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The Individuals with Disabilities Education Act (IDEA): Paperwork Reduction in P.L. 108-446

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The Individuals with Disabilities Education Act (IDEA): Paperwork Reduction in P.L. 108-446

Summary

The Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §1400 *et seq.*) is both a grants statute and a civil rights statute. It provides federal funding for the education of children with disabilities and requires, as a condition for the receipt of such funds, the provision of a free appropriate public education (FAPE). School districts must identify, locate, and evaluate all children with disabilities, regardless of the severity of their disability, to determine which children are eligible for special education and related services. Each child receiving services has an individual education program (IEP), created by an IEP team, delineating the specific special education and related services to be provided to meet his or her needs. The statute also contains detailed due process provisions to ensure the provision of FAPE.

Paperwork is required to implement many of these statutory provisions, and the requirements have often been criticized as being overly burdensome. One aim of the recent reauthorization of IDEA (P.L. 108-446) is to reduce unnecessary paperwork, as discussed in both the House and Senate committee reports for P.L. 108-446. P.L. 108-446 contains provisions specifically aimed at reducing paperwork and administrative burden including a paperwork reduction pilot program, changes in IEP requirements, changes in requirements for procedural safeguards notices, and a requirement that the Secretary of Education publish and disseminate model paperwork forms. This report will not be updated.

Contents

Introduction	1
Time Spent on Paperwork Prior to P.L. 108-446	2
Provisions in P.L. 108-446 Relating to Paperwork	3
Paperwork Reduction Pilot Program	3
Use of IDEA Funds to Reduce Paperwork	3
Children with Disabilities in Private Schools	4
Elimination of School-Based Improvement Plan	4
Reevaluations	5
The Individualized Education Program	5
Contents of the IEP	5
The IEP Team	7
The IEP Process	7
Multi-Year IEP Demonstration Pilot Program	8
Procedural Safeguards Notice	9
Model Paperwork Forms	9

The Individuals with Disabilities Education Act (IDEA): Paperwork Reduction in P.L. 108-446

Introduction

The Individuals with Disabilities Education Act (IDEA)¹ is both a grants statute and a civil rights statute. It provides federal funding for the education of children with disabilities and requires, as a condition for the receipt of such funds, the provision of a free appropriate public education (FAPE). School districts must identify, locate, and evaluate all children with disabilities, regardless of the severity of their disability, to determine which children are eligible for special education and related services. Each child receiving services has an individual education program (IEP), created by an IEP team, delineating the specific special education and related services to be provided to meet his or her needs. The statute also contains detailed due process provisions to ensure the provision of FAPE. Originally enacted in 1975 (P.L. 94-142), the act responded to increased awareness of the need to educate children with disabilities, and to judicial decisions requiring that states provide an education for children with disabilities if they provided an education for children without disabilities.²

Paperwork is required to implement many of these statutory provisions, and the requirements have often been criticized as being overly burdensome. It should be noted that the term “paperwork” encompasses activities and processes that may not involve paper products. In addition to written forms (such as plans and report cards), the term often includes meetings and other personal interactions, administrative duties, as well as computerized record-keeping. Some may define the term more broadly to including any activity that does not provide direct instruction to pupils. Others would counter that some non-instructional requirements of IDEA are just as important as direct instruction to ensure that children with disabilities receive appropriate educational services.

Reducing paperwork is an aim of the most recent reauthorization of IDEA (P.L. 108-446).³ The section on congressional findings states that “the education of

¹ 20 U.S.C. §1400 et seq.

² For a more detailed discussion of the congressional intent behind the enactment of P.L. 94-142 see CRS Report 95-669, *The Individuals with Disabilities Education Act: Congressional Intent*, by (name redacted).

³ For more information about P.L. 108-446, see CRS Report RL32716, *Individuals with Disabilities Education Act (IDEA): Analysis of Changes Made by P.L. 108-446*, by Richard (continued...)

children with disabilities can be made more effective by ... focusing resources on teaching and learning while reducing paperwork and requirements that do not assist in improving educational results.”⁴ Similarly, Congress finds that “teachers, schools, local educational agencies, and States should be relieved of irrelevant and unnecessary paperwork burdens that do not lead to improved educational outcomes.”⁵ In addition, both the House and Senate committee reports⁶ for P.L. 108-446 note that reducing paperwork is an important aim of the legislation. In its concluding remarks, the House report states that the legislation centers on the “Committee’s principles for reform,” which among other things includes reducing paperwork.⁷ The Senate report notes that one of the ways the legislation would improve IDEA is to “reduce bureaucratic paperwork for teachers.”⁸ P.L. 108-446 contains provisions specifically aimed at reducing paperwork and administrative burdens, including a paperwork reduction pilot program, changes in IEP requirements, changes in requirements for procedural safeguards notices, and a requirement that the Secretary of Education publish and disseminate model paperwork forms.⁹

Time Spent on Paperwork Prior to P.L. 108-446

The most recent data on paperwork under IDEA is a study by Westat for the U.S. Department of Education (ED).¹⁰ This study, which was based on a nationally representative telephone survey of special education teachers, found that “53 percent of elementary and secondary special education teachers reported that routine duties and paperwork interfered with their job of teaching to a *great extent*” and these

³ (...continued)

N. Apling and (name redacted). (Hereafter cited as CRS Report RL32716, *Analysis of Changes Made by P.L. 108-446*).

⁴ P.L. 108-446 §601(c)(5)(G).

⁵ P.L. 108-446 §601(c)(9).

⁶ H.Rept. 108-77, 108th Congress, 1st sess. (2003); and S.Rept. 108-185, 108th Congress, 1st sess. (2003).

⁷ H.Rept. 108-77, 108th Congress, 1st sess., 130 (2003).

⁸ S.Rept. 108-185, 108th Congress, 1st sess., 2 (2003).

⁹ It should be noted that some provisions added to IDEA by P.L. 108-446 could result in additional paperwork and administrative burdens. For example, states are now permitted to use 10% of funds reserved for state-level activities to create “risk pools” to assist in aiding high-need children with disabilities. (P.L. 108-446 §611(e)(3)) To use IDEA funds for this purpose, a state must develop (and annually review and amend as necessary) a state plan that, among other requirements, establishes participation criteria and develops a funding mechanism. Elements of the plan, such as determining a definition of “high need,” require coordination with local educational agencies (LEAs). Developing and revising such a plan, as well as administering the risk pool, could result in paperwork that some may find burdensome.

¹⁰ Elaine Carlson, Liwan Chen, Karen Schroll, and Sheri Klein, *SPeNCE: Study of Personnel Needs in Special Education. Final Report of the Paperwork Substudy*, Westat, Mar. 24, 2003. (Hereafter cited as Carlson, et al., *SPeNCE Paperwork Study*.) Available at [<http://ferdig.coe.ufl.edu/spense/results.html>].

teachers “typically spend over 10 percent of their time [5 hours per week] completing forms and doing administrative paperwork.”¹¹ Among the most time consuming activities were completing and revising the individualized education program (IEP) (on average, two hours are spent on each IEP) and IEP meetings (on average, each meeting takes 1½ hours).¹² Although only 35% of special education teachers conduct evaluations of children with disabilities, those who do spend nearly 12 hours per month conducting assessments and reviewing assessment information.¹³

Provisions in P.L. 108-446 Relating to Paperwork

Paperwork Reduction Pilot Program

P.L. 108-446 adds a paperwork reduction pilot program (§609) in order “to provide an opportunity for States to identify ways to reduce paperwork burdens and other administrative duties that are directly associated with the requirements of this title, in order to increase the time and resources available for instruction and other activities aimed at improving educational and functional results for children with disabilities.” This program permits the Secretary to waive for up to four years statutory or regulatory requirements (except civil rights requirements) that applying states link to excessive paperwork or other noninstructional burdens. These waivers may be granted to up to 15 states. The statutory provision is not to be construed to affect the right of a child with a disability to receive FAPE or to permit a state or local educational agency to waive the procedural safeguards in Section 615 of the act. The Secretary of Education is to include in the annual report to Congress information relating to the effectiveness of the waivers in:

- reducing the paperwork burden and reducing noninstructional time spent by teachers in complying with the act;
- enhancing longer-term educational planning;
- improving positive outcomes for children with disabilities;
- promoting collaboration between IEP Team members and
- ensuring satisfaction of family members.

In addition, the report must include any specific recommendations for the broader implementation of such waivers.

Use of IDEA Funds to Reduce Paperwork

While amounts that states may reserve from their IDEA Part B grant-to-states funds for state administration remain mostly unchanged, P.L. 108-446 does change the amount states may reserve for other state-level activities and expands those activities (§611(e)(2)). For FY2005 and FY2006, states may reserve 10% of their

¹¹ Ibid., p. 1 (emphasis added).

¹² Ibid., p. 5.

¹³ Ibid., p. 6.

grant.¹⁴ For subsequent fiscal years, the maximum amount is adjusted by the rate of inflation. P.L. 108-446 has added certain required and permitted uses of these reserved funds. One permitted use of funds is supporting “paperwork reduction activities, including expanding the use of technology in the IEP process.”¹⁵

Children with Disabilities in Private Schools

A child with a disability may be placed in a private school by the LEA or state education agency (SEA) as a means of fulfilling the FAPE requirement for the child, in which case the cost is paid for by the LEA. A child with a disability may also be unilaterally placed in a private school by his or her parents. In the latter situation, the cost of the private school placement is not paid by the LEA unless a hearing officer or a court makes certain findings. However, IDEA does require some services for children in private schools, even if they are unilaterally placed there by their parents. Exactly what these services are or should be has been a contentious subject for many years. The 1997 reauthorization of IDEA expanded on the private school provisions and the 2004 reauthorization includes several changes to the provisions relating to children who are placed in private school by their parents. The provisions relating to children placed in private schools by public agencies were not changed.

Generally, children with disabilities enrolled by their parents in private schools are to be provided special education and related services to the extent consistent with the number and location of such children in the school district served by a LEA pursuant to several requirements (§612(a)(10)(A)(I)). This provision was changed from previous law by the addition of the requirement that the children attending a private school be located in the school district served by the LEA. The Senate report described this change as “[a]n effort to streamline and simplify the provision of services to parentally-placed private school children with disabilities” by protecting “LEAs from having to work with private schools located in multiple jurisdictions when students attend private schools across district lines.”¹⁶

Elimination of School-Based Improvement Plan

P.L. 108-446 eliminated a provision in the previous law that allowed a public school to design, implement, and evaluate a school-based improvement plan.¹⁷ The Senate report stated that this authority was eliminated because the provision was

¹⁴ Certain smaller states may reserve up to 10.5% (§611(e)(2)(A)(ii)). The maximum percentages are reduced to 9% and 9.5% if the state does not reserve funds for the LEA risk pool. (See Carlson, et al., *SPeNCE Paperwork Study*.) (§611(e)(2)(A)(iii)) For FY2004 (prior to the enactment of P.L. 108-446), the average percentage for the maximum set-aside of other state-level activities was about 7%.

¹⁵ P.L. 108-446 §611(e)(2)(C)(ii).

¹⁶ S.Rept. 185, 108th Cong., 1st sess., 15-16 (2003). For a more detailed discussion of private school placements, see CRS Report RL32716, *Analysis of Changes Made by P.L. 108-446*.

¹⁷ P.L. 105-17, §613(g). For a more detailed discussion of the private school provisions in P.L. 108-446, see CRS Report RS22044, *Individuals with Disabilities Education Act (IDEA): Services in Private Schools Under P.L. 108-446*, by (name redacted).

ineffective. The Senate report further observed: “Schools can undertake school improvement activities and realize improved educational and transitional results for children with disabilities without incurring the additional administration and paperwork burdens required under this authority.”¹⁸

Reevaluations

LEAs¹⁹ are required to “conduct a full and individual initial evaluation” of a child before special education and related services are provided, and to conduct reevaluations as warranted to determine if the education and services provided require revisions or if the child no longer needs special education and related services. Reevaluations are required if the child’s teacher or parent makes a request or if the LEA determines that the child’s educational and service needs, academic achievement, or functional performance warrants a reevaluation (§614(a)(2)).²⁰ For example, a reevaluation might be warranted if the child’s performance in school significantly improves, suggesting that he or she no longer requires special education and related services, or if the child is not making progress toward the goals set out in his or her IEP, indicating that changes are needed in the education or related services the LEA is providing. The prior version of IDEA required that reevaluations take place at least every three years.²¹ P.L. 108-446 permits the parent and the LEA to override this requirement if they agree that a reevaluation is not necessary. In addition, P.L. 108-446 prohibits reevaluations more frequently than once a year, unless the parent and the LEA agree. The Senate report states: “In the interest of parents, children, and school districts, the committee believes that requiring costly and time-consuming reevaluations when both parents and local educational agencies deem them to be unnecessary is counterproductive.”²²

The Individualized Education Program

Contents of the IEP. The IEP is the blueprint for the education and related services that the LEA provides for a child with a disability, together with the goals, academic assessment procedures, and placement of the child (§614(d)). P.L. 108-446 continues to require an articulation of the child’s current academic and functional performance levels and a discussion of measurable annual goals. However, complaints about burdensome IEPs led to several changes in previous law. The House report states that “[o]ne of the top goals for the Committee is to reduce the unnecessary complications and processes involved in the IEP in order to give parents

¹⁸ S.Rept. 185, 108th Cong., 1st sess., 23 (2003).

¹⁹ Requirements discussed in this section also apply to the SEA or other state agencies if they provide direct services to children with disabilities.

²⁰ P.L. 108-446 continues to require parental consent for reevaluations initiated by the LEA, unless the parent fails to respond after the LEA has “taken reasonable measures to obtain such consent” (§614(c)(3)).

²¹ P.L. 105-17, §614(a)(2)(A).

²² S.Rept. 185, 108th Cong., 1st sess., 24-25 (2003).

greater control over the IEP and to make the process more efficient and more effective for children, their parents, and teachers.”²³

A notable change from previous law is the elimination of the requirement for “benchmarks and short-term objectives” for all children with disabilities²⁴ except those who are the most severely cognitively disabled²⁵ (§614(d)(1)(A)(i)(I)(cc)). The Senate report notes that benchmarks were eliminated due to their paperwork burden on schools.

While benchmarks and short-term objectives are thought by some to help track the child’s progress, their inclusion in IEPs contributes greatly to the paperwork burden on educators and parents and often bears no relationship to the non-linear reality of a child’s development. Special education practice via short-term objectives too often focuses on achieving only small incremental improvements in student performance to the detriment of more effective longer range planning....Both education officials and the President’s Commission on Excellence in Special Education have found that [sic] benchmarks and short-term objectives to be unnecessary and time consuming.... The committee expects that eliminating the requirements for benchmarks and short-term objectives will reduce unproductive paperwork and allow greater attention to be focused on the child’s annual IEP goals and on the methods of measuring progress and reporting that progress to parents in a meaningful way.²⁶

P.L. 108-446 adds a rule of construction that no additional information is required for the IEP beyond that explicitly required in §614 and that information in one part of the IEP need not be contained in another part (§614(d)(1)(A)(ii)). The Senate report notes that this addition was made to reduce the paperwork burden on teachers.

The committee is greatly concerned about the paperwork burden experienced by teachers and other education personnel in connection with writing IEP’s. Lengthy and complex IEPs are not necessarily beneficial to students if they create confusion and take teachers away from instructional time with children. The committee has examined a number of actual IEPs, and has discovered that many items in those documents are not required by federal IDEA law. While it has proven difficult to determine the source or sources generating this additional paperwork, the committee wants to ensure that the federal law does not contribute to this problem. Therefore, Section 614(d)(1)(A)(ii) provides that nothing in the section shall be construed to require that additional information be included in an IEP beyond what is explicitly required in the section. The bill retains an existing provision ensuring that the IEP team does not need to include

²³ H.Rept. 77, 108th Congress, 1st sess., 110 (2003).

²⁴ P.L. 105-17, §614(d)(1)(A)(ii).

²⁵ P.L. 108-446 refers to “children with disabilities who take alternate assessments aligned to alternate achievement standards.” This provision presumably refers to those children with the most severe cognitive disabilities that the Elementary and Secondary Education Act regulations permit to be assessed based on alternative achievement standards for the purposes of determining adequate yearly progress (AYP). This group is estimated to be about 10% of the total population of children with disabilities.

²⁶ S.Rept. 185, 108th Congress, 1st sess., 28-29 (2003).

information under one component of an IEP that is already contained in another component of the IEP. The committee also recognizes that section 617 requires the Department of Education to develop a model IEP, suitable for adoption by a State or LEA, which will accommodate the committee's desire for a streamlined, straightforward, expression of only the requirements mandated by this Act. However, the committee does not intend to eliminate the requirement to individualize an IEP based on each child's own unique needs.²⁷

The IEP Team. The IEP team is composed of the parents of a child with a disability, one or more special education teachers, one or more regular education teachers (if appropriate), and other LEA representatives (§614(d)(1)(B)).²⁸ P.L. 108-446 made additions and alterations to the IEP team requirements aimed at reducing paperwork and other burdens of the IEP process.

P.L. 108-446 permits members of the IEP team to be excused from IEP meetings if the parent and the LEA agree (§614(d)(1)(C)). If the meeting topic does not deal with the member's areas of concern, there are no further requirements. If the meeting deals with the excused member's areas, he or she must provide written input to the parent and to the team. In all cases, the parent's agreement or consent must be obtained in writing. This provision was added to address the concern "that the amount of time spent preparing for and attending IEP meetings, and the number of individuals required to attend such meetings, reduces the amount of time that personnel spend with students."²⁹ The change was described as a key provision that "empowers parents to make important decisions about their child's education, and allows local educational agencies to better utilize their personnel who are not needed for a particular meeting."³⁰

The IEP Process. IDEA requires that each LEA have an IEP for each child with a disability in place at the beginning of the school year (§614(d)(2)(A)). P.L. 108-446 added requirements for children who transfer from one school district to another during the school year (§614(d)(2)(C)). For those children changing districts **within** a state, the new LEA must provide "services comparable to those described in the previous IEP" until it adopts the previous IEP or develops and implements a new IEP. For children transferring **between** states, the new LEA must also continue comparable services until it conducts an evaluation of the child (if the LEA determines it to be necessary) and "develops a new IEP, if appropriate, that is consistent with Federal and State law." (§614(d)(2)(C)(i)) Both the old and new schools are required to "take reasonable steps" to ensure that the child's IEP, supporting documentation, and other records are promptly transferred (§614(d)(2)(C)(ii)).

²⁷ Ibid, pp. 30-31.

²⁸ For a child moving from the infants and toddlers program under Part C of IDEA, P.L. 108-446 provides that a representative of the Part C program (such as the program coordinator), at the parent's request, be invited to the initial IEP meeting "to assist with the smooth transition of services" (§614(d)(1)(D)).

²⁹ S.Rept. 185, 108th Congress, 1st sess., 31 (2003).

³⁰ H.Rept. 77, 108th Congress, 1st sess., 110 (2003).

The 2004 amendments to IDEA allow for certain other changes to the IEP to reduce paperwork. If the parent and the LEA agree, changes to the IEP after the annual IEP meeting may be made via a written document without holding an IEP meeting (§614(d)(3)(D)). This change was made to eliminate the requirement of reconvening an IEP team “which requires coordinating the schedules of a number of people, and often forces a parent to take off work to attend.”³¹ The previous requirement was seen as “so burdensome that often changes that could benefit a student are simply not made.”³² In addition, LEAs are encouraged to consolidate reevaluation meetings with IEP meetings for other purposes if possible (§614(d)(3)(E)). This change, the Senate report notes, was made in order “to ease time burdens for parents, school personnel, and related service providers.”³³ Finally, changes to the IEP may be made by amending it, rather than completely redrafting the document (§614(d)(3)(F)).

P.L. 108-446 also permits alternatives to physical meetings, such as video conferencing and conference telephone calls. These alternatives can take the place of physical IEP meetings and administrative meetings related to procedural safeguards under §615 (such as scheduling and exchange of witness lists) (§614(f)).

Multi-Year IEP Demonstration Pilot Program. P.L. 108-446 authorizes a multi-year IEP demonstration program (§614(d)(5)). The Secretary of Education is authorized to approve demonstration proposals from up to 15 states. These demonstrations would allow parents and LEAs to adopt IEPs covering up to three years that coincide with the child’s “natural transition points.”³⁴ The multi-year IEPs must be optional for parents and based on their informed consent. They must contain measurable annual goals linked to natural transition points. The IEP team must review the IEP at each transition point and annually to determine if progress is being made toward annual goals. More frequent reviews are required if sufficient progress is not being made. Beginning in 2006 and annually thereafter, the Secretary must report on the effectiveness of the demonstration programs. These reports must include a discussion of the effectiveness of the program and any specific recommendations for broader implementation of the program including reducing the paperwork burden on teachers, principals, administrators, and related service providers (§614(d)(5)(B)).

The concept of a multi-year IEP was a controversial one during the 2004 reauthorization. The House bill would have allowed a three-year IEP, if the parents agreed, while the Senate amendment would have also provided this option but limited it to 18-year-old students who are still in the school system. The final

³¹ S.Rept. 185, 108th Congress, 1st sess., 32 (2003).

³² *Ibid.*

³³ *Ibid.*

³⁴ These transition points are defined to include: the transition “from preschool to elementary grades, from elementary grades to middle or junior high school grades, from middle or junior high school grades to secondary school grades, and from secondary school grades to post-secondary activities, but in no case a period longer than 3 years” (§614(d)(5)(C)).

version, described above, was agreed to in conference.³⁵ The discussion of a multi-year IEP in the House report emphasizes that “[m]any parents, teachers, and school district officials have asked for greater flexibility in dealing with the paperwork associated with the Act” and that “[t]he Committee is very interested in reducing the paperwork burden on parents and teachers.”³⁶

Procedural Safeguards Notice

The procedural safeguards notice requirements notify parents and children with disabilities of their rights under IDEA. P.L. 108-446 amended previous requirements to reduce the paperwork burden on schools. The new law requires that a copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only one time a year except that a copy shall also be given upon initial referral or parental request for evaluation, upon the first occurrence of the filing of a complaint, and upon the request of a parent (§615(d)(1)). The description of the contents of the procedural safeguards notice generally tracks previous law except that there are additions relating to the opportunity to resolve complaints, including the time period in which to make a complaint, the opportunity for the agency to resolve the complaint, the availability of mediation, and the time period in which to file civil actions (§615(d)(2)).³⁷

Model Paperwork Forms

Under P.L. 108-446, the Secretary of Education is required to publish and disseminate to states, LEAs, and parent and community training and information centers four model forms: a model IEP form; a model individualized family service plan (for infants and toddlers served under Part C of IDEA); a model form of the notice of procedural safeguards; and a model form for the prior written notice required prior to certain actions by the LEA (§617(e)). The Senate report describes the need for these model forms.

The committee understands that the paperwork forms associated with the Act are greatly varied from State to State and district to district. A standard IEP in one State could be seven pages while in a neighboring State that same child’s IEP would be eighteen pages. While some of this variance is related to State or local policy, most of the differences relate to confusion regarding what the act requires.... Each of these model forms will help inform local educational agency efforts as they develop their own forms and will result in decreased paperwork burdens while still ensuring that all of the requirements of the act are met.

³⁵ H.Conf.Rept. 779, 108th Congress, 2nd sess., 209 (2004).

³⁶ H.Rept. 77, 108th Congress, 1st sess., 111 (2003).

³⁷ P.L. 108-446 also makes changes regarding the due process procedures, such as the addition of statutes of limitations, in an attempt to limit litigation. It could be argued that these changes may also serve to reduce paperwork. For a more complete discussion of these issues see CRS Report RL32753, *Individuals with Disabilities Education Act (IDEA): Discipline Provisions in P.L. 108-446*, by (name redacted).

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