. 5.

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<sup>1</sup>See: U.S. Congress. Senate. Committee on Labor and Human Resources. *Reauthorization of the Individuals with Disabilities Education Act*. Hearing. Senate Hearing No. 105-1, 105<sup>th</sup> Congress, first session, January 29, 1997. Washington, GPO, 1997.

<sup>2</sup>See: U.S. Congress. House. Committee on Education and the Workforce. *Hearings on H.R. 5, the IDEA Improvement Act of 1997*. Hearings. Serial No. 105-8, 105<sup>th</sup> Congress first session, February 4 and 6, 1997. Washington, GPO, 1997.

<sup>3</sup>The committee report accompanying S. 717 was ordered to be printed on May 9, 1997. See: U.S. Congress. Senate. Committee on Labor and Human Resources. *Individuals with Disabilities Education Act Amendments of 1997*. Report to accompany S. 717. Senate Report No. 105-17, 105<sup>th</sup> Congress, first session. Washington, GPO, 1997. (Hereafter referred to as U.S. Congress, *Individuals with Disabilities Education Act Amendments of 1997*, Senate Report No. 105-17)

<sup>4</sup>The committee report accompanying H.R. 5 was ordered to be printed on May 13, 1997. See: U.S. Congress. House. Committee on Education and the Workforce. *Individuals with Disabilities Education Act Amendments of 1997*. Report to accompany H.R. 5. House Report No. 105-95, 105<sup>th</sup> Congress, first session. Washington, GPO, 1997.

**The President signed the IDEA Amendments of 1997, P.L. 105-17, on June 4, 1997.**

## **Legislation in the 105<sup>th</sup> Congress**

P.L. 105-17 makes comprehensive changes to IDEA. The legislation not only amends and extends IDEA's expired programs — infants and toddlers and the special purpose programs, but also modifies the substantive requirements of IDEA's permanently authorized programs — grants to states and preschool programs.<sup>5</sup> Indeed, the focus of the measure is on revising the grants to states program. The grants to states program is the centerpiece of IDEA.<sup>6</sup>

In general, P.L. 105-17 retains the basic structure of IDEA — three formula grant programs and the discretionary grant programs. The primary emphasis in the measure is on adjusting IDEA's provisions on:

- federal administration;
- state and substate allocation formulas;
- the terms and conditions for state eligibility and participation;
- the terms and conditions for local eligibility and participation;
- the required services and procedures for meeting the needs of infants, toddlers and children with disabilities;
- parental participation in the education of their disabled children;
- the due process rights of infants, toddlers and children with disabilities and their parents; and
- support for reform, research, dissemination of information on best practices, and personnel training.

The following sections of this report describe the key elements of the legislation within the context of the major legal and programmatic issues in IDEA.

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<sup>5</sup>Although not technically up for reauthorization, the measure revises the grants to states and preschool programs in conjunction with the reauthorization of the parts of IDEA that have expired. (The grants to states and preschool programs remain permanently authorized; only their substantive requirements are amended.)

<sup>6</sup>The grants to states program is a conditional grant program that couples the acceptance of financial assistance with several stipulations. Under the grants to states program, school-age children with disabilities are entitled to a free appropriate public education in the least restrictive setting, including special education and related services according to their individualized education program.

## Key Features

Key features of the IDEA reauthorization include:

- Expanded procedures for the discipline of disabled students. Schools have specific statutory authority to remove certain misbehaving students with disabilities from classrooms and place them in alternative settings for up to 45 days. New, but limited, authority is given to hearing officers to change the placement of disabled children.
- No cessation of educational services. Disabled students are statutorily entitled to special educational services, even if expelled from school for disciplinary reasons.
- Limits on the recovery of attorneys' fees. Parents who prevail in due process disputes with school districts may not recover those attorneys' fees connected to meetings on the individualized education program (IEP) of their disabled child.
- Increased reliance on mediation. Before parents can request a formal due process hearing over a dispute about the schooling of their disabled child, they must be offered mediation and encouraged through counseling to try mediation first to resolve the problem.
- New state and substate allocation formulas. Under the grants to states program, enactment of appropriations above \$4.9 billion triggers a new state formula that distributes a base amount to states equal to their allocations in the year before the trigger was initially reached and distributes "new money" based upon total school-age population (weighted 85%) and total school-age population *in poverty* (weighted 15%). Minimum and maximum grant provisions ensure that there would be a floor and ceiling on the amount of aid going to states. Aid to local school districts would be distributed in a similar fashion as aid to states.
- Emphasis on educational results. Each disabled child's IEP must relate programming for the child to achievement in the general education curriculum. Further, states must establish performance goals and indicators for disabled pupils as well as include disabled pupils in statewide assessments and alternative assessments.
- Providing fiscal relief to local school districts. When federal appropriations for the grants to states program exceed \$4.1 billion and a school district gets a larger award, the district is permitted to reduce local spending on special education by a certain amount.
- Revamped and streamlined special purpose programs. There are three broad special purpose programs: state program improvement grants; coordinated research and personnel preparation; and coordinated technical assistance, support, and dissemination.

## Discipline

P.L. 105-17 generally expands the authority of school officials to discipline students with disabilities. Various protections, however, are built into the discipline provisions in order to safeguard the rights of disabled students. The Senate committee report describes the provisions as striking “a careful balance between the LEA’s duty to ensure that school environments are safe and conducive to learning for all children, including children with disabilities, and the LEA’s continuing obligation to ensure that children with disabilities receive a free appropriate public education.”<sup>7</sup>

Under prior law, children with disabilities were not immune from disciplinary procedures, but neither were those procedures identical with those for children without disabilities. Due to a history of exclusion of children with disabilities from education,<sup>8</sup> IDEA contains a “stay-put” provision that requires that “during the pendency of any [due process] proceedings conducted pursuant to this section [§615], unless the State or local educational agency and the parents of a child with a disability agree, the child shall remain in the then current educational placement of such child.”<sup>9</sup>

This provision was at issue in the Supreme Court case of *Honig v. Doe*, 484 U.S. 305 (1988). The Court there dealt with a case involving two children with disabilities who had engaged in activities such as breaking windows, choking another student, and extortion. The Court found that there was no dangerousness exception to the stay put rule but noted that the schools were not powerless to deal with dangerous children since they could suspend a child for ten days, use timeouts and ask a court for an injunction to move the child if necessary.

In 1994, an amendment to IDEA, often referred to as the Jeffords amendment, allowed schools to place a child with a disability who brings a firearm to school in an interim alternative placement for 45 days. If the parents request a due process hearing, this interim alternative placement is where the child remains during the pendency of any proceedings conducted pursuant to Section 615.

P.L. 105-17 modifies the provisions in IDEA relating to changing the placement of children with disabilities for disciplinary reasons, although, as noted in the section below on cessation, educational services to children with disabilities may not cease. One of the most controversial changes relating to placement is allowing a hearing officer to order a change in the placement of a child for not more than 45 days if the hearing officer:

- determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of such child with a disability is substantially likely to result in injury to the child or others (substantial evidence is defined as beyond a preponderance of the evidence);

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<sup>7</sup>U.S. Congress, *Individuals with Disabilities Education Act Amendments of 1997*, Senate Report No. 105-17, p. 28.

<sup>8</sup>For a discussion of this history see, *The Individuals with Disabilities Education Act: Congressional Intent*, CRS Report 95-669, by Nancy Jones.

<sup>9</sup>20 U.S.C. §1415(e)(3).



- considers the appropriateness of the child's current placement;
- considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
- determines that the interim alternative educational setting meets certain requirements including services and modifications described in the child's current IEP.

In addition to the new authority given to a hearing officer, P.L. 105-17 also expands the use of interim alternative placements. Prior law is codified so school personnel are given explicit authority to order a change in placement or suspension for not more than 10 days to the extent such measures would be applied to children without disabilities. School personnel may order a change in placement to an appropriate interim alternative educational setting if the child carries a weapon to school or a school function or knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function; this action may be for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days. Either before or not later than 10 days from taking this action, the local educational agency (LEA) must either review an existing behavioral intervention plan or convene an IEP meeting to develop an assessment plan to address the behavior. P.L. 105-17 provides that the alternative educational setting is to be determined by the IEP team and that this setting must meet certain requirements.

The new legislation also contains specific language regarding manifestation determinations. IDEA previously did not discuss what consequences occur depending on whether a child's behavior is a manifestation of a disability or not. However, ED in its interpretation of the statute has found that school officials have more discretion in applying the same standards to children with disabilities as apply to children without disabilities *if* the action of the child with a disability was not a manifestation of that child's disability.<sup>10</sup> P.L. 105-17 essentially tracks the existing ED interpretation but also provides for an expedited hearing when a parent disagrees with a determination that a child's behavior was not a manifestation of a disability.

P.L. 105-17 discusses where the child shall be placed during appeals regarding disciplinary action. If the child has been placed in an interim alternative educational setting, and the parents request a hearing, the child shall remain in that setting pending the decision of the hearing officer or until the expiration of the time periods specified, whichever occurs first. If the child is placed in an interim alternative educational setting and school officials propose to change the child's placement after the expiration of the interim alternative educational setting, and a hearing is requested, the child shall return upon the expiration and remain in the current placement; that is, the child's placement prior to the interim alternative educational setting. If school officials maintain that it is dangerous for the child to be in the current placement

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<sup>10</sup>OSEP Memorandum 95-16, 22 IDELR 531 (June 1, 1995).

during the pendency of the due process proceedings, the LEA may request an expedited hearing. These provisions differ from prior law as expressed in the Jeffords amendment in that the child will not remain in the interim alternative educational setting for an indefinite period of time while waiting for an appeal to be decided.

Issues involving the discipline of children with disabilities have been among the most contentious in the reauthorization process. P.L. 105-17 reflects an attempt to balance concerns, based on a history of exclusion, of ensuring the provision of an appropriate education for children with disabilities, with concerns regarding school safety. School officials have often argued that the previous process of obtaining an injunction to remove an allegedly dangerous child if the parents do not agree is too burdensome on the school. The legislation addresses this issue by providing for new, but limited, authority to hearing officers. Some have argued that this is too much authority to be vested in a hearing officer who may tend to be more favorable to the schools. On the other hand, this approach, especially with the limitations enunciated in the new language, arguably provides for a quick and impartial solution to maintaining safe schools.

## **Cessation of Educational Services**

The cessation of educational services for children with disabilities has also been one of the more controversial issues during the reauthorization of IDEA. P.L. 105-17 does not allow the cessation of educational services for children with disabilities who are expelled.

The legislation specifically requires that to be eligible for assistance under IDEA the state must ensure that “a free appropriate public education is available to all children with disabilities residing in the State . . . including children who have been suspended or expelled from school.”

ED has interpreted the requirement for a free appropriate public education (FAPE) in prior law as meaning that educational services must continue for all children with disabilities, even those who are excluded for misconduct that was not a manifestation of a disability. However, the Department found that these educational services could be provided in the home, an alternative school, or in another setting.

ED’s interpretation was called into question by the Fourth Circuit court of appeals decision in *Virginia Department of Education v. Riley*, 106 F.3d 559 (4<sup>th</sup> Cir. 1997). In this case, the court found that the plain language of IDEA does not condition the receipt of IDEA funds on the continued provision of educational services to children with disabilities who are expelled or suspended and that, therefore, educational services are not required for these children.<sup>11</sup> The legislation changes this result by providing specific language prohibiting cessation.

## **Attorneys’ Fees**

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<sup>11</sup>For a more detailed analysis of this case and the issue of cessation generally, see *Cessation of Educational Services and the Individuals with Disabilities Education Act*, CRS Report 97-258, by Nancy Jones.

P.L. 105-17 provides for the award of attorneys' fees with certain exceptions, including a prohibition on the award of attorneys' fees relating to any meeting of the IEP team unless such meeting is convened as a result of an administrative proceeding or judicial action.

As under prior law, the legislation provides that in any action or proceeding brought under Section 615, a court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party. These fees are to be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services provided and no bonus or multiplier may be used. Attorneys' fees are not to be awarded for services performed subsequent to the time of a written offer of settlement if the offer is made within certain specified times, the offer is not accepted within 10 days, and the court or administrative officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement. Attorneys' fees, including for services performed after a rejected offer of settlement, may be paid to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer. Attorneys' fees may also be reduced in certain circumstances including where the parent unreasonably protracted the final resolution of the controversy. However, fees may not be reduced if the court finds that the state or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of Section 615.

There are some new provisions on attorneys' fees. For example, although courts have been split on whether attorneys' fees can be awarded for IEP meetings, the measure specifically limits such awards. In addition, as discussed in the section below on mediation, awards for attorneys' fees may be limited for mediation in some circumstances. A new provision is added allowing for the reduction of attorneys' fees where the parent's attorney did not provide the school district with the appropriate information in the due process complaint.<sup>12</sup> Adding the provision requiring that information be provided was described in the Senate committee report as facilitating "an early opportunity for schools and parents to develop a common frame of reference about problems and potential problems that may remove the need to proceed to due process . . . ."<sup>13</sup>

## **Mediation**

P.L. 105-17 adds specific sections to IDEA concerning mediation, but do not mandate mediation. The measure requires that state or local educational agencies ensure that procedures are established and implemented to allow parties to resolve disputes through a mediation process that is at least available whenever an impartial

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<sup>12</sup>For a more detailed discussion of the previous statutory provisions relating to attorneys' fees see *Individuals with Disabilities Education Act: Awards of Attorneys' Fees*, CRS Report 96-873, by (name redacted).

<sup>13</sup>U.S. Congress, *Individuals with Disabilities Education Act Amendments of 1997*, Senate Report No. 105-17, p. 25.

due process hearing is requested or a hearing is requested regarding a placement in an alternative educational setting for disciplinary reasons. The mediation is:

- to be voluntary on the part of the parties;
- not used to deny or delay a parent's right to a due process hearing or to deny any other rights under part B;
- conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The legislation also allows the state or local education agency to establish procedures to require parents who choose not to use mediation to meet with a disinterested party to encourage the use of mediation. The state is to maintain a list of individuals who are qualified mediators and knowledgeable regarding the laws and regulations of special education and related services. The state is to bear the cost of the mediation process; each session shall be scheduled in a timely manner and held in a convenient location; an agreement shall be set forth in a written mediation agreement; and discussions that occur during mediation are confidential and may not be used as evidence in any subsequent proceeding. Attorneys' fees need not be awarded for mediation at the discretion of the state for a mediation that is conducted prior to the filing of a complaint. The Senate committee report states that the bill language neither requires nor prohibits the use of attorneys in mediation.<sup>14</sup>

Neither prior law nor prior federal regulations contain specific provisions relating to the use of mediation. However, in a comment to the regulations on due process hearings, ED has encouraged the use of mediation so long as it is not used to deny or delay a parent's rights.<sup>15</sup> ED has also found that the use of discretionary funds for reimbursement of mediation fees was a permissible expenditure.<sup>16</sup> In the past, case law has allowed for the award of attorneys' fees for assistance during mediation.<sup>17</sup>

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<sup>14</sup>U.S. Congress, *Individuals with Disabilities Education Act Amendments of 1997*, Senate Report No. 105-17, p. 26.

<sup>15</sup>34 C.F.R. § 300.506 note. See also Department of Education Policy Letter, EHLR 213:245 (March 15, 1989).

<sup>16</sup>Department of Education Policy Letter, 18 IDELR 279 (August 7, 1991).

<sup>17</sup>*Masotti and Masotti v. Tuskin Unified School District*, 806 F. Supp. 221 (C.D. Calif. 1992); *E.M. v. Millville Board of Education*, 849 F. Supp. 312 (D. N. J. 1994). For a more detailed discussion of mediation and IDEA see *Mediation and the Individuals with Disabilities Education Act (IDEA)*, CRS Report 96-211, by Nancy Jones.

## Allocation Formulas

P.L. 105-17 substantially changes both the state and substate formulas in the grants to states and preschool programs. In general, awards will be based on broader population factors rather than counts of disabled children served. Because of the significant change in formula factors, several additional provisions are added to help mitigate shifts in allotment patterns among states.

**Grants to States Program.** The measure outlines a new scheme to distribute aid under the grants to states program. Key features of the new distribution system are:

- A trigger appropriations level of \$4.9 billion that would have to be reached before the new state formula would take effect.
- A new state formula with broader population factors that would distribute “new money.” States would receive a base amount equal to their awards in the year before the trigger appropriations level was reached.
- Broader population factors that would distribute 85% of “new money” on the basis of total population within the age range that states provide FAPE (e.g., 3-21 years); 15% of “new money” would be distributed on the basis of total population *in poverty* within the age range that states provide FAPE.
- Minimum grant provisions that would ensure that each state received at least some increase in the first year that there is “new money,” and in any year that there is *more* “new money” to distribute than the year before.
- Maximum grant provisions that would limit state grant increases in the first year that there is “new money,” and in any year that there is *more* “new money” to distribute than the year before.
- A new substate formula for distributing aid to local school districts and eligible state agencies that would take effect with the new state formula. LEAs would receive a base award equal to what their grant would have been in the last year before the trigger was reached as if the state had distributed 75% of its award to LEAs; “new money” would be allotted 85% on the basis of public and private school enrollment within LEAs, and 15% on the basis of the number of children living in poverty within LEAs. There would be no minimum or maximum grant provisions for LEAs.

**Preschool Program.** The measure also contains new formula provisions for the preschool program. In general, the new provisions for the preschool program are identical to those outlined for the grants to states program. The key difference is that there is no trigger appropriations level that must be reached before they become operational (the base year is FY1997).

## Educational Improvement

P.L. 105-17 attempts to improve educational results for children with disabilities. The measure focuses these efforts in three main areas: IEPs, performance goals, and assessments.

The **IEP** is a mandated document for each child with a disability that, among other things, spells out the specific special education and related services to be provided to the child. Among the more significant changes made by the legislation concerning the development and contents of the IEP are:

- The IEP team. Each child's IEP must be developed by a team of educators. The measure expands the membership of the IEP team to include, if appropriate, the teacher of the regular education classroom where the child would be placed.
- Special factors. The measure requires the IEP team to take into account five factors in the preparation of the IEP. These factors address the special needs of disabled students who have behavior problems, are limited English proficient, blind, have special communication needs, or special technology needs.
- Contents of the IEP. The measure requires that each child's IEP relate the programming for the child to achievement in the general education curriculum. Further, the IEP must include the modifications needed to allow the child to participate in state or districtwide assessment programs or an explanation of why the child would not participate and how the child would be assessed. In addition, the IEP must reflect any parental input.

Prior law did not call for **performance goals**. Under the measure, states are required to establish goals for the performance of children with disabilities. Further, states must establish performance indicators to gauge progress toward the goals. States must report on their progress in meeting the goals every 2 years.

Prior law was silent on the participation of disabled students in **assessments** given to students at large. Under P.L. 105-17, states are required to include children with disabilities in general state and districtwide assessment programs, with appropriate accommodations; states and local districts must develop alternative assessments for those disabled children who would not be able to take the general assessments by July 1, 2000. States are required, with certain exceptions, to publish reports on the performance of disabled students on regular assessments by no later than July 1, 1998, and on the performance of disabled students on alternative assessments by no later than July 1, 2000.

## Local Relief

P.L. 105-17 seeks to provide relief to local school districts from the expenses associated with IDEA. The three main areas where new provisions attempt to lessen

the funding burden are the maintenance of effort requirement, fiscal accountability rules, and interagency coordination of the financial responsibility for services.

Under prior law, LEAs generally had to expend at least as much on special education and related services as they did in the previous year. This is known as the **maintenance of effort requirement**. The measure allows local districts to spend a certain amount less than they did in the previous year when federal appropriations for the grants to states program exceed \$4.1 billion and larger local awards result. In any year that more than \$4.1 billion is appropriated, then a LEA may reduce its expenditure of local funds by an amount equal to up to 20% of the increase in its IDEA allotment from the prior year. For instance, if the grants to states program appropriation was above \$4.1 billion and that resulted in an IDEA allotment to a LEA \$100,000 larger than its allotment the previous year, then the LEA could reduce its local spending on special education by \$20,000 (20% of \$100,000). In effect, some of the benefit from a rise in federal appropriations over \$4.1 billion would go towards local relief. Under certain circumstances, however, a state would be authorized to prevent a LEA from taking advantage of this new relief provision.

Some critics of IDEA have argued that its accountability rules unnecessarily restrict practices that could benefit other students while doing no harm to disabled children. P.L. 105-17 reflects this view and **sanctions incidental benefits** flowing from the use of IDEA grants. LEAs are specifically allowed to use IDEA aid for special education and related services for a disabled pupil in a regular class even if nondisabled students benefitted on an incidental basis.

As under prior law, states must have interagency agreements on the financial responsibility of state and local public agencies for the services guaranteed to disabled children under IDEA. The measure **strengthens state coordination of interagency resources**. Among other things, each state's interagency agreement or mechanism must ensure that public agencies assume the financial responsibility for IDEA services that they also provide before LEAs are required to pay. Further, public agencies otherwise obligated under federal or state law, or assigned the responsibility, to provide or pay for a service required under IDEA would have to fulfill that obligation or responsibility.

## **Special Purpose Programs**

P.L. 105-17 significantly alters the special purpose programs of IDEA. The number of special purpose programs decreases from 14 to 3 in a new part D. Of the three new programs, one represents a new federal initiative while the other two are a merging and consolidating of previous programs.

The state program improvement grants program is a new IDEA initiative. The program will make competitive grants to states for special education reform. States would use at least 75%, and under limited circumstances, at least 50% of their grant for addressing personnel issues in the state surrounding special education (for instance, training of teachers in new instructional approaches).

The coordinated research and personnel preparation program encompasses activities previously conducted under the following antecedent programs:

- deaf-blindness;
- serious emotional disturbance;
- severe disabilities;
- early childhood education;
- secondary and transitional services;
- postsecondary education;
- innovation and development;
- special studies; and
- personnel development

The coordinated technical assistance, support, and dissemination program encompasses activities previously conducted under the following antecedent programs:

- parent training;
- clearinghouses;
- regional resource centers;
- media and captioning services; and
- technology applications

The three new special purpose programs are authorized at “such sums as may be necessary” through FY2002.

### **Infants and Toddlers Program**

P.L. 105-17 revises and extends the early intervention program for infants and toddlers with disabilities who are under the age of 3. The program, formerly authorized in part H, is now authorized in part C. The program continues to provide formula grants to participating states to assist them in the maintenance and implementation of statewide systems of early intervention.

Significant revisions to the program include:



More emphasis on serving infants and toddlers with disabilities in natural environments — i.e., locations where the child would be if not disabled such as the home or nursery school.

For those states that have opted to not extend program eligibility to infants and toddlers at risk of becoming developmentally delayed, there is authority to use IDEA funds for limited activities for this population such as making referrals to other agencies.

During the development of the individualized family service plan, the identification of family needs surrounding the disabled infant or toddler must be family directed.

The new part C takes effect on July 1, 1998. The program is authorized at \$400,000,000 for FY1998, and “such sums as may be necessary” for FY1999 through FY2002.



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