



Legislative Bulletin.....April 30, 2003

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H.R. 1350—Improving Education Results for Children With Disabilities Act of 2003

H.R. 1350 — Improving Education Results for Children With Disabilities Act of 2003 (Castle)

Order of Business: The bill is scheduled for consideration on Wednesday, April 30th, under a structured rule. The rule allows for one hour of general debate, equally divided, and makes in order only those amendments in the Rules Committee report (summarized below).

Summary: H.R. 1350 reauthorizes programs under the Individuals with Disabilities Education Act (IDEA), which provides assistance for the education of children, infants, and toddlers with disabilities.

Major changes in H.R. 1350 to current IDEA law are outlined below:

Overidentification/Misidentification of Disabled Children:

- Allows states and local education agencies (LEA) to use funds for prereferral systems for K-12 students who have not been enrolled in special education but need additional academic and behavioral support in general education. LEAs may use up to 15 percent of funding provided under Part B for prereferral services. LEAs with significant overidentification of minority students would be required to operate a prereferral program.
- Prohibits a child from being identified as disabled if the sole factor of identification is the lack of scientifically-based reading instruction
- Eliminates the requirement that the IQ-discrepancy model be used to identify whether a child has a “specific learning disability”
- Once “full funding” of IDEA is achieved, the number of disabled children counted toward the maximum state grant would be limited to 13.5 percent of all children ages 3 to 17 in the state

Discipline:

- Changes the time period allowed for school personnel to place a child who violates the school code of conduct policy in an alternative setting from 45 business days to 45

school days. The alternative placement could be longer than 45 days if required by state law.

- Allows school personnel to discipline disabled children in the same manner as non-disabled children, although educational services for disabled children must continue in any alternative setting (if the child is suspended for more than 10 days) even if such services would be discontinued for non-disabled students
- Eliminates the current-law provision that requires a determination whether an action by a child (that would result in disciplinary action) was the result of his or her disability

Individualized Education Program (IEP):

- Eliminates (starting with the 2005-06 school year) the requirement that an IEP include short-term objectives and benchmarks
- Requires the IEP to specifically address the academic achievement goals of disabled students
- Allows the regular education teacher of a disabled child to be absent from IEP meetings if the meeting does not involve issues related to the child's participation in the regular education environment
- Allows any member of the IEP team to be excused from a meeting if the child's parent and the LEA agree attendance is not necessary
- Allows the IEP to be amended via a written document rather than through an IEP meeting, if the parents and LEA agree to do so
- Allows the IEP to be changed by amendment rather than redrafting the entire IEP
- Authorizes LEAs and parents to voluntarily agree to develop a multi-year IEP (up to three years) rather than a one-year IEP, with an annual review required to measure student progress and amend the IEP, if appropriate. Parents who choose a multi-year IEP may go back to an annual IEP at any time.

Paperwork/Regulations:

- Authorizes the Secretary to issue only those regulations that are "reasonably necessary" to ensure compliance with IDEA
- Requires states to minimize rules and regulations for LEAs and schools and to ensure that such rules are designed to help students "meet the challenging State student academic achievement standards"
- Requires a GAO review of all federal IDEA requirements and a sample of state and local requirements to determine which requirements result in excessive paperwork burdens
- Authorizes a 10-state pilot program granting four-year waivers of paperwork requirements
- Requires the Secretary of Education to develop "model forms" for the IEP, procedural safeguards notice, and prior written notice
- Allows the IEP team to determine that a child may leave special education and return to regular education or graduate from high school without an exit evaluation

Litigation/Binding Arbitration/Due Process:

- Requires states to establish a voluntary binding arbitration system. Both the LEA and parents of a disabled child must agree to enter into arbitration in writing. The LEA or state agency must ensure that parents understand that arbitration is in lieu of a due process hearing and the decision of the arbitrator is final
- Requires the state and LEA to make mediation available to resolve disputes before a formal complaint is filed
- Establishes a statute of limitations of one year from the date of the violation to file a complaint and requires such complaints to be clear and specific when filed
- Requires due process hearings to be conducted by the state education agency (the current statute defers to state law)
- Establishes a “resolution session” to take place before a due process hearing where the parents and LEA have an opportunity to discuss and resolve complaints. If the complaint is not resolved within 30 days to the satisfaction of the parents, a due process hearing would occur. Issues could not be raised at the due process hearing that were not raised in the complaint or at the resolution session, unless the LEA agrees otherwise.
- Requires decisions by due process hearing officers be based on whether or not the child received a free and appropriate public education, not on procedural violations of the statute
- Requires states to determine limits on attorneys’ fees

Accountability:

- Requires state performance goals for children with disabilities to be the same as the state’s definition of adequate yearly progress under the Elementary and Secondary Education Act (ESEA) and to include measurable annual objectives for student progress.
- Requires the Secretary of Education to monitor implementation of the IDEA statute. In monitoring the Act, the Secretary must look at the academic achievement of children with disabilities on assessments and graduation and dropout rates.
- If a state is not in compliance with IDEA, the Secretary must take one or more of the following actions: referral to technical assistance, direct use of state funds for technical assistance, or withholding of up to 50 percent of state activities funds. The Secretary is required to take further action if a state is determined to be in “substantial non-compliance” or continued non-compliance.
- Requires the Individual Family Service Plan for infants and toddlers to include goals for the development of pre-literacy and language skills and a plan for the child’s transition to school

Choice/Supplemental Services:

- Allows LEA funds to be used to provide supplemental services (such as tutoring) to disabled children in schools identified for school improvement under ESEA
- In Part C (Infants and Toddlers), allows states to create a program allowing children coming into the Part C preschool program to remain with their current providers, including private providers

Teacher Quality:

- Requires special education teachers who teach in core subjects to be “highly qualified” in those subjects
- Requires LEAs to ensure that all personnel are “appropriately and adequately prepared,” consistent with the teacher and paraprofessional requirements in ESEA
- Requires state professional development programs to partner with LEAs and at least one higher education institution

Research:

- Moves special education research within the Institute for Education Sciences (where all other federal education research currently takes place). Establishes a National Center for Special Education Research within the Institute, headed by a Commissioner for Special Education Research

Medication:

- Requires states to establish policies that prohibit school personnel from requiring a child to be prescribed medication listed under the Controlled Substances Act in order to attend school or receive services

State and Local Uses of Funds:

- Allows states and LEAs to use funds to establish mechanisms (such as risk sharing funds or consortia) to manage the costs of children with low incidence, high cost disabilities

GAO Studies/Reports: Requires GAO to conduct studies on the following –

- Paperwork requirements under the IDEA statute
- State interpretations of the federal subcategories of “child with a disability”
- Distance learning and technology programs offered to special education teachers for professional development
- Services provided to limited English proficient children

Appropriations: Sets a framework to meet the maximum federal commitment for special education funding of 40 percent of the average annual per pupil expenditure (FY03 appropriations of \$8.87 billion equal nearly 18 percent of the average annual per pupil expenditure. The FY04 budget resolution provided \$11.1 billion, 21 percent of APPE).

Authorizes appropriations for Part B as follows:

- FY04 – \$11.074 billion
- FY05 – \$13.374 billion
- FY06 – \$15.746 billion
- FY07 – \$17.918 billion
- FY08 – \$20.090 billion
- FY09 – \$22.262 billion
- FY10 – \$25.198 billion
- FY11 and subsequent years – such sums

For preschool grants under Part B, H.R. 1350 authorizes \$500 million for FY04 and such sums for subsequent fiscal years.

Appropriations for Part C, Infants and Toddlers, are authorized at \$447 million for FY04 and such sums for FY05-09.

Appropriations for Part D, National Activities, are as follows:

- Professional development – \$44 million for FY04 and such sums for FY05-09
- Research, technical assistance, studies and evaluations – \$171.8 million for FY04 and such sums for FY05-09
- Personnel preparation – \$90 million for FY04 and such sums for FY05-09
- Parent training and information centers – \$59 million for FY04 and such sums for FY05-09

Additional Background: IDEA was last reauthorized in 1997 through 2002. Two IDEA programs, Part B Grants to States and Preschool Grants, are permanently authorized.

Summary of Amendments Made in Order:

Castle/Boehner (Manager’s Amendment) (10 minutes) – Makes clarifying changes to the four GAO reports required in the bill, increases from 4 to 40 percent the amount a state can reserve from its state-level activities funds for high-cost special education students, increases the FY05 authorization by \$200 million to \$13.574 billion, and makes other clarifying/technical changes.

Vitter (10 minutes) – Adds a provision in Part A (GAO Review) mandating that the review will include recommendations to reduce or eliminate the excessive paperwork burdens for teachers, related services providers, parents and school administrators; Amends Part B (GAO Report) to require a GAO report be submitted 2 years after the date of enactment and submitted every 2 years thereafter.

Bradley (10 minutes) – Increases the maximum set-aside for state-level activities from \$500,000 to \$750,000.

Davis, Susan (10 minutes) – Inserts into the definition of a “free, appropriate, public education” the language contained in the Supreme Court Decision known as *Rowley*, which states that the goal for a child with disabilities is to have the educational and related services necessary for that child to access the general curriculum.

DeMint (20 minutes) – Amends Part D (National Activities) to allow for the Secretary of Education to fund the design, development, and initial implementation of parental choice programs for students with disabilities; Amends Part B (Assistance for Students Ages 3-21) to allow states to let federal money follow the child along with the state money to the selected public or private school.

Musgrave (10 minutes) – Allows school districts the option of offering parents of disabled children in private schools a certificate to be used for their child’s specific special education

needs. The amount of the certificate would be equivalent to the per-pupil proportionate IDEA dollars generated to the school district by private school children. Certificates could be redeemed at eligible providers that meet health, safety, and civil rights laws and are fiscally sound.

Shadegg (10 minutes) – Expresses the sense of Congress and finds that students are over-identified and misidentified as students with disabilities and therefore, students should not be classified as being disabled without having been judged by a physician or other individual certified by the state health board.

Tancredo/Graves (10 minutes) – Redefines “specific learning disability” as a disorder due to a medically detectable and diagnosable psychological condition relying on physical and scientific evidence.

Kirk (10 minutes) – Expresses the sense of Congress that providing special needs students with a safe and drug-free learning environment is a laudable goal. Makes reference to random locker searches conducted by school administrators as an effective way to assess the gravity of the drug situation at a particular school, as well as to indicate to students that the use of drugs on school property will not be tolerated.

McKeon/Woolsey (10 minutes) – Requires that any additional increases in federal funding above fiscal year 2003 levels be passed down directly to the local level.

Nethercutt (10 minutes) – Amends Part C (Infants and Toddlers) to provide parents, in consultation with the Individualized Family Service Plan (IFSP) team, the ability to decide what setting is appropriate for each child.

Sanchez, Loretta (10 minutes) – Allows Personnel Preparation funds in Part D to be used to develop and improve programs to train school safety personnel and first responders who work at educational facilities in the recognition of autism.

Wu (10 minutes) – Amends the State Competitive Grant Program in the bill to allow the Secretary to give priority to applications that provide for the establishment of a professional development program regarding methods of early and appropriate identification of children with disabilities.

Garrett (10 minutes) – Requires the Secretary of Education to conduct a study within 2 years after the enactment of the Act on the cost to each state for compliance with this Act.

Committee Action: H.R. 1350 was considered and amended by the Education and the Workforce Committee on April 9 and 10, 2003, and reported favorably by a vote of 29-19.

The bill was also considered and amended by the Subcommittee on Education Reform of the Education and the Workforce Committee on April 2, 2003. The Subcommittee approved the bill by voice vote.

Administration Position: The Administration has indicated that it supports H.R. 1350.

Cost to Taxpayers: The Congressional Budget Office estimates that new authorizations under H.R. 1350 would total about \$50 billion over the 2004-2009 period (because two IDEA programs are permanently authorized, CBO uses a current-law baseline that assumes appropriation increases at the rate of inflation and does not include this baseline in the estimate for H.R. 1350). **Including the current-law baseline, authorizations under H.R. 1350 total \$111.7 billion over six years.** CBO estimates that appropriation of the new authorized levels would result in additional outlays of \$32 billion over the 2004-2009 period (for a total of \$90.7 billion when including the current-law baseline).

Does the Bill Create New Federal Programs or Rules?: As detailed above, the bill makes changes to the current IDEA program, some of which include new federal rules and requirements.

Constitutional Authority: The Education and the Workforce Committee cites Article I, section 8, clause 1 (general welfare) in the committee report for H.R. 1350.

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