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The New IDEA: A Summary of Significant Reforms by Mary Beth Klotz, NCSP and Libby Nealis

President Bush signed into law the new IDEA reforms under the Individuals with Disabilities Education Improvement Act on December 3, 2004 making it officially known as Public Law No: 108-446. The signing marked the end of a three-year reauthorization process and represented the first update to the nation's special education law in seven years. After months of stalling in between stages of the legislative process, Congressional education leaders came together for a bipartisan agreement in late November that focused on academic accountability for student and school performance. The effective date for all the changes in the law is July 1, 2005, except for changes to the requirements for highly qualified teachers that take effect immediately. The research section also takes effect immediately, except that the research plan must be developed by October 1, 2005. Now that the new IDEA reforms have been made law, the Department of Education will begin writing federal regulations. A shorter than previous public comment period has begun, with a deadline of February 28, 2005. The Department aims to have final regulations completed within a year.

At the foundation of the new law are the findings of the 2002 President's Commission on Excellence in Special Education which recommended special education reforms based on academic results for students, early intervention, parental choice, and paperwork reduction. NASP has worked hard throughout the reauthorization process advocating for provisions that will improve the lives of children with disabilities, as well as to promote public awareness of the important contributions that school psychologists make as related services providers. NASP would like to thank its members for providing input on the law and contacting their members of Congress on NASP recommendations. Continued advocacy as the Department of Education, Office of Special Education Programs (OSEP), and the states begin to develop the IDEA Regulations will be crucial. NASP members are encouraged to utilize the NASP Advocacy Action Center at <http://capwiz.com/naspweb/> to contact their state policymakers as they develop state regulations.

Now that the reauthorized law has been unveiled, school psychologists will be interested in understanding changes in the law that most impact the profession. This summary briefly highlights key changes to select provisions in the new law. In addition, NASP will continue to report to members on the new law and the forthcoming regulations as events unfold.

Key Provisions in the New IDEA

Identification of Learning Disabilities: As anticipated, the reauthorized law adds new language that allows local education agencies (LEAs) to eliminate the IQ-Achievement discrepancy requirement stating that, "... a local education agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual

ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.”

Furthermore, the new language states that, “In determining whether a child has a specific learning disability, a local education agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in Section 614(a)(2) & (3).”

This new language represents the first change in how states may determine the existence of a specific learning disability (SLD) since the law was passed nearly 30 years ago. The change in the Evaluation Procedures section of the law will grant greater flexibility to local and state education agencies as they begin to implement new models for identification. It will be critical for school psychologists to work actively within the state to ensure uniform guidance on best practices and exemplary problem-solving models.

While the statute gives no further specifics on use of the discrepancy formulae or an alternative process, there is additional information on Congressional intent in House and Senate committee reports accompanying their bills. “The Committee does not disregard the research base that supports the appropriate use of IQ tests, but the Committee acknowledges the widespread misuse of those measures. The bill specifically allows local educational agencies to continue to use the discrepancy model. However, the Committee hopes that local educational agencies that continue to use the discrepancy model will take great efforts to ensure that the application of the discrepancy model falls within the appropriate guidelines of the IQ assessment, and that evaluators do not rely solely on a simple test score, but place that result within the larger context of the child’s individual abilities” (House Report 108-77, p. 107). The report goes on to specifically recommend the RTI model as an option, but directs the Department to “also conduct high quality research to evaluate the effectiveness of these models, and provide more information regarding these alternatives” (p. 108).

Senate report 108-185 provides further clarification on this change. “In order to prevent radical differences in how local educational agencies determine the presence of specific learning disabilities, the committee encourages States to develop research-based models that can be adopted by local educational agencies. Further, the committee emphasizes that nothing in the new statutory language would prohibit a State from establishing a consistent statewide process for determining whether a child has a specific learning disability. States should collaborate with LEAs to identify the criteria for determining an SLD and ensuring the consistency and integrity of the classification system across the State. In addition, the committee strongly encourages the Secretary of Education to assist States and LEAs in this effort by developing guidance and technical assistance systems for the improvement of SLD identification and eligibility” p. 28. The federal regulations on IDEA will undoubtedly reflect the congressional intent put forth in these reports.

As for NASP recommendations on implementing reforms to LD identification, NASP has been actively involved in the national LD reform initiative with representatives participating on the OSEP sponsored LD Roundtable and the National Joint Committee on Learning Disabilities. In addition, NASP has been committed to providing a professional forum for examining and discussing various methods to LD identification and eligibility through articles published in

Communiqué, convention and summer institute training sessions, and updated legislative information on the NASP website, to name a few activities. Upcoming opportunities include the special sessions of the President's Strand of the 2005 Convention in Atlanta, and an e-Community discussion on February 7-11, 2005.

Discipline: For the most part, Congress accepted the Senate version of the discipline provisions, which largely reflect current law, but with numerous clarifications.

Unique circumstances. Schools will now be allowed to consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

Manifestation determination. The new law continues manifestation but with some changes:

- The law authorizes schools to order, for children with disabilities who violate student conduct codes, changes of placement to an appropriate interim educational setting, another setting, or suspension, for up to ten school days, to the same extent as would apply to a non-disabled student, without making a manifestation determination.
- The plan maintains the manifestation determination with modifications intended to simplify the process, as well as the exception for cases involving guns, bombs, drugs, or serious bodily injury (as defined in criminal code).
- Manifestation determinations must be conducted *within 10 school days* of a disciplinary decision that results in a change of placement. The IEP team must determine if the behavior: (1) was caused by, or had a direct and substantial relationship to, the child's disability; or (2) was the direct result of the LEA's failure to implement the IEP.
- If the child's conduct is determined to be a manifestation of their disability the IEP team must: (1) conduct a functional behavioral assessment and implement a behavioral intervention plan, if the LEA has not done so; or (2) review an existing behavioral intervention plan and modify it to address the behavior; and (3) except in cases involving weapons, drugs, or infliction of serious bodily injury, return the child to the placement from which the child was removed, unless the parent and LEA agree to a change of placement as part of the modification of the behavioral intervention plan.
- IDEA 2004 authorizes schools, upon determining that the violation was not a manifestation of the child's disability, to apply the same disciplinary procedures as for a child without a disability, provided that FAPE requirements are met, with the option of providing such FAPE in an interim alternative educational setting.

Timeline for removal. In cases involving weapons or drugs, or when a child has committed serious bodily injury, a school will be authorized to remove the child from the regular classroom setting for up to 45 *school* days, regardless of whether the child's behavior was a manifestation of disability. In such cases the child will still be entitled to receive continued educational services and appropriate functional behavioral assessments and behavioral intervention services and modifications. The 45 school days is a subtle but significant change from the 45 *calendar* days that is stipulated in IDEA '97.

NASP is pleased that many of the protections and safeguards for disciplining students with disabilities remain in place in IDEA 2004 such as a modified Manifestation Determination and the emphasis on providing FAPE to a child who has been removed from their regular placement.

Unfortunately, the conferees rejected the Senate’s stronger language under Sec. 614(d)(3)(B)(i) and chose to keep the House language (as in current law) that, the IEP team shall “in the case of a child whose behavior impedes the child’s learning or that of others, *consider* the use of positive behavioral interventions and supports....” We are disappointed that while in the case of reading interventions, Congress mandates the use of research-based interventions; however, in the case of behavioral problems, schools must only *consider* using them. On a positive note, there a stronger emphasis on providing behavioral interventions throughout the new law, including as part of early intervening services (more below) to students not yet classified under IDEA.

NASP will continue to keep members abreast of the specific policy areas affecting the discipline of students with disabilities that will need to be addressed through the regulatory process.

Reevaluations: The bill adds language to clarify the requirements for reevaluations and place limitations on their frequency. The bill states that a reevaluation shall occur not more frequently than once a year, unless the parent and the LEA agree otherwise; and at least every 3 years *unless the parent and the LEA agree that a reevaluation is unnecessary*. The option for the parent and team to extend the timeline for a reevaluation beyond three years is a change from IDEA ’97.

Early Intervening Services: The new IDEA places a greater emphasis on the use of pre-referral services to minimize overidentification and prevent unnecessary referrals to special education. School districts will now be allowed to use up to 15% of their federal funds annually, combined with other funds, to develop and implement coordinated early intervening services. These services are for students in all grades, with a focus on K-3, who have not been identified as needing special education and related services, but “need additional academic and behavioral support to succeed in a general education environment.” This includes among such allowable services: (1) professional development for teachers and other school staff to deliver scientifically-based academic and behavioral interventions; and (2) providing educational and behavioral evaluations, services, and supports, including scientifically-based literacy instruction.

NASP strongly supports the early identification of and intervention for all students who need academic and behavioral supports. We are especially pleased that behavioral interventions and assessments are included in this section and that “other school staff” are included in professional development activities. Although “related services personnel” are not named specifically, we plan to offer recommendations for regulations that encourage school districts to acknowledge and utilize related services personnel, such as school psychologists, in the provision of early intervening services and the consultation necessary to assist teachers in providing classroom-based interventions.

Congress also makes a strong connection between the provision of early intervening services and new, problem-solving methods to determine eligibility under IDEA. “The Committee encourages LEAs to take advantage of the prereferral services in section 613 to provide early intervention services to students and accompany those services with rigorous evaluation methods and curriculum-based assessments to measure the progress of the child. Through the application of high quality instruction, delivered by well-trained individuals, local educational agencies will be able to differentiate between children that have different learning styles and children that have disabilities” (House Report 108-77, p. 106).

Over-identification and Disproportionality: States will not only be required to keep track of how many minority students are being identified for special education, the amount of time spent in general education settings, and the number of discipline referrals, they will also be required to provide “comprehensive, coordinated, early-intervention programs” for children in groups that are determined to be overrepresented. This effort will be tied to early intervention services for students who show difficulty with developing basic reading skills. The districts must also make the public aware of what they’re doing to address the overrepresentation problem by establishing clear targets and indicators.

IEP Changes: Several significant changes have been made to the requirements addressing team attendance and IEP content.

- Individualized Education Programs (IEPs) must contain measurable annual goals and a description of how the child's progress will be measured and reported.
- Except in the case of students taking alternative assessments, short-term objectives and benchmarks in IEPs will be replaced with the NCLB system that measures students’ actual academic progress.
- Team members may be excused from an IEP meeting if no modifications are being made to that member’s area of curriculum or service; or if the member provides input prior to the meeting on a modification to be made.
- Changes to IEPs can be made without convening the IEP team if both the school district and parent agree.
- Minor changes to IEPs can be made in a conference call or by letter providing that team members agree on this format.
- Requirements to make provisions for transition planning has been changed from age 14 to 16, however language was added requiring in the IEP the inclusion of “...appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills.”

Paperwork Reduction: Fifteen states will be chosen to participate in a paperwork reduction demonstration program.

- Demonstration states will be permitted, among other changes, to allow school districts to offer the *option* of three-year IEPs to parents.
- The Secretary will not waive any statutory or regulatory requirements that relate to civil rights requirements in IDEA.
- After two years, the Secretary shall include in the annual report to Congress information relating to outcomes of these state waivers.

Accountability: As noted in the President’s Commission on Special Education, the current system places too much emphasis on compliance with complicated rules and not enough emphasis on academic results.

- IDEA 2004 revises requirements for academic achievement and functional performance of children with disabilities to conform IDEA to the State and LEA accountability system established under the NCLB Act.

- Schools and LEAs, must report disaggregated data to examine the results of children with disabilities and ensure that the subgroup is making adequate yearly progress (AYP) towards reaching proficiency.

Personnel Standards: Regrettably, the conferees allowed for the weakening of standards for related services personnel by removing a high federal standard. The new IDEA legislation will eliminate the use of emergency, temporary and provisional certification for related service providers, but would give states greater authority to determine professional qualifications in schools. The law will also require that local educational agencies “take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services.” As previously reported, states must be vigilant to counter those who would attempt to lower state standards, and work with state and local education agencies to address vacancies of qualified providers in schools.

The report language that accompanied the compromise bill stated that the “Conferees intend for State education agencies to establish rigorous qualifications for related services providers to ensure that students with disabilities receive the appropriate quality and quantity of care.” It also encouraged state educational agencies to consult with other state agencies, the disability community, and professional organizations to determine the appropriate qualifications for related services providers.

Child Medication: The final language states that, “The State educational agency shall prohibit State and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 1801 et seq.) as a condition of attending school, receiving an evaluation under subsection (a) or (c) of section 614, or receiving services under this title. NASP believes that all states and schools should have been prohibiting this practice all along. Although the language to conduct a study on the issue was not accepted, we are pleased that the requirement that states develop a formal policy (contingent upon federal funds) was removed, as was the stigmatizing language singling out psychotropic medication.

The language further stipulates that “Nothing in subparagraph (A) shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student’s academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services.” NASP and our mental health allies had worked successfully to have this same language included in the House Child Medication Safety Act (H.R. 1170).

Funding: The law authorizes funding increases of about \$2.3 billion each year. However, these allocations remain subject to the budgetary challenges and competition of the annual appropriations process. While the goal is to reach the promised 40 percent of per-pupil funding by 2011, we are still now less than halfway there at 19 percent.

Democratic leaders had pushed for mandatory funding allocations for special education, but these proposals were repeatedly rejected. Rather, Republican Congressional leaders promised that they would continue to give \$1 billion increases to IDEA each year, on a “glide path” to full funding. Clearly, this plan is already falling short. Final funding for IDEA, Part B, State Grants,

for FY 2005 is \$10.7 billion. This \$520 million increase above FY 04 is \$480 million short of the administration's \$1 billion request and \$1.7 billion less than authorized under the new IDEA, signed into law only days before this funding was finalized.

The plan also gives states the option of creating accounts for high-risk, unpredictable situations, using up to 10 percent of the state-level activities funds to reimburse districts.

Next Steps: Overall, the consensus of education organizations and advocates are that the new IDEA reforms are generally positive, particularly in efforts to clarify more complicated provisions and streamline paperwork requirements. NASP will continue to be proactive as the regulatory process gets underway working closely with allied organizations on key issues. As provided during the reauthorization period, NASP will continue to offer members up-to-date information and resources to help them navigate the changes underway in policy and practice. School psychologists, who are well informed of the IDEA statutory changes and coming regulatory reforms, as well as congressional intent behind them, will be better prepared to assist their states in developing state regulations and guide their schools and districts in implementation of best practices.

References and Resources:

NASP's IDEA Information Page at: <http://www.nasponline.org/advocacy/IDEAinformation.html>

NASP's Legislative Updates: <http://nasponline.org/advocacy/index.html#legupdates>

President's Commission on Excellence in Special Education (2002). *A new era: Revitalizing special education for children and their families*. Washington, DC: Author.
<http://www.ed.gov/inits/commissionsboards/whspecialeducation/reports/index.html>

Read the final IDEA bill posted on the Committee for Education and the Workforce website:
<http://edworkforce.house.gov/issues/108th/education/idea/conferencereport/confrept.htm>

Committee Reports, which explain the various changes Congress makes from current law and offers guidance to the Department of Education in developing regulations and implementing the reauthorized IDEA.

U.S. House of Representatives Report 108-77:

<http://www.nasponline.org/advocacy/IDEAHouseReport.pdf>

U.S. Senate Report 108-105: <http://www.nasponline.org/advocacy/IDEACommittee.pdf>

The Council for Exceptional Children's Summary of Significant Issues in IDEA 2004:
http://www.cec.sped.org/pp/IDEA_120204.pdf

A Side-by-Side Comparison of IDEA '97 to IDEA '04 from the National Association of State Directors of Special Education may be purchased at: www.nasdse.org

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