

## I. PURPOSE OF THIS STUDY ON IDEA '97

The purpose of this study is twofold:

(1) The first purpose is to examine and provide an understandable summary of those sections of the Individuals With Disabilities Education Act Amendments of 1997 ["IDEA'97"] with the most dramatic impact on our members' work lives.
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IDEA'97 is a complex piece of legislation. This is not surprising. IDEA '97 is both an education law and a civil rights law. IDEA '97 was developed over several years with many interested parties, including the National Education Association, providing input about what should be included in the final product. While many changes in IDEA'97 clarify and improve the way, in which educational personnel provide services to children and students with disabilities, some of those changes do not. This study will highlight the sections of IDEA '97 of most significance to our members and "rate" the impact the section may have on our members' ability to provide an education to children with disabilities. The "rating" will designate whether the respective change is an improvement over the former law; has little or no impact; or is it an area that needs more work in future legislation.

(2) The second purpose of this study is to provide a summary of how each state is implementing IDEA '97.
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This summary will provide our members with a "ready reference guide" on how improvements in their state's implementation of IDEA '97 may be achieved by providing members with a handy comparison of how other states are implementing IDEA'97.

As the summary of IDEA'97 (see Part IV below) will indicate, there were many areas of improvement. Two such areas, for example, include the increased emphasis on the obligation of state and local educational agencies to provide training to all educational

employees who work with children with disabilities; and the elimination of repetitive and unnecessary paperwork in the evaluation and reevaluation of students with disabilities. Despite the intent of the Federal IDEA '97 to improve working conditions in many areas such as staff development and reduction of paperwork, it is inevitable that some states will implement the legislation with varying degrees of success.

IDEA '97 may encourage and provide financial incentives to states for staff development, but whether federal funds for the staff development actually are granted is contingent upon how proactive the respective state agency is with the respect to filing a state improvement grant. Further, although the Federal IDEA '97 may reduce paperwork associated with evaluations and reevaluations of students with disabilities, there is nothing in the Federal law that prevents states and individual districts from requiring more paperwork. A major goal of this study, therefore, is to educate members as to the differences between the requirements under the Federal IDEA '97 from each state's idiosyncratic implementation. Members who can distinguish between a federal requirement from a state requirement will be better equipped to "track" whether their respective state is implementing IDEA '97 in a manner consistent with the NEA goals.

## II. INTRODUCTION AND OVERVIEW OF IDEA '97

In May 1997, the United States House of Representatives and Senate passed legislation reauthorizing and amending the Individuals With Disabilities Education Act (hereinafter referred to as IDEA '97). President Clinton signed the bill into law on June 4, 1997 (IDEA is Public Law 105-17). On March 12, 1999, the Department of Education's rules and regulations became finalized [see, Federal Register, Volume 64, Number 48 at 12406-12672 pertaining to 34 CFR Parts 300 and 303].

❖ IDEA '97 was streamlined and reorganized into four (4) parts (the

old IDEA had been nine (9) parts.

- ❖ Part A of IDEA '97 covers general provisions and definitions. Part A includes the purposes and goals of the new amendments.
- ❖ Part B is entitled "Assistance for Education of All children with Disabilities" and describes the means by which the federal government will assist the states in carrying out the purposes of the Act. Included in this part is how the local educational agencies shall provide a free appropriate public education to students with disabilities between the ages of three (3) and twenty-one (21). Part B also includes the basic rights of and responsibilities of children with disabilities and their parents.
- ❖ Part C pertains to Infants and Toddlers with Disabilities and addresses the needs of infants and toddlers ages birth to three (3) years old.
- ❖ Part D is entitled "National Activities to Improve Education of Children with Disabilities". In part D there is authorization for discretionary programs-- including state program improvement grants, coordinated research, personnel, technical assistance support, and dissemination of information—for the improvement of the education of children with disabilities.

Some of the amendments to IDEA'97 are significant changes while others are refinements to the processes that have previously been delineated for schools and parents to follow in planning and providing special education and related services to children and youth with disabilities. The most significant changes in IDEA '97 include:

- ❖ Discipline of children with disabilities. In the Amendments to IDEA'97, the ability of school personnel to discipline children with disabilities has been expanded and to some extent clarified.
- ❖ Increased emphasis in the law for state and districts to provide training and information for all school personnel who work with students with disabilities. This is a major step towards improving the education of students with disabilities via the recognition that more and extensive training must be provided to all school personnel who work with this population of students.
- ❖ The important role paraprofessionals/paraeducators play in assisting to provide services to children with disabilities is recognized in IDEA'97. There is emphasis in the law that

paraeducators must be appropriately trained and supervised which will in turn be another major positive step toward improving the education for students with disabilities. Note that although IDEA'97 uses the term paraprofessionals, the NEA has adopted use of the term paraeducators. The term "paraeducators" has been coined by the National Resource Center for Paraprofessionals. The terms paraeducator and paraprofessional are synonymous as used in this report.

- ❖ Development and review of the individualized education program (IEP) including increased emphasis on participation of children and youth with disabilities in the general education classroom and in the general curriculum. The most significant change in the area of IEP is the inclusion of general education teachers in the process.
- ❖ Voluntary mediation as a means of resolving parent-school controversies. The goal sought through voluntary mediation is the reduction of the adversarial posturing that sometimes occurs between school representatives and parents of students with disabilities will be minimized.
- ❖ The way in which evaluations and reevaluations are conducted. IDEA '97 incorporates approaches to eliminate unnecessary or repetitive paperwork thereby freeing staff to spend more of their time providing direct services to children with disabilities.
- ❖ Parent participation in eligibility and placement decisions. Parental involvement has long been recognized to be a key in any child's education. The IDEA'97 Amendments memorializes the importance of parental involvement in the education of students with disabilities.
- ❖ Participation of children and youth with disabilities in state and district wide assessment (testing) programs. These assessments will be used to measure the progress of students with disabilities.
- ❖ The addition of transition planning. IDEA'97 recognizes the importance of students to consider their roles in society at an earlier age thereby enhancing the possibilities for such students to lead useful and productive lives.

It is important to emphasize that this study does not purport to examine all the amendments to IDEA, rather, it will review those changes impacting local staff most critically.



### III. STRUCTURE OF THE STUDY

IDEA has numerous changes in how students who are disabled will receive the services they need in order to succeed. This study will examine the modifications and new requirements in IDEA '97 in the areas that most directly affect our members namely, how services are provided at a local level. The study will compare and contrast how the newly proscribed changes in the Federal law are being implemented by each of the states. For ease of reference, the statutory source cited is the United States Code referred throughout as USC.

The topical areas to be examined include:

- ❖ Paperwork
- ❖ Discipline
- ❖ Professional Development
- ❖ The training and Professional Development of Paraeducators
- ❖ Individual Education Programs ("IEPs")
- ❖ Leave/release time to enable regular education teachers' involvement in the IEP process

Additionally, some of the topic areas overlap. For example, some of the changes in the area of discipline may impact paperwork. In areas of overlap, the study will note in the summary of the statutory change what other areas may be impacted.

For each of the above-referenced subject areas, the study will give a brief an overview of the major changes caused by IDEA '97. The study will compare and contrast the "old" IDEA with IDEA '97. Following this comparison, the study will then examine how each state has implemented IDEA '97. This portion of the study will be arranged alphabetically by state. Included in the analysis will be:

- ❖ Statutory and administrative citations , if available, for ease in reference;
- ❖ State Associations' response to the IDEA '97
- ❖ Key contacts within the State Associations to enable one State Association to more readily gain access to information from

other State Associations;

- ❖ Key contacts within each state's regulatory agencies and
- ❖ Additional sources of information (e.g. Web site addresses)

The implementation phase of IDEA is a "work in progress" (NEA pamphlet entitled "Status Report on the Individuals with Disabilities Education Act [IDEA] as of June, 1998" at page 7). This study will enable members to quickly reference and compare how other states are implementing IDEA'97.

## IV. TOPICS WHERE AMENDMENTS IMPACT HOW SERVICES ARE PROVIDED

### A. PAPERWORK

#### Overview

One of the goals of the IDEA '97 was to be sensitive to the level of paperwork that has been required to date with regard to providing education and related services to children with disabilities. In many sections of the law it appears there was significant progress in regard to decreasing paperwork. In other sections, often due to newly created requirements, there was an increase in paperwork. Regardless of the changes in the Federal IDEA, however, it must be reemphasized that a state can require more paper work than is being required under the Federal IDEA'97. In the state by state analysis section of this study, if a state requires more paperwork than is necessary under the Federal law there will be a specific reference to that difference.

It should also be noted, however, that some of the sections might have short term gains in paperwork while in the long run the impact of the Amendment may be to decrease paperwork. For example, the amendments adding mediation of the parties would certainly cause some increase in paperwork, but if the parties could resolve their differences in the mediation process, the net effect would be substantially less paperwork than what would result in a full blown due process hearing. In other amendments of IDEA '97, there were either minor changes in the level of paperwork or the changes were effectively a "wash" and these are noted.

#### Decrease



## State eligibility [20 USC 1412]

Establishment of FEOG timelines

State must establish goal & timelines for Full Educational Opportunity Goal (FEOG) but drops requirement for additional detail. [20 USC 1412 (a)(2); see also the regulations at section 300.124 Federal Register at page 12427]

Decrease

Classification by disability category

State has option whether or not to classify by disability category. Arguably this could result in some decrease in paperwork. [20 USC 1412(a)(3)(B); see also the regulations at section 300.125(d) Federal Register at page 12427]

Possible minor decrease

## Local eligibility requirements [20 USC 1413]

### IDEA application

Local Educational Agency must submit IDEA application once instead of once every three (3) years. [20 USC 1413(b)(1)]

Decrease

### IDEA application

State needs only to modify the IDEA plan of Local Educational Agency only to extent necessary. [20 USC 1413(b)(2)]

Decrease

## Evaluations, IEP and placement [20 USC 1414]

### Initial and reevaluation, data to be used

The process by which schools determine whether a child is a "child with a disability" as defined under 20 USC 1402(3) and the educational needs of the child have changed under IDEA'97. The process now begins by a review of the existing evaluation data on the child, including evaluations and information provided by the parents, current classroom based assessments and observations, and observations of teachers and related services providers. On the basis of this review, the team determines what additional data, if any, are needed to determine:

- 1) whether the child has a particular category of disability;
- 2) the present levels of educational performance and educational needs of the child;
- 3) whether the child needs special education and related services; &
- 4) if any additions or modifications to special education and related services are needed to enable the child to meet measurable annual IEP goals and participate, as appropriate, in the general curriculum. Intent is that assessment assist in disability determination and IEP development that enables child to participate in general curriculum. [20 USC1414(c)(1); see also the regulations at Sections 300.320-321 Federal Register at page 12439]

## Decrease

### Reevaluations

If the IEP team & other qualified professionals determine that no additional data is needed to determine whether the child continues to be a child with a disability, LEA must notify the parent of this determination. Included in the notice to parents will be the reasons for their decision not to obtain additional data and the right of the parent to request an assessment to determine if the child continues to be a child with a disability. The IEP team is not required to conduct an assessment unless the parent requests it. [20 USC 1414(c)(4)]

Major decrease

## Increase

### Definitions [20 USC 1401]

#### Orientation and mobility

Orientation and mobility are added to related services. [20 USC 1401(22); see also the regulations at section 300.24(b)(6)(i)-(ii) Federal Register at page 12424]

Minor increase

### State eligibility [20 USC 1412]

#### Goals for performance

State must establish goals for the performance of children with disabilities and to develop indicators to judge children's progress. Progress reports must be filed every two years. A state may revise its State improvement plan as needed, based on assessment results, if it receives money under subpart 1 of Part D. [20 USC 1412(a)(16); see also the regulations at section 300.137 Federal Register at page 12429].

Major increase no similar provision existed in the Old IDEA.

#### Assessments

States are now required to include children with disabilities, with accommodations when necessary, in State and district wide assessment programs. Alternative assessments must be developed for children who cannot participate in regular assessments by the year 2000. The results must be reported but confidentiality must be maintained. [20 USC 1412(a)(17); see also the regulations at sections 300.138-139 Federal Register at page 12429]

Major increase no similar provision existed in the Old IDEA.

#### Data on suspension/expulsion rates

Requires state educational agency to gather data on suspension/expulsion rates of children with disabilities from Local

Educational Agency to review discrepancies among or within Local Educational Agencies and between children with disabilities and non-disabled children. [20 USC 1412(a)(22); see also the regulations at section 300.146 Federal Register at page 12431]  
Increase also relates to the issue of discipline

## Local eligibility requirements [20 USC 1413]

### Notice if out of compliance

If State Educational Agency decides to reduce/refuse funds to Local Educational Agency that it determines is out of compliance, the LEA must notify the public within its area of eligibility findings. [20 USC 1413(d)(2); see also the regulations at section 300.197(b) Federal Register at page 12433]

Increase

### Inclusion of disciplinary information

State may require a Local Educational Agency to include in the records of a child with disabilities a statement of current or previous disciplinary action that has been taken against the child. State could require Local Educational Agency to transmit such statement pertaining to discipline of the student to the extent that disciplinary information is included in, and transmitted with, the student records of nondisabled children.

[20 USC 1413(j)]

Possible increase also pertains to discipline

## Evaluations, IEP and placement [20 USC 1414]

### Notice to parents

LEA shall provide notice to parents describing evaluation procedures and safeguards regarding evaluation. Requirement is not new but content of notice has changed.

[20 USC 1414(b)(1)]

Increase but may even out

### Parents help make eligibility determination

Eligibility determination is to be made by a team of qualified professionals and the child's parent. A copy of evaluation report & documentation of eligibility must be given to the parent. [20 USC 1414(b)(4); see also the regulations at Section 300.534(a)(1) Federal Register at page 12456]

Increase

Special rule for eligibility determination.

In making a determination under 20 USC 1414(A)—that the child is a child with a disability, a child shall not be determined to be a child with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English. [20 USC 1414(b)(5); see also the regulations at section 300.534 (b) Federal Register at pages 12456-57]

Possible increase

Reevaluations: parental consent.

Informed parental consent must be obtained for reevaluation unless the LEA can demonstrate it took reasonable measures to obtain consent and the parent failed to respond. [20 USC 1414(c)(3)]

Possible increase

Child no longer has disability

An evaluation must be conducted before determining a child no longer has a disability.

[20 USC 1414(c)(5)]

Increase

## Procedural safeguards [20 USC 1415 (b)]

Parent participation

Parents have the right to participate in all meetings regarding the identification, evaluation, and educational placement of the child, and the provision of FAPE and to examine all records relating to their child. [20 USC 1415 (b)(1); see also regulations at Sections 300.501(a)(b) &(c) as well Appendix A to Part 300—Notice of Interpretation, II Involvement of Parents and Students at pages 12472 and 12473].

The regulations clarify what constitutes a meeting. The regulations explain that a “meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision is those issues are not addressed in the child’s IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or a response to a parent proposal that will be discussed at a later meeting.” [Section 300.501(b)(2) Federal Register at page 12446].

Increase

Content of prior written notice

Prior written notice must include: 1) description of action proposed or refused; 2) explanation of why action proposed or refused, 3) a description of any other options considered and reasons rejected, 4) description of evaluation procedure, test, record or report used as



the basis for action, 5) any other relevant factors related to the action, 6) statement that parent have procedural safeguard protections and how to get a copy and 7) sources for assistance and understanding Section 615(c)(1-7) [20 USC 1415 (c)(1-7)]

Slight increase as only 6 & 7 are new

#### Parents Rights Brochure

When procedural safeguards notice (Parent Rights Brochure) is provided to parent:

- ❖ On initial referral for evaluation
- ❖ On each notification of an IEP meeting
- ❖ On reevaluation of the child

- ❖ Upon registration of a complaint with regard to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate education to that child

[20 USC 1415 (d)(1)(A-C); see also the regulations at section 300.504(a) Federal Register at page 12449]

Increase

Contents of procedural safeguards notice

Notice must contain a full explanation of the procedural safeguards related to:

- ❖ Independent educational evaluations
- ❖ Prior written notice
- ❖ Parental consent
- ❖ Access to educational records
- ❖ Opportunity for due process
- ❖ Child's placement during due process
- ❖ Interim alternative settings
- ❖ Requirements for parental placement in private schools at public expense
- ❖ Mediation
- ❖ Due process including requirements for disclosure of evaluation results & recommendations
- ❖ Civil actions
- ❖ Attorney fees

[20 USC 1415 (d)(2)(A-H); see also the regulations at section 300.504(b) Federal Register at page 12449]

Increase

## Mediation process [20 USC 1415(e)]

Any SEA or LEA (in order to receive federal funds) must have mediation process established. This process must be (1) voluntary on the part of the parties (2) not used to deny or delay parents' rights to due process; (3) conducted by qualified and impartial mediator trained in effective mediation techniques. SEA or LEA may establish procedures to require parents who chose not to use mediation to meet with disinterested party under contract with a

parent training center for the purpose of encouraging the use of mediation. [20 USC 1415 (e)(1)-(2)(A) & 2(B); see also regulations Section 300.506 Federal Register at page 12450]

Increase in paperwork in the short term but if mediation results in avoiding due process hearing it will save paperwork in the long term.

## B. DISCIPLINE

### Overview

Perhaps the most essential issue for our members throughout the amendment and reauthorization process of IDEA was the area of discipline. Many important strides in discipline were achieved. School personnel now can determine that a student with disabilities who brought or possess weapons or drugs to school can be placed in an interim alternative educational setting for up to 45 days. School personnel can remove students with disabilities who committed other serious violations of school rules for up to 10 school days. The authority of hearing officers was expanded so they can decide to remove a student for up to 45 days if the school personnel demonstrate that maintaining the current placement is substantially likely to result in injury to the child or to others. In the past only the courts could make determinations that would remove a student with disabilities to an alternative educational setting pending a due process hearing. Additionally, school personnel can request an expedited hearing, should they deem it necessary.

Although many positive steps were gained, many serious issues remain. For example, the "stay put provision" still applies during the pendency of any proceedings under Procedural Safeguards which is in keeping with the old law. See 20 USC 1415(j). Students who have been removed for up to 45 days will be returned to their regular placement if the due process hearings that are required for a change in placement have not been completed. The major changes are those pertaining to placement of students with disabilities in interim alternative educational settings which may be found at 20 USC 1415(k) and will be summarized below.

### Improvement

Placement of students with disabilities in

## Interim alternative educational settings [20 USC 1415(k)(1)]

Up to ten days' change in placement

Authorizes school personnel to order a change in placement to (1) an appropriate interim alternative educational setting; (2) another setting; or (3) suspension

for not more than ten (10) school days to the extent these alternatives would be applied to children without disabilities. [20 USC 1415(k)(1)(A)(i); see also regulations at sections 300.519 and 300.520(a)(1)(i)-(ii) Federal Register page 12453 and Appendix A answers to questions 38 & 40 at pages 12479-12480]

The regulations clarify that school personnel may order the removal of a student with disabilities to the same extent that a student without disabilities would be removed for not more than 10 days without the provision of services. The question of whether a student with disabilities can be removed for additional periods of 10 days or less is more complicated. The short answer is yes but there can be no cessation of educational services beyond 10 days. The Appendix clarifies that school personnel may not use their ability to suspend on multiple occasions as a means of avoiding their need to consider and address the child's behavior as part of providing FAPE to the student. The student can be removed for additional periods. The removals can only be for separate incidents of misconduct & as long as there is no pattern of exclusion.

Major improvement

Up to 45 days' change in placement

IDEA '97 authorizes school personnel to order a change in placement to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline but not more than 45 days if a child with a disability:

- 1) carries a weapon to school or is in possession of a weapon (or to school function) or
- 2) knowingly possesses/ uses illegal drugs or sells solicits the sale of controlled substances while at school. This is an expansion from old IDEA that applied this provision only for weapons. [20 USC 1415(k)(1)(A)(ii); see also regulations at sections 300.519

and 300.520(a)(2) through 300.520(a)(3) Federal Register page 12453]

Improvement.

Functional behavioral assessment [20 USC 1415(k)(1)(B)]

If the LEA did not conduct a functional behavior assessment & implement a behavioral intervention plan before the behavior that resulted in the suspension, the agency shall convene an IEP meeting to develop an assessment plan to address that behavior. This IEP meeting must take place either before taking the disciplinary action but not later than 10 days after taking the disciplinary action. If there was a behavior plan already in place, the IEP team shall review the plan and modify it where necessary.[20 USC 1415(k)(1)(B)(i)-(ii)]; see also regulations at section 300.520(b)(1) & (c) Federal Register at page 12453]

Improvement.

Determination of setting for alternative interim educational setting [20 USC 1415(k)(3)]

The alternative interim educational setting is to be determined by the IEP team. It shall be selected to enable the child to continue:

- ❖ To participate in the general curriculum (although in another setting)
- ❖ To receive those services and modifications that will enable the child to meet the goals set out in the IEP.

The alternative interim educational setting will also include services and modifications designed to address the behavior in question. [Section 20 USC 1415(k)(3)(A)-(B)(i)(ii) see also regulations at section 300.520(b)(1) & (c) Federal Register at page 12453]

Improvement.

Notice to parents [20 USC 1415(k)(4)(A)(i)]  
Parents will be notified of the decision to take disciplinary action no later than the date on such decision is made. Parents will be notified of all procedural safeguards.

[20 USC 1415(k)(4)(A)(i); see also regulations at section 300.523(a)(1) Federal Register at page 12454]  
Improvement.

Authority of hearing officer [20 USC 1415 (k)(2)]  
Under judicial interpretations of the old law, a court could order a change in the placement of a child if the existing placement was substantially likely to result in injury to the child or others. IDEA '97, has expanded the authority of a hearing officer to include the authority to order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer:

- 1) determines that the public agency has demonstrated that maintaining the current placement is substantially likely to result in injury to the child or to others
- 2) considers the appropriateness of the child's current placement
- 3) considers whether the agency made reasonable efforts to minimize risk of harm in the current placement
- 4) determines that the interim placement meets specified requirements [that the interim alternative educational setting will be selected that enables the child to continue to participate in the general curriculum and to receive those services and modifications designed to address the behavior].

[20 USC 1415(k)(2)(A-D); see also regulations at section 300.521 Federal Register at pages 12453-54]

Major improvement. Expansion of hearing officer's authority will presumably streamline the response time involved in removing student with a disability in a crisis situation.

Protections for children not yet eligible for

special education. [20 USC 1415(k)(8)]

Conditions that apply if no basis of prior knowledge  
[20 USC 1415(8)(C)]

If there was no prior knowledge of the child's disability, the child may be disciplined just as a child without disabilities would be disciplined. If a parent requests a special education assessment during the time period of a disciplinary action [10 school days or 45 days], that assessment shall be expedited. If the child is eligible, the LEA must begin serving him or her. The child's placement, pending results of the assessment, will remain in the educational placement chosen by the school authorities.

[20 USC 1415 (k)(8)(C)(i)-(ii); see also regulations at section 300.527(d) Federal Register at pages 12455]

Improvement .



## Manifestation determination review [20 USC 1415(k)(4)]

Individuals to carry out review [20 USC 1415(k)(4)]

The old IDEA had no similar provision. Immediately, if possible, but not later than 10 school days after the disciplinary action has been taken, the IEP team and other qualified individuals shall review the relationship between the child's disability and any behavior subject to disciplinary action under the school's discipline code.

[20 USC 1415(k)(4)(B); see also regulations at section 300.523(b) Federal Register at pages 12454]

Improvement.

Conduct of review [20 USC 1415(k)(4)(C)]

Before the IEP team may determine that the behavior was not a manifestation of the child's disability it must first consider all relevant information in terms of the behavior subject to disciplinary action. These considerations shall include:

- 1) evaluation and diagnostic results (must include other relevant information from the parents;
- 2) observation of the child
- 3) whether the child's IEP and placement were appropriate;
- 4) whether the special education services and behavior intervention strategies were provided consistent with the child's IEP and placement
- 5) whether the child's disability impaired his/her ability to understand the impact and consequences of behavior for which disciplinary action is being considered
- 6) whether the child's disability impaired his/her ability to control the behavior

[20 USC 1415(k)(4)(C); see also regulations at section 300.523(c) Federal Register at pages 12454]

Determination that behavior was not a manifestation of disability [20 USC 1415(k)(5)]

If after considering all of the above, it is determined that the behavior was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which

they would be applied to children without disabilities. There can however be no cessation of educational services. Further, if the LEA initiates disciplinary procedures applicable to all children, the LEA shall ensure that the special education records and disciplinary records of the child with a disability are transmitted for consideration by the person(s) making the final determination regarding the disciplinary action.

[20 USC 1415(k)(5); see also regulations at section 300.523(c)(2)(i-iii) Federal Register at pages 12454]

## Needs Improvement/Loss

Manifestation determination review [20 USC 1415(k)(4)]

Appeals of manifestation or placement decisions [20 USC 1415(k)(6)]

Parents may request a hearing if they disagree with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement. The SEA or LEA shall arrange for an expedited hearing when requested by the parent. The basis for review is whether the LEA demonstrated the child's behavior was not a manifestation of the child's behavior consistent with 20 USC 1415(k)(4)(C) [conduct of review for manifestation determination]. The basis for review of a placement decision is 20 USC 1415(k)(2) [authority of hearing officer]

[20 USC 1415(k)(6); see also regulations at section 300.525 Federal Register at pages 12454]

Needs substantial improvement as during the pendency of the appeal student is returned to their original placement.

Placement during appeals [20 USC 1415(k)(7)]

In General [20 USC 1415(k)(7)(A)]

When parent requests a hearing regarding disciplinary action, the child shall remain in the interim alternative educational setting pending the hearing officer's decision or the expiration of the time [up to 45 days] whichever is first unless the LEA and parents agree otherwise. [20 USC 1415(k)(7); see also regulations at section 300.526 Federal Register at pages 12454]

Major loss because if parents want to challenge disciplinary action, student will end up back in the classroom.

Current Placement [20 USC 1415 (k)(7)(B)]

If a child is placed in an interim alternative educational setting [IAES] and school personnel propose to change the child's placement after the expiration of the IAES, the child shall remain in the current placement (placement prior to IAES).

Needs improvement.

Expedited Hearing [20 USC 1415(k)(7)(C)]

The exception to this provision is where school personnel maintain that it is dangerous for the child to be in the current placement in which case the LEA may request an expedited hearing. The hearing officer in determining placement shall apply the standards set forth in 20 USC 1415(2). These standards include: substantial evidence that maintenance of current placement will likely result in injury to child or to others; consideration of appropriateness of current placement; has school made reasonable efforts to minimize risk of harm in current placement; & determines IAEI meets

standards set forth in this statute. [20 USC 1415(k)(7)(C); see also regulations at section 300.526 (c)Federal Register at pages 12455]  
Needs improvement

## Protections for children not yet eligible for special education. [20 USC 1415(k)(8)]

In general [20 USC 1415(k)(8)(A)]

IDEA '97 allows students who have not yet been determined as eligible for special education and who have violated any rule or code of conduct to assert the protections of IDEA. The protections of IDEA will be applied to students not yet determined to qualify for special education, if the local educational agency had knowledge that the child was a child with a disability before the behavior that warranted discipline occurred

[20 USC 1415(k)(8)(A); see also regulations at section 300.527 (a) Federal Register at pages 12455]

Basis of prior knowledge [20 USC 1415(k)(8)(B)]

Factors for determining prior knowledge include:

- 1) The parents expressed concerns in writing to personnel of the Local Educational Agency that the child needs special education. There is an exception to the requirement that this be in writing if the parent is illiterate or if the parent has a disability that precludes his or her writing of concerns.
- 2) The behavior or performance of the child demonstrates the need for special education
- 3) The parent requested special education assessment
- 4) The teacher or other personnel of the Local Educational Agency expressed concern about the behavior or performance of the pupil to the director of special education of the Local Educational Agency or to other LEA personnel.

[20 USC 1415(k)(8)(B)(i)-(iv); see also regulations at section 300.527(b) Federal Register at pages 12455]

## Referral to Law Enforcement [20 USC 1415(k)(9)]

Local Educational Agencies may report a crime committed by a child with a disability to appropriate authorities. Local Educational Agencies may not prevent law enforcement or judicial authorities from exercising their responsibilities. Reporting school districts must ensure that copies of the child's special education and disciplinary records are transmitted for consideration to the appropriate authorities to which it is reporting a crime.

[20 USC 1415(k)(9)(A)-(B); see also regulations at section 300.529 Federal Register at pages 12455]

Improvement. It makes clear that students with disabilities who commit crimes may have that crime reported to appropriate authorities.

### C. PROFESSIONAL DEVELOPMENT

#### Overview

The most promising improvement in IDEA'97 is its recognition that professional development opportunities for all staff working with children with disabilities are essential if the educational opportunities for children with disabilities are to make substantive improvement. IDEA'97 makes very specific requirements that state improvement plans contain strategies for staff development and improvement. IDEA'97 requires that each state has an improvement plan which is to specifically outline improvement strategies for professional development (after an assessment of state and local needs) which will meet the overall goal of ensuring the effectiveness of efforts to educate children with disabilities.

Major Improvement.

Comprehensive system of personnel development [20 USC 1412 (a)(14)]

IDEA'97 requires that as a prerequisite for states to obtain federal dollars, the state must have in effect a comprehensive system of personnel development [hereinafter referenced as CSPD]. The CSPD

must be designed to ensure an adequate supply of qualified special education, regular education, and related services personnel that meets the requirements for a state improvement plan relating to personnel development.

[20 USC 1412(a)(14); see also regulations at section 300.380 Federal Register at pages 12443]

Major improvement but each state must be proactive in developing effective improvement plans in order to obtain the federal monies available.

#### State Improvement Plans [20 USC 1453]

Within each state's improvement plan, there must a needs analysis which gives the number of personnel providing special education & related services [20 USC 1453(b)(2)(B)]. Further the state must outline how it will address identified needs for inservice and preservice for personnel working with children with disabilities. Note this section specifically includes paraprofessional personnel [20 USC 1453(c)(3)(D)].

The state improvement plan must, in outlining how it will address the identified needs for inservice and preservice for personnel, give a description of how the state:

- i. will prepare general and special education personnel with the content knowledge & collaborative skills needed to meet the needs of children with disabilities
- ii. will prepare professionals & paraprofessionals in the area of early intervention with the content knowledge & collaborative skill needed to work with infants & toddlers with disabilities
- iii. will work with institutions of higher education & other entities that prepare personnel who work with children with disabilities to ensure those institutions & entities develop the capacity to support quality professional development programs meeting state & local needs

- iv. will work to develop collaborative agreements with other states for joint support & development of program to prepare personnel where there's insufficient demand within a single state to justify or support a program
- v. states in similar regions will work together to address the lack of uniformity & reciprocity in the credentialing of teachers & other personnel
- vi. will enhance the ability of teachers & others to use strategies, such as behavior interventions, to address the conduct of children with disabilities that impedes the learning of children with disabilities & others
- vii. will acquire & disseminate, significant knowledge from educational research & other sources; and how the state will adopt promising practices, materials & technology
- viii. will recruit, prepare & retain qualified personnel, including personnel with disabilities & from groups that are underrepresented in the fields of regular education, special education & related services
- ix. the plan is integrated with other professional development plans & activities developed and carried out under other laws addressing personnel recruitment & training
- x. will provide for the joint training of parents & special education, related services, and general education personnel.

[20 USC 1453(c)(3)(D)(i-ix); see also regulations at section 300.382 Federal Register at pages 12444]

Improvement if plan is submitted meeting the federal mandates then up to 75% of the money must be used for staff development.



## D. THE TRAINING AND PROFESSIONAL DEVELOPMENT OF PARAEDUCATORS

### Overview

Under the old law, paraprofessionals working with children with disabilities were not specifically referenced. A significant change in IDEA'97 is that the law now recognizes paraprofessionals specifically as personnel who work with children with disabilities [20 USC 1412(a) (15)(B)iii]. Again, note that although IDEA'97 uses the term paraprofessionals, the NEA has adopted use of the term paraeducators. The term "paraeducators" has been coined by the National Resource Center for Paraprofessionals. The terms paraeducator and paraprofessional are synonymous as used in this report.

In order for states to qualify for federal monies under IDEA the state must meet certain personnel standards. Included as one such standard is the standard that "shall allow paraprofessionals and assistants who are appropriately trained and supervised, ...to be used to assist in the provision of special education and related services to children with disabilities..." [20 USC 1412 (a) (15)(B)iii]. The training standard for paraprofessionals is to be in accordance "with State law, regulations, or written policy, in meeting the requirements of this part [the part is state eligibility requirements under IDEA which is 20 USC 1412 ]

Paraprofessionals are again specifically mentioned in reference to information that must be provided by states in their applications for improvement grants regarding the training that staff will receive. 20 USC 1453(c)(3)(D)(i thru x) requires states [applying for improvement grants] to explain how it will address the identified needs for in-service and pre-service preparation to ensure that all personnel who work with children with disabilities (including... paraprofessional personnel) have the skills, and knowledge necessary to meet the needs of children with disabilities.

Major Improvement that paraprofessionals are now

recognized as staff members who are providing services to students with disabilities.

## E. INDIVIDUAL EDUCATION PROGRAMS ("IEPS")

### Overview

The most critical change in the IEP is the emphasis in the IDEA '97 on the student's participation in the general curriculum. The IEP must specify the special education, related services, supplementary aids and services, program modifications for the child and supports for the school personnel. These supports are intended to ensure the child's progress toward the IEP goals—the participation in the general curriculum, extra-curricular and other non-academic activities. IDEA '97 strengthens the least restrictive environment policy by requiring that the IEP provide an explanation of the extent to which the child will not participate with non-disabled children in academic, non-academic and extracurricular activities. [The old law required an explanation as the extent the child would be participating in the regular classroom].

The new IDEA lists a variety of circumstances under which the IEP must be reviewed and revised, it expands the IEP team to include the regular education teacher and parents. IDEA '97 includes specific factors that must be considered by the IEP team when developing the child's IEP such as behavioral issues and the child's specific communication needs is the child is blind or visually impaired, deaf or hard of hearing, or of limited English proficiency. Another addition to the IEP is the new requirement of a statement of transition service needs of the child starting at age 14.

IEP content [20 USC 1414(d)(1)(A)]

Content must include present level of performance ("plop"), annual goals, short-term objectives or benchmarks, statements of special education/related services, explanation of

extent to which the child will not participate in regular class, district wide/state assessment participation, projected dates for beginning of services (frequency, location, duration), transition (age 14 service, age 16 services required), progress toward annual goals as measured and parent informed. [20 USC 1414(d)(1)(A)]

## Improvement

### IEP TEAM [20 USC 1414(d)(1)(B)]

IEP team is defined as a group including parent, at least one regular education teacher, if child participating in regular education environment, special education teacher, LEA representative (qualified to provide or supervise specially designed instruction for children with disabilities, knowledgeable about general curriculum and availability of resources of LEA), individual who can interpret instructional implications of evaluation results, other individuals at discretion of parent or agency, child when appropriate.

[20 USC 1414(d)(1)(B); see also regulations Section 300.344 Federal Register at page 12440]. Impact of the regulations. Section 300.344 Federal Register at pages 12440-12441 further clarifies how it is determined whether an individual is considered to have knowledge or "special expertise" regarding a child. Under paragraph Section 300.344(c) the party (either the parents or the agency) who has invited the individual to be a member of the team also determines if that person has knowledge or special expertise. For example, if a parent views the paraeducator as someone having knowledge of the child and wants the paraeducator on the team, under this section, this is sufficient for the paraeducator to become a member of the IEP team.

Improvement.

IEP development.

The IEP team in developing the IEP, must consider the strengths of the child and parent concerns and the results of evaluations. The IEP team also must consider special factors related to behavioral needs, limited English proficiency, need for instruction in Braille, communication needs, and need for assistive technology devices and services. [20 USC 1414(d)(3)(A)-(B); see also regulations section

300.346(a)(1)-(2) Federal Register at 12441]  
Improvement.

Involvement of regular education teacher  
Regular education teacher participates to extent appropriate in the development of IEP, including the determination of behavioral interventions, supplementary aids and services, program modification and support for school personnel. [20 USC 1414(d)(3)(C); see also regulations section 300.346(d)(1)-(2) Federal Register at 12441 and Appendix A answer to question 24 further clarifies the role of the regular education at page 12477.]  
Appendix A, question 24 clarifies the role as follows: "Thus, while a regular education teacher must be a member of the IEP team if the child is, or may be, participating in the regular education environment, the teacher need not ...be required to participate in all decisions made as part of the meeting or to be present throughout the entire meeting or attend every meeting." Further it clarifies that not more than 1 regular education teacher be included on the IEP team, see page 12477]

Improvement, but problem implementing.

IEP review and revision.

IEP must be reviewed annually and be revised as appropriate to address lack of progress in annual goals and general curriculum, results of any reevaluation, any information provided to or by the parent, child's anticipated needs or other matters. The regular education teacher participates in review and revision. Section 614(d)(4) [20 USC 1414(d)(4); see also regulations at Section 300.346 Federal Register at page 12441]

Improvement.

Students in adult prisons

Children with disabilities convicted as adults and incarcerated in adult prisons, are not required to participate in general assessments or in transition planning and services if they will be incarcerated beyond the age of 21. IEP team may modify IEP or placement for security or compelling penological interest. [20 USC 1414(d)(6); see also regulations at Section 300.347(d) Federal Register at page 12442]

Improvement.

### IEP Construction

IEP team does not have to include information under one component of the IEP if already included in another component. [20 USC 1414(e); see also regulations at Section 300.346(e) Federal Register at page 12442]

Decreases paperwork

### Placement

LEA or SEA shall ensure that parents of children with disabilities are members of any group that makes decisions on educational placement. [20 USC 1414(f)]

Improvement.

### IEP In Effect

There is no change in the requirement that an IEP shall be in effect for each child with disabilities at the beginning of each school year. It further permits either Individualized family service plan or an IEP to be used for 2 year olds (at the State Educational Agency's discretion) and 3-5 year olds. [20 USC 1414(d)(2)]

No substantive change.

### Failure to meet transition objectives

When the participating agency other than the LEA fails to provide transition services in the IEP, the LEA shall reconvene the IEP team to identify alternative strategies to meeting transition objectives. [20 USC 1414(d)(5); see also regulations at Section 300.348 Federal Register at page 12442 and Appendix A, question 12 at page 12475]

Needs improvement.

<p style="text-align: center;"><b>F. ACCOMMODATIONS TO ENABLE REGULAR EDUCATION TEACHERS IN THE IEP PROCESS</b></p>
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## Overview

IDEA '97 has as one of its underlying "thrusts" that students with

disabilities will be educated in the general education classroom and in the general curriculum with appropriate aids and services. One of the indicators of the importance placed on the children with disabilities being educated in the general education is that IDEA '97 references the involvement of regular education teacher in IEP process for the student with disabilities. There are three (3) specific references to the regular education teacher of the child with a disability.

#### Team composition

The IEP team composition must include "at least one regular education teacher of such child (if the child is, or may be, participating in the regular education environment".20 USC 1414(d)(3)(B)(iii);[20 USC 1414(d)(3)(C); see also regulations section 300.346(d)(1)-(2) Federal Register at 12441 and Appendix A answer to question 24 further clarifies the role of the regular education at page 12477.]

Appendix A, answer to question 24 clarifies the role of the regular education in the following way: "Thus, while a regular education teacher must be a member of the IEP team if the child is, or may be, participating in the regular education environment, the teacher need not ...be required to participate in all decisions made as part of the meeting or to be present throughout the entire meeting or attend every meeting." Further it clarifies that not more than 1 regular education teacher is required be included on the IEP team, see page 12477]

Improvement, but problem implementing.

#### Development of IEP

The regular education teacher of the child, as a member of the IEP team, shall, to the extent appropriate, participate in the development of the IEP of the child. This includes the determining appropriate behavioral interventions and strategies and the determining supplementary aids and services, program modifications, and support for school personnel consistent with use of related services [20 USC 1414(d)(3)(C); see also regulations section 300.346(d)(1)-(2) Federal Register at 12441 and Appendix A answer to question 24 further clarifies the role of the regular education at page 12477]]

Improvement, but problem implementing.

Review and revision of IEP

Regular education teacher of the child with a disability, as a member of the IEP team, shall to the extent appropriate, participate in the review and revision of the IEP of the child. [20 USC 1414(d)(4); also see regulations section 300.346(d)(1)-(2) Federal Register at 12441 and Appendix A answer to question 24 further clarifies the role of the regular education at page 12477].

Improvement, but problem implementing.

IDEA'97 does not explain how regular education teachers will add these responsibilities while maintaining their current workload. This study will review some of the strategies the states are and will be using for the implementation of these new requirements for regular classroom teachers.

## V. CONCLUSION

As the above summary of IDEA'97 suggests, there have been many changes in IDEA'97. How such changes are implemented by each of the states will be reviewed in the following sections of this study. Each of the major topical areas will be referenced within each state section but only differences in implementation between the state and the federal law will be noted.

