SECTION I

CONTEXT / ENVIRONMENT

Modules

1. *Overview of the IDEA Amendments of 1997*

2. *State Accountability Systems and Students with Disabilities*

Overview of the IDEA Amendments of 1997[1]

In June 1997, the Individuals with Disabilities Education Act (IDEA) was amended by Public Law 105-17, the IDEA Amendments of 1997. This is the fifth set of amendments to the Act. Over the years, IDEA has fostered significant changes in the lives of children with disabilities and their families and in the roles of schools and teachers in the education of children with disabilities.

PURPOSE: To present a review of changes in IDEA resulting from the 1997 amendments to the law that were enacted to help ensure better results for students with disabilities and their families.

The basic tenets of IDEA have remained intact since the original passage of the law in 1975. However, each set of amendments has strengthened the original law. The IDEA Amendments of 1997 retain much of the previous version of the law but had some important revisions. This module does not attempt to provide a detailed explanation of all the changes to the Act; rather, it provides an overview of some areas in which the legislation has changed.

Many of the other modules in this annual report also provide specific information on the changes in the law. The complete text of the revised law can be obtained on-line at http://www.ed.gov/offices/OSERS/IDEA (case sensitive) or http://www.lrp.com/ed.

The Six Principles of IDEA

One way to conceptualize IDEA is to define six principles that provide the framework around which education services are designed and provided to students with disabilities. They are:

- free appropriate public education (FAPE);

[1] This module is, in part, based on an Office of Special Education Programs (OSEP)-sponsored project from the National Information Center for Children and Youth with Disabilities (NICHCY) and the Federal Resource Center for Special Education (FRC). Information from a two-volume notebook of training materials titled *The Individuals with Disabilities Education Act Amendments of 1997: Curriculum and Overheads* was used to write this module.

- appropriate evaluation;
- individualized education program (IEP);
- least restrictive environment (LRE);
- parent and student participation in decision making; and
- procedural safeguards.

The changes in the law will be examined within the framework of these six guiding principles.

FAPE

The IDEA Amendments of 1997 retain the original provisions of FAPE but added two new provisions. Thus, the law still requires that students with disabilities have available to them a "free appropriate public education," meaning special education and related services that:

> "(A) have been provided at public expense, under public supervision and direction, and without charge;
>
> (B) meet the standards of the State educational agency;
>
> (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and
>
> (D) are provided in conformity with the individualized education program required under section 614(d)." (§602(8))

The law now also specifically requires that FAPE must be made available to children who are suspended or expelled. State educational agencies (SEAs) and local educational agencies (LEAs) are responsible for ensuring that a student's IEP with its goals and objectives continues to be implemented in the least restrictive environment even though the child has been removed from the school. (A

further review of the new discipline requirements is given in the procedural safeguards section of this overview.)

The IDEA Amendments of 1997 also place limitations on the States' obligation to serve students with disabilities in prison. Federal law does not require States to provide FAPE to individuals ages 18 through 21 who, before their incarceration in an adult correctional facility, were not considered as having a disability--that is, they had not been identified as having a disability under IDEA or did not have an IEP in place prior to incarceration.

Definitions Included in FAPE. Key terms in the FAPE provision are "special education and related services." The IDEA Amendments of 1997 maintain the definition of special education. The definition of related services was also virtually unchanged; however, "orientation and mobility services" was added to the nonexhaustive statutory list of related services. Orientation and mobility services are designed to aid students who are blind or have other visual impairments.

FAPE and the General Curriculum. What determines an appropriate education was emphasized in the IDEA Amendments of 1997. The language requiring an evaluation was strengthened (see "Appropriate Evaluation" in this module), and evaluations must include information relevant to a student's participation in the general curriculum (§614(b)(2)).

Comprehensive System of Personnel Development (CSPD) and State Improvement Plans (SIPs). The providers of services under IDEA must be effectively prepared in their knowledge, skills, and attitudes. The IDEA Amendments of 1997 include a new competitive grant provision--the State Improvement Grants (SIGs). The majority of these grant funds must be spent for personnel development. To compete for an SIG, a State must submit a State Improvement Plan. A State's CSPD must be designed to ensure an adequate supply of qualified special education, general education, and related services personnel that meets the requirements for a SIP relating to personnel development in subsections (b)(2)(B) and (c)(3)(D)

of Section 653 of the Act. In addition, capacity-building is now promoted at the local level. Adoption of promising practices is actively conducted through the SIPs and through subgrants to LEAs for capacity building and improvement (§611(f)(4)).

The new law added provisions to the CSPD, including:

- a State must have in effect a CSPD that meets the requirements of the SIP; and

- personnel must meet the requirements specified in the State's SIP.

The SIP is a powerful tool for States to use to improve their systems and to equip staff with the necessary knowledge to improve results for students with disabilities. Under the IDEA Amendments of 1997, to the maximum extent possible, the SIP must be integrated with State plans under the Elementary and Secondary Education Act of 1965 (ESEA) and the Rehabilitation Act of 1973, as appropriate. SIGs are awarded on a competitive basis after peer review, and the IDEA Amendments of 1997 set guidelines on how the funds may be used.

Professional Standards. Prior to the IDEA Amendments of 1997, each State was required to (a) ensure that personnel were appropriately and adequately trained; (b) establish and maintain professional standards that its personnel had to meet; and (c) specify the steps that it intended to take to retrain or hire personnel who did meet State standards, when current personnel did not meet the highest State standard for a specific profession or discipline. The IDEA Amendments of 1997 add two new provisions:

- States may allow the use of paraprofessionals and assistants to assist in the provision of special education and related services under certain conditions. Paraprofessionals and assistants must be appropriately trained and supervised.

- States may adopt a policy that requires LEAs to make an ongoing good faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services. Such a policy may include that where there are shortages of qualified personnel, the recruitment and hiring of the most qualified persons available is allowed, provided that those persons who are hired are making satisfactory progress toward completing applicable course work and will in 3 years complete the courses to meet State standards.

Appropriate Evaluation

As in previous versions of the law, the IDEA Amendments of 1997 require that before a student can receive special education and related services for the first time, he or she must receive a "full and individual initial evaluation." The law also requires:

- parental consent for the initial evaluation;
- a nondiscriminatory evaluation;
- evaluation by a team in all areas of suspected disability;
- not using any single procedure to determine that a child is a child with a disability or to determine the child's educational program;
- testing in the native language or mode of communication of the child, unless it is clearly not feasible to do so; and
- that LEAs conduct reevaluations for each child with a disability if "conditions warrant a reevaluation or if the child's parents or teacher requests a reevaluation, but at least once every 3 years . . . ." (§614(a)(2)(A)).

The IDEA Amendments of 1997 amend certain aspects of the evaluation process and moved all of the provisions related to evaluation and reevaluation to one place in the

law. (See Section 614) The changes in the evaluation provisions are described below.

The Part B definition of a child with a disability was expanded to include, at the discretion of the SEA and LEA, children between the ages of 3 and 9 who are--

> "(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and
>
> (ii) who, by reasons thereof, needs special education and related services." (§602(3))

Previously, use of the term developmental disabilities was limited to children ages birth through 5. According to the Committee on Labor and Human Resources Report, "use of 'developmental delay' as part of a unified approach will allow the special education and related services to be directly related to the child's needs and prevent locking the child into an eligibility category which may be inappropriate or incorrect . . . ." (pp. 6-7)

Other changes to the evaluation provisions include codification of the policy that assessment tools and strategies provide information that is instructionally useful, emphasis on participation in the general curriculum, and reduction of the paperwork burden.

The evaluation process has also been strengthened. The law now requires that a parent be included as part of the team that determines eligibility. Specifically, the evaluation process includes collecting "information provided by the parent" (§614(b)(2)(A)), reviewing existing evaluation data, including "evaluations and information provided by parents" (§614(c)(1)(A)), and requires that the "determination of whether the child is a 'child with a disability' . . . shall be made by a team of qualified professionals and the parent of the child . . . ." (§614(b)(4)(A))

Inclusion in State and Districtwide Assessment.[2] One of the far-reaching changes to IDEA is its alignment with recent educational reform legislation, including The Goals 2000: Educate America Act, the Improving America's Schools Act (IASA), and the School to Work Opportunities Act. The IDEA Amendments of 1997 require that:

> "(A) IN GENERAL.--Children with disabilities are included in general and district-wide assessment programs, with appropriate accommodations, where necessary. As appropriate, the State or local educational agency--
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> (i) develops guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State and district-wide assessment programs; and
>
> (ii) develops and, beginning no later than July 1, 2000, conducts those alternate assessments.
>
> (B) REPORTS.--The State educational agency makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:
>
> (i) the number of children with disabilities participating in regular assessments.
>
> (ii) the number of those children participating in alternate assessments.
>
> (iii)(I) The performance of those children on regular assessments (beginning no later than July 1, 1998) and on alternate assessments (no later than July 1, 2000), if doing so would be statistically sound and

[2] For in-depth discussions of the changes in law related to the inclusion of students with disabilities in the assessment process, please see in Section I the module titled "State Accountability Systems and Students with Disabilities," and in Section IV the modules titled "Standards-Based Reform and Students with Disabilities" and "Developing Alternate Assessments for Students with Disabilities."

would not result in the disclosure of performance results identifiable to individual children.

(II) Data relating to the performance of children described under subclause (I) shall be disaggregated--(aa) for assessments conducted after July 1, 1998; and (bb) for assessments conducted before July 1, 1998, if the State is required to disaggregate such data prior to July 1 1998." (§612(a)(17))

Performance Goals and Indicators.[3] In addition to requiring that States include students with disabilities in assessment procedures, the IDEA Amendments of 1997 require States to establish performance goals for children with disabilities and to establish performance indicators to judge their progress toward these goals. States had until July 1, 1998, to establish:

- appropriate performance goals for students with disabilities that "are consistent, to the maximum extent appropriate, with other goals and standards for children established by the State;" and

- "performance indicators the State will use to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates." (§612(a)(16))

Individualized Education Programs (IEPs)

IDEA requires that an IEP be written for each student with a disability receiving special education and related services. The IDEA Amendments of 1997 incorporate some new requirements pertaining to IEPs and move all provisions related to the IEP to Section 614(d). These went into effect on July 1, 1998.

[3] Section IV contains a module titled "Performance Indicators for Parts B, C, and D." This module gives a detailed description of OSEP's response to the Government Performance and Results Act of 1993 (GPRA).

The section begins by defining the term "Individualized Education Program":

> "The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section. . . ." (§614(d)(1)(A))

Below is a summary of the provisions that modified the IEP in the IDEA Amendments of 1997.

Statement of the Child's Present Levels of Educational Performance. The IEP must state how the child with a disability is currently doing at school, emphasizing the child's strengths and weaknesses and areas that need to be addressed. The information is drawn from recent evaluations, observations, and inputs from parents and school personnel. A new area of emphasis in the IDEA Amendments of 1997 is "how the child's disability affects the child's involvement and progress in the general curriculum." (§614(d)(1)(A)(i)(I))

Statement of Measurable Annual Goals, Including Benchmarks or Short-Term Objectives. This section focuses on the IEP team's recommended educational goals that are appropriate for the student. The goals must be annual and measurable and include benchmarks or short-term objectives, and relate to "meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum; and meeting each of the child's other educational needs that result from the child's disability . . . ." (§614(d)(1)(A)(ii)(I) and (II))

Statement of Special Education and Related Services. Given the child's strengths, needs, and annual goals, the IEP considers the special education and related services necessary to accomplish those goals. Again, the IDEA Amendments of 1997 emphasize services necessary to enable the child to be part of the general curriculum. In fact, the IEP must include "an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class . . . ."

(§614(d)(1)(A)(iv)) Also, the IDEA Amendments of 1997 include a definition of "Supplementary Aids and Services." "Supplementary aids and services" means "aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with section 612(a)(5) [The 1997 Amendments, provision on LRE]." (§602(29))

Statement of Any Individual Modifications in the Administration of State or Districtwide Assessment of Student Achievement.[4] The IDEA Amendments of 1997 require that students with disabilities be included in the assessment process. Modifications or adaptations must be given where appropriate. If the IEP team determines that a child will not participate in a particular State or local assessment, or any part of that assessment, then a statement of "why that assessment is not appropriate for the child and how that child will be assessed" must be included. (§614(d)(1)(A)(v)(II)(aa) and (bb))

Dates, Frequency, Location, and Duration of Services. Each student's IEP must include when the student's special education and related services will begin, how long they will go on (duration), how often they will be provided (frequency), and where they will take place (location). The location provision is new in the IDEA Amendments of 1997. (§614(d)(1)(A)(vi))

Transition Services. The requirement to provide youth with disabilities transition services was retained from the prior law. However, two new requirements were added. First, IEPs must include,

> "beginning at age 14, and updated annually, a statement of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's course of study (such as partici-

[4] For more on this topic, please see the modules titled "State Accountability Systems and Students with Disabilities" in Section I and "Standards-Based Reform and Students with Disabilities" and "Developing Alternate Assessments for Students with Disabilities" in Section IV of this report.

> pation in advanced-placement courses or a vocational education program)." (§614(d)(1)(A)(vii)(I))

This requirement was designed to augment the existing requirement which states:

> "beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages . . . ." (§614(d)(1)(A)(vii)(II))

The second addition is that IEPs must include,

> "beginning at least one year before the child reaches the age of majority under State law, a statement that the child has been informed of his or her rights under this title, if any, that will transfer to the child on the age of reaching majority . . . ." (§614(d)(1)(A)(vii)(III))

Developing the IEP. The IDEA Amendments of 1997 maintain essentially the same process for developing an IEP. However, the new legislation increases the role general educators play on the IEP team, and related service personnel are specifically mentioned as being part of the IEP team, where appropriate, and at the discretion of the parent or school. New language was also added with regard to the responsibilities of the IEP team. Specifically, the law charged the IEP team to consider: (a) the strengths of the child and the concerns of the parents for enhancing the education of their child and (b) the results of the initial evaluation or most recent evaluation of the child. (§614(d)(3)(A))

In the process of developing the IEP, the IEP team must also consider "special factors," including:

> "(i) in the case of a child whose behavior impedes his or her learning or that of others, consider where appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

(ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP;

(iii) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille) that instruction in Braille is not appropriate for the child;

(iv) consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communication with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(v) consider whether the child requires assistive technology devices and services." (§614(d)(3)(B))

Reviewing and Revising the IEP. The IDEA Amendments of 1997 emphasize that the IEP is to be reviewed annually or more frequently if needed to determine if goals are being met. The IEP must be revised, as appropriate, to address "any lack of expected progress toward the annual goals and in the general curriculum, where appropriate; the results of any reevaluation conducted under [§614]; information about the child provided to, or by, the parents . . . ; the child's anticipated needs; or other matters." (§614(d)(4)(A)) Also, as appropriate the regular education teacher must participate in the review and revision of the IEP. (§614(d)(4)(B))

Least Restrictive Environment

Since 1975, all eligible students must receive FAPE in the least restrictive environment possible. This means that the child must receive an appropriate education designed to meet his or her needs while being educated with nondisabled peers to the maximum extent appropriate. Specifically, the law requires each State to ensure that:

> "[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." (§612(a)(5)(A)).

The IDEA Amendments of 1997 add two new provisions to strengthen this commitment:

> "(i) IN GENERAL.--If the State uses a funding mechanism by which the State distributes State funds on the basis of the type of setting in which a child is served, the funding mechanism does not result in placements that violate the requirements of subparagraph (A).
>
> (ii) ASSURANCE.--If the State does not have policies and procedures to ensure compliance with clause (i), the State shall provide an assurance that it will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements." (§612(a)(5)(B))

These new provisions require that States do not set up funding mechanisms that violate the LRE requirement and that if a State has in place funding mechanisms that are in violation, they be revised as soon as possible. Furthermore, as described in the IEP section, supplementary aids and services were defined, as well as other components,

such as student involvement in the general curriculum, the participation of students in State and districtwide assessment programs, and performance goals and indicators.

When students with disabilities are educated in the general education classroom, the possibility exists that a nondisabled child might benefit from the special education being provided to a child with a disability. In the past, schools were required to keep track of these incidental benefits. The new provision states:

> "(4) PERMISSIVE USE OF FUNDS.--Notwithstanding paragraph (2)(A) or section 612(a)(18)(B) (related to commingled funds), funds provided to the local educational agency under this part may be used for the following activities:
>
> > (A) SERVICES AND AIDS THAT ALSO BENEFIT NONDISABLED CHILDREN.--For the costs of special education and related services and supplementary aids and services provided in a regular class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if one or more nondisabled children benefit from such services." (§613(a)(4))

Parent and Student Participation

IDEA strongly encouraged the participation of and communication among all parties who have a vested interest in the education of students with disabilities. On the one hand, parents have always been important players in the special education process, and their involvement is crucial to successful results for students. On the other hand, the language inviting student participation has become stronger with the past two reauthorizations of IDEA, particularly in the area of transition.

Previous versions of IDEA stipulated that:

- Public agencies must notify parents when they propose or refuse to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child.

- Parents have the right to inspect and review any education records relating to their child that the public agency collects, maintains, or uses. In addition, they have the right to inspect and review all educational records with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child.

- Parental consent is required before a child may be evaluated for the first time.

- Parents have the right to obtain an independent educational evaluation (IEE) of their child; under certain circumstances, this IEE may be at public expense. If the parents obtain an IEE at private expense, results of the evaluation must be considered by the public agency in any decision made with respect to the provision of FAPE to the child.

- Parents are members of the team that develops their child's IEP.

- Parental consent is required for a child's initial special educational placement.

- Parents have the right to challenge or appeal any decision related to the identification, evaluation, or placement of their child, or the provision of FAPE to their child.

The IDEA Amendments of 1997 define "parent" and provide procedural safeguards for infants, toddlers, and children so that they continue to receive services under the Act if the parent is unable to be located.

The definition of parent as it appears in the IDEA Amendments of 1997 is:

> "The term 'parent'--
> (A) includes a legal guardian; and
> (B) except as used in sections 615(b)(2) and 639(a)(5), includes an individual assigned under either of those sections to be a surrogate parent." (§602(19)).

Section 615(b) states the procedural safeguards established for Part B; Section 615(b)(2) requires "procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child) to act as a surrogate for the parents . . . ."

Section 639(a) states the procedural safeguards established for Part C; Section 639(a)(5) requires

> "[p]rocedures to protect the rights of the infant or toddler whenever the parents of the infant or toddler are not known or cannot be found or the infant or toddler is a ward of the State, including the assignment of an individual (who shall not be an employee of the State lead agency or other State agency, and who shall not be any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents."

The IDEA Amendments of 1997 also add several new requirements in terms of parental involvement in their child's education. The following section contains verbatim text from the IDEA Amendments of 1997 related to parental rights and responsibilities.

Notification to the Public Agency by Parents Regarding Private School Placement. "LIMITATION ON REIMBURSEMENT.--The cost of reimbursement described in clause (ii) [regarding reimbursement for private school placement] may be reduced or denied if--(aa) at the most

recent IEP meeting that the parents attended prior to the removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or (bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in division (aa); (II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 615(b)(7), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or (III) upon a judicial finding of unreasonableness with respect to actions taken by the parents." (§612(a)(10)(C)(iii))

"EXCEPTION.--Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement may not be reduced or denied for failure to provide such notice if--(I) the parent is illiterate and cannot write in English; (II) compliance with clause (iii)(I) would likely result in physical or emotional harm to the child; (III) the school prevented the parent from providing such notice; or (IV) the parents had not received notice, pursuant to section 615, of the notice requirement in clause (iii)(I)." (§612 (a)(10)(C)(iv))

Input During Evaluation. "CONDUCT OF EVALUATION.--In conducting the evaluation, the local educational agency shall--(A) use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities . . . ." (§614(b)(2))

Eligibility. "DETERMINATION OF ELIGIBILITY.--Upon completion of administration of tests and other evaluation materials--(A) the determination of whether the child is a child with a disability as defined in section 602(3) shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and (B) a copy of the evaluation report and the documentation of determination of eligibility will be given to the parent." (§614(b)(4))

"SPECIAL RULE FOR ELIGIBILITY DETERMINATION.-- In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency." (§614(b)(5))

Reevaluation. "PARENTAL CONSENT.--Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(C), prior to conducting any reevaluation of a child with a disability, except that such informed parent consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond." (§614(c)(3))

Receiving Progress Reports and Revising the IEP. The IEP must contain "a statement of-- . . . (II) how the child's parents will be regularly informed (by such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of--(aa) their child's progress toward the annual goals . . . ; and (bb) the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year." (§614(d)(1)(A)(viii))

Regarding the revision of IEPs, the LEA must "ensure that, subject to subparagraph (B), the IEP Team--(i) reviews the child's IEP periodically, but not less than annually to determine whether the annual goals for the child are being achieved; and (ii) revises the IEP as appropriate to address--(I) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate; (II) the

results of any reevaluation conducted under this section; (III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B); (IV) the child's anticipated needs; or (V) other matters." (§614(d)(4))

Placement. "EDUCATIONAL PLACEMENTS.--Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child." (§614(f))

Participation in All Meetings. The procedural safeguards under Part B of the IDEA Amendments of 1997 require:

> "an opportunity for the parents of a child with a disability . . . to participate in meetings with respect to identification, evaluation, and educational placement of a child, and the provision of a free appropriate public education to such child . . . ." (§615(b)(1))

Notification by Parents of Their Intent To File a Complaint. Any SEA, State agency, or LEA that receives Part B funds must institute "procedures that require the parent of a child with a disability, or the attorney representing the child, to provide notice (which shall remain confidential)--(A) to the State educational agency or local educational agency, as the case may be, in the complaint filed under paragraph (6); and (B) that shall include--(i) the name of the child, the address of the residence of the child, and the name of the school the child is attending; (ii) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and (iii) a proposed resolution of the problem to the extent known and available to the parents at the time; . . ." (§615(b)(7))

Parent Involvement in Policy Making. Parents were also encouraged in many other ways in the legislation to be involved as partners with educators and policy makers. This included involvement at the national, State, and local levels.

At the national level, the IDEA Amendments of 1997 require the Department of Education to involve parents in activities related to the funding of grants in the areas of coordinated research, technical assistance, support and dissemination of information. Parents of children with disabilities must be included in the development of the comprehensive plan of activities for research grants, membership in the standing panel of experts to evaluate applications for grants and cooperative agreements, and membership in the peer review panels for particular competitions.

At the State level, parents are to be involved at two levels. First, they must be invited to participate on the State advisory panel that is set up "for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State." (§612(a)(21)) In fact, "the majority of members of the panel shall be individuals with disabilities or parents of children with disabilities." (§612(a)(21)(C)) Second, they must be invited partners with the SEA in developing and implementing the State program improvement grants. (§652(b))

Parents are also to be involved in decision making at the local level. Specifically, they are to be involved in school-based improvement plans that the LEAs may submit. These improvement plans are designed "to permit a public school within the jurisdiction of the local education agency to design, implement, and evaluate a school-based improvement plan . . . that is designed to improve educational and transitional results for all children with disabilities . . . in that public school." (§613(g)(1)) Membership of this panel must reflect the diversity of the community in which the public school is located and must include parents of children with disabilities who attend the school.

Students as Partners in Their Education. The law acknowledges that if students are to develop into independent, productive adults and become increasingly responsible for their behaviors and accomplishments, they need to acquire the skills that promote decision making. Therefore, new provisions (discussed in the IEP section of this module) regarding transition were added to the law.

Procedural Safeguards

The procedural safeguards were designed to protect the rights of parents and their children with disabilities, as well as give families and schools a mechanism for resolving disputes. Some of the safeguards remain essentially unchanged, while others have been revised or newly added. The following safeguards have remained intact:

- access to educational records: parents have the right to inspect and review all of their child's educational records;
- parents' right to obtain an IEE of their child;
- parents' right to request a due process hearing on any matter with respect to the identification, evaluation, or placement of their child, or the provision of FAPE;
- parents' right to have a due process hearing conducted by an impartial hearing officer;
- parents' right to appeal the initial hearing decision to the SEA, if the SEA did not conduct the hearing; and
- parents' right to bring civil action in an appropriate State or Federal court to appeal a final hearing decision.

Several procedures were modified and others were added. These will be discussed in the remainder of this section.

Prior Written Notice and the Procedural Safeguard Notice. Before the IDEA Amendments of 1997, prior written notice of procedural safeguards had to be given to parents before a public agency (a) proposed to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child or (b) refused to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE (34 CFR §300.505(a)(1)). The IDEA Amendments of 1997 changed this approach to informing parents of the procedural safeguards by trying to simplify

the process. Now the full explanation of the law's procedural safeguards is provided via the "procedural safeguards notice" when:

- the child is initially referred for evaluation;
- parents are notified of an IEP meeting;
- the agency proposes to reevaluate the child; and
- upon registration of a due process complaint. (§615(d)(1))

At other times, parents are reminded of the availability of procedural safeguards through a document called "prior written notice." Prior written notice is to be given whenever the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child, and includes: "(1) a description of the action proposed or refused by the agency; (2) an explanation of why the agency proposes or refuses to take the action; (3) a description of any other options that the agency considered and the reasons why those options were rejected; (4) a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action; (5) a description of any other factors that are relevant to the agency's proposal or refusal; (6) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of the description of the procedural safeguards can be obtained; and (7) sources for parents to obtain assistance in understanding the provisions of this part." (§615(c))

Mediation. Prior legislation permitted mediation to be used to resolve conflicts between schools and parents of a child with a disability. The IDEA Amendments of 1997 outline States' obligations for creating a mediation process in which parents and LEAs may voluntarily participate. States must ensure that the mediation process is voluntary on the part of parties, and that it is not used to deny or delay a parent's right to a due process hearing or to deny

any other rights afforded under Part B of IDEA. Mediation must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques. A list of qualified mediators knowledgeable in laws and regulations relating to the provision of special education and related services must be maintained by the State, and the State must bear the cost of the mediation process. (§615(e))

Discipline. Specific requirements were added to the law regarding the discipline of children with disabilities. These requirements were based on a number of factors, including court cases, OSEP memoranda, and findings from OCR.

One of the basic tenets of the original law has become known as the "stay put" policy. This provision has served to prevent public agencies from unilaterally removing a child with a disability from his or her current educational placement and placing the child in another setting during administrative proceedings. The IDEA Amendments of 1997 carry forward this provision by stating:

> "Except as provided in subsection (k)(7) [placement during appeals], during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child . . . ." (§615(j))

The IDEA Amendments of 1997 add explicit new requirements regarding the discipline of students with disabilities who:

- violate a school rule or code of conduct subject to disciplinary action;
- carry a weapon to school or a school function under the jurisdiction of an SEA or LEA;
- knowingly possess or use illegal drugs or sell or solicit the sale of a controlled substance while at school or school function under the jurisdiction of an SEA or LEA; and

- if left in their current educational placement, are substantially likely to injure themselves or others.

Section 615(k) of the IDEA Amendments of 1997 divides the disciplinary process into 10 subsections. The following paragraphs briefly outline these disciplinary requirements.

The IDEA Amendments of 1997 clarify the authority of school personnel to take disciplinary action, including ordering a change in placement for a child with a disability--

> "(i) to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities); and
>
> (ii) to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days if--
>
> > (I) the child carries a weapon to school or a school function . . . ; or
> > (II) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function . . . ." (§615(k)(1)(A))

Either before or not later than 10 days after taking the disciplinary action mentioned above, if the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in the suspension, the agency must convene an IEP meeting to develop an assessment plan to address the behavior. If the child already has a behavioral assessment plan, the IEP team must review the plan and modify it as necessary. (§615(k)(1)(B))

The law expanded the authority of the hearing officer to place the child in an appropriate interim alternative educational setting for not more than 45 days. The hearing officer must determine that the public agency has

demonstrated that maintaining the child in the current placement is substantially likely to result in injury to the child or others. In so determining, the hearing officer must consider the appropriateness of the current placement and whether the public agency has made a reasonable effort to minimize the risk of harm in the current placement, including the use of supplementary aids and services. (§615(k)(2))

Both of these new provisions refer to placing the child with a disability in a setting which will enable the child to continue to participate in the general curriculum and to continue to receive services and modifications described in the child's IEP and enable the child to meet the goals of the IEP. The placement must be determined by the IEP team. (§615(k)(3))

The relationship between the child's disability and the misconduct must be determined through a "manifestation determination review." The IEP team may determine that the behavior was not a manifestation of the child's disability. To consider the behavior subject to the disciplinary action, all relevant information, including evaluation and diagnostic results, including other relevant information supplied by the parents of the child, observations of the child, and the child's IEP placement must be reviewed in relation to the behavior subject to the disciplinary action. The IEP team must determine that the child's IEP and placement were appropriate and the supplementary aids and services and the behavior intervention strategies were provided consistent with the child's IEP and placement, the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action, and the child's disability did not impair the ability of the child to control the behavior. (§615(k)(4)(C))

Under the IDEA Amendments of 1997, if it is determined that the misconduct was not 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 in which they would be applied to children without disabilities. However, schools must

continue to provide FAPE to children with disabilities who have been suspended or expelled from school. (§615(k)(5)(A))

Parents have the right to appeal manifestation determinations. During the appeal, the "stay put" provision determines the child's placement during the appeal process. The LEA may request an expedited hearing if the school personnel maintain that it is dangerous for the child to be in the current placement. (§615(k)(6) and (7))

Also under the IDEA Amendments of 1997, a child who has not yet been found eligible for special education and who has violated any rule or code of conduct could assert the protections of the Act if the LEA had knowledge that the child had a disability before the behavior occurred. The IDEA Amendments of 1997 include a set of criteria to determine whether the LEA knew if the child had a disability. If the LEA did not have knowledge that a child has a disability, then the child may be subject to the same disciplinary actions as children without disabilities. However, if a request is made for an evaluation of a child during the time that the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. (§615(k)(8)(C))

The IDEA Amendments of 1997 make it clear that agencies are not prohibited from reporting a crime committed by a child with a disability to the appropriate authorities. Similarly, the law does not prevent State and judicial authorities from exercising their responsibilities. (§615(k)(9))

Finally, the IDEA Amendments of 1997 provide definitions for controlled substances, illegal drugs, substantial evidence, and weapons. These definitions are critical to the interpretation and implementation of these new provisions. (§615(k)(10))

Attorneys' Fees

The IDEA Amendments of 1997 clarify circumstances under which attorneys' fees can be collected and ensures that a fair cost standard is imposed. The legislation prohibits attorneys' fees and related costs for (a) an IEP meeting, except if ordered by an administrative proceeding or judicial action, or (b) at the discretion of the State for a mediation that is conducted prior to filing a complaint. The legislation also outlines certain circumstances when attorneys' fees must be reduced. (§615(i)(3))

Conclusions

Historically, IDEA has been a strong civil rights statute. As shown throughout this module, the IDEA Amendments of 1997 build upon previous versions of IDEA to provide children with disabilities and their families with a comprehensive set of rights and responsibilities. The new law also strengthens the responsibilities of SEAs and LEAs. IDEA tries to balance parental rights and educational agencies' responsibilities. It is hoped that this balance will be achieved through technical assistance to States, increased involvement of families, and OSEP's oversight of implementation of the law.

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State Accountability Systems and Students with Disabilities[1]

PURPOSE: To present an overview of accountability issues, particularly as they relate to State systems for addressing the needs of students with disabilities.

Over the past several years, Federal, State, and district policy makers have promoted a system of standards-based reform[2] in which special education has played a limited role (Goertz & Friedman, 1996). On the State level, standards-based reform emerged in the 1990s as a system to address policy fragmentation generated by a series of conflicting, State-initiated reforms (Smith & O'Day, 1991). Standards-based reform posits that "State government is to set system and student goals for the State, coordinate these long-term instructional goals across various State policies, and hold schools and school districts accountable for meeting these goals" (Smith & O'Day, as cited in Center for Policy Research, 1996, p. 4).

Most broadly, accountability is defined as "a systematic method to assure those inside and outside the educational system that schools and students are moving toward desired goals" (Brauen, O'Reilly, & Moore, 1994, p. 2). Accountability may be defined at two levels--*systems-level* accountability and *student-level* accountability. Traditionally, systems-level accountability has focused on input and process indicators of schooling and program improvement. In many States, this type of accountability is called *school accreditation*, or the *program review process*. With standards-based reform, accountability has been expanded to include evaluation of student results as well. Student results typically are measured in terms of assessment results. Hence, three elements for systems-level accountability are: inputs, processes, and aggregate student results. *Student-level* accountability may include individual graduation and promotion requirements.

[1] This module reports, in part, work conducted by Virginia Roach, Ed.D., at the Center for Policy Research, one of several research centers funded by OSEP.

[2] More information related to standards-based reform can be found in two modules in the Results section: "Standards-Based Reform and Students with Disabilities" and "Developing Alternate Assessments for Students with Disabilities."

This module focuses only on systems-level accountability. The remainder of the module reviews changes in the State education accountability systems and issues associated with including students with disabilities in general education accountability.[3] The module ends with summary findings relevant to families and children, educators, and policy makers at the Federal, State, and local levels.

Importance

Including students with disabilities in accountability systems is important for several reasons. First, many educators and advocates contend that general educators do not feel accountable for the performance of students with disabilities (Elliott & Thurlow, 1997; Roach & Raber, 1997; Schnorr, 1990). Second, including students with disabilities in the general accountability program is a key vehicle for including students with disabilities in standards-based reforms. In addition, advocates support the inclusion of students with disabilities in all facets of the general school system, including the accountability system (NASBE, 1992; NASDSE, 1994). Finally, Federal legislation requires that students with disabilities be included in all aspects of standards-based reform (The Goals 2000: Educate America Act, 1993; the Improving America's Schools Act, 1994; and the Individuals with Disabilities Education Act Amendments of 1997). Despite this rationale, however, special education has played a limited role in creating standards-based reform policy (Goertz & Friedman, 1996), and students with disabilities are often excluded from the general curriculum, State and district assessments, and accountability systems (Elliott & Thurlow, 1997; Roach & Raber, 1997).

[3] Please see the *19th Annual Report*, pages III-9 through III-22, for an in-depth discussion on the educational reform activities related to the inclusion of students with disabilities in statewide assessments.

Traditional General Education Accountability

The traditional model for general education accountability is based largely on inputs to the system, such as the number of books in the library, the square footage allocation per student in a school, and the number and age of the textbooks that a district uses. These input-oriented accountability systems are variously called accreditation, school improvement reviews, accountability reports, profiles, and district composite reports. Some of these reviews are completed by State department of education staff in conjunction with district and school officials. In other instances, independent accrediting bodies work in conjunction with the State to conduct accreditation reviews. In addition to accounting for specific inputs, many systems review components of the education enterprise to determine if programs are being implemented with integrity and within the spirit of the policy that created them. Examples include the curriculum review cycle and long-range facilities planning in a district. The focus of these reviews is on the processes of and inputs to education; the unit of analysis is typically the school building or district.

Coupled with this type of accountability review are compliance reviews for specific categorical programs funded by either the Federal or State government. Compliance review, or monitoring, takes the specific program as the unit of analysis. Like accreditation, it is based largely on the *process* of delivering a particular program (such as compensatory education or bilingual education) to a particular student population, school, or district. As such, program compliance also relies on the inputs to the system.

Traditional Special Education Accountability

Traditionally, accountability in special education has been focused on compliance. Until the mid-1990s, the focus

was on ensuring that districts were undertaking the appropriate procedures prescribed by Federal and State law in a timely fashion. Child count has also been used as an accountability measure in special education because much of special education's Federal and State funding is based on the number of students eligible to receive services under the program (Elliott & Thurlow, 1997). In addition, one of the mandates of IDEA is "child find," the requirement for districts to locate students who may be in need of special education services. Reviewing the child count for special education is a way to evaluate the districts' and States' fulfillment of that requirement. Also, the courts and/or hearing process have become a mechanism for special education accountability at the district and State levels.

Accountability Reform

General education accountability systems have been changing in three ways: (1) in substance, (2) in form, and (3) in implementation.

Substance

This is a shift from emphasis on the inputs to and processes of instruction to the results of the educational system. However, it is important to note that although States have added an emphasis on student achievement, or in some instances weighted student achievement more heavily in their accountability systems, with few exceptions States have generally maintained the input and program improvement elements of their systems (Roach & Raber, 1997).

Form

States are adding sections to their accountability systems that describe student results, such as district or school report cards, or requiring districts to report State assessment results as part of a larger comprehensive report of the

district. States are implementing processes that require districts to describe how they will help students meet State-established standards. As a result, some States have been adding elements of strategic planning to their accountability systems. Some States are expanding their accountability systems to hold *the school* accountable where they formerly may have placed accountability at the district or student level.

Implementation

For many States, the emphasis has shifted in accountability programs from procedural compliance to program improvement and technical assistance (MacDonald, as cited in Schrag, 1996). To accomplish this, accountability in some States is changing from an episodic to an ongoing process. States are also coordinating monitoring across several programs. Thus, monitoring for special education programs is conducted on the same cycle as monitoring for bilingual education or Title I programs. Additionally, some States are integrating their accountability systems to include students with diverse needs.

The primary way that students with disabilities are included in the new general education accountability systems is through the inclusion of their test scores in school and district reports. Advocates have been working aggressively over the past several years to ensure that as many students as appropriate are included in State or district standardized testing. Yet, research shows that the extent to which students with disabilities are included in assessments varies based on factors such as State policies and guidelines, the type of assessments given and accommodations available, how test scores are reported, and the consequences attached to the testing reports (Roach & Raber, 1997). Revised State assessment and accountability policies in some States, as well as the recently amended IDEA, require that students with disabilities be included in the testing process and that the scores be reported in the State's accountability system (Elliott & Thurlow, 1997).

Issues Associated with Including Students with Disabilities in General Education Accountability

In the tracking of 12 State accountability systems, and a more in-depth study of 4 of those State accountability systems, the following issues emerged (Roach, Goertz, & Dailey, 1997):

- **Limited time.** Under a coordinated model, special education compliance monitors must conduct a full special education compliance review while also participating in team compliance activities. State monitoring staff have expressed concerns that they simply do not have enough time to attend to both activities.

- **Non-coordinated and duplicative monitoring.** Although all of the four States that were studied in depth reported coordinating or consolidating their special education compliance monitoring with general education monitoring, districts did not necessarily perceive it that way. Respondents in some study districts reported that although State monitors arrived in the district at the same time, they monitored their own programs and asked district and school staff duplicative questions. In some study districts, respondents reported that programs were monitored at different times, although the State reported a coordinated accountability system.

- **Individual entitlement versus group accountability on common standards.** In our sample, Maryland, Missouri, Kentucky, Texas, Florida, and Colorado were placing greater emphasis on student outcomes in their accountability systems (Roach, Goertz, & Dailey, 1997). If the new accountability systems are based primarily on student achievement of common standards, special educators and advocates worry that attention to the individualization of special education will be lost. This can have two consequences. First, educators may drop some of the individualization associated with special education as they focus more on group accountability.

Second, because the focus is on group accountability in general education, accountability for student results in special education may never develop.

- **General accountability systems must include students with disabilities in their assessments.** Because student assessment results are the linchpin of new accountability systems, States that have inadequately included students with disabilities in their testing programs are ill prepared to include these students in their accountability programs. States must develop methods for including all students in their assessment system under the new requirements of the IDEA Amendments of 1997.

- **Poor achievement is masked if data are not collected and reported in sufficient detail.** State accountability systems that rely on student assessments typically collect data only on district- or building-level performance. What is reported is often an average test score of the student population as a whole. In these instances, the outstanding performance of some students can counterbalance the poor performance of other students so that the average score of the total school population seems adequate. This is a concern for tracking any student population in State accountability systems, including students with disabilities.

- **State compliance staff feel pulled by Federal compliance requirements.** Special education compliance items reflect Federal compliance requirements that are primarily process-oriented (Elliott & Thurlow, 1997). As States develop accountability systems that focus on program improvement, special education staff perceive that they are torn between satisfying Federal procedural compliance items and fully participating in the comprehensive, performance-oriented State accountability programs and coordinated strategic planning. State monitors feel that they are put in the position of asking local officials to focus on program inputs and

special education as a separate system and, simultaneously, to focus on program improvement of a unified system (Roach & Raber, 1997).

Implications

Based on recent work done at the National Association of State Boards of Education (NASBE), and changes taking place in State accountability systems in recent years, several points should be noted.

- Respondents at the district level valued the utility of process-oriented special education monitoring based on the extent to which they believed process monitoring leads to better student results. Guaranteeing the right to access programs, some believe, naturally leads to student achievement. For others, as with general education accountability reform, guaranteeing access to the system does not necessarily translate to improved student results. They believe it is necessary to focus on student results in order to improve student achievement.

- States continue to struggle with establishing the correct mix of emphasis on accountability for process versus accountability for student results. Even with the shift in emphasis toward student results, States continue to monitor program elements and input variables with an eye toward program improvement.

- Shifting accountability to focus on whether students are meeting the new standards involves shifting the orientation of accountability from inputs or processes to results *and* "raising the bar" on expectations for students with disabilities.

- Including students with disabilities in the general State accountability system extends their franchise in the general system but at no point exonerates a State from ensuring individual protections promulgated by IDEA. General and special education accountability systems are not mutually exclusive.

Summary

Including students with disabilities in State accountability systems is part of a general education reform movement that emphasizes end results rather than educational processes. IDEA and other legislative acts mandate that students with disabilities be reported in State assessment results and thereby become part of the State's accountability system. Issues surrounding the inclusion of students with disabilities in accountability systems include time constraints on State monitoring activities, performance masking related to the reporting of averages of scores at the district or school level, and lack of existing systems or alternative assessments at the State level.

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