



Council for
Exceptional
Children

IDEA
Reauthorization
Recommendations

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The Council for Exceptional Children

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IDEA Reauthorization Recommendations

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Introduction

The Council for Exceptional Children (CEC) is committed to the achievement of successful outcomes for children and youth with exceptionalities, through the promotion of professional excellence in special education and the provision of high quality professional supports and quality conditions for teaching and learning.

IDEA is scheduled to be reauthorized by the US Congress in 2002; that is, by the end of 2002, Congress is scheduled to approve the continued expenditure and use of federal funds to carry out activities included under certain components or parts of the IDEA statute. The IDEA statute is made up of four parts, including the Part A General Provisions section, the Part B Grants to States Program (including preschool grants), the Part C Infants and Toddlers program, and the Part D Support Programs. Congress must periodically review and reauthorize Parts C and D of IDEA (usually every 5 years) in order to ensure continuation of the activities included under these parts. However, the Part B Grants to States Program, which includes the Preschool Grants Program, is permanently authorized. Thus, only Parts C and D of IDEA are subject to reauthorization in 2002. While Congress has amended Part B of IDEA during previous reauthorization cycles for Parts C and D, Part B does not require periodic review and reauthorization by Congress in order to continue.

With that in mind, and in preparation for the upcoming reauthorization of IDEA, the Council for Exceptional Children has prepared a set of recommendations for consideration as reauthorization activity proceeds. Many of these recommendations address IDEA issues and challenges through solutions that do not involve statutory changes to IDEA Part B and Part C. Many of the implementation issues are best addressed through policy changes to the Part D Support Programs. In addition, we have recommended clarifying language to the statute and recommended actions for the Secretary of Education. Some of the policy recommendations may be implemented now and do not need to wait until reauthorization. CEC has only recommended changes to the law when convinced that the current federal statutory language with appropriate federal, state and (or) local guidance, technical assistance, and resources are insufficient to address identified areas of concern raised by CEC members.

CEC has engaged in a year long process of soliciting issues and input from the membership to develop these recommendations and will continue to do so throughout the reauthorization process. A CEC IDEA Reauthorization Work Group was convened to advise CEC in the development of its recommendations. Members of that work group are as follows: Naomi Zigmond, Madeleine Will, Maddy Rodriguez-Walling, Theodore Pikes, Alba Ortiz, Linda Lewis, Mark Goor, Alice Farling, Ron Benham, and Joe Ballard. As always, CEC will continue to collaborate with our partners including families, and those in special education and general education.

Background

CEC applauds the success of IDEA. By any standard, it represents an important and necessary component of the education system in this country. It is fundamental to the success of children

and youth with disabilities. CEC believes that the fundamental rights and protections for children and their families, as well as the basic fiscal and administrative mechanisms contained in Parts A, B and C of IDEA are sound and have stood the test of time. In essence, CEC believes that in this era of change in the American school, the IDEA must perform a dual role. On the one hand, it must reflect for children with disabilities the basic tenets and directions of national policy in education reform. We do not think this will be difficult, for we believe that IDEA, as enacted in P.L. 94-142, was good model legislation for school reform long before school reform was a national topic. At the same time, during this period of intense innovation and change in American education, IDEA must stand as the rock of stability in its declaration of the fundamental and unchanging rights and protections for children with disabilities and their families. We know that the IDEA can and will perform this dual function.

After extensive deliberations, significant changes were made to IDEA in the last reauthorization. IDEA '97 was completed less than 5 years ago and final implementing regulations have been in effect for less than three years. As we approach reauthorization, we must consider the issues that have arisen as a result of IDEA '97 and its implementation across the country. While the 1997 amendments to IDEA have improved opportunities and results for children and youth with disabilities and their families, CEC members have reported challenges in their role of assisting students in achieving successful outcomes. In response to member input, CEC released its 2000 report, "Bright Futures for Exceptional Learners," which sets a positive and proactive agenda to achieve quality conditions for teaching and learning.

The upcoming IDEA reauthorization provides an important opportunity to continue CEC's efforts to assist in ensuring effective implementation of IDEA '97. As IDEA reauthorization proceeds, CEC will continue to carefully examine the implementation of the Part B Grants to States Program and the Preschool Grants Program; Part C, the Infants and Toddlers Program under IDEA; and the national support programs under Part D of IDEA.

CEC has collected information from many sources, reviewed it carefully with our members, and determined if potential changes in the law were warranted to address members' areas of concern. It is already clear that many of the issues that have been identified by CEC members can and should be addressed in state and local policy and through the provision of training and technical assistance. With that in mind, CEC advocates for a careful and deliberative decision-making process to determine the appropriate level of government (federal, state or local) and method (statute, regulations, or guidance and training) to address specific issues of concern raised by CEC members. In summary, because we approach with caution the notion of making additional changes to the IDEA statute, CEC has only recommended changes to the law when convinced that the current federal statutory language with federal, state and/or local policy solutions are insufficient to address identified areas of concern raised by CEC members.

IDEA Policy Issues

As an initial step in preparing for IDEA reauthorization, CEC member input was sought in a variety of public policy discussions and forums between April 2001 and the present. After careful review and consideration of CEC member feedback, seven policy issues were identified (see below). While we are aware that other important issues may arise as the IDEA

reauthorization process proceeds, these seven policy issues currently are of uppermost importance on the minds of CEC members. As the IDEA reauthorization process unfolds, we look forward to continuing to receive input on these and other issues from CEC members. CEC will engage in the dynamic reauthorization process and intends to consider other proposals that may come forward and take positions as may be appropriate.

This paper is organized according to seven IDEA policy issues identified by CEC members. Each of the seven policy issues includes a background section and CEC policy recommendations. The seven issues are:

- ⇒ Finance
- ⇒ Disproportionate Representation
- ⇒ Qualified Personnel
- ⇒ Increasing Accountability while Reducing Paperwork
- ⇒ Identification and Eligibility: Learning Disabilities
- ⇒ Discipline Procedures
- ⇒ Early Childhood

Finance

Background

Part B

When Congress originally enacted P.L. 94-142, The Education for All Handicapped Children Act, in 1975, Congress authorized the federal government to pay 40% of each state's "excess cost" of educating children with disabilities. That amount – commonly referred to as the "IDEA full funding" amount – is calculated by taking 40% of the national average per pupil expenditure (APPE) multiplied by the number of children with disabilities served under IDEA in each state. While federal funding for Part B has significantly increased over the last several years, the federal share is still only at 17%, which is the highest federal contribution to date.

Over the years, while the law itself continues to work and children are being educated, the intended federal/state/local cost-sharing partnership has not been realized because Congress never lived up to its financial obligation. As a result, local communities and states have been forced to pay a higher proportion of the special education costs. Every year, critical federal funding for special education faces increasingly stiff competition across all the important programs within the discretionary portion of the federal budget.

Part C and Preschool

The Part C Infants and Toddlers Program and the Preschool Program under Part B are critical components of states' efforts to assist young children with special needs in developing to their full potential. The importance of the early years in ensuring that children succeed later in school and life has achieved bipartisan recognition in the U.S. Congress and the Administration. States and communities continue to demonstrate their commitment to this effort through the investment of significant resources, but full federal participation is essential.

Appropriations for the Part B Preschool Grants (for children with disabilities ages 3 through 5, inclusive) and the Part C Infants and Toddlers Program (ages birth through 2 years of age, inclusive) have received little or no increases over the past several years. These programs have suffered serious decreases when inflation is taken into account.

Part D

The IDEA Part D Support Programs provide the critical infrastructure, training, research, and development functions necessary to drive improvements in all aspects of special education practice. The support programs provide critical funds for professional development, technical assistance, and dissemination of knowledge about promising practices to improve results for children with disabilities. Funds for these vital programs have remained stagnant for a number of years. In fact, when adjusted for CPI, support for the Part D programs has significantly declined.

Supplanting Provisions

It should be recalled that children become eligible under IDEA both by reason of having a disability, and having a disability *which requires special education*. CEC has long held that schools must employ ongoing effective instructional interventions and progress monitoring to

assist students who are not progressing as expected in the early grades in order to prevent inappropriate referrals and reduce the number of children and youth in the school district ultimately requiring designation for special education. Such ongoing activities benefit a wide range of students in the school who have, or are at risk of having, learning difficulties, many or most of whom may not be children with disabilities. Well-known examples within the student population include low achievers, children with reading and behavior problems, children from economically deprived home and community environments, children from diverse cultures, and English language learners.

While CEC continues to support the so-called “supplanting provision” (also called the “fiscal realignment provision”), that is in current law (at 20 percent - Sec.613(a)(2)(C)), CEC believes that these funds which can be treated as local funds generally should be used for educational purposes. These funds should first be used for activities supporting effective instructional interventions and progress monitoring in general education designed to assist students who are not progressing as expected in the early grades in order to prevent inappropriate referrals and reduce the number of children and youth in the school district ultimately requiring designation for special education.

Summary

Children and families are shortchanged when more than 37,000 teachers without appropriate licenses teach students with disabilities each year because funds are not available to recruit and train qualified teachers. They are shortchanged when research-based educational practices are not available in schools as a result of 10 years of stagnant federal funding for educational research. And they are shortchanged when adequate funds are not available to provide developmentally appropriate early intervention services to eligible infants, toddlers, and preschoolers with disabilities.

CEC Policy Recommendations

- ⇒ **Recommendation 1:** CEC recommends full funding for all parts of IDEA, including the Part B Grants to States Program (including preschool grants), the Part C Infants and Toddlers Program, and the Part D Support Programs. Specifically:
 - ⇒ CEC recommends mandatory full funding for Part B with a phase-in of full funding of \$22.23 billion to be reached by FY 2008.
 - ⇒ CEC recommends increases in the per child allocation in the Preschool Grants Program by \$145 each year to reach full funding (i.e., \$1500 per child allocation) by FY 2008, at an estimated cost of \$990 million in FY 2008.
 - ⇒ CEC recommends permanent authorization of Part C and increases of \$45 million per year in Part C to reach full funding by FY 2008, at an estimated cost of \$725 million in FY 2008.
 - ⇒ CEC recommends the total annual appropriation for Part D support programs should be derived from the overall federal annual appropriation for the IDEA formula grants. That is, the total Part D appropriations should be indexed to the total annual appropriation for IDEA formula programs consistent with private industry standards for infrastructure, research, and development.

⇒ **Recommendation 2:** CEC recommends that those Part B funds which the LEA may treat as local funds in any given fiscal year (Sec.613(a)(2)(C)) should remain as a part of the school district budget, and that the 20 percent (consistent with current law) first be used for activities supporting effective instructional interventions and progress monitoring in general education designed to assist students who are not progressing as expected in the early grades and beyond in order to prevent inappropriate referrals and reduce the number of children and youth in the school district ultimately requiring designation for special education.

Disproportionate Representation

Background

There is widespread recognition that students from culturally and linguistically diverse backgrounds are disproportionately represented in special education. In the most recent IDEA reauthorization in 1997, the U.S. Congress called for greater efforts to ensure that children from culturally and linguistically diverse backgrounds are classified accurately and appropriately placed.

The findings section of IDEA (Section 601) illustrates the significance of the problem:

- ✓ Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.
- ✓ More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.
- ✓ Poor African American children are 2.3 times more likely to be identified by their teacher as having mental retardation than their white counterparts.
- ✓ Although African Americans represent 16 percent of elementary and secondary enrollments, they constitute 21 percent of total enrollments in special education.
- ✓ The dropout rate is 68 percent higher for minorities than for whites.
- ✓ More than 50 percent of minority students in large cities drop out of school.

As part of IDEA '97, Congress included specific provisions in IDEA requiring States to provide for the collection and examination of data to determine if significant disproportionality based on race is occurring in the state with respect to the identification or placement in particular educational settings of such children. If the state finds evidence of disproportionality in the identification or placement of children, the state is required to review and, if appropriate, revise its policies, procedures, and practices to address the problem. In addition, as part of the individual evaluation requirements, Congress reaffirmed the Act's long-standing policy of ensuring that tests and other evaluation materials used to assess a child are selected so as not to be discriminatory on a racial or cultural basis; and are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so.

The Council for Exceptional Children's Delegate Assembly passed a resolution in April of 1997, stating CEC's intent to advocate for the elimination of disproportionate representation of culturally and linguistically diverse students in special education. CEC is committed to this issue and will continue to advocate for appropriate government policies, setting professional standards, providing continuing professional development, and assisting professionals in obtaining resources necessary for effective professional practices to eliminate disproportionality.

The National Academy of Sciences (NAS) report, "Minority Children in Gifted and Special Education," was released on Jan. 16, 2002. This report includes the findings of this major study of disproportionate representation of culturally and ethnically diverse students in programs for students with disabilities and in programs for students with gifts and talents. CEC is already

disseminating the findings of this study. Further, CEC is committed to pursuing policy changes as well as to provide training and technical assistance to improve practice in this important area.

The U.S. Department of Education's 22nd *Annual Report to Congress* (2000) reports the following for the 1998-99 school year for children ages 6-21 served under IDEA:

- Asian/Pacific Islander students represent 3.8 percent of the general population. Among students receiving special education services in all disability categories, Asian/Pacific Islander students represent only 1.7 percent of the population. This percentage varies by individual disabilities for Asian/Pacific Islander students to include: 4.6 percent of those with hearing impairments, 4.7 percent with autism and 11.3 percent with deaf-blindness.
- Black (non-Hispanic) students account for 14.8 percent of the general population and 20.2 percent of the special education population in all disabilities. In fact, in 10 of the 13 disability categories, the percentage of the special education population composed of black students equaled or exceeded the resident population percentage. Black students' representation in the mental retardation and developmental delay categories was more than twice their national population estimates.
- Representation of Hispanic students in special education (13.2 percent) was generally similar to the percentages in the general population (14.2 percent). However, Hispanic students exceeded the resident population percentages in three categories: 15.8 percent with specific learning disabilities, 16.3 percent with hearing impairments, and 14.4 percent with orthopedic impairments. White (non-Hispanic) students made up a smaller percentage (63.6 percent) of special education students than the general population (66.2 percent).
- American Indian students represent 1.0 percent of the general population and 1.3 percent of special education students. American Indian students slightly exceeded the national average in nine disability categories, reaching the largest percentages in the categories of deaf-blindness (1.8 percent) and TBI (1.6 percent).

The highly publicized results of the Civil Rights Project at Harvard University provides compelling data on these issues. This has led to great concern throughout the education community, and ongoing dialogue about solutions to these problems. Based on 1997 data, the Civil Rights Project reported that African American children were almost three times more likely to be labeled mentally retarded compared to white children. Extensive disproportionate representation is also found for Asian Pacific children, and Hispanic children are being over-identified in some states and not in others. The category in which disproportionate representation is most likely is mental retardation, with each of the racial minority groups showing substantial disproportionate representation in at least one state.

CEC Policy Recommendations

⇒ **Recommendation 1:** CEC recommends that the Findings section of the statute be updated to reflect current data on disproportionality in special education.

- ⇒ **Recommendation 2:** CEC recognizes the value of the 1997 addition of race and ethnicity data collection to IDEA, as well as the requirement that states review and change policies and procedures as needed in this area. CEC recommends, due to the importance of this issue, that states and local districts be required to develop and implement improvement plans in the case of significant disproportionality. These efforts should include the involvement of all relevant stakeholders and reporting of the data and progress to the US Secretary and the public.
- ⇒ **Recommendation 3:** CEC recommends that the Secretary direct OSEP-focused monitoring efforts to include an emphasis on remedies to address disproportionality, as necessary. These efforts should be coordinated with the Office for Civil Rights.
- ⇒ **Recommendation 4:** CEC recommends including a provision requiring collection of data monitoring the number of children with Limited English Proficiency (LEP) receiving special education and related services as part of the state data collection requirements under IDEA.
- ⇒ **Recommendation 5:** CEC recommends amending IDEA Part D Studies and Evaluations (Sec. 674) to require the Secretary to conduct a single, well-designed national data collection effort to monitor the social economic status (SES) of children receiving special education and related services, and the relationship between SES and referrals to special education.
- ⇒ **Recommendation 6:** Given the importance of collaboration and ownership by general and special education in addressing the issue of disproportionality, and recognizing that all agencies and stakeholders have a role in addressing disproportionality, CEC recommends that the Secretary establish a cross-departmental workgroup/task force to address the development and dissemination of instructional and intervention strategies to ensure that children and youth from culturally and linguistically diverse backgrounds, and children living in poverty, are not inappropriately referred to special education because of academic achievement deficits not related to a disability. In addition, CEC recommends that the cross-departmental workgroup/task force identify and advise the Secretary on legislative or regulatory changes needed in ESEA and other appropriate legislation to reduce inappropriate referrals to special education.
- ⇒ **Recommendation 7:** CEC recommends clarifying language in ESEA and IDEA to ensure that effective early intervention strategies are in place in general education as an integral part of the total educational process to safeguard against inappropriate referral, unnecessary testing, and misclassification in special education. Such efforts should maximize the involvement of all family, school and community resources to provide effective intervention strategies early to address students' learning needs. These efforts should occur prior to referral to special education.
- ⇒ **Recommendation 8:** CEC recommends that those Part B funds which the LEA may treat as local funds in any given fiscal year (Sec.613(a)(2)(C)) should remain as a part of the school district budget, and that the 20 percent (consistent with current law) first be used for activities supporting effective instructional interventions and progress monitoring in general education designed to assist students who are not progressing as expected in the early grades and beyond in order to prevent inappropriate referrals and reduce the number of children and youth in the school district ultimately requiring designation for special education.
- ⇒ **Recommendation 9:** To reduce later and unnecessary referrals to special education children and youth from culturally and linguistically diverse backgrounds, CEC recommends the full funding and availability of high quality early childhood intervention programs that focus on children who are at risk, such as Early Head Start, Head Start, Child Care Development Block grant, Even Start, WIC, and other appropriate programs. This includes incentives for

states in increasing the number of Part C eligible children served who receive needed early intervention services. Such efforts should ensure the availability of family support, health services, sustained high quality child care, and developmental stimulation from birth. Such efforts will increase the likelihood that all young children will arrive at school ready to learn and succeed.

- ⇒ **Recommendation 10:** CEC supports continuation of current efforts to prepare, recruit, and retain qualified professionals from culturally and linguistically diverse groups, and efforts to provide effective preservice and inservice training, to ensure that all personnel are prepared and competent to assess and teach all children from culturally and linguistically diverse backgrounds.
- ⇒ **Recommendation 11:** CEC recommends that the Secretary establish a priority under Part B CSPD and the Part D State Improvement Grants (SIG) ensuring that states pursue targeted outreach to individuals from culturally and linguistically diverse backgrounds to pursue careers in special education, beginning with high school age students from culturally and linguistically diverse backgrounds.
- ⇒ **Recommendation 12:** CEC recommends expanding programs under the Higher Education Act to recruit new special education teachers from culturally and linguistically diverse backgrounds by forgiving their college loans or providing scholarships, and expanding scholarships available under Part D of IDEA, in exchange for commitments to teach children and youth with disabilities.
- ⇒ **Recommendation 13:** CEC recommends that the Secretary establish through Part D priority setting effective strategies for faculty training, including distance learning, to ensure that teacher educators demonstrate cultural and linguistically diverse competence. This includes sensitivity to appropriate family-centered practices with attention to the family's culture and preferences.
- ⇒ **Recommendation 14:** CEC recommends that the Secretary establish through Part D priority setting effective strategies to ensure that high quality research on effective early intervention and educational practice for children and youth from culturally and linguistically diverse groups is in the hands of all education personnel, to improve results for all children and youth.

Qualified Personnel

Background

According to CEC's "*Bright Futures for Exceptional Learners: An Agenda to Achieve Quality Conditions for Teaching & Learning*," released in 2000, more than 37,000 teachers without appropriate licenses teach students with disabilities each year because funds are not available to recruit and train qualified teachers. CEC believes this issue is at a national crisis proportion and aggressive measures for remediation are warranted.

On a daily basis, special educators confront teaching and learning conditions that frustrate their use of high quality research-validated instruction. Rather than continue to confront these barriers, many special educators leave the profession each year. They leave at almost twice the rate of their general education colleagues. In fact, four out of every ten entering special educators have left before their fifth year.

Each year college and university programs in the United States prepare approximately 22,000 special education teachers, only about half the number needed annually to fill special educator vacancies. While communities continue to grow in diversity, special education, like general education, remains an overwhelmingly white and female profession.

Some important facts regarding the demand for well-qualified special education teachers are listed below:

- ✓ The most significant variable within the school relating to student achievement is qualified teachers (NCTAF, 2001).
- ✓ The demand for well-qualified special education teachers has been growing for the past two decades (*IDEA Annual Reports to Congress 1977- 2000*).
- ✓ The U.S. Department of Labor estimates that by 2008 the demand for special educators will increase by one-third (Bureau of Labor Statistics *Occupational Outlook Quarterly*, Spring 2000).
- ✓ Professional demands on special educators are greater than ever, making recruitment and retention difficult (Council for Exceptional Children *Bright Futures for Exceptional Learners*, 2000).
- ✓ The need for well-qualified special education teachers is second to none in education, including math/science teachers. In fact, ninety-eight percent of school districts across the U. S. report that one of their top priorities is to meet the growing demand for special education teachers (*Teacher Supply and Demand in the United States, American Association for Employment in Education*, 2000).
- ✓ Today, more than 39,000 people without appropriate qualifications are delivering special education to students with disabilities (U.S. Department of Education, Westat database for the *Twenty-Third Annual Report to Congress on IDEA*, 2001).

- ✓ College and university programs prepare approximately 22,000 special education teachers annually, about half the number needed to fill special educator vacancies (Integrated Post-Secondary Education Data System, 2000).
- ✓ Colleges and universities are experiencing shortages of special education faculty. Every year 30% of faculty vacancies go unfilled (Smith, et al. *The Study of Special Education Leadership Personnel with Particular Attention to the Electorate*, 2001).
- ✓ In CPI adjusted figures, federal funding for personnel preparation has declined by approximately 50% since 1977 (Kleinhammer-Tramill, P.J., Peters, J.T., Fiore, T.A., March 2001).

CEC Policy Recommendations

⇒ **Recommendation 1:** In order to ensure that all children and youth with disabilities achieve high results, every child and youth with a disability must receive services from highly qualified special education teachers, related services providers, and early intervention teachers, as well as highly qualified general education teachers and administrators, consistent with the requirements of the *No Child Left Behind Act of 2001*.

Amend the IDEA Part B Comprehensive System of Personnel Development (CSPD) [Section 612(a)(14)], Personnel Standards [Section 612(a)(15)] and Part C CSPD [Section 635(a)(8)] requirements of the statute in a manner consistent with the *No Child Left Behind Act of 2001* to ensure that ALL special education teachers, related services providers, and early intervention teachers are highly qualified by the 2006-07 school year.¹ Specifically:

- “Highly qualified” means that a special education teacher, related services provider, or early intervention teacher holds full State certification or licensure to teach in such state, and the teacher has not had certification or emergency licensure requirements waived on an emergency, temporary, or provisional basis.
- By the school year 2003-04, all new special education teachers, related services providers, and early intervention teachers must be highly qualified as defined above.²

To facilitate the successful implementation of Recommendation 1, the Council for Exceptional Children recommends that the law require the Secretary to reserve 2% of total Part B funds and Part C funds for FY 2003 to address 3 Priority Areas.³ The 3 Priority Areas are:

¹ The *No Child Left Behind Act of 2001* (NCLB) requires that all general education teachers are highly qualified within 4 years of enactment of the NCLB. Accordingly, CEC recommends that all special education, related services providers, and early intervention teachers are highly qualified within 4 years from the year that IDEA is reauthorized.

² NCLB requires that all new general education teachers are highly qualified by the 2002-03 school year (i.e., within 1 year following enactment of NCLB). Accordingly, CEC recommends that all new special education, related services providers, and early intervention teachers are highly qualified within 1 year following IDEA reauthorization.

³ Based on current FY 2002 appropriation for Part B and Part C, this amount would be approximately \$158 million. CEC recommends this amount be based on final FY 2003 appropriation for Part B and Part C, with subsequent yearly inflationary increases.

- Priority Area 1—*Ensure that the nation has the capacity to prepare and retain a sufficient supply of highly qualified diverse special education teachers, related services providers, teacher trainers, and early intervention teachers, as well as general education teachers, to improve results for children and youth with disabilities.*
- Priority Area 2—*Ensure that states require mastery of nationally recognized standards to effectively serve children and youth with disabilities through teacher licensing and program accreditation requirements, thereby promoting consistency across states.*
- Priority Area 3—*Ensure that each state’s licensing requirements for all special education, early intervention, and general education school administrators include the mastery of appropriate standards to effectively supervise, develop, and support delivery of high-quality special education, related services and early intervention.*

The Secretary would distribute not less than 30% of the total Part B reserve fund for each of the 3 Priority Areas. Within each of the 3 Priority Areas, emphasis would be placed on building the *ongoing capacity* (and not provision of funds for direct services; i.e., training costs) of state and local educational agencies, the Part C system, and institutions of higher education to effectively address the 3 priority areas listed below, so that such progress is institutionalized and sustained. These capacity building recommendations are intended to improve and enhance ongoing personnel preparation activities.

The Secretary would require that recipients demonstrate how the proposed activities will ensure that (1) all children and youth with disabilities receive services from highly qualified special education teachers, related services providers, and early intervention teachers, as well as highly qualified general education teachers and administrators, by the 2006-07 school year;⁴ and (2) all children and youth with disabilities achieve high results.⁵ In order to receive funds to carry out Priority Areas 1, 2, and 3, recipients would also need to establish and implement an evaluation system that establishes clear performance criteria (including timelines and benchmarks for monitoring progress), and systematically gather performance data demonstrating sufficient progress towards meeting the performance criteria.⁶ The Secretary would continue or discontinue funding based on the extent to which recipients demonstrate sufficient progress towards fully meeting the performance criteria.

Details of Priority Areas

- Priority Area 1—*Ensure that the nation has the capacity to prepare and retain a sufficient supply of highly qualified diverse special education teachers, related services providers, teacher trainers, and early intervention teachers, as well as general education teachers, to improve results for children and youth with disabilities.*

⁴ See footnote 1.

⁵ NCLB requires that all students, including students with disabilities, achieve high academic standards established in the state by the 2011 school year.

⁶ See performance criteria as per footnotes 1, 2 and 5.

The Secretary would reserve no less than 30% of available funds to supplement, not supplant, current funding authority under the Part D Personnel Preparation and State Improvement Grants authorities. First, the Secretary would establish a new priority under Part D to provide funds to colleges and departments of education and departments of special education to pursue systemic reform activities related to capacity building and program improvement for pre-service and ongoing professional development. Specifically, funds would be used to:

1. Build capacity of special education preparation programs to prepare an adequate supply of teacher educators;
2. Ensure the capacity of special education preparation programs to recruit students of culturally and linguistically diverse backgrounds into special education, related services, and early intervention teacher preparation programs;
3. Focus across the college of education and department of education preparation program on integrating research-based knowledge and skills needed to educate and improve results for children and youth with disabilities;
4. Build the capacity of college of education and department of education preparation programs to integrate teacher preparation across each of the general education content areas to improve results for children and youth with disabilities;
5. Focus on structuring or restructuring colleges of education's departments of special education teacher preparation programs to work collaboratively with other departments within the college of education to improve results for children and youth with disabilities; and
6. Development and maintenance of partnerships between institutions of higher education and local educational agencies for the purpose of ongoing professional development, including teacher mentoring and induction.

In addition, Title II of the Higher Education Act should be amended to require teacher education programs to demonstrate and publicly report the competence of general and special education program graduates relative to education of children and youth with disabilities under the requirements of IDEA. Competence should be demonstrated both through tests of teaching knowledge at the end of the initial preparation program, as well as through performance assessments at the end of the second or third year of teaching. Performance assessments should be based on proficiency in using evidence-based instructional practices and the educational performance of children and youth with disabilities.⁷ CEC also recommends that the same requirements noted above apply to the competence of general education and special education administration program graduates relative to their role in managing and supporting general and special education teachers in educating children and youth with disabilities under the requirements of IDEA.

Second, the Secretary would establish a new priority under the Part D State Improvement Grants (SIG) to supplement states' ongoing activities under SIG to ensure that each state:

⁷ Although Title II regulations currently require knowledge and performance assessments, the assessments are based on state teaching standards, many of which do not contain sufficiently rigorous standards relative to educating students with disabilities under the requirements of IDEA.

1. Has a sufficient supply of highly qualified special education teachers, related services providers, and early intervention teachers (with a priority on geographic areas within the state with the greatest shortages of highly qualified teachers);
2. Provides high-quality in-service training to current special education teachers, related services providers, early intervention teachers, general education teachers, and administrators to ensure that they have the knowledge and skills necessary to improve results for children and youth with disabilities;
3. Establishes and implements policies and procedures to increase the recruitment and retention of highly qualified special education personnel, with a focus on individuals from culturally and linguistically diverse backgrounds;
4. Develops and implements effective teacher mentoring and induction;
5. Requires involvement of the state's Part C Early Intervention system and the states Preschool Grants Program in SIG development and implementation activities; and
6. Requires interagency agreement among state and local educational agencies administering Part B programs and services, the Part C system, state institutions of higher education, families, and other appropriate parties within the state (and through interstate agreements, as appropriate) in all SIG development and implementation activities.

Consideration should be given to include these provisions in all state CSPD Plans.

- Priority Area 2—*Ensure that states require mastery of nationally recognized standards to effectively serve children and youth with disabilities through teacher licensing and program accreditation requirements, thereby promoting consistency across states.*

The Secretary would reserve no less than 30% of available reserve funds and equitably distribute such funds as a bonus for each State that elects to include the nationally recognized standards/licensing requirements for teachers in its requirements for the Part B Comprehensive System of Personnel Development (CSPD) [Section 612(a)(14)], Personnel Standards [Section 612(a)(15)] and Part C CSPD [Section 635(a)(8)]. Funds should also be used to expand and sustain the state's capacity to provide technical assistance and dissemination activities to local school districts and the state's Part C system to ensure that all special education teachers, related services providers, and early intervention teachers hold full state certification or licensure that requires demonstrated mastery of nationally recognized standards to effectively serve children and youth with disabilities.

- Priority Area 3—*Ensure that each state's licensing requirements for all special education, early intervention, and general education school administrators require mastery of appropriate standards to effectively supervise, develop, and support delivery of high-quality special education, related services and early intervention.*

The Secretary would reserve no less than 30% of available reserve funds and equitably distribute funds as a bonus for each State that elects to include the nationally recognized standards/licensing requirements for school administrators in its requirements for the Part

B Comprehensive System of Personnel Development (CSPD) [Section 612(a)(14)], Personnel Standards [Section 612(a)(15)] and Part C CSPD [Section 635(a)(8)]. Funds should also be used to expand and sustain the state's capacity to provide technical assistance and dissemination activities to local school districts and the state's Part C system to ensure that all special education, early intervention, and general education school administrators hold full state certification or licensure that requires demonstrated mastery of appropriate standards to effectively supervise, develop, and support delivery of high-quality special education, related services, and early intervention.

⇒ **Recommendation 2:** CEC recommends significantly increasing the federal authorization and appropriation of funds under IDEA Part D for personnel preparation activities in order to address critical shortages in qualified special education and related services personnel, and requiring the Secretary to equitably distribute such funds to eligible recipients.

⇒ **Recommendation 3:** Under the Comprehensive Plan for activities carried out under subpart 2 of part D, the Secretary should be required to establish a workgroup/task force to advise the Secretary on (1) a cohesive long-term research agenda to improve the knowledge base regarding the preparation and continuing professional growth of special education teachers, related services providers, early intervention teachers, and general and special education administrators; and (2) a cohesive long-term research agenda to identify teaching and learning conditions that enhance the achievement of children and youth with disabilities, including:

1. Efficacy of special education teacher preparation models;
2. Characteristics of effective teacher education programs, including alternative certification programs;
3. Relationship between student achievement (and developmental achievement of infants, toddlers, and preschoolers) and qualifications of teachers;
4. Effective accountability measures for teacher education programs;
5. Impact of personnel preparation grants on quality of teacher training programs;
6. Develop and apply skill standards for special education personnel to assist children and youth with disabilities in successfully accessing the general education curriculum;
7. Develop and apply skill standards for general education personnel to work effectively with children with disabilities, including those from culturally and linguistically diverse backgrounds; and
8. Factors that enhance professionals' capacity to practice by ensuring appropriate teaching conditions through work environments, administrative support, and the materials/resources needed.

⇒ **Recommendation 4:** CEC recommends amending the service obligation provision under IDEA Part D – Personnel Preparation to be consistent with the provision under the Higher Education Act – Title II. Applicants will ensure that individuals who receive a scholarship under the proposed project will provide special education and related services to children with disabilities for one year (currently two years) for every year for which assistance was received or repay all or part of the cost of that assistance, in accordance with regulations issued by the Secretary. In addition, CEC recommends expanding programs under the Higher Education Act to recruit new special education teachers by forgiving their college

loans or providing scholarships, and expanding scholarships available under Part D of IDEA, in exchange for commitments to serve children and youth with disabilities. IDEA and state policies with regard to service obligations should be amended to account for situations where teachers serve children with disabilities in inclusive settings (including natural environments) in which the majority of children do not have disabilities.⁸ Finally, CEC recommends incorporating IDEA's service tracking and reporting requirements with other tracking and reporting systems established under the Higher Education Act and ESEA.

⁸ Under current law, teachers and other providers who received IDEA financial assistance for a part or all of their training must select employment options in which they are able to satisfy the service obligation requirement that the majority of the children they serve or of the time they spend working must be with children with disabilities.

Increasing Accountability while Reducing Paperwork

Background

Too often in special education practice, compliance-related documentation is stressed over thoughtful decision-making for children and youth and their families. No barrier to delivering quality services is more problematic to special educators than paperwork. While special educators recognize the importance of individualized education programs (IEPs), they struggle with the amount of clerical work that process requires. The average length of the typical IEP is between 8 and 16 pages, with an estimated 4 hours of pre-meeting time going into each IEP meeting.⁹

A majority of special educators estimate that they spend a day or more each week on paperwork, and 83% report spending from half to one-and-a-half days per week in IEP-related meetings.¹⁰ Too often the focus of IEP development seems to be on compliance with the rules and regulations that govern special education services in order to avoid procedural complaints.

Yet IEPs are just the beginning of special educators' paperwork responsibilities. In addition to IEPs, special educators frequently prepare (1) forms for the central office, (2) letters and notifications, (3) minutes of collaborative team meetings, (4) reports and evaluations of students referred but not placed in special education, (5) medical assistance billing records, (6) telephone logs, (7) child abuse reports, (8) due process documentation, (9) quarterly progress reports, (10) daily/weekly notes to parents, (11) curriculum data reports, and (12) grade reports.¹¹

While general educators and special educators spend approximately the same amount of time filling out paperwork, special educators spend the majority of their time filling out compliance and documentation-related paperwork, while general educators spend most of their time completing instructionally relevant paperwork such as tracking students' academic progress across the curriculum.¹²

The IEP and its Central Role in Special Education

When the Education for All Handicapped Children Act, P.L. 94-142, was originally enacted in 1975, Congress recognized the central importance of an individualized education program for every child with a disability. A review of the legislative history of the Act, now known as the Individuals with Disabilities Education Act (IDEA), indicates that the following premises governed the congressional inclusion of the IEP requirement: First, that each child with a disability requires an educational blueprint custom tailored to achieve his or her maximum potential; and second, that all individuals involved in the child's education, including the child, should have the opportunity for input in the development of an individualized program of

⁹ Council for Exceptional Children. (2000). *Bright Futures for Exceptional Learners: An Agenda to Achieve Quality Conditions for Teaching & Learning*. Arlington, VA: Author.

¹⁰ Ibid.

¹¹ Ibid.

¹² Study of Personnel Needs in Special Education (SPeNSE). *Paperwork in Special Education* (2002). Study conducted by Westat and funded by the U.S. Department of Education, Office of Special Education Programs.

instruction that includes specifics for instruction and services, timelines for those specifics, and the need for periodic review of those specifics.¹³

The Council for Exceptional Children has long held that a child's individualized education program is the cornerstone for delivering the highest quality services possible to children with disabilities. In this regard, CEC believes:

*The central element for the delivery of all the services required by a person with an exceptionality must be an individually designed program. Such a program must contain the objectives to be attained, resources to be allocated, evaluation procedures and time schedule to be employed, and a termination date for ending the program and procedure for developing a new one. The process for developing an individualized program must adhere to all the procedural safeguards of due process of law and must involve the individual person and his or her family, surrogate, advocate, or legal representative.*¹⁴

IEP Requirements Now and in 1975

In 1975, Congress clearly recognized that an effective IEP must appropriately combine elements of instructional planning with procedural compliance documentation. The IEP was, and continues to be, a custom-tailored educational blueprint for a child or youth with a disability that is designed by the child's family, school officials, and in many cases the child or youth, regarding the provision of appropriate special education and related services to the child or youth with a disability. However, during subsequent reauthorizations of the Act, Congress added new process requirements to the IEP. As a result, the focus of the IEP and its critical balance between elements of instructional planning and procedural/compliance documentation has shifted significantly toward compliance documentation.

When P.L. 94-142 was first enacted, the law required the following when developing a child's IEP:

*A written statement for each [child with a disability] developed in any meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specifically designed instruction to meet the unique needs of [children with disabilities], the teacher, the parents or guardian of such child, and whenever appropriate, such child, which statement shall include (A) a statement of the present levels of education performance of such child, (B) a statement of annual goals, including short-term instructional objectives, (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in [general] educational programs, (D) the projected date for initiation and anticipated duration of such services, and (E) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.*¹⁵

¹³ Abeson & Ballard (1976). State and federal policy for exceptional children. In Public Policy and the Education of Exceptional Children. Weintraub, F. J., Abeson, A., Ballard, B. & LaVor, M.L. (Eds.) 1976. Council for Exceptional Children: Reston, VA.

¹⁴ Council for Exceptional Children Policy Manual (2001). Council for Exceptional Children: Arlington, VA, [Para. 8, p. 101].

¹⁵ 20 U.S.C. 1402 (a)(19).

Following the enactment of the 1997 amendments to IDEA, the law required:

A written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes (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 the 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 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; (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. In addition, the statute explicitly states the list of participants for the IEP Team to include: (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); (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 educational 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. The statute specifies additional requirements in the development of a child's IEP to include consideration of the following factors: (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 (iii) 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; (iv) 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; (v) 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; (vi) 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 (vii) consider whether the child requires assistive technology devices and services.¹⁶

Some of the current IEP requirements were added in the Act between 1975 and 1997, such as the required statement of needed transition service needs for students with disabilities beginning at age 16. However, most of the current statutory requirements were included during the most recent reauthorization of the Act in 1997. Of those new requirements, many represented a codification of the U.S. Department of Education's regulations adopted pursuant to the Act.

CEC believes that each of the current statutory requirements of the IEP can be justified in terms of appropriate educational practice. However, in lieu of the annual review and revision requirements of the IEP, the application of these requirements too often focuses on compliance documentation and resultant paperwork at the expense of appropriate short and longer term educational planning for the student. Too often, the sheer volume and highly prescriptive nature of the current IEP requirements, which must be applied on an annual basis for each child, inadvertently transforms the IEP into a *symbol* of compliance and the IEP meeting into a *ceremony* of compliance. The result is that the procedural process requirements of the IEP often become the focus of an IEP meeting rather than individualized instructional programming for the child to address his or her current and anticipated needs.

Special educators, nevertheless, recognize that the paperwork for documenting individualized decision-making is important and the need for ways to manage it is acute, particularly the need for adequate hardware and software for case management. Yet few special educators indicate that they have these tools for case management, or report that they are often the last in their schools to receive computers or simply get the "cast offs." Moreover, while professional outside education routinely have clerical support for paperwork tasks, special educators are expected to complete their paperwork without clerical or technological support.

CEC Policy Recommendations

⇒ **Recommendation 1:** CEC recommends that the Secretary should be required to identify, develop, and disseminate simplified and streamlined suggested model IEPs, procedural safeguard notices, and prior written notice reporting requirements incorporating all relevant federal statutory and regulatory requirements. These models may be used at the discretion of

¹⁶ IDEA Section 614(d).

SEAs and LEAs. Regarding the model IEPs, the Secretary should be required to provide for a streamlined annual IEP review and revision process whereby annual IEP updates only document changes to the previous year's IEP with regard to the child's present levels of performance, IEP goals, special education and related services, and educational placement. IEP Teams should not be required to provide additional documentation beyond this unless additional revisions are made to the IEP or upon request by the child's parents. The Secretary should be required to disseminate and provide training and technical assistance on the model IEPs, procedural safeguard notices, and prior written notice reporting requirements to all state and local educational agencies, parent training centers, and other appropriate parties.

- ⇒ **Recommendation 2:** CEC recommends requiring that the Secretary establish a new priority under IDEA Part D to provide technical assistance and support to state and local educational agencies to simplify and streamline, consistent with federal requirements, state and local educational agencies' IEP development, review, and revision requirements; procedural safeguards notice; and prior written notice reporting requirements. In addition, CEC believes that states should utilize IDEA Part B state set-aside funds to develop a simplified and streamlined model IEP, procedural safeguards notice, and prior written notice reporting requirements incorporating all relevant federal statutory and regulatory requirements as well as state requirements, and likewise provide funds and technical assistance to local educational agencies to develop simplified and streamlined model IEPs, procedural safeguards notices, and prior written notice reporting requirements incorporating all relevant federal statutory and regulatory requirements, state requirements, and local requirements.
- ⇒ **Recommendation 3:** CEC recommends fully funding IDEA in order to provide sufficient funds allowing for (1) the hiring of clerical support staff to assist in special education record keeping functions, data collection, and information sharing, and (2) the purchase and maintenance of appropriate hardware and software for IEP case management and other special education record keeping functions, all of which should explicitly be made an allowable use of funds under IDEA Part B funds.
- ⇒ **Recommendation 4:** CEC recommends amending IDEA to require that a copy of the procedural safeguards notice be provided to parents only upon initial referral for special education evaluation, upon registration of a complaint, or as otherwise requested by a parent.¹⁷
- ⇒ **Recommendation 5:** CEC recommends eliminating the existing statutory language on comprehensive transition planning that ineffectively differentiates between services at ages 14 and 16. CEC recommends requiring transition planning (including measurable annual goals) leading to postschool outcomes for youth with disabilities by 14 years of age. CEC also recommends that the Secretary establish cross-departmental and interagency agreements with other federal agencies to collect statewide data on students' attainment of postsecondary employment and education in order to ensure greater accountability for postschool results as articulated in the purposes section of IDEA.

¹⁷ Section 615(d) of current law requires that a copy of the procedural safeguards available to parents be given to parents, at a minimum, upon initial referral for evaluation, upon each notification of an IEP meeting (which at a minimum is every year), upon reevaluation of the child, and upon registration of a complaint.

- ⇒ **Recommendation 6:** CEC recommends amending the IDEA triennial reevaluation requirements to coincide with natural transition points for the child (rather than the arbitrary 3-year reevaluation requirement under current law).¹⁸
- ⇒ **Recommendation 7:** CEC recommends eliminating short-term objectives and benchmarks under the current IEP requirements. IDEA '97 requires that, to the extent that the parents of children without disabilities are regularly informed of their child's progress, parents of children with disabilities must be regularly informed (by such means as periodic report cards) of their child's progress toward attaining annual IEP measurable goals as well as the extent to which such progress is sufficient to enable the child to achieve the measurable goals by the end of the year. This must occur at least quarterly, although it typically occurs more frequently. These reporting requirements are sufficiently explicit and yield more instructionally relevant information to be used by teachers as well as reported to parents regarding a student's progress, and provide a clear and more appropriate accountability mechanism for monitoring and reporting a student's progress than do short-term objectives.
- ⇒ **Recommendation 8:** CEC recommends that the Secretary establish a process for *piloting* an IEP review and revision process (including establishing both formative and summative evaluation procedures for gauging effectiveness) that is designed to streamline the process as well as strengthen and enhance longer term educational planning for children and youth with disabilities. **This would not entail a statutory change. Rather, it would be an optional piloted activity pursued by the Secretary.** The Secretary will involve all stakeholders in developing and implementing the pilot with special emphasis on the inclusion of a high proportion of family members with children with disabilities, and establish through Part D priority setting both formative and summative evaluation procedures for gauging the effectiveness of the pilot. Specifically, CEC recommends granting authority to IEP Teams participating in this pilot, with the consent of the parents of a child with a disability:
- To develop a 3-year IEP (in lieu of an annual IEP) for each child or youth with a disability, with IEP goals coinciding with natural transition points for the child or youth,¹⁹ including measurable *annual* goals for measuring progress (taking the place of short-term objectives) that are tied to the general education curriculum content standards as well as other annual goals, such as life skills, self-advocacy, social skills, desired post school outcomes, and other goals deemed appropriate for the child or youth by the IEP team;
 - To comprehensively review and revise the IEP consistent with current law, but at natural transition points for the child (rather than annually);
 - To provide for a streamlined annual IEP review meeting focusing on the child's current levels of performance and progress towards meeting the measurable annual goals, and from that review determine if any additions or modifications to the special

¹⁸ Natural transition points are defined as the period that is close in time to the transition of a child with a disability from preschool to elementary grades, from elementary grades to middle or junior high school grades, from middle or junior high school grades to high school grades, and from high school grades to postschool activities, but in no case longer than 3 years.

¹⁹ Natural transition points are defined as the period that is close in time to the transition of a child with a disability from preschool to elementary grades, from elementary grades to middle or junior high school grades, from middle or junior high school grades to high school grades, and from high school grades to postschool activities, but in no case longer than 3 years.

education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP;

- Consistent with IDEA's current performance reporting requirements, (1) regularly inform the parents of a child with a disability of the extent to which their child is progressing towards meeting the goals of the IEP (including measurable annual goals and 3-year IEP goals coinciding with natural transition points for the child); and (2) inform the parent of the extent to which that progress is sufficient to enable the child to achieve the measurable *annual* goals by the end of the school year, as well as the 3-year IEP goals coinciding with natural transition points for the child;
- If the child is making sufficient progress toward meeting each of the measurable *annual* goals of the IEP by the end of the school year and such progress continues to be deemed sufficient to enable the child to attain the 3-year annual IEP goals coinciding with natural transition points for the child, the IEP Team would not be required to conduct a comprehensive annual review and revision of the IEP. Instead the IEP Team would conduct a streamlined annual IEP review process in intervening years between natural transition points (at which time the comprehensive review would be required), unless the child's parents or teacher called for a more comprehensive review and revision of the IEP; and
- If the child is not making sufficient progress toward attaining each of the measurable *annual* goals (which must be documented in the performance reports to parents and provided to parents at least quarterly) this lack of adequate progress would automatically trigger an IEP review meeting, which is not required under current law. The trigger would occur when a child's documented performance is insufficient to ensure he or she will attain one or more annual goals, rather than waiting for the scheduled annual IEP review, in order to determine whether any additions or modifications to the annual IEP goals, special education and related services, or a change in placement is needed.

Information related to the effectiveness of the pilot process in enhancing longer term educational planning, positive outcomes for children with disabilities, promoting collaboration between IEP team members, and ensuring satisfaction of family members should be reported in the Annual Report to Congress, along with any specific recommendations for broader implementation.

Identification and Eligibility: Learning Disabilities

Background²⁰

Nature of Learning Disabilities

Converging evidence supports the validity of the learning disability (LD) construct. LD involves disorders of learning and cognition intrinsic to the individual. These disorders are specific in the sense that they affect relatively narrow academic and non-academic performance outcomes in individuals with average or above-average intelligence. LD is manifested differently in different students, and sometimes differently in the same student at different ages. LD may occur in combination with other disabling conditions, but it is not due to mental retardation, behavior disorders, lack of opportunity to learn, or primary sensory deficits.

Although processing difficulties have been linked to some LD disorders (e.g., phonological processing and reading), direct links with other processes have not been established. Currently available methods for measuring processing difficulties are inadequate. Therefore, systematically measuring them, and basing treatments on them, is not yet feasible.

LD is frequently experienced across the life span with manifestations varying as a function of developmental stage and environmental demands. LD may be identified first in young children, or its onset may be observed in older students or young adults as they attempt to respond to changing cognitive demands.

Prevalence

It is difficult to know the true prevalence rate of LD, partly because of an inadequate database. The few existing studies focus on reading in the elementary grades. Very few studies about prevalence involve math, written expression, or other manifestations of the disability. A best estimate is that at least 6% of the general population in grades K-12 require the LD label and special education. Whereas logic and some research indicate that high-quality classroom instruction can reduce the prevalence of LD, the 6% prevalence figure presumes the existence of such classroom instruction.

Identification

IQ-achievement discrepancy continues to be a controversial component in the identification of LD. Questions have been raised, for example, about IQ tests as valid indicators of intelligence; about certain statistical methods for calculating the size of an IQ-achievement discrepancy; and about whether discrepancy scores predict future learning and discriminate between low-achieving students with and without IQ-achievement discrepancies. On the other hand, ability-achievement discrepancies appear inherent to the contemporary construct of LD (in terms of "unexpected underachievement"), particularly when they are used as a necessary but not sufficient criterion.

²⁰ Portions of this section are printed with the permission of the Council for Exceptional Children's Division on Learning Disabilities.

In principle, psychometric and non-psychometric alternatives exist to the IQ-achievement discrepancy. One alternative would seek evidence of both low academic achievement and a level of cognitive functioning higher than that conventionally associated with mental retardation; that is, a profile of low academic achievement despite at least average cognitive performance, measured by an intelligence test, aptitude screening, or adaptive rating. Although aptitude and academic achievement data would be collected, no discrepancy score would be derived. A second alternative, often described as “response to treatment,” requires implementation of generally effective instruction and ongoing progress monitoring of students. Chronic non-responders to the generally effective instruction would be viewed as appropriate for referral to special education. Although this “response-to-treatment” alternative has been used by a small number of school districts across the nation, more rigorous study of its validity and practicality is desirable. One validity concern is that it should identify a percentage of the student population consistent with current estimates of LD prevalence; a practical concern is whether it can be implemented with fidelity on a large scale. At present, it is also unclear whether a “response-to-treatment” approach would affect the disproportionate number of children of color receiving special education services (learning disability is one category of special education not currently plagued by large inequities in proportional representation).

Special Education

Most students with LD require special education as defined in the regulations. Special education treatments have been developed that promote the academic achievement of many students with LD. Such treatments include (but are not limited to) direct instruction, curriculum-based measurement, mnemonics, peer tutoring, and strategy training. Research indicates that these treatments are effective only when they are implemented accurately, consistently, and intensively. Such implementation is facilitated, in turn, by appropriately high expectations for student performance and by several contextual factors, including reasonable caseloads, lower pupil-teacher ratios, and a general school environment that values instruction and recognizes that ongoing progress monitoring (in contrast to high-stakes testing) is a key indicator of the academic achievement of students with LD. In general, students with LD require intensive, iterative (recursive), explicit instruction to achieve academic success. In addition, many require alternative curricula such as life skills, social skills, and self-advocacy.

CEC Policy Recommendations

⇒ **Recommendation 1:** CEC recognizes that the use of the aptitude-achievement discrepancy model continues to be a controversial component in the identification of LD and shares those concerns. However, there are no research-based alternatives that have been sufficiently validated at this time. CEC recommends that the Secretary establish a priority through the Part D Research authority and sufficient funds be allocated to validate psychometric, non-psychometric and “response-to-treatment” methods of identification. Particular attention should be given to the fidelity of the response-to-treatment method on a large scale and its impact on disproportional representation of children from culturally and linguistically diverse backgrounds.

- ⇒ **Recommendation 2:** CEC supports the early identification of children who need special education and related services. However, CEC is concerned that the current application of special education eligibility criteria including those for learning disability may unintentionally delay provision of special education and related services for children and youth who require such services. CEC supports the IDEA '97 language that allows state and local school districts to use developmental delay as an additional eligibility category for children three through nine years. CEC recommends that states and local school districts utilize this option to ensure that all children who are disabled and need special education and related services are identified even if they do not at this early age meet existing Part B categorical eligibility criteria. CEC agrees with DEC on the following points: First, that young children's development is characterized by a broad range of behaviors across developmental domains and is better described by developmental metrics than by those with a more educational or academic focus. Second, the reliability of standardized and norm-referenced assessments for the identification of diagnostic categories for young children continues to be problematic, resulting in unnecessary miscategorization and potential loss of services. Third, for many children these early grades are a pivotal foundation for acculturation within the school community. For the many children who are transient or enter school for the first time at kindergarten or beyond, opportunities to understand and practice school behaviors are limited. Categorical classification during these years would be premature and potentially inaccurate.²¹
- ⇒ **Recommendation 3:** CEC recommends clarifying language in ESEA and IDEA to ensure that effective early intervention strategies are in place in general education as an integral part of the total educational process to safeguard against inappropriate referral, unnecessary testing, and misclassification in special education. Such efforts should maximize the involvement of all family, school and community resources to provide effective intervention strategies early to address students' learning needs. These efforts should occur prior to referral to special education.
- ⇒ **Recommendation 4:** CEC recommends that those Part B funds which the LEA may treat as local funds in any given fiscal year (Sec.613(a)(2)(C)) should remain as a part of the school district budget, and that the 20 percent (consistent with current law) first be used for activities supporting effective instructional interventions and progress monitoring in general education designed to assist students who are not progressing as expected in the early grades and beyond in order to prevent inappropriate referrals and reduce the number of children and youth in the school district ultimately requiring designation for special education.

²¹ DEC Concept Paper on Developmental Delay As An Eligibility Category, Division for Early Childhood, Council For Exceptional Children, November 2001.

Discipline Procedures

Background

Educating children and youth in a safe environment is crucial to their achievement of positive educational results, as well as crime prevention, community safety, and successful transition of youth into the workforce. Dangerous and violent behavior in the schools cannot be ignored. Children and youth must be held accountable and the rights of other students and teachers must be protected. Schools must be safe harbors for all children and classrooms must be conducive to learning. However, no child should be denied appropriate educational services – no child should be left behind.

In local school districts, swift, appropriate discipline and comprehensive family-centered intervention are crucial and appropriately responsive to acts of violence. If a child is placed in long-term suspension or expelled from school as a result of dangerous or violent behavior in school or at a school function, it is the responsibility of the state, as well as the community and the school, to ensure that alternative supports and educational services necessary for an appropriate education are provided to the student. Alternative education programs and services help ensure that we all have safe schools and safe communities, and that all children have a safe environment in which to learn.

The 1997 amendments to IDEA gave school personnel greater flexibility in terms of disciplining children with disabilities, while maintaining the rights and protections afforded under IDEA that all children with disabilities receive a free appropriate public education (FAPE). Prior to the 1997 amendments to IDEA, school officials could not change the placement of a child with a disability without parental consent or, as a last resort, a court order. This provision of the law is often referred to as the “stay-put provision.” However, the 1997 amendments provided certain exceptions to the stay-put provision. For example, since 1997 school officials may suspend or expel a child with a disability if he or she violates a school discipline code and the behavior was not related to his or her disability, provided such suspension or expulsion is applied in a manner consistent with the policy applied to students without disabilities who engage in similar behaviors. However, IDEA requires that states ensure that children with disabilities continue to receive a free appropriate public education during suspensions (of more than 10 days) or expulsions.

In addition, under the 1997 amendments law, school personnel may place a child with a disability in an interim alternative educational setting for up to 45 days if the child brings a dangerous weapon or illegal drugs to school or to a school function, regardless of whether the behavior was related to his or her disability. Moreover, a hearing officer may order the removal of a child with a disability to an interim alternative educational setting for up to 45 days if the child is deemed substantially likely to injure himself or herself, or others.

CEC notes that there is some confusion and (or) misunderstanding surrounding the current IDEA discipline policy that warrants clarification. In the vast majority of discipline cases, parents and school officials can and should reach agreement on appropriate discipline measures for children with disabilities within the context of the traditional IEP review process. In the majority of

situations where parents and school officials reach agreement within the context of the traditional IEP process regarding FAPE and its application with respect to appropriate discipline measures for children with disabilities, the IDEA stay-put provision and IDEA discipline amendment do not apply and should not be invoked. Instead, the agreement reached by school officials and parents regarding FAPE and its application with respect to disciplinary measures for a child with a disability should be reflected in the child's IEP and implemented accordingly. In rare cases where parents and school officials cannot reach agreement within the context of the traditional IEP review process, the procedural requirements specified under Section 615(k) of IDEA (the discipline amendment) provides the necessary alternative process for resolving the dispute.

CEC Policy Recommendations

CEC supports the current IDEA discipline policy; however, *CEC recommends further clarification of the current IDEA discipline policy and strategies for improved implementation.*

- ⇒ **Recommendation 1:** The statute should be amended to clarify that Section 615(k) of IDEA (the discipline amendment) is a policy of last resort that should be applied only in rare cases where the parents of a child with a disability and school officials cannot otherwise reach agreement on appropriate disciplinary measures for the child within the context of the traditional IEP review process.
- ⇒ **Recommendation 2:** CEC recommends clarifying the remainder of the discipline provisions within committee report language to facilitate implementation of the current IDEA discipline policy.
- ⇒ **Recommendation 3:** CEC recommends increasing funding under the Part D Support Programs for the provision of appropriate research, personnel preparation, technical assistance, and other supports and services to institutions of higher education, state and local educational agencies, educational personnel, and parents to facilitate implementation of the current IDEA discipline policy.
- ⇒ **Recommendation 4:** CEC opposes cessation of educational services and supports for any student. No child should be denied appropriate educational services. CEC supports the use of comprehensive family-centered approaches to address the individual social, emotional, behavioral, and educational needs of students who demonstrate challenging behaviors in schools. As such, CEC recommends establishing a single discipline standard for all students by amending ESEA to require continued alternative educational services for all students who are suspended or expelled from school.
- ⇒ **Recommendation 5:** CEC supports language that requires interagency agreements among state agencies with authority over the direction and expenditure of federal and state funds under IDEA, ESEA, Juvenile Justice, and other relevant authorities, to ensure continued alternative educational services (including the full continuum of services as provided for under IDEA) for any student who is long-term suspended or expelled from school.

Early Childhood

Background

All states participate in the Part C Infant and Toddler and the Preschool Grants Programs under IDEA. This commitment on the part of states and communities ensures that children from birth until age three with disabilities and their families have available individualized early intervention services. Further, it means that children from 3-5 years of age with disabilities have available special education and related services designed to meet their individual needs. It is important to note, however, that states and communities have met this important obligation without adequate federal fiscal contributions.

Despite widespread acceptance of the importance of an early start for a child's successful development, these federal programs have received little or no federal increases in the last several years. While Part C received an increase last year, the Preschool Program has not received an increase in several years while continuing to serve more and more children. The preschool program is the ONLY dedicated federal funding source for preschoolers (3-5 years) with disabilities. While these children are counted under Part B, there is no obligation to utilize these funds for preschoolers and in fact many states and/or school districts do not.

CEC is committed to assisting families in enhancing the development of their infants and toddlers with disabilities by strengthening early learning opportunities through the family's daily activities and routines; the provision of early intervention services in natural environments as appropriate to the needs of the child; supporting the key role of families in the decision making process; and maximizing all available public and private resources to ensure their most effective and efficient use. We recommend a strengthened emphasis on the child's development, with *services* being one means of achieving the IFSP developmental outcomes. When we focus on services (i.e., the means) we lose sight of the end result, achievement of developmental outcomes.

CEC Policy Recommendations²²

⇒ **Recommendation 1:** CEC recommends clarification of developmental delay language to allow local education agencies the option of accepting or rejecting the use of “developmental delay” for specific subsets of age range (such as 3-5 or 3-6 or 3-8, etc.). Current regulatory interpretations have required that LEAs select either the entire state selected age range for developmental delay or not use the term at all. In the case of a state that allows use of the term from age 3-9 years, this serves as a disincentive to those LEAs who want to continue to use the term for children 3-5 years but are not ready to accept the term for use for children 6-9 years.

²² In 2001, CEC, DEC, CASE, and the National Association for the Education of Young Children (NAEYC) submitted extensive comments on the Part C NPRM published by the Department of Education. On January 10, 2002, the Department of Education indicated in its Federal Register announcement that they would be considering responses provided from the 2001 Part C NPRM when developing their statutory proposals, and recommended that individuals resubmit their recommendations for the Part C regulations as statutory recommendations. CEC's recommendations listed below are based on the original regulatory recommendations submitted last year.

- ⇒ **Recommendation 2:** CEC recommends permanently authorizing Part C.
- ⇒ **Recommendation 3:** CEC recommends creating incentives in the Part C funding formula to assist states in increasing the number of Part C eligible children served who receive needed early intervention services. There exists a great variability in the percentages of children served across states with a range of 1% to about 7%. States should be encouraged to serve all children in need of early intervention to increase the likelihood of children’s success later in school. In any formula change, hold-harmless provisions should be instituted to ensure states do not lose funds and matching requirements should be considered.
- ⇒ **Recommendation 4:** CEC recommends that clarifying language should be added to the definition of early intervention services stating that services are designed to address the family-identified resources, priorities and concerns as determined by the IFSP team which relate to enhancing their child’s development.
- ⇒ **Recommendation 5:** CEC recommends clarifying language that defines *natural environments* as settings in which an eligible child’s age peers who have no disabilities are typically found; and includes the child’s home and community settings in which children without disabilities participate.
- ⇒ **Recommendation 6:** CEC recommends that the natural environments policy in the statute should be changed to incorporate language related to the achievement of the child’s outcomes as follows:
 1. To the maximum extent appropriate, early intervention to address the major IFSP outcomes expected to be achieved for the child is provided in natural environments; and
 2. The provision of early intervention for each eligible child occurs in a setting other than a natural environment only if the IFSP team, based on the evaluation and assessment and determination of outcomes, determines that each major IFSP outcome expected to be achieved cannot be achieved satisfactorily for the child in a natural environment.
- ⇒ **Recommendation 7:** CEC recommends that the IFSP language should be revised to reflect an emphasis on natural environments determination being made for each individual outcome in the IFSP. Language should also clarify that if an IFSP outcome for the child must be addressed in a setting other than a natural environment, a justification must be included in the child’s IFSP that should focus on the generalization of the IFSP outcome and opportunities in the child’s daily activities and routines to practice the skill and achieve the IFSP outcome. In addition, we support clarifications that the provisions on natural environments do not apply to family services listed in an IFSP and that nothing in Part C should be construed as limiting appropriate services to parents or other family members. Finally, “Other Services” language in the IFSP should be clarified to ensure that the IFSP includes to the extent appropriate, medical, child care, and other services necessary to meet the resources, priorities and concerns of the child and family, but that are not required under Part C.
- ⇒ **Recommendation 8:** CEC recommends clarifying language requiring that all states participating under this part follow Part C rules for eligible children regardless of the funds used. Further, we recommend that states be given the option of requiring the use of Part B rules to provide FAPE to this age range of eligible children. We recommend that language support the optional use of Part B funds without the additional requirement of meeting the Part B rules, unless the state elects to do so. We oppose current OSEP interpretation that

states follow Part B rules and Part C rules if they use Part B funds. We do not believe that current statutory language requires this interpretation.

- ⇒ **Recommendation 9:** CEC recommends that the Secretary pursue parallel changes in Medicaid law to ensure that Medicaid funds be used in accordance with Part C and Part B requirements. States are under obligation to maximize these resources while continuing to ensure services are provided in accordance with IDEA regulations. These two requirements often present a direct conflict with each other. In addition, requiring the billing of insurance prior to the use of Medicaid for dually enrolled children often hinders access to Medicaid revenues. We support language that a state may NOT require parents to sign up for or enroll in a public insurance program, such as Medicaid, in order to receive early intervention services.
- ⇒ **Recommendation 10:** CEC recommends that in states with a system of parental fees, the state must first determine the applicable family fee, and give parents the option of using their private insurance or paying the applicable fee. If the family opts to pay the fee, the state should not be allowed to also access the family's insurance to cover the remaining costs of the service unless the family gives consent. Similarly, if a family opts to use their insurance, but the insurance does not cover the entire cost of the service, the state should only be allowed to require that the family pay the uncovered portion up to but not exceeding the amount of the state fee.