

NEWS DIGEST

A publication of the National Information Center for Children and Youth with Disabilities

The IDEA Amendments of 1997

After two years of analysis, hearings, discussions, and other legislative activities, both the Senate and the House of Representatives have passed legislation that reauthorizes and amends the Individuals with Disabilities Education Act (IDEA). President Clinton signed the bill into law on June 4, 1997. The reauthorized legislation is called the "Individuals with Disabilities Education Act Amendments of 1997," and is Public Law 105-17.

This *News Digest* provides readers with an overview of the major changes to the IDEA, as well as a detailed, point-by-point look at the law, including verbatim language of portions of the law itself. Information is presented in a side-by-side analysis, with portions of the "old" IDEA's requirements presented on the left side of the page, and the "new" IDEA's requirements (and specific language) presented on the right. This presentation will allow readers to readily see some of the principle areas where the IDEA has changed and where it has remained essentially the same.

This document is intended for individuals who are already familiar with the previous IDEA and who want to know the specifics of IDEA 97. This includes state and local education agency personnel such as administrators and special education directors; Parent Training and Information (PTI) center

staff and advocates; school personnel such as principals, special educators, and general educators; and other people who have a base of knowledge about this important legislation.

An Overview of the Changes

The Individuals with Disabilities Education Act Amendments of 1997 bring many changes to the law that was initially passed in 1975 as P.L. 94-142. That law, known as the Education for All

Table of Contents

An (Overview of the	Changes.....1	;
The Next Steps	5	
References & Resources.....	10	
Selected Organizations.....	11	
Part A: General Provisions.....	12	
Part B: Assistance for Education of All Children with Disabilities	14	
State Eligibility.....	14	
----- minations, IHPs, & Placements.....	20	
Procedural Safeguards	25	
Part C: Infants & Toddlers.....	37	
Index	38	

N
I
C
H
C
Y

Handicapped Children Act, or the EHA, has guaranteed since 1975 that eligible children and youth with disabilities would receive a free appropriate public education (FAPE) designed to meet their unique educational needs. P.L. 94-142 has been amended many times since its original enactment, each time after lengthy debate and consideration. This latest reauthorization includes many modifications to the law. Some of these changes are significant, while others subtly fine tune the processes already laid out for schools and parents to follow in planning and providing special education and related services to children and youth with special needs.

What are some of the most significant changes to the IDEA? Basically, the changes fall into several areas that are critically important to the special education process. These include:

- * participation of children and youth with disabilities in State and districtwide assessment (testing) programs;
- * development and review of the Individualized Education Program (IEP), including increased emphasis upon participation of children and youth with disabilities in the general education classroom and in the general curriculum, with appropriate aids and services;
- * parent participation in eligibility and placement decisions;
- * the way in which re-evaluations are conducted;
- * the addition of transition planning;
- * voluntary mediation as a means of resolving parent-school controversies; and

- * discipline and behavior issues of children and youth with disabilities.

This overview will look at each of these issues briefly, then refer the reader to the side-by-side analysis of how the IDEA has been changed to address each issue.

Including Children and Youth with Disabilities in Assessments

Whether or not students with disabilities should take part in assessments (testing) conducted across their State or district has been an area of controversy over the years. If these students are included, what type of modifications and accommodations, if any, should be made to ensure that their disabilities do not get in the way of their demonstrating what they know or can do?

Under the reauthorized IDEA, States are now required to include children with disabilities, with accommodations when necessary, in State and districtwide assessment programs. For children who cannot participate in regular assessments, States must develop alternative assessments by 2000.

Changes Not Covered in This Document

Space does not permit us to cover all the changes that reauthorization has brought to the **IDEA**. We have selected for discussion those modifications and new requirements that most directly affect how services are provided at the local level—for instance, IEP changes, behavioral issues and discipline—and those changes that, although made Statewide, affect families and the professionals who work with them—such as mediation and assessment of children with disabilities.

Not discussed are changes to the law that are highly administrative in nature, such as state funding formulas, the state-local funding split, and school-based improvement plans. Plans are to make discussion of these changes available separately.

To read the verbatim language of the new IDEA regarding these requirements, see page 18.

Individualized Education Program Requirements

Each student's Individualized Education Program, or IEP, is a vital document, for it spells out the special education and related services that he or she will receive. The IEP is developed by a team that includes both parents and school professionals and, when appropriate, the student. The new IDEA maintains the IEP as a document of central importance and, in the hope of improving compliance, moves all provisions related to the IEP to one place in the law—Section 614(d). Under the prior law, IEP provisions were found in several different places.)

At the same time, several key changes have been made to what information the IEP must contain and the way in which the IEP is developed. These changes are to take effect on July 1, 1998. [The exception is provisions related to children with disabilities who have been convicted as adults and incarcerated in adult prisons. These

provisions (see page 19) take effect immediately.

The information the IEP must include.

The IEP retains many familiar components from previous legislation, such as statements regarding the student's present levels of educational performance, annual goals, special education and related services to be provided, projected dates for the beginning and end of services, and transition services for youth. However, some modifications have been made

to these familiar components to place more emphasis within the law upon involving students with disabilities in the general curriculum and in the general education classroom, with supplementary aids and services as appropriate.

For example, "present levels of educational performance" must now include a statement of how the child's disability affects his or her involvement and progress in the general curriculum. Similarly, the IEP must contain a statement of special education and related services, as well as the supplementary aids and services, that the child or youth needs in order to:

...be involved and progress in the general curriculum...and to participate in extracurricular and other nonacademic activities; and...to be educated and participate with other children with disabilities and nondisabled children...

[Section 614(d)(1)(A)(iii)]

With these new IEP requirements, there is a clear intent to strengthen the connection between special education and the general education curriculum. As the Committee on Labor and Human Resources' *Report to Accompany S. 717* (the report that accompanied the proposed IDEA to Congress and explained the intent behind proposed changes) states:

The new emphasis on participation in the general education curriculum...is intended to produce attention to the accommodations and adjustments necessary for disabled children to access the general education curriculum and the special services which must be necessary for appropriate participation in particular areas of the curriculum... (p. 20)

Along the same line is the requirement that the IEP include an explanation of the extent to which

the student will *not* be participating with nondisabled children in the general education class and in extracurricular and non-academic activities. This explanation of the extent to which the child will be educated separately is a new component of the IEP, yet is clearly in keeping with the changes noted above.

Other aspects of the IEP are entirely new as well. For example, each student's IEP must now include a statement of how the administration of State or districtwide assessments will be modified for the student so that he or she can participate. If the IEP team determines that the student cannot participate in such assessments, then the IEP must include a statement of (a) why the assessment is not appropriate for the child, and (b) how the child will be assessed.

These changes work in tandem with changes elsewhere in the IDEA requiring that students with disabilities be included in State and districtwide assessments of student achievement.

Other new IEP requirements are statements regarding: (a) informing the student about the transfer of rights as he or she approaches the age of majority; (b) how parents will be regularly informed of their child's

progress toward meeting the annual goals in the IEP: (c) where services will be delivered to the student; and (d) transition service needs of the student beginning at age 14 (see page 4 for a more detailed discussion of this new requirement).

To read the precise language of IDEA 97 in regard to the contents of the IEP, see pages 20-22 in this *News Digest*.

Developing the IEP. The new IDEA maintains essentially the same process for developing the IEP—namely, the document is developed by a multidisciplinary team, including the parents. However, the new legislation increases the role of the general educator on the IEP team, to include, when appropriate, helping to determine positive behavioral interventions and appropriate supplementary aids and services for the student.

Also added to the IEP process are "special factors" that the IEP team must consider. These factors include:

behavior strategies and supports, if the child's behavior impedes his or her learning or that of others;
the child's language needs (as they relate to the IEP if the child has limited English proficiency;

Getting a Copy of the New IDEA

There are several places from which you can obtain a copy of the new legislation. The quickest of these are Internet sites that have posted the law in its entirety. If you have access to the Internet, try the following Web sites:

<http://www.ed.gov/offices/OSERS/IDEA4> Office of Special Education and Rehabilitative Services (OSKRS), at the Department of Education: choose "The Law"

<http://www.lrp.com/ed/> Education Administration On-line: choose "IDEA Full Text"

You can also obtain a copy of the new law by contacting your Senator or Representative and requesting a copy of the law (ask for S.717/H.R. 5).

providing for instruction in Braille and the use of Braille (unless not appropriate), if a child is blind or visually impaired: and the communication needs of the child, with a list of specific factors to be considered if a child is deaf or hard of hearing and whether the child requires assistive devices and services.

To read the precise language of IDEA 97 in regard to IEP development, see pages 22-23 in this *News Digest*.

Reviewing and revising the IEP. The language in the new IDEA emphasizes periodic review of the IEP (at least annually, as previously required) and revision as needed. A new, separate requirement exists: Schools must report to parents on the progress of their child with disabilities at least as frequently as progress of nondisabled children is reported, which seems likely to affect the revision process for IEPs. If it becomes evident that a child is not making "expected progress toward the annual goals and in the general curriculum," the IEP team must meet and revise the IEP.

The new legislation specifically lists a variety of other circumstances under which the IEP team would also need to review and revise the IEP, including the child's anticipated needs, the results of an reevaluation conducted, or information provided by the parents.

To read the precise language of IDEA 97 in regard to the reviewing and revising the IEP, see page 23 in this *News Digest*.

Parent Participation in Eligibility and Placement Decisions

Under the old IDEA, parent participation was not required for making decisions regarding; a student's eligibility for special

education and related services. Under the new legislation, parents are specifically included as members of the group making the eligibility decision. (See page 20 for the precise language of the law.)

Parent participation in placement decisions is similarly required. Under the old legislation, parent involvement in deciding the placement of their child was not required. The new IDEA clarifies the parents' right to be involved in such decisions. (See page J4 for the exact language used in the new IDEA.)

Conduct of Reevaluations

Under the previous law, each student receiving special education and related services was reevaluated every three years in all areas related to his or her disability. The purposes of this reevaluation were to determine if the child continued to have a disability and what his or her present levels of educational performance and educational needs were. The new law has streamlined the reevaluation process. Now, at least every three years, the IEP team shall review existing evaluation data on the child and, based upon that review and upon input from the parents, shall identify what additional information (if any) is needed to determine:

- if the child continues to have a disability and continues to need special education and related services
- what the child's present levels of performance and educational needs are:
- whether modifications to the special education and related services are needed to enable the child to meet the goals set out in the IEP and to participate in the general curriculum.

If IEP team members feel that they do not have enough information to answer the above questions, then tests and other evaluation

procedures would be conducted in order to gather the specific information needed. If, however, they feel that sufficient data exist to address these questions, then the school system is not required to reevaluate the child. Parents must be notified of that determination, as well as their right to request that their child be reevaluated anyway. If parents request such a reevaluation the school must conduct it

An important change in the law requires that parents give their consent before any reevaluation of the child may be conducted. (If parents fail to respond to the school's request for consent, however, the school may under certain conditions proceed without it.)

To read the precise language of IDEA 97 in regard to the reevaluation of children, see pages 24-25 in this *News Digest*.

Transition Services

The requirements for providing transition services for youth with disabilities have been modified in IDEA 97. While the definition of transition services remains the same, two notable changes have been made to IEP requirements:

- beginning when a student is 14, and annually thereafter, the student's IEP must contain a statement of his or her transition service needs under the various components of that IEP that focus upon the student's courses of study (e.g., vocational education or advanced placement); and
- beginning at least one year before the student reaches the age of majority under state law, the IEP must contain a statement that the student has been informed of the rights under the law that will transfer to him or her upon reaching the age of majority.

The new law maintains 16 as the age when students' IEP's must contain statements of needed transition services. These two requirements—one for students aged 14 and older and one for students aged 16 and older—seem confusingly similar. However, the purpose of including certain statements for students beginning at age 14, according to the Committee on Labor and Human Resources' *Report [to Accompany S. 717]*, "is to focus attention on how the child's educational program can be planned... [and] the provision is designed to augment, and not replace, the separate transition services requirement, under which children with disabilities (who are 16 or older) receive transition services..." (p. 11).

To read the precise language of IDEA 97 in regard to the transition services, see page 21 in this *News Digest*.

Mediation

IDEA 97 establishes mediation as a primary process to be used in resolving conflicts between schools and the parents of a child with a disability. While prior legislation permitted mediation, the new legislation explicitly outlines States' obligations for creating a mediation system in which parents and schools may voluntarily participate. Among a State's obligations are:

- A ensuring that the mediation process is voluntary on the part of the parties, is not used to deny a parent's right to due process, and is conducted by a qualified and impartial mediator trained in effective mediation techniques;
- A maintaining a list of qualified mediators; and
- A bearing the cost of the mediation process.

Some parents may choose not to use mediation, and States may establish procedures requiring

parents to meet with a impartial party who would explain the benefits of mediation and encourage them to make use of the process.

The verbatim language of the new IDEA regarding mediation can be found on pages 27-28 in this *News Digest*.

Discipline and Behavior Issues

Some of the most sweeping—and complicated—changes in the new IDEA are in the area of disciplining children with disabilities who exhibit challenging behaviors. To assist schools in understanding and complying with these new requirements, the Office of Special Education Programs (OSEP), U.S. Department of Education, is considering releasing official guidance in the near future. Until such guidance is available, then, the best means of developing an accurate understanding of IDEA 97's disciplinary requirements is to read the law itself. As requested by OSEP, the discussion of discipline in this *News Digest* is kept to providing verbatim quotations from P.L. 105-17.

The requirements of law are found in Section 615(k), "Placement in Alternative Educational Setting." This section is divided into HI subparts (e.g., authority of school personnel, authority of school officer, determination of setting, manifestation determination review, and so on). On the next four pages, you will find a graphic representation of all subparts [except subpart (8), which addresses "Protections for Children Not Yet Eligible for Special Education and Related

Editorial Notes

Use of quotation marks: On pages 6-9 and in the side-by-side comparison of the old and new IDEA beginning on page 12, the use of quotation marks (" ") signifies verbatim quotations from the new law.

Use of brackets within quotes from the law: Occasionally, within the verbatim quotations from the new law, we have enclosed text within brackets [].

The material in brackets is NOT part of IDEA 97—it is information provided by the editor to explain references made within the law to other sections or paragraphs of the statute.

Services'—this subpart is provided on pages 34-35. This graphic representation is organized primarily in an "if-then" and "question-answer" fashion and provides exact quotes from IDEA 97. These aspects of discipline are critical new issues for schools and families to know and understand.

There is no substitute for reading exactly what the law says. If you are interested in or concerned about the disciplining of children with disabilities, we urge you to read Section 615(k) of IDEA 97 in its entirety. The complete, unabridged text of this section is presented in the side-by-side analysis, beginning on page 30.

The Next Steps

Laws passed by Congress provide a general framework of policy related to a particular issue. Once a law is passed, Congress delegates the task of developing detailed regulations to guide the law's implementation to an administrative agency within the Executive Branch. These detailed federal regulations are published in the *Code of Federal Regulations (CFR)*. The CFR interprets and further explains the law.

Regulations exist for the old IDEA, in CFR Title 34 Parts 300 to

Continued on page 10

***A student with disabilities violates a school rule or code of conduct.
Disciplinary action lasting more than 10 days is considered.***

⊗ ***If...***

"(D) The child carries a weapon to school or to a school function under the jurisdiction of a State or local educational agency; or

"(E) 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 under the jurisdiction of a State or local educational agency"...

[Section 615(k)(1)(A)(ii)]

→ ***Then...***

(1)(A) "School personnel...may order a change in placement of a child with a disability...to an appropriate interim alternative educational setting...for some amount of time a child without a disability would be subject to discipline, but for not more than 45 days..." [Section 615(k)(1)(A)(i)]

★ ***If...***

maintaining the current placement of the child is substantially likely to result in injury to the child or others...

→ ***Then...***

(2) "A hearing officer...may order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer—

"(A) determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;

"(B) considers the appropriateness of the child's current placement;

"(C) considers whether the public agency has made reasonable efforts to minimize the risk of harm in the current placement, including the use of supplementary aids and services; and

"(D) determines that the interim alternative educational setting... (i) [is] selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and (ii) includes services and modifications designed to address the behavior described in paragraph (1) or paragraph (2) so that it does not recur."

[Section 615(k)(2) and (3)]

⊗ ***If...***

neither of these situations is the case...

→ ***Then...***

"(1)(A) School personnel...may order a change in the placement of a child with a disability...to an appropriate interim alternative educational setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities)..." [Section 615(k)(1)(A)(i)]

However, educational services may not be stopped.

[Section 612(a)(1)(C)]

"Either before or not later than 10 days after taking a disciplinary action described in subparagraph (A)—" [Subparagraph (A) refers to the situations described in Ⓢ and Ⓣ above]

"(i) if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the suspension described in subparagraph (A), the agency shall convene an IEP meeting to develop an assessment plan to address that behavior; or

"(ii) if the child already has a behavioral intervention plan, the IEP Team shall review the plan and modify it, as necessary, to address the behavior." [Section 615(k)(1)(B)]

KEY DEFINITIONS

The Definition of Substantial Evidence

"The term 'substantial evidence' means beyond a preponderance of the evidence."
[Section 615(k)(10)(C)]

The Interim Alternative Educational Setting

"(3) DETERMINATION OF SETTING.—

"(A) IN GENERAL.—The alternative educational setting described in paragraph (1)(A)(ii) [the situation described on page 6 as Ⓢ] shall be determined by the IEP Team.

"(B) ADDITIONAL REQUIREMENTS.—Any interim alternative educational setting in which a child is placed under paragraph (1) or (2) [all situations on page 6] shall—

"(i) be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and

"(ii) include services and modifications designed to address the behavior described in paragraph (1) or paragraph (2) [see page 6] so that it does not recur." [Section 615(k)(3)]

Controlled Substance

"The term 'controlled substance' means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c))." [Section 615(k)(10)(A)]

Illegal Drug

"The term 'illegal drug'—(i) means a controlled substance; but (ii) does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act [the Controlled Substances Act] or under any other provision of Federal law."

[Section 615(k)(10)(D)]

Weapon

"The term 'weapon' has the meaning given the term 'dangerous weapon' under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code,"

[Section 615(k)(10)(D)]

According to the *Report [to Accompany S. 717]*, this term is defined as "a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2-1/2 inches in length."

[Committee on Labor and Human Resources (1997), p. 34]

*The Manifestation Determination Review:
Was the child's behavior a manifestation of his or her disability?*

When

IS AN MDR
required?

(4)(A) "If a disciplinary action is contemplated as described in paragraph (1) or paragraph (2) [see page 6] for a behavior of a child with a disability described in either of those paragraphs, or if a disciplinary action involving a change in placement for more than 10 days is contemplated for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the local educational agency that applies to all children—"

"(i) no later than the date on which the decision to take action is made, the parents shall be notified of that decision and of all procedural safeguards accorded under this section; and (ii) immediately if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action." [Section 615(k)(4)(A)]

Who

conducts the
MDR?

(4)(B) "Individuals to carry out review. A review described in subparagraph (A) (see above, under "When?") shall be conducted by the IEP Team and other qualified personnel." [Section 615(k)(4)(B)]

How

is the MDR
conducted?

(4)(C) "Conduct of review. In carrying out a review described in subparagraph (A), the IEP Team may determine that the behavior of the child was *not* [emphasis added] a manifestation of such child's disability only if the IEP Team—

"(i) first considers, in terms of the behavior subject to disciplinary action, all relevant information, including— (I) evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the child; (II) observations of the child; and (III) the child's IEP and placement; and

"(ii) then determines that—(I) in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement; (II) 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 (III) the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action." (Section 615(k)(4)(C))

And Then

what happens?

"(5) Determination that behavior was not manifestation of disability

"(A) In general.—If the result of the review described in paragraph (4) [A, B, & C above] is a determination, consistent with paragraph (4)(C), that the behavior of the child with a disability 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, except as provided in section 612(a)(1) [the requirement that schools provide FAPE to children with disabilities who have been suspended or expelled from school],

"(B) Additional requirement.—If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action." [Section 615(k)(5)]

Parent Appeal

(6)"(A) IN GENERAL.— (i) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parent may request a hearing, (ii) The State or local educational agency shall arrange for an expedited hearing in any case described in this subsection when requested by a parent.

"(B) REVIEW OF DECISION.—(i) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of such child's disability consistent with the requirements of paragraph (4)(C) [see "(4)(C), Conduct of Review," on previous page].

"(ii) In reviewing a decision under paragraph (1)(A)(ii) [when school personnel change the child's placement for up to 45 days] to place the child in an interim alternative educational setting, the hearing officer shall apply the standards set out in paragraph (2)" [when a hearing officer orders a change in placement for not more than 45 days] [Section 615(k)(6)]

Placement During Appeal

"(7) PLACEMENT DURING APPEALS.—

"(A) IN GENERAL.—When a parent requests a hearing regarding a disciplinary action described in paragraph (1)(A)(ii) or paragraph (2) to challenge the interim alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(A)(ii) or paragraph (2), whichever occurs first, unless the parent and the State or local educational agency agree otherwise.

"(B) CURRENT PLACEMENT.—If a child is placed in an interim alternative educational setting pursuant to paragraph (1)(A)(ii) or paragraph (2) and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in subparagraph (C) [below].

"(C) EXPEDITED HEARING.—(i) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative educational setting) during the pendency of the due process proceedings, the local educational agency may request an expedited hearing.

"(ii) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards set out in paragraph (2)" [see * on page 6],

Referral to and Action by Law Enforcement & _____ Judicial Authorities

(9)"(A) Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

"(B) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime." [Section 615(k)(9)(A) and (B)]

(continued from page 5)

399. New regulations incorporating the changes in the law must now be written. This may take some time. Following their release in draft form (anticipated in late August or September 1997) will be a period of public comment, where individuals and groups may provide feedback and identify concerns regarding the proposed regulations. Revisions will be made, and final regulations will be released. Plans are to have final regulations by the Spring of 1998.

Until new regulations are available, States are required to implement the new law with the guidance available from old regulations (where these remain in accordance with the IDEA 97 statute) and from the language of the new statute (where new regulations do not exist to reflect and interpret changes that have occurred). New regulations will be awaited with interest, as changes to the law have been substantial.

Effective Dates for the New law

Although Congress has passed the amendments to the IDEA, and President Clinton has signed them into law, not all aspects of the new-law become effective immediately. Here is a brief synopsis of effective dates for Parts A, B, C (formerly H), and I.

Parts A & B take effect immediately upon the President's signature EXCEPT:

- Section 617 [Administration] takes effect on October 1, 1997
- Section 612(a)(4) and Section 614(d) [the IEP] take effect on July 1, 1998, except for Section 614(d)(6) [provisions for children with disabilities convicted as adults and incarcerated in adult prisons], which takes effect immediately
- Section 612(a)(14) [Comprehensive System of Personnel Development] takes effect on July 1, 1998
- Section 612(a)(16) [Performance Goals and Indicators] takes effect on July 1, 1998
- Section 618 [Program information/Data collection] takes effect on July 1, 1998
- Section 611 & 619 take effect beginning with funds appropriated for FY 98.

Part C (formerly Part H, Early Intervention) takes effect on July 1, 1998

Part I (Family Support Program) is repealed as of October 1, 1998.

References & Resources

Anderson, W., Chitwood, S., & Hayden, D. (1997). *Negotiating the special education maze: A guide for parents and teachers* (3rd ed.). Bethesda, MD: Woodbine House. (Available from Woodbine House, 6510 Bells Mill Road, Bethesda, MD 20817. Telephone: 1-800-843-7323.)

Committee on Labor and Human Resources. (1997, May 9). *Report [to accompany S. 717]*. Washington, DC: Government Printing Office. [Available from Superintendent of Documents, Attention: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954. Charge orders may be telephoned to the Government Printing Office at (202) 512-1800. The Report is also available on-line from the Senate Reports Online via GPO Access, address: <http://wais.access.gpo.gov>]

Congress passes IDEA. (1997, May). *IDEA Reauthorization Special Report* [special supplement to *The Special Educator*]. Horsham, PA: LRP.

Council for Exceptional Children. (1997, May). *Summary of the Individuals with Disabilities Education Act (IDEA) Amendments of 1997 (H.R. 5) (S. 717)*. Reston, VA: Author. (See address under ERIC Clearinghouse on Disabilities and Gifted Education, on next page.)

Hehir, T. (1997, June 17). *OSERS memorandum to Chief State School Officers: Changes in Part B of the Individuals with Disabilities Education Act, as required by the Individuals with Disabilities Education Act Amendments of 1997*. Washington, DC: U.S. Department of Education. (Available from the Clearinghouse on Disability Information, see address on next page.)

National Association of State Directors of Special Education (see address on next page) has produced several documents on IDEA 97, including:

Comparison of the key provisions of the IDEA and the 1997 amendments to IDEA (May 1997)

Overview of the professional development requirements: 1997 IDEA amendments (May 1997)

Comparison of data requirements: Previous law & P.P. 105-17 (1997 IDEA Amendments) (June 1997)

Comparison of key early childhood issues: Previous law & P.P. 105-17 (1997 IDEA Amendments): The Infants and Toddlers Program (Part C); the Preschool Program (June 1997)

Selected Organizations

Center for Law and Education—197 Friend Street, 9th Floor. Boston. MA 02114. Telephone: (617) 371-1166. e-mail DC office: hn1669@handsnet.org
E-mail Boston Office: hn0481@handsnet.org

Center for Special Education Finance, 1791 Arastradero Box 1113, Palo Alto, CA 94302-1113. Telephone: -3550. E-mail: CSEF@AIR-CA.ORG
[p://www.air-dc.org/csef_hom](http://www.air-dc.org/csef_hom)

Clearinghouse on Disability Information—Office of Education and Rehabilitative Services (OSERS), Room 3152. Switzer Building. 330 C Street SW, Washington, DC 20202-2524. Telephone: (202) 205-8241 (V/TTY). URL: <http://www.ed.gov>

Council of Administrators of Special Education—615 16th Street. X.W., Albuquerque, NJ 87104. Telephone: (505) 243-7622. E-mail: thomason@apsicc.aps.edu

Disability Rights Education and Defense Fund—2212 Sixth Street, Berkeley, CA 94710. Telephone: (510) 644-2555 (V); (510) 644-2629 (TTY). E-mail: dredfca@aol.com

ERIC Clearinghouse on Disabilities and Gifted Education—Council for Exceptional Children, 1920 Association Drive, Reston, VA 22091. Telephone: 1-800-328-0272. E-mail: ericec@cec.sped.org
URL: <http://www.cec.sped.org/ericec.htm>

HEATH Resource Center—(FIEATH is the national clearinghouse on postsecondary education for individuals with disabilities)—One Dupont Circle, Suite 800, Washington, DC 20036-1193. Telephone: 1-800-544-3284 (V/TTY). E-mail: heath@ace.nche.edu URL: <http://ace-info-server.nche.edu/programs/HEATH/home.html>

Judge David L. Bazelon Center for Mental Health Law—1101 15th Street NW, Suite 1212, Washington, DC 20005-5002. Telephone: (202) 467-5730 (V); (202) 467-4232 (TTY). E-mail: bazelon@nicom.com URL: <http://www.bazelon.org>

National Association for the Education of Young Children—1509 16th Street NW, Washington, DC 20036-1426. Telephone: 1-800-424-2460; (202) 232-8777. E-mail: pubaff@naeyc.org
URL: www.america-tomorrow.com/naeyc

National Association of Private Schools for Exceptional Children—1522 K Street NW, Suite 1032, Washington, DC 20005-1202. Telephone: (202) 408-3338. E-mail: NAPSEC@aol.com
URL: <http://www.spedschools.com/napsec.html>

National Association of Protection and Advocacy Systems (NAPAS)—900 Second Street NE, Suite 211, Washington, DC 20002. Telephone: (202) 408-9514 (V); (202) 408-9521 (TTY). E-mail: hn4537@handsnet.org

National Association of State Directors of Special Education (NASDSE)—1800 Diagonal Road, Suite 320, Alexandria, VA 22314. Telephone: (703) 519-3800; (703) 519-7008 (TTY). E-mail: specialed@nasdse.org

National Clearinghouse for Professions in Special Education—Council for Exceptional Children, 1920 Association Drive, Reston, VA 20191-1589. Telephone: 1-800-641-7824; (703) 264-9476; (703) 264-9480 (TTY). E-mail: ncpse@cec.sped.org
URL: <http://www.cec.sped.org/ncpse.htm>

National Early Childhood Technical Assistance System (NEC*TAS)—Frank Porter Graham Child Development Center, University of North Carolina, 500 NationsBank Plaza, 137 E. Franklin Street, Chapel Hill, NC 27514. Telephone: (919) 962-2001; (919) 966-4041 (TTY). E-mail: nectasta.nectas@mhs.unc.edu
URL: <http://www.nectas.unc.edu>

National Parent Network on Disabilities—1727 King Street, Suite 305, Alexandria, VA 22314. Telephone: (703) 684-6763 (V/TTY). E-mail: npnd@cs.com
URL: <http://www.npnd.org>

Parent Training and Information (PTI) Centers—PTIs exist in every state to assist parents of infants, children, and youth with disabilities in understanding their rights under federal and state law and to help them develop skills to be effective members of the team planning their child's education. To find out the PTI in your state, contact NICHCY at 1-800-695-0285.

RESNA—1700 N. Moore Street, Suite 1540, Arlington, VA 22209-1903. Telephone: (540) 542-6686 (V); (540) 524-6639 (TTY). URL: <http://www.resna.org/resna/reshome.htm>

Technical Assistance to Parent Programs (TAPP) Network—Federation for Children with Special Needs, 95 Berkeley Street, Boston, MA 02116. Telephone: (617) 482-2915 (V/TTY). E-mail: fesinfo@fcsn.org
URL: <http://www.fcsn.org/tapp/home.htm>

The IDEA's Framework

Old Law

Nine Parts: A—General provisions, definitions, and discretionary program administration; B—School age and preschool programs; C—Centers-based discretionary programs; D—Training; E—Research discretionary programs; F—Instructional media; G—Technology and media; H—Infants and toddlers program; and I—Family support.

New Law

Four Parts: A—General provisions and definitions; B—School age and preschool programs; C—Infant and toddler programs; and D—Discretionary programs.

Part A: General Provisions Definitions & Other Issues

Old Law

- *Serious emotional disturbance* was the designated disability category to be used for certain children with disabilities.

Developmental delay was an option that States could use to categorize children ages 3 through 5.

if Educational service agency was not defined in the old law.

Please Note/

Space limitations do not permit us to go over every change in the law. See the introduction and the box on page 2 for more details about what information is covered in this document and what's not.

New Law

- * *Serious emotional disturbance* remains as a disability category, but the new law inserts that this disability will be "(hereinafter referred to as 'emotional disturbance')." [Section 602(3)(A)(i)]

Developmental delay may now be used, at the discretion of the State and the local educational agency, as a category for children with disabilities from ages 3 through 9.

"(B) CHILD AGED 3 THROUGH 9.—The term 'child with a disability' for a child aged 3 through 9 may, at the discretion of the State and the local educational agency, include a child—

"(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 reason thereof, needs special education and related services." [Section 602 (3)(B)]

- * The new law defines *educational services agency* as a term that...

"(A) means a regional public multiservice agency— (i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and (ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and secondary schools of the State; and

"(B) includes any other public institution or agency having administrative control and direction over a public elementary or secondary school." [Section 602(4)]

Old IDEA

- * Definition of *parents* in regulations

Related services: Orientation and mobility services were not specifically mentioned in the old law but were covered under regulations.

Supplemental aids and services were not defined in the statute or regulations.

- * *Transition services*

Policy letters and regulations: The old law extended the department-wide 30-day period of public comment to 90 days and established a baseline for regulatory implementation. Policy letters were considered to be interpretations of policy, but not legally binding.

We Remind You...

Use of quotation marks: The use of quotation marks (" ") in this section signifies verbatim quotations from the new law. As in the law itself, each quoted paragraph begins with a quotation mark. The closing quotation mark is placed at the end of the entire passage being quoted (not at the end of every paragraph). If material is not in quotes, it is a summary provided by the editor, NOT a verbatim quotation from the law.

Use of brackets: Within the verbatim quotations from the new law, you may find text *within* brackets []. The material in brackets is NOT part of IDEA 97—it is information provided by the editor to explain references made within the law to other sections or paragraphs of the statute. Brackets at the *end of* a quotation indicate where, in the statute, you can find the text being quoted.

IDEA 97

- * The term *parents* is now defined to include legal guardians and surrogate parents. [Section 602(19)]

Related services: Orientation and mobility services are now specifically mentioned in the list of related services. [Section 602(22)]

- * The term *supplementary aids and services* is now defined as: "...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)" [requirements concerning least restrictive environment]. [Section 602(29)]

- * *Transition services:* "Related services" are now included in the definition of transition services. [Section 602(30)]

- * *Policy letters and regulations:* The new law clarifies procedures regarding the U.S. Department of Education's use of policy letters and other correspondence. Policies of general applicability originally included in a policy letter must be widely disseminated. The Department must also include in its written responses a statement of their legal status as agency interpretations that are not legally binding.

"(c) POLICY LETTERS AND STATEMENTS.—The Secretary may not, through policy letters or other statements, establish a rule that is required for compliance with, and eligibility under, this part without following the requirements of section 553 of title 5, United States Code.

"(d) CORRESPONDENCE FROM DEPARTMENT OF EDUCATION DESCRIBING INTERPRETATIONS OF THIS PART.—

"(1) IN GENERAL.—The Secretary shall, on a quarterly basis, publish in the Federal Register, and widely disseminate to interested entities through various additional forms of communication, a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of this Act or the regulations implemented pursuant to this Act.

"(2) ADDITIONAL INFORMATION.—For each item of correspondence published in a list under paragraph (1), the Secretary shall identify the topic addressed by the correspondence and shall include such other summary information as the Secretary determines to be appropriate.

"(e) ISSUES OF NATIONAL SIGNIFICANCE.—If the Secretary receives a written request regarding a policy, question, or interpretation under part B of this Act, and determines that it raises an issue of general interest or applicability of national significance to the implementation of part B, the Secretary shall—

"(1) include a statement to that effect in any written response;

"(2) widely disseminate that response to State educational agencies, local educational agencies, parent and advocacy organizations, and other interested organizations, subject to applicable laws relating to confidentiality of information; and

"(3) not later than one year after the date on which the Secretary responds to the written request, issue written guidance on such policy, question, or interpretation through such means as the Secretary determines to be appropriate and consistent with law, such as a policy memorandum, notice of interpretation, or notice of proposed rulemaking.

"(f) EXPLANATION.—Any written response by the Secretary under subsection (e) regarding a policy, question, or interpretation under part B [preschool and school-age programs] of this Act shall include an explanation that the written response—

"(1) is provided as informal guidance and is not legally binding; and

"(2) represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented."
[Section 607(c) through (f)]

Part B: Assistance for Education of All Children with Disabilities

Old Law
State Eligibility

New Law
Section 612—State Eligibility

State eligibility in general: Under the old IDEA, State plans needed to be in place.

State eligibility in general: State applications need to be submitted only once and thereafter only amendments need to be submitted, as necessitated by official findings of compliance problems, by changes in law or regulations designed to carry out the law, or by changes in interpretation of the law by a Federal court or a State's highest court.
[Section 612(c)]

Child find: Regardless of the severity of their disability, children with disabilities were to be identified, located, and evaluated.

* *Child find:* The new law maintains prior requirements and clarifies that a State's child find efforts must include children in private schools. A State must also develop and implement a process to determine which children in need of special education are receiving it. Identified children do not need to be categorized by their disability.

"(A) IN GENERAL.—All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and that a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

Old IDEA

Least restrictive environment: Under the previous legislation, States had to establish procedures to assure LRE.

* *Procedural safeguards:* States had to have policies and procedures consistent with the provisions in Section 615.

* *Transition from Infant & Toddler program to Preschool program:* The old law identified requirements for transitioning a child from an infant/toddler program to a preschool program.

* *Placement in private school:* The old law identified standards for, and access to, public services for children in private schools.

IDEA 97

•**(B) CONSTRUCTION.**—Nothing in this Act requires that children be classified by their disability so long as each child who has a disability listed in section 602 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this part." [Section 612(a)(3)]

Least restrictive environment: The new law maintains the prior LRE definition and requirements and adds that, if a State's funding formula is not consistent with LRE, an assurance must be provided that it will be.

"(i) **INGENERAL.**—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) [the definition of LRE].

"(ii) **ASSURANCE.**—If the State does not have policies and procedures to ensure compliance with clause (i), the State shall provide the Secretary an assurance that it will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements." [Section 612(a) (5)(B)(i) and (ii)]

* *Proceduralsafeguards:* The new law adds specific requirements regarding nondiscriminatory testing.

"(B) **ADDITIONAL PROCEDURAL SAFEGUARDS.**—Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child." [Section 612 (a)(6)(B)]

* *Transition from Infant & Toddler program to Preschool program:* The new law maintains the prior requirements and adds the requirement that the LEA participate in transition planning conferences. [Section 612(a)(9)]

* *Placement in private school:* A proportionate amount of IDEA funds must be spent on children with disabilities placed in private schools by their parents.

"(A) **CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS.**— (i) **IN GENERAL.**—To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary and secondary schools, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):

"(I) Amounts expended for the provision of those services by a local educational agency shall be equal to a proportionate amount of Federal funds made available under this part. (II) Such services may be provided to children with disabilities on the premises of private, including parochial, schools, to the extent consistent with law.

"(ii) CHILD-FIND REQUIREMENT.—The requirements of paragraph (3) of this subsection (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including parochial, elementary and secondary schools." [Section 612(a)(10)(A)]

Private school placements without consent of public agency: Reimbursement was available in certain circumstances.

* *Private school placements without consent of public agency:* The new law requires parents to provide notice that they intend to transfer their child to a private school. If parents do not provide notice, reimbursement for this private school placement may be reduced or denied, with certain exceptions. Other limitations are also included.

"(ii) REIMBURSEMENT FOR PRIVATE SCHOOL PLACEMENT.—If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

"(iii) LIMITATION OF REIMBURSEMENT.—The cost of reimbursement described in clause (ii) may be reduced or denied—(I) if—

If parents do not notify school prior to transferring their child to a private school, the amount of reimbursement for the private placement may be reduced or denied.

"(aa) at the most recent IEP meeting that the parents attended prior to 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.

Old IDEA

Exceptions to the notification requirements for parents

* *Personnel standards:* The prior legislation required that (a) personnel had to be appropriately and adequately trained; (b) a State had to establish and maintain standards; and (c) when personnel did not meet the highest State standard for a specific profession or discipline, a State had to specify the steps it intended to take to retrain or hire personnel who did meet State standards.

• *Performance goals and indicators:* No similar provisions existed in the old IDEA.

The new IDEA requires States to establish performance goals and indicators for children with disabilities

IDEA 97

"(iv) 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 serious 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 [procedural safeguards], of the notice requirement in clause (iii)(I)." [Section 612(a)(10)(C)]

• *Personnel standards:* The new law maintains prior requirements regarding personnel standards and adds that the standards shall allow the use of paraprofessionals under certain conditions and allow a State to adopt a policy to allow the use of the most qualified persons available under certain conditions.

"(B) STANDARDS DESCRIBED.—Such standards shall...(iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services to children with disabilities under this part [Part B].

"(C) POLICY.—In implementing this paragraph, a State may adopt a policy that includes a requirement that local educational agencies in the State make an ongoing good-faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services to children with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified persons available who are making satisfactory progress toward completing applicable course work necessary" to meet the State standards within three years. [Section 612 (a)(15)(B)(iii) and 612(a)(15)(C)]

~k *Performance goals and indicators:* The new law requires the State to establish goals for the performance of children with disabilities and to develop indicators to judge children's progress. A State must revise its State improvement plan based on assessment results, if it receives funds under subpart 1 of Part D.

"The State—

(A) has established goals for the performance of children with disabilities in the State that—(i) will promote the purposes of this Act, as stated in 601(d); and (ii) are consistent, to the maximum extent appropriate, with other goals and standards for children established by the State;

(B) has established 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;

(C) will, every two years, report to the Secretary and the public on the progress of the State, and of children with

disabilities in the State, toward meeting the goals established under subparagraph (A); and

"(D) based on its assessment of that progress, will revise its State improvement plan under subpart 1 of part D as may be needed to improve its performance, if the State receives assistance under that subpart." [Section 612(a)(16)]

Participation in assessments: No similar provisions existed in the old IDEA.

Participation in assessments: States are now required to include children with disabilities, with accommodations when necessary, in State and districtwide assessment programs. Alternative assessments must be developed for children who cannot participate in regular assessments by 2000. Results must be reported (while protecting individual children's identities).

"(A) IN GENERAL.—Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations, where necessary. As appropriate, the State or local educational agency—(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 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." [Section 612(a)(17)]

Including children with disabilities in State and districtwide assessments and developing alternate assessments



State Advisory Panel: The old law addressed panel membership and duties in more general terms.

State Advisory Panel: The new law describes in more detail both panel duties and membership, including representation from private and charter schools and from State juvenile and adult corrections agencies. A majority of the members must be individuals with disabilities or parents of children with disabilities.

Old IDEA

IDEA 97

Membership in State Advisory Panel

"(B) MEMBERSHIP.—Such advisory panel shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, that is representative of the State population and that is composed of individuals involved in, or concerned with, the education of children with disabilities, including—

"(i) parents of children with disabilities; (ii) individuals with disabilities; (iii) teachers; (iv) representatives of institutions of higher education that prepare special education and related services personnel; (v) State and local education officials; (vi) administrators of programs for children with disabilities; (vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities; (viii) representatives of private schools and public charter schools; (ix) at least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and (x) representatives from the State juvenile and adult corrections agencies.

"(C) SPECIAL RULE.—A majority of the members of the panel shall be individuals with disabilities or parents of children with disabilities." [Section 612(a)(21)]

Charter schools: No similar provisions existed in the old IDEA.

Charter schools: The new law requires that an LEA serve children with disabilities attending charter schools that are public schools of the LEA in the same manner as it serves children with disabilities in its other schools. An LEA must also provide funds to these charter schools in the same manner as it provides those funds to its other schools. [Section 613(a)(5)]

Services to prisoners in adult prisons: No prison-specific provisions existed in the old IDEA.

* *Services to prisoners in adult prisons:* The new IDEA authorizes the Governor to transfer from the State Education Agency (SEA) to another agency (e.g., a State correctional agency) the responsibility for educating juveniles with disabilities who have been convicted as adults under State law and incarcerated in adult prisons [Section 612(a)(11)(C)]. Additionally, if the State demonstrates a good faith security or compelling penological interest that cannot otherwise be accommodated, the IEP Team may modify such a child's IEP or placement [Section 614(d)(6)].

"(C) EXCEPTION.—Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons." [Section 612(a)(11)(C)]

Provisions regarding children with disabilities in adult prisons

"(6) CHILDREN WITH DISABILITIES IN ADULT PRISONS.—(A) IN GENERAL.—The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

"(i) The requirements contained in section 612(a)(17) and paragraph (1)(A)(v) of this subsection (relating to participation of children with disabilities in general assessments).

Provisions regarding children with disabilities in adult prisons (continued)

"(ii) The requirements of subclauses (I) and (II) of paragraph (1)(A)(vii) of this subsection (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this part will end, because of their age, before they are released from prison.

"(B) ADDITIONAL REQUIREMENT.—If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child's IEP Team may modify the child's IEP or placement notwithstanding the requirements of sections 612(a)(5)(A) [least restrictive, environment] and 614(d)(1)(A) [definition of the IEP] if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated." [Section 614(d)(6)]

Old Law:
Evaluations, Eligibility Determinations, IEPs, and Educational Placements

New Law—Section 614
Evaluations, Eligibility Determinations, IEPs, and Educational Placements

• *Parent participation in eligibility decisions:* The old law did not require schools to involve parents in decision-making regarding whether a child was eligible for special education and related services.

* *Parent participation in eligibility decisions:* Under the new law, parents are specifically included as members of the group making the decision regarding a child or youth's eligibility for services.

"(4) 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) [see below]; and

"(B) a copy of the evaluation report and the documentation of determination of eligibility will be given to the parent.

"(5) 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." [Section 614(b)(4)]

* *Individualized Education Program (IEP):* The old law listed specific components to be included in each child's IEP.

* *Individualized Education Program (IEP):* Except for those provisions covering youth convicted as adults and incarcerated in adult prisons (see above), **IEP provisions under the new law do not take effect until July 1, 1998.** The new law requires that additional information be provided under most components of the IEP. Additional emphasis is placed on identifying the supplementary supports and services needed to enable the child to be educated in the general education classroom and with the general curriculum. New requirements include identifying the extent to which the child will participate in State or districtwide assessment. Schools are now required to report regularly to parents upon the child's progress toward the annual goals.

Old IDEA

IDEA 97

Components to be included in the IEP are:

"(i) a statement of the child's present levels of educational performance, including— (I) how the child's disability affects the child's involvement and progress in the general curriculum; or (II) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

"(ii) a statement of measurable annual goals, including benchmarks or short-term objectives, related to—(I) 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 (II) meeting each of the child's other educational needs that result from the child's disability;

"(iii) a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of program modifications or supports for school personnel that will be provided for the child—(I) to advance appropriately toward attaining the annual goals; (II) to be involved and progress in the general curriculum in accordance with clause (i) and to participate in extracurricular and other nonacademic activities; and (III) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph;
"(iv) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in clause (iii);

"(v)(I) a statement of any individual modifications in the administration of State or districtwide assessments of student achievement that are needed in order for the child to participate in such assessment; and (II) if the IEP Team determines that the child will not participate in a particular State or districtwide assessment of student achievement (or part of such an assessment), a statement of—(aa) why that assessment is not appropriate for the child; and (bb) how the child will be assessed;

"(vi) the projected date for the beginning of the services and modifications described in clause (iii), and the anticipated frequency, location, and duration of those services and modifications;

"(vii)(I) 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 courses of study (such as participation in advanced-placement courses or a vocational education program); (II) 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; and (III) 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

New language emphasizes student participation in the general curriculum

New IEP requirements re: student participation in State or districtwide assessment

New requirement re: statement of transition service needs in IEP

Old IDEA

New requirements re: reporting student progress to parents

- *Development of the IEP:* No similar provisions existed in the old IDEA.

Important new IEP requirements for considering:

- *behavior issues and developing positive behavioral support strategies*

language needs of IEP students

A blind or visually impaired students need for Braille

the communication needs of children who are deaf or hard of hearing

a child's need for assistive devices and services

IDEA 97

rights under this title, if any, that will transfer to the child on reaching the age of majority under section 615(m); and

"(viii) a statement of—(I) how the child's progress toward the annual goals described in clause (ii) will be measured; and (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 described in clause (ii); and (bb) the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year." [Section 614(d)(1)(A)(i) through (viii)]

Development of the IEP: The new law adds specific factors that the IEP team must consider when developing a child's IEP, including, most notably, behavior issues and the specific communication needs of the child, if he or she is blind or visually impaired, of limited English proficiency, or deaf or hard of hearing.

"(A) IN GENERAL.—In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider—(i) the strengths of the child and the concerns of the parents for enhancing the education of their child; and (ii) the results of the initial evaluation or most recent evaluation of the child.

"(B) CONSIDERATION OF SPECIAL FACTORS.—The IEP Team shall—

"(i) in the case of a child whose behavior impedes his or her learning or that of others, consider, when 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 or the use of 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 communications 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 devices and services.

Old IDEA

Important new requirements re: involvement of the regular education teacher

IDEA 97

"(C) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—The regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and strategies and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(iii)." [Section 614(d)(3)]

- *Review and revision of the IEP:* Under the old IDEA, the IEP was to be reviewed and revised at least annually.

Review and revision of the IEP: The new law maintains prior requirements and adds new language emphasizing revision of the IEP, as appropriate.

"(A) IN GENERAL.—The local educational agency shall ensure that, subject to subparagraph (B) [see page 22, "Consideration of Special Factors"], 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) [see page 24, "Additional requirements for evaluation and reevaluations"]; (IV) the child's anticipated needs; or (V) other matters.

"(B) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER. —The regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the review and revision of the IEP of the child." [Section 614(d)(4)]

- * *IEP team:* Members of the IEP team were specified in the old IDEA.

IEP Team: The new law maintains prior requirements regarding IEP Team membership and adds members to the team, including the regular education teacher. The IEP Team, then, is a group composed of:

"(i) the parents of a child with a disability;

"(ii) at least one regular education teacher of such child (if the child is, or may be, participating in the regular education environment);

The regular education teacher is specifically mentioned as being part of the IEP Team.

"(iii) at least one special education teacher, or where appropriate, at least one special education provider of such child;

"(iv) a representative of the local educational agency who—(I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (II) is knowledgeable about the general curriculum; and (III) is knowledgeable about the availability of resources of the local education agency;

"(v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi);

"(vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

"(vii) whenever appropriate, the child with a disability." [Section 614(d)(1)(B)]

- *Parent participation in placement decisions:* Parents had the right to consent to or refuse decisions regarding their child's initial placement. However, the Federal statute did not require that they be a member of the team making the placement decision.

- * *Parent participation in placement:* The new law explicitly states parents' right to be involved in all placement decisions regarding their child. Unlike IEP changes, this change takes effect immediately.

"(f) 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." [Section 614(f)]

- *Reevaluation of students:* Under Federal regulations to the old IDEA, each student with disabilities was reevaluated every three years in all areas related to his or her disability. The data gathered through this reevaluation were used to determine if the student still had a disability and what his or her present levels of educational performance and needs were.

- *Reevaluation of students:* Under IDEA 97, reevaluating the student at least every three years is still required. Now, however, the IEP Team is required to review existing evaluation data on the student and identify if additional information is needed to determine if the student continues to have a disability and what his or her present levels of performance and educational needs are. If sufficient information exists, the child does not need to be reevaluated. (However, if parents request the reevaluation for the purpose of determining continued eligibility, then the school must conduct it.) If data are needed in a particular area, then the child would be reevaluated in that area. Parents must give their consent before any reevaluation can be conducted.

"(c) ADDITIONAL REQUIREMENTS FOR EVALUATIONS AND REEVALUATIONS.—

"(1) REVIEW OF EXISTING EVALUATION DATA.—As part of...any reevaluation under this section, the IEP Team...and other qualified professionals, as appropriate, shall—

"(A) review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and related services providers observation; and

"(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

"(i) ...in the case of a reevaluation of a child, whether the child continues to have such a disability; (ii) the present levels of performance and educational needs of the child; (iii) ...whether the child continues to need special education and related services; and (iv) whether any additions or

In conducting reevaluation of students every three years, schools may review existing evaluation data, identify what data they have and what additional data are needed, and assess the student in the area where data are needed.

Old IDEA

Parental consent is needed for reevaluating a student (unless parents fail to respond to requests for consent).

If no additional data are needed to determine if the child continues to be a child with a disability, the LEA is not required to conduct such an assessment of the child...

...unless requested to by the child's parents.

*Old Law.
Procedural Safeguards*

- *Access to records:* The old IDEA guaranteed parents the opportunity to examine all *relevant* records.
- *Prior written notice:* The parents or guardians were entitled to receive prior written notice whenever an agency proposed (or refused) to initiate or change the identification, evaluation, or placement of the child or the provision of FAPE.

IDEA 97

modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general curriculum.

"(2) SOURCE OF DATA.—The local educational agency shall administer such tests and other evaluation materials as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

"(3) PARENTAL CONSENT.—Each local educational agency shall obtain informed parental consent...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.

"(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED.—If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether a child continues to be a child with a disability, the local educational agency—

"(A) shall notify the child's parents of—(i) that determination and the reasons for it; and (ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability; and

"(B) shall not be required to conduct such an assessment unless requested to by the child's parents.

"(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY.—A local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability." [Section 614(c)]

*New Law—Section 615
Procedural Safeguards*

Access to records: The new law maintains requirements and clarifies that parents can review *all* records (not just "relevant" records). [Section 615(b)(1)]

- * *Prior written notice:* The new IDEA maintains the requirement that schools provide parents with prior written notice, including informing them about the procedural safeguards available to parents under the Act. With IDEA 97, however, the procedural safeguards notice can now have a long version and a short version. The long version of the notice includes a full and complete explanation of the Act's procedural safeguards. At a minimum, parents must be provided with this long notice upon their child's initial referral for evaluation, when they are notified of an IEP meeting, upon reevaluation of the child, and if they register a due process complaint. The short version of the procedural safeguards notice merely states that the parents have protection under the procedural safeguards of the Act and indicates the means by which a description of these safe-

guards can be obtained. The short version can be provided to parents when the long version is not expressly required by law. Both versions are to include a list of sources of assistance that parents can contact for help in understanding the Act's procedural safeguards.

"(b) TYPES OF PROCEDURES.—The procedures required by this section shall include—

"...(3) written prior notice to the parents of the child whenever such agency—(A) proposes to initiate or change; or (B) refuses to initiate or change; the identification, evaluation, or educational placement of the child, in accordance with subsection (c), or the provision of a free appropriate public education to the child;

"(4) procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly-is not feasible to do so..." [Section 615(b)(3) and (4)]

"(c) CONTENT OF PRIOR WRITTEN NOTICE.—The notice required by subsection (b)(3) shall include—

(1) a description of the action proposed or refused by the agency; (2) an explanation of why the agency proposed or refused 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 a description of the procedural safeguards can be obtained; and (7) sources for parents to contact to obtain assistance in understanding the provisions of this part.

"(d) PROCEDURAL SAFEGUARDS NOTICE.—

"(1) IN GENERAL.—A copy of the procedural safeguards available to the parents of a child with a disability shall be given to parents, at a minimum— (A) upon initial referral for evaluation; (B) upon each notification of an individualized education program meeting and upon reevaluation of the child; and (C) upon registration of a complaint under subsection (b)(6).

"(2) CONTENTS.—The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents, unless it clearly is not feasible to do so, and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to— (A) independent educational evaluation; (B) prior written notice; (C) parental consent; (D) access to educational records; (E) opportunity to present complaints; (E) the child's placement during pendency of due process proceedings; (G) procedures for students who are subject to

IDEA 97 maintains requirements for providing parents with prior written notice

The prior written notice must notify parents about procedural safeguards available under IDEA

Under what circumstances, at a minimum, parents must be given a full explanation of procedural safeguards

What topics the full explanation of procedural safeguards must address

Old IDEA

IDEA 97

placement in an interim alternative educational setting; (H) requirements for unilateral placement by parents of children in private schools at public expense; (I) mediation; (J) due process hearings, including requirements for disclosure of evaluation results and recommendations; (K) State-level appeals (if applicable in that State); (L) civil actions; and (M) attorneys' fees." [Section 615(c) and (d)]

Notification by parents filing a complaint: No similar provisions existed in the old law.

Notification by parents filing a complaint: The new law adds a requirement that parents filing a complaint must provide the State educational agency or local educational agency with notice. The notice must contain specific information.

"(b) TYPES OF PROCEDURES.—The procedures required by this section shall include—

"...(7) procedures that require the parent of a child with a disability, or the attorney representing the child, to provide notice (which shall remain confidential)—

New requirement for parents filing a complaint

"(A) to the State educational agency or local educational agency, as the case may be, in the complaint filed under paragraph (6) [any complaint relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child]; and

What information parents need to include in their notice of complaint

"(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; and

"(8) procedures that require the State educational agency to develop a model form to assist parents in filing a complaint in accordance with paragraph (7)." [Section 615(b)(7) and (8)]

Mediation: No similar provisions existed under the old law, although mediation was a permissible activity.

**Mediation:* The new law requires States to establish a mediation system in which parents and schools may voluntarily participate. The law specifies mediation requirements as follows:

"(e) MEDIATION.—

"(1) IN GENERAL.—Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in subsection (b)(6) to resolve such disputes through a mediation process which, at a minimum, shall be available whenever a hearing is requested under subsection (f) or (k).

"(2) REQUIREMENTS.—Such procedures shall meet the following requirements:

"(A) The procedures shall ensure that the mediation process— (i) is voluntary on the part of the parties; (ii) is not

used to deny or delay a parent's right to a due process hearing under subsection (f) or to deny any other rights afforded under this part; and (iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

"(B) A local educational agency or a State agency may establish procedures to require parents who choose not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with— (i) a parent training and information center or community parent resource center in the State established under section 682 or 683; or (ii) an appropriate alternative dispute resolution entity; to encourage the use, and explain the benefits, of the mediation process to the parents.

"(C) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

"(D) The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

"(E) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

"(F) An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement.

"(G) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process." [Section 615(e)(2)]

The new mediation process

•*Disclosure of evaluations and recommendations:* The old IDEA's regulations regarding disclosure exist at 34 CFR 300.508 (a)(3).

Disclosure of evaluations and recommendations: IDEA 97 clarifies that, at least 5 days before a hearing, each party must disclose all evaluations and recommendations. Any party failing to meet this requirement may be barred from introducing this evidence, unless the other party consents.

"(2) DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS.— (A) IN GENERAL.—At least 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

"(B) FAILURE TO DISCLOSE.—A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party." [Section 615(f)(2)]

Old IDEA

* *Prohibition of attorneys' fees and related costs:* The old law stipulated that no attorneys' fees may be awarded subsequent to the time of a written offer of settlement under certain circumstances.

Attorneys' fees may be reduced if attorney did not provide appropriate information to school system of parents filing a complaint

IDEA 97

Prohibition of attorneys' fees and related costs: The new law maintains prior requirements and adds that attorney fees may not be awarded for an IEP meeting unless the meeting is convened as a result of an "administrative proceeding or judicial action." Fees would also not be awarded for mediation prior to the filing of a due process complaint. Fees may be reduced in certain circumstances, including if the attorney representing the parents did not provide the school district with the appropriate information in the due process complaint [see page 27, "Notification by Parents Filing a Complaint"].

"(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e) that is conducted prior to the filing of a complaint under subsection (b)(6) or (k) of this section." [Section 615 (i)(3)(D)(ii)]

"(F) REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—Except as provided in subparagraph (G), whenever the court finds that—

"(i) the parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

"(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

"(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

"(iv) the attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with subsection (b)(7);

"the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

"(G) EXCEPTION TO REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section." [Section 615(i)(3)(F) and (G)]

Old IDEA

Maintenance of current educational placement and placement in alternative educational setting—authority of school personnel: Under the old IDEA, during the time that a proceeding was being conducted, the child remained in his or her current educational placement (unless otherwise agreed by the SEA or LEA and parents), except in the case of a child who brought a firearm to school. Such a child could be placed in an interim alternative educational setting for not more than 45 days. If a parent requested a due process hearing in a case involving a firearm, the child still remained in the interim placement.

Under the new law, "(k) Placement in Alternative Educational Setting" consists of 10 separate, but interrelated, subparts: (1) Authority of school personnel; (2) Authority of hearing officer; (3) Determination of setting; (4) Manifestation determination review; (5) Determination that behavior was not manifestation of disability; (6) Parent appeal; (7) Placement during appeals; (8) Protections for children not yet eligible for special education and related services; (9) Referral to and action by law enforcement and judicial authorities; and (10) Definitions.

Subparts (1)-(9) are presented in the next few pages and, although reviewed separately, should be viewed as aspects of the same issue—the procedures for placing a child in an alternative educational setting. The definitions contained in Subpart 10 are presented verbatim on page 7 of this News Digest.

New requirements re: functional behavioral assessments of students with disabilities involved in disciplinary actions

IDEA 97

• *k Maintenance of current educational placement and placement in alternative educational setting—authority of school personnel:* IDEA 97 brings several changes to prior requirements, including expanding the school's right to take disciplinary action with children with disabilities who knowingly possess or use illegal drugs or sell or solicit the sale of a controlled substance while at school or school functions. Schools are required now to conduct a functional behavioral assessment and implement a behavior intervention plan for children who violate school rules or codes of conduct for which disciplinary action is taken.

"(j) MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT.— Except as provided in subsection (k)(7) [see page 34], 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, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

"(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING.—

"(1) AUTHORITY OF SCHOOL PERSONNEL.—

"(A) School personnel under this section may order a change in the placement of 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 to a school function under the jurisdiction of a State or local educational agency; 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 under the jurisdiction of a State or local educational agency.

"(B) Either before or not later than 10 days after taking a disciplinary action described in subparagraph (A)—

"(i) if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the suspension described in subparagraph (A), the agency shall convene an IEP meeting to develop an assessment plan to address that behavior; or

Old IDEA

IDEA 97

Authority of hearing officer: Under judicial interpretations of the old IDEA, a court could order the placement of a child to be changed if that placement was substantially likely to result in injury to the child or others.

See page 7 for the definition of 'substantial evidence'

Determination of setting: No explicit provisions regarding determining interim alternative educational settings existed in the old IDEA.

The interim alternative educational setting must—
enable the student to participate in the general curriculum and receive those services listed in the IEP; and
include services designed to address the behavior.

•*Manifestation determination review:* No similar provisions existed in the old IDEA.

"(ii) if the child already has a behavioral intervention plan, the IEP Team shall review the plan and modify it, as necessary, to address the behavior." [Section 615(j)-(k)(1)]

Authority of hearing officer: The new IDEA has expanded the authority of hearing officers to place children in interim educational settings.

"(2) AUTHORITY OF HEARING OFFICER.—A hearing officer under this section may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer—

"(A) determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;

"(B) considers the appropriateness of the child's current placement;

"(C) considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

"(D) determines that the interim alternative educational setting meets the requirements of paragraph (3)(B)" [see below, under "Determination of Setting"]. [Section 615 (k)(2)]

Determination of setting: Under IDEA 97, the IEP Team determines the interim alternative educational setting of the child. Additional requirements have been added.

"(3) DETERMINATION OF SETTING.—

"(A) IN GENERAL.—The alternative educational setting described in paragraph (1)(A)(ii) shall be determined by the IEP Team.

"(B) ADDITIONAL REQUIREMENTS.—Any interim alternative educational setting in which a child is placed under paragraph (1) or (2) shall—

"(i) be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and

"(ii) include services and modifications designed to address the behavior described in paragraph (1) or paragraph (2) so that it does not recur." [Section 615(k)(3)]

•*Manifestation determination review.* In the new law, immediately, if possible, but in no case later than 10 school days after the disciplinary action has been taken, the IEP Team

and other qualified individuals shall review the relationship between the child's disability and the behavior subject to disciplinary action, to determine whether or not the behavior was a manifestation of the child's disability. The team must consider a wide range of information in making this determination.

"(4) MANIFESTATION DETERMINATION REVIEW.—

"(A) IN GENERAL.—If a disciplinary action is contemplated as described in paragraph (1) or paragraph (2) for a behavior of a child with a disability described in either of those paragraphs, or if a disciplinary action involving a change of placement for more than 10 days is contemplated for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the local educational agency that applies to all children—

Immediate parent notification required

"(i) not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and of all procedural safeguards accorded under this section; and

"(ii) immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

"(B) INDIVIDUALS TO CARRY OUT REVIEW.—A review described in subparagraph (A) shall be conducted by the IEP Team and other qualified personnel.

"(C) CONDUCT OF REVIEW.—In carrying out a review described in subparagraph (A), the IEP Team may determine that the behavior of the child was not a manifestation of such child's disability only if the IEP Team—

"(i) first considers, in terms of the behavior subject to disciplinary action, all relevant information, including (I) evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the child; (II) observations of the child; and (III) the child's IEP and placement; and

Determining or not whether the behavior was a manifestation of the child's disability

"(ii) then determines that—

"(I) in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;

"(II) 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

"(III) the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action."
[Section 615(k)(4)]

Old IDEA

- *Determination that behavior was not a manifestation of disability:*
No similar provisions existed in the old IDEA.

- * *Parent appeal of manifestation determination and interim alternative placement actions:* Parental appeals were subject to the due process provisions of the Act, although no provisions regarding manifestation determination or interim alternative educational placements existed in the old law.

IDEA 97

- k *Determination that behavior was not a manifestation of disability:*
Under the new law, if it is determined that the behavior 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, provided, however; that there is no cessation of educational services.

"(5) DETERMINATION THAT BEHAVIOR WAS NOT MANIFESTATION OF DISABILITY.—

"(A) IN GENERAL.—If the result of the review described in paragraph (4) is a determination, consistent with paragraph (4)(C), that the behavior of the child with a disability 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, except as provided in section 612(a)(1) [the requirement that schools provide FAPE to children with disabilities who have been suspended or expelled from school].

"(B) ADDITIONAL REQUIREMENT.—If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action." [Section 615(k)(5)]

- * *Parent appeal of manifestation determination and interim alternative placement actions:* Under the new IDEA, if a parent disagrees with the determination or placement decision, the parent may request a hearing. The SEA or LEA shall arrange for an expedited hearing when requested by the parent. The hearing officer will make a determination as to whether the behavior was a manifestation of the child's disability.

"(6) PARENT APPEAL.—

"(A) IN GENERAL.—(i) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parent may request a hearing.

"(ii) The State or local educational agency shall arrange for an expedited hearing in any case described in this subsection when requested by a parent.

"(B) REVIEW OF DECISION.—(i) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of such child's disability consistent with the requirements of paragraph (4)(C) [see "(4) Manifestation Determination Review: (C), Conduct of Review," on page 32].

"(ii) In reviewing a decision under paragraph (1)(A)(ii) [for drug and weapon violations] to place the child in an interim alternative educational setting, the hearing officer shall apply the standards set out in paragraph (2)" [see page 31, "(2) Authority of hearing officer"]. [Section 615(k)(6)]

Placement during appeals: Under the prior legislation, during the pendency of any administrative or judicial proceeding regarding a complaint, the child remained in his or her current educational placement, unless the parents and public agency agreed otherwise.

k Placement during appeals: The requirements of the new law are as follows:

"(7) PLACEMENT DURING APPEALS.—

"(A) IN GENERAL.—When a parent requests a hearing regarding a disciplinary action described in paragraph (1)(A)(ii) [when school personnel changed the child's placement up to 45 days] or paragraph (2) [when a hearing officer orders a change in placement for not more than 45 days] to challenge the interim alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(A)(ii) or paragraph (2), whichever occurs first, unless the parent and the State or local educational agency agree otherwise.

When a parent requests a hearing regarding a disciplinary action, the child remains in the interim alternative educational setting until the hearing officer decides or until the expiration of the time period allowed, whichever happens first.

"(B) CURRENT PLACEMENT.—If a child is placed in an interim alternative educational setting pursuant to paragraph (1)(A)(ii) or paragraph (2) and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in subparagraph (C).

"(C) EXPEDITED HEARING.—(i) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative educational setting) during the pendency of the due process proceedings, the local educational agency may request an expedited hearing.

"(ii) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards set out in paragraph (2)" [see page 31, "(2) Authority of Hearing Officer"].

* *Protections for children not yet eligible for special education:* No similar provisions existed in the old IDEA.

k Protections for children not yet eligible for special education: Under IDEA 97, a child who has not yet been found eligible for special education and who has violated a rule or code of conduct could assert the protections of the Act if the LEA had knowledge that the child was a child with a disability before the behavior occurred.

"(8) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.—

"(A) IN GENERAL.—A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any

IDEA 97

rule or code of conduct of the local educational agency, including any behavior described in paragraph (1) [see page 30, "Authority of School Personnel"], may assert any of the protections provided for in this part if the local educational agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred:

"(B) BASIS OF KNOWLEDGE.—A local educational agency shall be deemed to have knowledge that a child is a child with a disability if—

"(i) the parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with the requirements contained in this clause) to personnel of the appropriate educational agency that the child is in need of special education and related services;

"(ii) the behavior or performance of the child demonstrates the need for such services;

"(iii) the parent of the child has requested an evaluation of the child pursuant to section 614; or

"(iv) the teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of such agency or to other personnel of the agency." [Section 615(k)(8)(B)]

"(C) CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE.—

"(i) IN GENERAL.—If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B)) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

"(ii) LIMITATIONS.—If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under paragraph (1) or (2) [see page 30, "(1) Authority of School Personnel" and page 31, "(2) Authority of Hearing Officer"], the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities." [Section 615(k)(8)(C)]

Old IDEA

* *Referral to and action by law enforcement and judicial authorities:*
No explicit provision existed in the old IDEA.

* *Transfer of parental rights at age of majority:* No similar provisions existed in the old IDEA.

Age of majority requirements

IDEA 97

Referral to and action by law enforcement and judicial authorities:
The new law makes clear that agencies are not prohibited from reporting a crime committed by a child with a disability to appropriate authorities. Similarly, the law does not prevent State law enforcement and judicial authorities from exercising their responsibilities. The agency reporting the crime must ensure that copies of the special education and disciplinary records are transmitted for consideration by the appropriate authorities.

"(9) REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES.—

"(A) Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

"(B) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime." [Section 615(k)(9)(A) and (B)]

* *Transfer of parental rights at age of majority:* The new law outlines procedures for the transfer of parental rights to the child when he or she reaches the age of majority, consistent with State policy.

"(1) IN GENERAL.—A State that receives amounts from a grant under this part may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)—

"(A) the public agency shall provide any notice required by this section to both the individual and the parents;

"(B) all other rights accorded to the parents under this part transfer to the child;

"(C) the agency shall notify the individual and the parents of the transfer of rights; and

"(D) all rights accorded to parents under this part transfer to "children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

"(2) SPECIAL RULE.—If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part." [Section 615(m)]

Part C: Infants and Toddlers with Disabilities

kChange within IDEA: In the old legislation, the Infants and Toddlers Program requirements were located in Part H, so that early intervention was often referred to as the Part H program.

Findings and Policies: The old IDEA included findings related to the need to enhance the development of infants and toddlers with disabilities.

* *Definitions:* A definition of "at-risk infant or toddler" did not exist in old law.

k General requirements: The old law outlined a series of requirements, including a timetable for implementation of an early intervention system.

Natural environments: No similar provisions existed in the old IDEA.

Personnel standards: See description of "Personnel Standards" under Part B (page 17). Similar requirements existed for the Infant and Toddler Program.

IFSP: The prior legislation outlined requirements for the development of individualized family service plans (IFSP).

-*k Procedural safeguards:* The old law outlined procedural safeguards to be included in the statewide system.

Change within IDEA: Under the new law, the Infants and Toddlers Program requirements are located in Part C. There will no longer be a Part-H. These changes take effect July 1, 1998.

k Findings and Policies: IDEA 97 maintains prior findings and modifies one of its purposes from developing an early-intervention "program" to developing a "system that provides early intervention services." Also added is the purpose "to encourage States to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services." [Section 631(b)(1) and (4)]

Definitions: The new law maintains previous definitions and additionally defines "at-risk infant or toddler" as: "...an individual under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual." [Section 632(1)]

General requirements: The new law maintains previous requirements and clarifies that the identification of each family's needs must be "family-directed." [Section 635(a)(3)] The implementation timetable has been dropped. A requirement is added that a State policy must be in effect that ensures availability of early intervention services. [Section 635(a)(2)]

* *Natural environments:* The new law requires policies and procedures that ensure:

"(A) to the maximum extent appropriate, early intervention services are provided in natural environments; and

(B) the provision of early intervention services for any infant or toddler occurs in a setting other than a natural environment only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment." [Section 635(a)(16)]

Personnel standards: See description of "Personnel Standards" under Part B (page 17). Similar requirements exist under the new law for the Infant and Toddler Program. [Section 635(a)(8)]

IFSP: The new law maintains similar requirements, with the additional requirement that a justification be included "of the extent, if any to which services will not be provided in a natural environment." [Section 636(d)(5)]

Procedural safeguards: The new law maintains prior requirements. The prohibition on who may not serve as a surrogate parent is expanded to include individuals or employees of providers of early intervention services. [Section 639(a)(5)] Right to mediation, as delineated under Part B, applies to

Part C as well, with Part B references to FAPE being considered as references to early intervention services. [Section 639(a)(8)]

**State Interagency Coordinating Council:* The old law required a State to establish an ICC according to listed specifications.

**State Interagency Coordinating Council:* The new IDEA maintains prior requirements regarding establishment, composition, meetings, management authority, and function of ICCs. The number of members is now left to the State to determine. [Section 641]

Index

Access to records, 25

Advisory Panel, 18

Age of majority
statement in the IEP, 21
transfer of parental rights at, 36

Alternative educational setting, see Placement

Assessment
children with disabilities' participation in, 18
reports, 18
statements in the IEP, 21

Assistive devices and services in the IEP, 22

Attorney fees, 29

Behavior
behavioral intervention plan, 30
functional assessment of, 30
in the IEP, 22
LEA knowledge of problem, 35
manifestation determination review, 31
referral to law enforcement, 36

Braille, 22

Charter schools, 19

Child find in private schools, 14, 16

Definitions
at risk infant or toddler, 37
controlled substance, 7
developmental delay, 12
educational service agency, 12
illegal drug, 7
parents, 13
related services, 13
serious emotional disturbance, 12
substantial evidence, 7
supplementary aids and services, 13
transition services, 13
weapon, 7

Determination
of setting, 31
that behavior was not a manifestation of disability, 33

Discipline, see Behavior

Disclosure of evaluations and recommendations, 28

Eligibility decisions, 20

Funding for children in private schools, 15

General curriculum
in IEP, 21
lack of progress in, 23
when in interim alternative educational setting, 31

IFSP, 37

Indicators, 17

Individualized Education Program
description of contents, 21
development of, 22
review of, 23
special factors to consider, 22
team members, 23
transition services, 21

Infants and Toddlers Program, 37

Interagency Coordinating Councils, 38

Interim alternative educational setting, see Placement

Law enforcement and judicial authorities, 36

LEA knowledge of child's disability, 35

Least restrictive environment (LRE), 15

Limited English proficiency, 22

Maintenance of placement, 30

Majority, age of, 36

Manifestation determination review. 31
 Mediation, 11
 Natural environments, 37
 Notification
 by parents re: filing a complaint, 27
 by parents re: private school placement, 16
 procedural safeguards, 26
 to parents re: disciplinary action, 32
 to parents re: procedural safeguards, 25
 Orientation and mobility services, 13
 Parent appeal, 33
 Parent consent to reevaluate child, 25
 Parent notification, see Notification
 Parent participation
 in eligibility decisions, 20
 in placement decisions, 24
 on Advisory Panel, 19
 Part C (formerly Part H), 37
 Participation in assessments, 18
 Performance goals and indicators, 17
 Personnel standards
 Part B, 17
 Part C (formerly H), 37
 Placement
 authority of hearing officer to change. 31
 authority of school personnel to change, 30
 during appeal, 34
 in private schools, 15
 in interim alternative educational setting, 30
 maintenance of current educational placement, 30
 manifestation determination review⁷, 31
 parent appeal of, 33
 requirement for interim alternative educational setting, 31
 Policy letters and regulations, 13
 Prior written notice, see Notification
 Prisons, 19, 20
 Private school placement
 limitation of reimbursement for, 16
 use of IDEA funds for, 15
 without consent of public agency, 16
 Procedural safeguards
 access to records, 25
 children not yet eligible, 34
 disclosure prior to hearing, 28
 nondiscriminatory evaluation, 15
 notice of, 26
 Part C (formerly H), 37 -
 prior written notice, 26
 reevaluation, 24
 Protections for children not yet eligible, 34
 Records
 access to, 25
 transmittal of special education and disciplinary records, 33
 Reduction in attorneys' fees, 29
 Reevaluation of student, 24
 Referral to law enforcement & judicial authorities, 36
 Regular Education Teacher
 participation in IEP development, 23
 participation in IEP review, 23
 participation on IEP team, 23
 Reimbursement for private school placement, 16
 Reports
 on student assessment, 18
 to parents on student progress, 22
 Services in prisons, 19
 Special factors to consider in IEP development, 22
 State Advisory Panel, 18
 State eligibility/plans, 14
 State Interagency Coordinating Councils, 38
 Supplementary aids and services
 definition, 13
 statements in IEP, 21
 Transfer of parental rights at age of majority, 36
 Transition
 definition, 13
 from infant program to preschool program, 15
 transition services for youth, 21
 Triennials, see Reevaluation of student
 Weapon, definition of, 7
 Written notification, see Notification

NICHCY News Digest is published several times a year in response to questions from individuals and organizations that contact the Clearinghouse. In addition, NICHCY disseminates other materials and can respond to individual requests for information. For further information and assistance, or to receive a *NICHCY Publications Catalog*, contact NICHCY, P. O. Box 1492, Washington, DC 20013. Telephone: 1-800-695-0285 (Voice/TTY) and (202) 884-8200 (Voice/TTY). Visit our Web site (<http://www.nichcy.org>) or our gopher site ([gopher aed.org](gopher.aed.org)). You can send us e-mail at: nichcy@aed.org

NICHCY thanks our Project Officer, Dr. Peggy Cvach, at the Office of Special Education Programs, U.S. Department of Education, for her time in reading and reviewing this manuscript. We would also like to express our deep appreciation to those individuals who read this manuscript in draft and provided us with guidance, suggestions, and expertise critical to ensuring its accuracy. In particular, we thank: Margaret Burley, Executive Director, Ohio Coalition for the Education of Children with Disabilities, Marion, OH; Myrna Mandlawitz, National Association of State Directors of Special Education, Alexandria, VA; and the many individuals at the Office of Special Education Programs, U.S. Department of Education, who went over the draft with the finest of combs.

Project Director Suzanne Ripley
 Editor/Author Lisa Ktipper
 Associate Editor Mary Kate Gutierrez

This information is copyright free, unless otherwise indicated. Readers are encouraged to copy and share it, but please credit the National Information Center for Children and Youth with Disabilities (NICHCY). Please share your ideas and feedback with our staff by writing to the Editor.



A Special Thank You...

This publication would not be complete without a special thank you to Donna Waghorn, Director of Information Services, at NICHCY, for her faithful tracking of the IDEA through the long reauthorization process. She kept us informed and now, through this *News Digest*, her knowledge flows to our readers. Thanks, Donna.



Academy for Educational Development

Publication of this document is made possible through Cooperative Agreement #H030A30003 between the Academy for Educational Development and the Office of Special Education Programs of the U.S. Department of Education. The contents of this document do not necessarily reflect the views or policies of the Department of Education.

The Academy for Educational Development, founded in 1961, is an independent, nonprofit service organization committed to addressing human development needs in the United States and throughout the world. In partnership with its clients, the Academy seeks to meet today's social, economic, and environmental challenges through education and human resource development; to apply state-of-the-art education, training, research, technology, management, behavioral analysis, and social marketing techniques to solve problems; and to improve knowledge and skills throughout the world as the most effective means for stimulating growth, reducing poverty, and promoting democratic and humanitarian ideals.