



CRS Report for Congress

The Individuals with Disabilities Education Act (IDEA): Overview and Selected Issues

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Summary

The Individuals with Disabilities Education Act (IDEA) provides funds to states for the education of children with disabilities. It contains detailed requirements for the receipt of these funds, including the core requirement of the provision of a free appropriate public education (FAPE). The statute also contains detailed due process provisions to ensure the provision of FAPE. IDEA was revised most recently in 2004 by P.L. 108-446, but Congress has continued to grapple with issues relating to the act. This report provides a brief overview of the act with particular attention paid to issues of recent congressional concern, such as funding and private school enrollment. This report will be updated as necessary.

Overview of Statutory Requirements

IDEA¹ provides federal funding for the education of children with disabilities and requires, as a condition for the receipt of such funds, the provision of FAPE. Originally enacted in 1975, the act responded to increased awareness of the need to educate children with disabilities, and to judicial decisions requiring that states provide an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

¹ 20 U.S.C. §1400 *et seq.*, P.L. 108-446.

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 Nancy Lee Jones.

IDEA has been amended several times, most recently by P.L. 108-446 in 2004.³ The act both authorizes federal funding for special education and related services⁴ and, for states that accept these funds,⁵ sets out principles under which special education and related services are to be provided. The requirements are detailed, especially when the regulatory interpretations are considered. The major principles include requirements that:

- States and school districts make available a **free appropriate public education** (FAPE)⁶ to all children with disabilities, generally between the ages of 3 and 21. States and school districts **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)** spelling out the specific special education and related services to be provided to meet his or her needs. The parent must be a partner in planning and overseeing the child's special education and related services as a member of the **IEP team**.
- "To the maximum extent appropriate," children with disabilities must be **educated with children who are not disabled**; and states and school districts provide **procedural safeguards** to children with disabilities and their parents, including a right to a due process hearing, the right to appeal to federal district court and, in some cases, the right to receive attorneys' fees.

Funding and the "Full Funding" Issue

Funding Trends. IDEA is one of the largest educational programs overseen by the U.S. Department of Education (ED). FY2006 appropriations for the program were

³ For a more detailed discussion of changes made by P.L. 108-446, see CRS Report RL32716, *The Individuals with Disabilities Education Act (IDEA): Analysis of Changes Made by P.L. 108-446*, by Richard N. Apling and Nancy Lee Jones (cited hereafter as "CRS Report RL32716, *Analysis of Changes Made by P.L. 108-446*." For a discussion of the final regulations promulgated by the Department of Education, see CRS Report RL33649, *The Individuals with Disabilities Education Act (IDEA): Final Regulations for P.L. 108-446*, by Richard N. Apling and Nancy Lee Jones.

⁴ Related services (for example, physical therapy) assist children with disabilities to help them benefit from special education (20 U.S.C. §1401(26), P.L. 108-446 §602(26)).

⁵ Currently, all states receive IDEA funding.

⁶ It should be emphasized that what is required under IDEA is the provision of a free appropriate public education. The Supreme Court, in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 177 (1982), held that this requirement is satisfied when the state provides personalized instruction with sufficient support services to permit a child to benefit educationally from that instruction, and that this instruction should be reasonably calculated to enable the child to advance from grade to grade. IDEA does not require that a state maximize the potential of children with disabilities.

\$11.6 billion.⁷ Most of these appropriations fund the Part B grants-to-states program, which was funded at \$10.6 billion for FY2006. This program provides state grants for services mainly for school-aged children with disabilities. IDEA authorizes two other state grants programs: the preschool grants program (§619), which funds services for children with disabilities ages 3 to 5 (funded at \$381 million for FY2006), and the infants and families state grants program (Part C), which funds services for infants and toddlers with disabilities and their families (funded at \$436 million for FY2006). Finally, IDEA authorizes a variety of national activities (Part D), such as funding for personnel preparation, parent information centers, and technology and media services (funded at \$253 million for FY2006).

Until recently, appropriations for the Part B grants-to-states program had been rising rapidly. Between FY1997 and FY2004, appropriations rose an average of 20% per year. The rate of increases has been less over the last two fiscal years, and FY2006 funding actually was slightly less than it was in FY2005. Despite recent slowing in appropriations growth, FY2006 appropriations for the IDEA Part B grants-to-states program is more than four times the FY1995 amount. Funding for the other two grants programs and for national programs has seen much slower growth. For example, the FY2006 appropriations for the preschool state grants program were only about 6% greater than the FY1995 amount for that program.

Authorizations and Maximum State Grants. Part B grants-to-states funding and state grant amounts under this program are often compared with amounts required to provide maximum state grants — the so-called “full funding” of IDEA. In addition, as a result of changes made by P.L. 108-446, which provides for specific authorization levels for the Part B grants-to-states program, it is appropriate to compare actual and proposed funding and grant amounts to authorized funding levels and estimated state grants at those authorized levels.

When Congress enacted the predecessor legislation to IDEA in 1975, the available estimate of the cost of educating children with disabilities was, on average, twice the cost of educating other children. A determination was made that the federal government would pay some proportion of this additional or “excess” cost. The metric for determining this excess cost was the national average per-pupil expenditure (APPE). The final determination was that the federal government would pay up to 40% of this excess cost. That is, a state’s maximum grant under the grant-to-states program is 40% of APPE times the number of children with disabilities served. (See Section 611(a)(2) of IDEA.)⁸ Total funds necessary to provide each state with its maximum grant are often called the “full funding” amount for IDEA Part B grants to states. Although appropriations for IDEA Part B grants to states have increased significantly over the last decade, funding still falls short of the amount that would be necessary to provide maximum grants to all states. For example, the FY2006 appropriated amount accounted for 17.65% of APPE.

Prior to the enactment of P.L. 108-446, IDEA authorized “such sums as may be necessary” for the Part B grants-to-states program. In response to debate over how and

⁷ As of this writing, CRS did not have final FY2007 appropriations for IDEA.

⁸ Under P.L. 108-446, the calculation of maximum state grants will change in FY2007. See CRS Report RL32716, *Analysis of Changes Made by P.L. 108-446*, for a discussion of this change.

when to reach maximum funding for IDEA, P.L. 108-446 [§611(i)] amended the act to include several years of specific authorization levels, culminating in an amount estimated to provide each state with its maximum grant in FY2011.

Children with Disabilities in Private Schools

A child with a disability may be placed in a private school by the local educational agency (LEA) as a means of fulfilling the FAPE requirement for the child. In this 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 this situation, the cost of the private school placement is not paid by the LEA unless a hearing officer or court makes certain findings. However, IDEA does require some services for such children in private schools.

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 an LEA. Under prior law (P.L. 105-17), it was **the LEA in which the child lived** that provided these services. Under current law, these services are provided by **the LEA in which the child's private school is located**. These requirements include that the funds expended by the LEA, including direct services to parentally placed private school children, shall be equal to a proportionate amount of **federal funds** made available under Part B of IDEA.⁹ In addition, the LEA must consult with private school officials and the parents of these children with disabilities.¹⁰ Finally, there are compliance procedures that include an appeal to the Secretary of Education.¹¹

Due Process and Discipline

Each state educational agency, state agency, or local educational agency that receives funds under IDEA must establish and maintain procedures designed to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to a free appropriate public education.¹² The various types of procedures include an opportunity for parents of a child with a disability to examine records, participate in meetings, and obtain an independent educational evaluation of the child; prior written notice of a change or refusal to change a placement; an opportunity for mediation; and an opportunity to present complaints.¹³ In addition, where a complaint is filed, IDEA mandates procedures that require the parent or the attorney representing the child to

⁹ 20 U.S.C. §1412(a)(10)(A)(i), P.L. 108-446 §612(a)(10)(A)(i).

¹⁰ 20 U.S.C. §1412(a)(10)(A)(iii), P.L. 108-446 §612(a)(10)(A)(iii).

¹¹ 20 U.S.C. §1412(a)(10)(A)(v), P.L. 108-446 §612(a)(10)(A)(v). For a more detailed discussion of IDEA and private schools generally see CRS Report RS22044, *Individuals with Disabilities Education Act (IDEA): Services in Private Schools under P.L. 108-446*, by Nancy Lee Jones. For a discussion of issues relating concerning children with disabilities who have been unilaterally placed by their parents in private schools, see CRS Report RL33368, *The Individuals with Disabilities Education Act (IDEA): Parentally Placed Children in Private Schools*, by Richard N. Apling and Nancy Lee Jones.

¹² 20 U.S.C. §1415(a), P.L. 105-17 §615(a).

¹³ 20 U.S.C. §1415(b), P.L. 105-17 §615(b).

provide notice, including the child's name and school, the nature of the problem, and a proposed resolution of the problem.¹⁴ If the complaint is not resolved, the parent or LEA has an opportunity for an impartial due process hearing.¹⁵ Prior to this hearing, the LEA must convene a resolution session to attempt to resolve the issue. If there is no resolution at this point, the due process hearing occurs, and the hearing officer renders a decision. The Supreme Court has held that the burden of proof in an administrative hearing challenging a child's individualized education program is on the party seeking the relief.¹⁶ Any party aggrieved by the hearing officer's decision may bring a civil action in state or federal district court, and there is a right to attorneys' fees in some situations.¹⁷

Generally, under IDEA, a child with a disability is not immune from disciplinary procedures; however, these procedures are not identical to those for children without disabilities.¹⁸ First, IDEA requires that all children, including children with disabilities who have been suspended or expelled from school, must receive a free appropriate public education.¹⁹ However, school personnel may suspend a child with a disability for up to 10 school days. Within 10 school days of a decision to change the placement of a child with a disability, school personnel must conduct a manifestation determination. Essentially, if the LEA, a parent, and relevant members of the IEP team determine that the conduct in question was caused by or had a direct and substantial relationship to the child's disability, or if the conduct in question was the direct result of the LEA's failure to implement the IEP, the conduct is determined to be a manifestation of the child's disability. If the conduct is determined not to be a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration as they would be applied to children without disabilities, except that educational services may not cease. If the behavior is found to be a manifestation of the child's disability, a functional behavioral assessment shall be implemented or reviewed.

School personnel also may place the child in an interim alternative education setting for up to 45 school days for situations involving weapons or drugs, or where a child has inflicted serious bodily injury²⁰ upon another person while at school. School personnel

¹⁴ *Id.*

¹⁵ 20 U.S.C. §1415(f), P.L. 108-446 §615(f).

¹⁶ *Schaffer v. Weast*, 546 U.S. 49 (2005). For a more detailed discussion of this case, see CRS Report RS22353, *The Individuals with Disabilities Education Act (IDEA): Schaffer v. Weast Determines Party Seeking Relief Bears the Burden of Proof*, by Nancy Lee Jones.

¹⁷ 20 U.S.C. §1415(i), P.L. 108-446 §615(i). The Supreme Court has granted *certiorari* in *Winkelman v. Parma City School District* (05-983) to determine whether, and if so, under what circumstances, non-attorney parents of a child with a disability may bring suit without using an attorney under IDEA. See CRS Report RS22543, *The Individuals with Disabilities Education Act (IDEA): Supreme Court to Decide Whether Parents May Bring Suit Pro Se*, by Nancy Lee Jones.

¹⁸ 20 U.S.C. §1415(k), P.L. 108-446 §615(k).

¹⁹ 20 U.S.C. §1412(a)(1), P.L. 108-446 §612(a)(1).

²⁰ Serious bodily injury is defined in the same manner as in 18 U.S.C. §1365(h)(3), which states, "the term 'serious bodily injury' means bodily injury which involves — (A) a substantial risk of
(continued...)

may also request a hearing officer to change the placement of a child with a disability to an appropriate interim alternative educational setting for 45 school days. There are specific appeals provisions for this situation in the statute.²¹

Interrelationship between IDEA and the No Child Left Behind Act²²

In 2001, the No Child Left Behind Act (NCLBA) (P.L. 107-110) reauthorized and amended the Elementary and Secondary Education Act (ESEA). Among other purposes, NCLBA aimed to improve public elementary and secondary education for all students. One mechanism for accomplishing this goal was to require that all students reach proficiency or advanced standing on state achievement tests of reading and mathematics by school year 2013-2014. Public school students are to make adequate yearly progress (AYP) each year to meet these goals. Schools and local educational agencies (LEAs) that fail to make AYP for two consecutive years or more can face various penalties. AYP applies not only to all students in the aggregate but also to designated subgroups, such as children with disabilities. ED has recognized that not all children with disabilities can be expected to achieve proficiency on academic standards set for most children. As a result, ED permits LEAs to calculate AYP for small percentages of children with disabilities based on alternate achievement standards (1% of all children tested) and modified achievement standards (2% of all tested).

Another NCLBA mechanism for improving public education is to require that all public school teachers of “core subjects” (such as reading, mathematics, history, and science) are “highly qualified.” The requirements to be a highly qualified teacher are fairly lengthy; however, the general principle is that such teachers demonstrate subject matter competency in the subject or subjects they teach. The 2004 IDEA amendments modified these requirements for special education teachers. First of all, the amendments require that all public school special education teachers must meet a definition of highly qualified, not just those teaching core subjects. In addition, the amendments made certain additional modifications to apply to the NCLBA highly qualified definition with respect to two types of special education teachers: those who teach only children with disabilities who are held to alternate academic standards and those teaching more than one core subject to children with disabilities.

²⁰ (...continued)

death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.”

²¹ For a more detailed discussion of the discipline provision in IDEA, see CRS Report RL32753, *Individuals with Disabilities Education Act (IDEA): Discipline Provisions in P.L. 108-446*, by Nancy Lee Jones.

²² For further information on the interrelationship between IDEA and NCLBA, see CRS Report RL32913, *The Individuals with Disabilities Education Act (IDEA): Interactions with Selected Provisions of the No Child Left Behind Act (NCLBA)*, by Richard N. Apling and Nancy Lee Jones. For further information on the NCLBA in general, see CRS Report RL33749, *The No Child Left Behind Act: An Overview of Reauthorization Issues for the 110th Congress*, by Wayne C. Riddle.