



INFORMATION BULLETIN

The Individuals with Disabilities Education Improvement Act of 2004

On November 19, 2004, Congress passed legislation to reauthorize the federal Individuals with Disabilities Education Act (IDEA). President Bush signed the Act into law December 3, 2004. This legislation may be cited as the Individuals with Disabilities Education Improvement Act of 2004. It culminates three years of development starting with public forums held by the United States Department of Education in 2001 to the recent negotiations between the House and Senate Conference Committee to reconcile differences between the House and Senate versions of their IDEA bills.

All changes are effective July 1, 2005 except the definition of “highly qualified” as aligned to the No Child Left Behind Act (NCLB). This section of the legislation is effective on the date of its enactment, as well as certain provisions of Part D, relating to funding for personnel preparation. This bulletin provides a summary of the most significant changes of the IDEA and implications for NYSUT members and schools.

The United States Department of Education will amend federal IDEA regulations to conform to the Act within a year of the Act’s enactment. It is anticipated that these amendments will serve to clarify several statutory changes as noted, herein. The Act requires the U.S. Secretary of Education to issue regulations “only to the extent necessary to ensure there is compliance with the specific requirements of the statute.” In addition, New York State will need to amend its special education statutes and regulations to conform to the Act. The full text of the IDEA is available on line at <http://edworkforce.house.gov>.

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Summary of Changes to IDEA

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Individuals with Disabilities Education Act 2004

Summary of Changes

Highly Qualified Special Education Teachers

Section 602 (10) of the Act defines a highly qualified special education teacher as one who holds full state certification or licensure as a special education teacher (including certification obtained through alternative routes of certification), has not had his or her certification waived on an emergency, temporary or provisional basis, and holds at least a bachelor's degree. Section 602(10) also includes specific provisions affecting special education teachers teaching multiple core academic subjects and those teaching to alternate achievement standards. To help states with the highly qualified educator goal, this legislation allocates additional resources to states to support teacher development, with an emphasis on recruitment, preparation and highly qualified teachers.

- **Special education teachers teaching multiple core academic subjects:**

- A **special education teacher who is not new to the profession** (veteran) who teaches two or more core academic subjects exclusively to students with disabilities may demonstrate competence in all the core academic subjects the teacher teaches using the NCLB high objective uniform state standard of evaluation (HOUSSE), **which may include a single HOUSSE covering multiple subjects.**
- A **special education teacher new to the profession** who teaches multiple core academic subjects and who is highly qualified in math, language arts, or science when hired may demonstrate competence in the other core academic subjects through the HOUSSE, which may include a single HOUSSE covering multiple subjects, no later than **two years after the date of employment.**
- **Both new and veteran special education teachers** who teach multiple subjects may also demonstrate subject matter competence by meeting the original requirements under NCLB.

- **Special education teachers teaching to alternate achievement standards:**

A special education teacher who teaches core academic subjects exclusively to students who are assessed against alternate achievement standards may demonstrate subject matter competence by meeting the NCLB requirements applicable to an elementary school teacher, or in the case of instruction above the elementary level, by having subject matter knowledge appropriate to the level of instruction being provided, as determined by the State.

- **Special education teachers who only provide consultative services:**

The House Conference Report included language clarifying those teachers who provide only consultative services to a highly qualified teacher should be considered to be highly qualified special education teachers as long as they are certified in special education. Consultative services do not include instruction in core academic subjects, but may include adjustments to the learning environment, modifications of instructional methods, adaptation of curricula, the use of positive behavioral supports and interventions, or the use of appropriate accommodations to meet the needs of individual children.

- **Special education teachers teaching one core academic subject:**

Conference report language also clarifies that a special education teacher teaching one core academic subject must meet the original NCLB requirements for demonstrating subject matter competency.

- **Construction Clause – Private Right of Action**

Section 602(10)(E) includes a new construction clause stating that there is no individual right of action (e.g. impartial hearing or court) that a parent or student may pursue for the failure of a particular teacher to be highly qualified. Parents, however, according to Section 612(a) (14) D may file a complaint with the State Education Department about staff qualifications.

Impact on New York State: The Act provides some flexibility for special education teachers who are fully certified in their field to meet separate subject matter competency for each core academic subject they teach. These changes, however, will not completely solve the problems special education teachers face in meeting the requirements in New York State. As described below some teachers may not have adequate time to meet the new requirements.

The Act provides some flexibility to school districts in hiring special education teachers of multiple subjects who may not meet the “highly qualified” requirements in all subject areas. New York State’s new certification requirements, however, may impose certain problems with this flexibility. Under the new certification requirements, some middle and secondary special education teachers may not be able to demonstrate subject competency in the three areas indicated (math, language arts, or science), as they may have elected a concentration in social studies or other subject area. The current wording of New York State’s HOUSSSE may need to be reexamined to enable teachers to demonstrate subject matter competency within the allowed two years.

The new requirements for special education teachers who are teaching to the alternate achievement standards establish a higher standard than that currently in place for these teachers. Currently, based on New York State’s eligibility criteria for students with severe cognitive disabilities who participate in an alternate assessments, these students are not receiving instructional content at the level of grades Kindergarten through 12 in a core academic subject. Therefore, the New York State Education Department has stated that this group of special education teachers is not subject to the NCLB and is not required to meet the NCLB definition of “highly qualified.” In New York State, special education teachers will now be required to meet the NCLB requirements.

According to the New York State Education Department, resource room teachers and consultant teachers will need to meet the general requirements for highly qualified special education teachers (hold at least a bachelor’s degree and state certification in special education), but will not be required to demonstrate subject matter competency.

Assistive Technology Devices

Section 602 (1) defines assistive technology devices as *“any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized that is used to increase, maintain, or improve functional capabilities of a child with a disability.”* This definition was

amended to clarify that an assistive technology device does not include a “medical device” that is surgically implanted or the replacement of such device.

Impact on New York State: Schools districts will no longer be financially responsible for providing surgically-implanted devices to students with disabilities and any assistive technology service that will allow the student to use the device. The reference to such surgically implanted device was also included in the definition of related services. These surgeries and the follow-up maintenance cost are now the fiscal responsibility of families and their insurance carriers rather than by public school districts.

Related Service Providers and Paraprofessionals

- Section 612(a)(14)(B) of the Act removes the “highest qualified provider” standard from the law. (*Prior law required that the professional standards for personnel providing special education or related services are based on the highest requirements in the state applicable to a specific profession or discipline.*)
- This section also clarifies that related service personnel and paraprofessionals are required to meet qualifications that are consistent with state certification, licensure, or comparable requirements.
- The Act maintains the prior law provision in Section 612(a)(14)(B) that allows paraprofessionals and assistants who are appropriately trained and supervised to be used to assist in the provision of special education and related services to students with disabilities.

Impact on New York State: The Act maintains the role of appropriately trained and supervised paraprofessionals (now called supplementary school personnel in New York State) in the provision of special education programs and services. It also maintains the current policy under NCLB that special education paraprofessionals who provide instructional support in Title I school-wide programs meet NCLB requirements. Under NCLB, paraprofessionals hired after January 8, 2001 must meet the requirements now. All other paraprofessionals must satisfy such requirements by January 8, 2006. See NYSUT Information Bulletin No. 200312 *Teacher Aides and Teaching Assistants – NCLB Requirements for Paraprofessionals* for more information on these requirements.

Clarification will be required to determine how the deletion of the “highest qualified standard” from the Act will affect the agreement the New York State Education Department made with the United States Department of Education requiring all individuals providing speech pathology services to students with disabilities in school settings after July 1, 2015 to hold a master’s degree in speech language pathology for the professional certificate.

Nursing and Interpreting Services

Section 602 (26) of the Act adds two new related services: school nurse services and interpreting services. School nurse services are designed to enable a student with a disability to receive a free appropriate public education (FAPE) as described in the student’s individualized education program (IEP). As previously mentioned, the revised definition of related services does not include a “medical device that is surgically implanted, or the replacement of such a device.”

Impact on New York State: The inclusion of interpreting services and school nurse services strengthens the provision of these services for eligible students. The IEP team [in New York

State called the Committee on Special Education (CSE)] currently is required to consider the communication needs of students who are deaf or hard of hearing, including opportunities for direct communication with peers and professional personnel in the student's language and communication mode. In addition, increased numbers of students with significant health needs requiring the services of professional registered nurses are being educated in public schools. The inclusion of these services in the definition of related services will help to ensure that students are afforded specific services based on their unique needs and that such services are provided by qualified individuals. NYSUT supports establishing state standards for the preparation of educational interpreters and is urging the State Education Department (SED) to promulgate regulatory standards for this occupational title in a manner that is consistent with recommendations NYSUT shared with the SED.

Evaluation and Eligibility Determinations

- **Requests for Initial Evaluation:** Section 614 (a) (1) (B) defines who can refer a child for an initial evaluation. Requests for an initial evaluation may be requested by either a parent of a child, a state education agency, other state agency or a local educational agency (i.e., school district).

Impact on New York State: This language has the potential of limiting professional school staff, including teachers, in making a referral for an initial special education evaluation, as it would permit school districts to decide whether school staff can refer students for initial evaluation and impose conditions and controls on the referral process. Section 4401-a of New York State Education Law and Section 200.4 (a)(1) of the Regulations allows teachers and other professional members of the school district to make a direct referral to the Committee on Special Education (CSE) for an initial evaluation, if they suspect that the student has a disability. Sections 4401-a and 200.4 (a)(1) would need to be amended to limit a professional school staff's right to refer a student directly to the CSE for an initial evaluation. NYSUT has strongly urged SED to maintain current law regarding the right of professional members of a school to make a direct referral to the CSE.

- **Lack of Appropriate Instruction:** Section 614 (b) (5) of the Act was amended to clarify the current provision in regard to making a determination of eligibility for special education programs and related services. IDEA 1997 specified that a student must not be determined to be a student with a disability of the determinant factor is lack of instruction in reading or math or limited English proficiency. Language was added that lack of instruction in reading would include the essential components of reading instruction as defined in Section 1208(3) of the No Child Left Behind Act. The essential components of reading instruction includes: instruction in phonemic awareness, phonics, vocabulary development, reading fluency and reading comprehension strategies.

Impact on New York State: Under IDEA 1997, the CSE must have considered the reading ability of the student and whether the student's prior instruction in these areas was appropriate. The inclusion of the language in regard to the essential components of reading instruction provides greater clarification in determining the appropriateness of the reading instruction.

- **Lack of Parental Consent for Special Education and Related Services:** Section 614 (a) (1) (D) of the Act gives parents the right to refuse services for their children. School districts would be prohibited in statute from using due process procedures to override a

parent's refusal to consent to the initial provision of special education programs and services. According to the Act, in the absence of parental consent a school district would not be in violation of the requirement to make available a free and appropriate public education to the student for the failure to provide the recommended special education programs and services. In addition, the school district would not be required to convene a CSE meeting or develop an IEP for a student whose parents fail to provide consent for the initial provision of services.

Impact on New York State: This provision represents a significant change in limiting a school district's authority to make available special education programs and services to eligible students by disallowing a school district to use due process procedures to provide initial special education and related services. These students with significant behavioral and learning problems will remain in general education classrooms without necessary special education services and supports, potentially affecting the quality of learning of all students in the classroom. These students would be subject to the school district's code of conduct and would not be eligible to claim protections under IDEA for violating the code.

- **Reevaluations:** A school district must conduct a reevaluation if the child's parents or teacher requests a reevaluation. New language was added to specify that a reevaluation must also be conducted if the district determines that the educational or related services needs, including improved academic achievement and functional performance of a student, warrant a reevaluation. Section 614 (a) (2) of the Act establishes limitations on the conduct of reevaluations. Such evaluations may not be conducted more than once a year unless the parent and school district agree otherwise and must be conducted at least every three years unless the parent and the school district agree that a reevaluation is unnecessary.

Impact on New York State: While a teacher maintains the right to request a reevaluation of a student, the decision to conduct such evaluation rests with the parent and school district, if more than one reevaluation has occurred during the year. This provision represents a change in New York State procedures. Clarification will be needed in federal regulation, relating to the documentation of agreement between the parent and school district.

- **Evaluations Before Change in Eligibility:** Section 614 (c)(5) is amended to incorporate the current language in Section 300.534 of the Regulations stating that a school district is not required to conduct an evaluation of the student, if the termination of the student's eligibility is due to the student graduating from high school with a regular diploma or the student reaches the age of 21. New language requires school districts to provide the student with a summary of the student's academic achievement and functional performance, which would include recommendations on how to assist this student in meeting the student's postsecondary goals.

Impact on New York State: The requirement to provide the student with a summary of academic achievement and functional performance will require further federal regulatory clarification concerning the extent of information to be provided to the student. This requirement will impose an additional paperwork burden on school districts and educators, as such summary is not currently provided to students in New York State.

- **Specific Learning Disabilities:** Section 614 (b) (6) of the Act would no longer require school districts to take into consideration whether a student 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. In addition, school districts may use a process that determines if the child responds to scientific, research-based intervention as part of the evaluation procedures.

Impact on New York State: The decision to use these procedures for the determination of a learning disability rests with the local school district in the absence of any required state policy or guidance and limited research-based alternatives that have been validated at this time. This could increase the inconsistency across school districts in the identification of students with learning disabilities. NYSUT is urging the State Education Department to develop and/or identify research-based models for schools to use and to establish a uniform statewide process for determining whether a student has a learning disability.

Prohibition on Mandatory Medication

Section 612(a)(25) of the Act adds a new provision which prohibits state and school district personnel from requiring a student to obtain a prescription for a substance covered by the Controlled Substances Act as a condition of attending school, receiving an evaluation or receiving service. This section clarifies that this prohibition, however, does not prevent a teacher and other school personnel from 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.

Impact on New York State: While this provision prohibits teachers and other school personnel from recommending parents seek medication to address their child's behavior, teachers may continue to share information about the student's behavior or the need for an evaluation with parents. Teachers and other members of the Committee on Special Education may require additional professional development on interventions and strategies to address these behaviors and for communicating with parents about the student's behavior. This need should be reflected in the school district's Professional Development Plan.

IEP Team Member Participation

- **Excluding IEP Team Members:** Although the IEP team membership remains unchanged, a new provision is added to Section 614 (d) (1) (C) clarifying when the attendance of an IEP member is not necessary at an IEP team meeting. Subparagraph (i) establishes that a member would not be required to attend all or part of the meeting, if the student's parent and the school district agree in writing that the attendance is not necessary because the member's area of the curriculum or related services is not being modified or discussed at the meeting.

Subparagraph (ii) of this section allows a member of the IEP team to be excused from attending all or part of the meeting when the meeting does involve the member's area of the curriculum or related services, if the parent and the school district consent in writing to the excusal and the member submits written input to the parent and IEP team before the meeting.

- **Changes to IEP after Annual Review Meeting:** Section 614(d)(3)(D) of the Act includes a new provision concerning the attendance of IEP members at meetings for the purpose of making changes in the IEP after the annual review. The parent and school district may

agree not to convene an IEP meeting for the purpose of making changes after the annual review and instead may develop a written document to amend or modify the student's current IEP.

Impact on New York State: Excusing mandated members from IEP team meetings, especially from discussion in a meeting that involves the member's area of service or curriculum, severely limits the active participation of the student's teachers and other service providers. General and special education teachers, school psychologists, and other service providers share important information about the student at IEP meetings. Although the legislation requires excused members to submit "input" prior to the IEP meeting, this procedure should not be viewed as a viable substitute for participation because it does not allow for the interaction and discussion that occurs in an IEP team meeting.

Clarification is required in regard to how the New York State Education Department will interpret this provision in light of current Education Law that requires the CSE to develop and review a student's IEP. In addition, clarification is needed in federal regulations concerning the specific nature of the "written report" to be provided by the individual excused from the meeting. NYSUT has informed the State Education Department that it opposes any changes to current New York State Education Law or Regulations of the Commissioner that would change membership and participation requirements for Committee and Subcommittee on Special Education.

Components of the IEP

The new IDEA amends Section 614 (d) (A) regarding the components of a student's individualized education program.

- **Present Level of Performance:** The present level of performance and measurable annual goals must be described according to the student's academic and functional performance versus "educational performance" in prior law.
- **Benchmarks and Short-Term Objectives:** The requirement to indicate annual measurable goals, including academic and functional goals is maintained as a component of the IEP. Benchmarks and short-term objectives are eliminated for all students, except those who take alternate assessments aligned to alternate achievement standards.
- **Special Education and Related Services:** The IEP must indicate a statement of the special education and related services and supplementary aids and services, *based on peer reviewed research to the extent practicable*, to be provided to the student.
- **Accommodations:** The IEP must now include a statement on appropriate accommodations necessary to measure academic achievement and functional performance on state and district-wide assessments versus the current description of "individual modifications" on such assessments.
- **Transition Services Planning:** The provision of transition planning is now a single-stage process beginning at age 16. The Act deletes the requirement to include transition activities at age 14. In addition, new language is added requiring the IEP to indicate "appropriate measurable postsecondary goals based upon age appropriate transition assessments relating to training, education, employment, and where appropriate, independent living skills." The definition of transition service in Section 602(32) of the Act was amended to clarify that such services must be designed within a results-oriented

process that is focused on improving the academic and functional achievement of the student to facilitate the student's movement to post school activities. The definition also clarifies that transition services must be based on the student strengths in addition to his or her preferences and interests.

- **Reporting Progress to Parents:** The provision relating to parental reporting is revised to require reporting to the "extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year." The Act clarifies that such reporting must be concurrent with the issuance of report cards.

Impact on New York State: The elimination of benchmarks and short-term objectives in IEPs will serve to reduce the paperwork burden on teachers and other special education providers. In addition, the revision in the two-stage transition planning process will eliminate the confusion in current law and reduce paperwork for school staff. Further regulatory clarification is required concerning the inclusion of postsecondary goals based on transition assessments. NYSUT has urged New York State to consider age 14 as the criterion for the initiation of transition planning. Further federal guidance will be required before a final determination on the younger criteria can be rendered.

Multiple-Year IEP Demonstration Project

The Act adds a new Section 614(d)(5) which authorizes the Secretary of Education to approve up to 15 proposals from states to develop a comprehensive multi-year IEP, not to exceed three years.

- The IEP would be designed to coincide with the natural transition points for the student. Natural transition points refer to those periods that are aligned to the time of a student's transition from preschool to elementary grades, from elementary grades to middle school, from middle school to secondary school, and from secondary school to postsecondary activities.
- Parents would have the option to participate in a multi-year IEP.
- The Secretary is required to submit a report to Congress two years after the date of enactment of the legislation regarding the effectiveness of this demonstration program.

Impact on New York State: NYSUT recommended that the State Education Department not submit an application for this program to the federal government. NYSUT believes that student growth should be reviewed at least annually by the Committee on Special Education, especially for young students whose needs may change dramatically from one year to another. Based on the findings of this demonstration program, teachers and other service providers may experience future reductions in paperwork and time related to the IEP process.

Students Transferring into School Districts

- Section 614(d)(2)(C) of the Act includes specific language concerning students who transfer from one school district to another within the state. The new language requires school districts to provide the student with a free and appropriate public education (FAPE), including services, comparable to those described in the previous IEP in consultation with parents until the school district adopts the previous IEP, or develops or adopts and implements a new IEP.

- This section of the Act also includes a provision concerning a student with a disability who transfers to a school district within the same academic year from another state. In this situation the school district must make available FAPE including services comparable to those described in the previous IEP in consultation with parents until the school district conducts an evaluation, if necessary, and develops a new IEP, if appropriate.
- This new provision also includes language that requires school districts to take reasonable steps to promptly obtain the student's records from the previous school and for the previous school to promptly respond to such requests.

Impact on New York State: The Act clarifies the responsibility of the receiving school district in regard to the provision of special education programs and services for students transferring to a new district within or from outside the state. In addition, school districts are required to exchange student information promptly thus facilitating the timely review of the entering student's educational program. New York State will be required to revise its policies in regard to students who transfer from one school district to another.

Placement of Students in Alternative Educational Settings

Discipline Procedures: The Act amends Section 615 (k) of the IDEA affording teachers and school districts greater discretion in regard to disciplining students with disabilities while protecting the rights of these students.

- The new discipline procedures specifically refer to violations of a code of student conduct in relation to removal of students from their current placement for up to 10 school days. School officials may now consider "any unique circumstances on a case-by-case basis" when determining whether to change the placement of a student who violates the code of conduct.
- Manifestation determinations would be made by the parent, school district and relevant members of the IEP team (as determined by the parent and school district). The determination would be made upon consideration of "all relevant information in the student's file, including the child's IEP and teacher observations" and "relevant information provided by the parent."
- In determining whether the behavior was a manifestation of a student's disability, the conduct in question must be caused by a direct and substantial relationship to the student's disability or the direct result of the school district's failure to implement the IEP. If there is no manifestation, the student will be disciplined in the same manner as a non-disabled student.
- School personnel (formerly a hearing officer) may now remove a student to an interim alternative educational placement (IAEP) for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability in cases where a student has inflicted serious bodily injury upon another person. (Serious bodily injury is defined as bodily injury that involves substantial risk of death, extreme physical pain, protected and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.) The IAEP is determined by the IEP team.

- The student’s placement during appeals to contest disciplinary actions will be the discipline setting not the pre-dispute placement. In these situations there must be an expedited hearing process, which will lead to a hearing within 20 school days after the request for the hearing and a decision within 10 days after the hearing.
- In regard to protections for students who are not yet eligible under IDEA, the school district shall not be deemed to have knowledge that the student is a student with a disability if the parent of the student has not allowed an evaluation of the student or has refused services, or the student was evaluated and it was determined that the student was not a student with a disability.
- A single term “school days” replaces the three definitions of a “day” contained in 1997 IDEA.

Impact on New York State: New York State will be required to amend its state laws and regulations to conform with the federal IDEA changes. NYSUT believes that these changes help school personnel to maintain safer schools and hold students responsible for their actions while protecting the rights of students with disabilities. Students with disabilities will be subject to the same consequences for violations of the school’s code of conduct, unless the infraction is a direct result of the student’s disability or the school district’s failure to implement the IEP. School officials now have the authority to remove students whose behavior disrupts the learning process.

In addition, the IDEA provides greater clarity in regard to determining whether the behavior is a manifestation of the student’s disability. Further regulatory clarification will be required including defining “unique circumstances” as they relate to the authority of school personnel to make a change of placement on a “case-by-case” basis.

Accountability

The Act includes several provisions designed to improve the performance of students with disabilities and to hold states and school districts accountable for such performance. Many of these changes are consistent with the recommendations of the Bush Administration’s Commission on Excellence in Special Education which emphasized the need to focus on improving results for students with disabilities. The Act aligns the accountability systems for students with disabilities with the No Child Left Behind Act in such areas as performance goals and indicators, data reporting and priorities for federal and state monitoring.

- Section 612(a)(15) and (16) of the Act requires states to include all students with disabilities in the No Child Left Behind Accountability system. Students with disabilities must be included in all state assessments with appropriate accommodations and alternate assessments where necessary, and as indicated in their respective IEPs. States must also develop guidelines on the provision of appropriate accommodations and report on the number of students with disabilities who were provided accommodations to participate in regular state assessments.
- Section 611 (e) (2) (C) (xi) of the Act allows states to provide direct services to school districts including supplemental educational services, such as tutoring, for children with disabilities enrolled in schools that are identified as in need of improvement under NCLB.

- Section 612(a)(16)(C) requires the performance results of students with disabilities who participate in the alternate assessment to count when determining the performance of a school district and state.
- Section 612(a)(16)(C) requires states to use universal design principles in developing and administering any state or district-wide assessment.
- Section 614(d)(A) of the Act requires individualized education programs to specifically address academic achievement of students with disabilities.
- States are required to develop plans on how they will meet NCLB's accountability provisions. Section 616(e) of the Act includes technical assistance the federal government can take to help states address areas of concern.

Impact on New York State: The emphasis on academic achievement in the IEP underscores the need to ensure students with disabilities have access to the general education program. As a result, more students with disabilities will be educated in general education classrooms. The Committee on Special Education will continue to play a critical role in recommending services and supports to help students successfully progress in the general curriculum. Local unions should be involved in any effort in which the New York State Education Department works with a school district on priority areas that target academic performance of students with disabilities.

Enforcement Priorities and Sanctions

- Section 616 of the Act requires states to establish monitoring targets specifically around child find, mediation, disproportionality by race and ethnicity, transition services, and issues related to the provision of free appropriate public education in the least restrictive environment.
- Section 616(e) of the Act provides a structured timeline and includes increasingly harsher, enforceable sanctions when the federal government determines that a state needs intervention in meeting its targets. These actions may include imposing mandated targeted spending or withholding of federal dollars for noncompliance.

Impact on New York State: The new monitoring requirements may not have a significant impact on New York State given its current monitoring system which has focused on improving the performance of students with disabilities and other key performance indicators for a number of years. Under the new IDEA, however, the performance targets subsequently placed on states and school districts have been broadened. Local unions will need to be vigilant in regard to the targets established for their respective school districts and take steps to actively participate in the development and implementation of local plans to address these targets. Clarification is required in regard to the state's right to impose the same level of sanctions on school districts as the U.S. Department of Education may impose on states that are not making acceptable progress towards the targeted priorities.

Early Intervening Services

- Section 613(f) of the Act allows school districts to use up to 15 percent of their IDEA funds to help students who need additional academic and behavior supports to succeed in general education.

- In implementing early intervening services, a school district may carry out certain activities including professional development for teachers and other school staff to help them deliver “scientifically-based academic instruction and behavior interventions and providing educational and behavioral evaluations, services and supports, including scientifically-based literacy instruction.”
- IDEA funds may be used to support early intervening activities that are coordinated with activities funded under NCLB as long as such funds are used to supplement, and not supplant, NCLB funds for these activities.

Impact on New York State: NYSUT strongly endorses the use of early intervention services as a remedy for students with behavior and learning problems, especially those representing different racial and ethnic backgrounds (see the next session). NYSUT is concerned, however, that the use of IDEA funds for such early intervening services in combination with the changes in regard to local fiscal efforts could significantly impact federal IDEA funds to support the provision of special education programs and services.

Disproportionality by Race and Ethnicity

- Section 612 (a) (24) requires the state to maintain policies and procedures to prevent the disproportionate representation by race and ethnicity of students as students with disabilities, including with respect to a particular impairment.
- In the case of a school district that the state determines has a significant disproportionality with respect to the identification of students with disabilities or the placement of these students in a particular setting, such district must reserve 15 percent of its IDEA funds to provide coordinated early intervening services to serve to reduce over-identification based on race and ethnicity.

Impact on New York State: Students from different race and ethnic backgrounds, especially African-American students have been disproportionately identified in certain categories and disproportionately placed in separate settings. This legislation requires states to identify school districts where disproportionality exists and to implement specific early intervening activities to address this issue. Activities include the provision of professional development for school personnel in effective teaching strategies and positive behavioral interventions and supports to prevent over-identification and misidentification of students. New York State currently identifies school districts with disproportionate representation by race and ethnicity. IDEA funds will provide additional resources to assist these districts in addressing this issue.

Paperwork Reduction

The IDEA includes several provisions in addition to those described above that address the paperwork burden on teachers and school districts.

- Section 609 of the Act provides an opportunity for 15 states to identify ways to reduce paperwork burdens and other administrative duties that are directly associated with the federal IDEA requirements to increase the time and resources available for instruction and other activities aimed at improving educational and functional results for students with disabilities.
- The Act also requires the Secretary of Education to publish and widely disseminate model forms for individualized education programs, and procedural due process notices.

Impact on New York State: While initially limited to 15 states, it is anticipated that this effort will result in increased instructional time and may potentially streamline state and local procedures. NYSUT has urged the New York State Education Department to apply for a waiver from federal law and regulation for paperwork reduction.

IDEA Funding - Additional Resources and Local/State Flexibility

The IDEA includes several provisions that provide additional resources to states and local school districts and greater flexibility in the use of IDEA funds.

- Section 611 of the Act establishes a seven-year schedule to theoretically reach the goal of full funding. Congress authorizes \$12.36 billion for fiscal year 2005, and provides an additional \$2.3 billion each year thereafter through fiscal year 2011.
- Section 613 (a)2(c) of the Act authorizes school districts to reduce local expenditures to carry out activities authorized under NCLB by an amount equivalent to 50 percent of new federal special education funding each year. A school district is prohibited from taking advantage of the provision if the state determines that the district is unable to establish and maintain programs of FAPE or have had action taken against them by SED because of lack of compliance.
- Section 611 authorizes states to establish a “risk pool” for school districts to help pay for the education of high-need students and the unexpected enrollment of these students. A high-need student is one whose educational cost is greater than three times the average per pupil expenditure.

Impact on New York State: While the Act appropriates money to achieve full funding, it does not make IDEA an entitlement program. Since IDEA funding remains a discretionary program, its annual appropriation continues to be at the whim of Congress. For example, for fiscal year 2005 the IDEA called for \$12.4 billion to be appropriated, however, only \$11.6 billion was made available in this fiscal year. In regard to the treatment of IDEA funds as local funds, collective bargaining units should monitor this allowance to ensure that the school district fully complies with the requirements of this provision. New York State will need to decide whether it will establish a “risk pool” for high-need students with disabilities in light of its current state funding formula and support high cost special education students.

Professional Development

- Section 613 (a) continues to require school districts, as a condition to receive federal IDEA funds, to submit a plan to the State Education Department. This plan must include an assurance that all personnel necessary to carry out IDEA requirements are appropriately prepared and trained including that those personnel have the content knowledge and skills to serve students with disabilities subject to Section 612(a) (14) and Section 2122 of the No Child Left Behind Act.
- Section 2122 of NCLB includes several requirements in regard to the components of a local application including, but not limited to, an assessment of local needs for professional development and a description of how the school district, teachers, paraprofessionals, principals and other relevant school staff and parents have collaborated in the planning of activities and in the preparation of the application.

Impact on New York State: IDEA 2004 repeals the requirements that states have comprehensive systems of personnel development (CSPD), however, it continues to mandate that states require qualifications “to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained.” The Act adds language that personnel serving students with disabilities have “content knowledge and skills to serve” those students.

The provision of Section 2122 may strengthen the professional development process by requiring teachers and other individuals to be directly involved in planning and implementing the district’s professional development plan. NYSUT will continue to urge the State Education Department to integrate the IDEA personnel development plan into the school district’s professional development plan required under Section 100.2(dd) of the Commissioner’s Regulations, to ensure the coordination of the district’s professional development activities.

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