



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable the Members of the Board of Regents

FROM: Rebecca Cort 

COMMITTEE: EMSC-VESID

TITLE OF ITEM: Individuals with Disabilities Education Improvement Act

DATE OF SUBMISSION: December 20, 2004

PROPOSED HANDLING: Discussion

RATIONALE FOR ITEM: To provide information on the key provisions of the Act and anticipated implications

STRATEGIC GOAL: Goals 1-6

AUTHORIZATION(S):

SUMMARY:

This report provides a summary of the key changes to the Individuals with Disabilities Education Act (IDEA) as reauthorized by the Individuals with Disabilities Education Improvement Act of 2004 enacted on December 3, 2004.

Many of the provisions of IDEA 2004 will require significant changes to New York State laws, regulations, policies and guidance. A number of provisions of IDEA 2004 are at the option of states. This will require us to make important policy decisions that could significantly impact special education in New York State. The attached chart identifies selected key provisions, New York State's current status and anticipated implementation implications.

Attachment

The Individuals with Disabilities Education Improvement Act

The President signed the Individuals with Disabilities Education Improvement Act on December 3, 2004, stating “ The Individuals with Disabilities Education Improvement Act of 2004 will help children learn better by promoting accountability for results, enhancing parent involvement, using proven practices and materials, providing more flexibility, and reducing paperwork burdens for teachers, states and local school districts.” In many key areas, the Act strengthens, supports and aligns with our current State and local efforts to improve education results for students with disabilities. This Act, which reauthorizes the Individuals with Disabilities Education Act (IDEA) and amends other Acts, includes landmark changes to:

- improve accountability and results for students with disabilities.
- improve services to students with disabilities.
- reduce procedural and paperwork requirements.
- encourage cooperation with parents in the special education process.
- ensure less adversarial methods are used to resolve disputes between parents and school districts.
- focus federal and State monitoring, technical assistance and enforcement on meeting performance goals and indicators to improve outcomes for students with disabilities.
- establish a seven-year course to fully fund IDEA and increase the State’s discretionary dollars.
- provide flexibility in the use of IDEA funds by school districts to support improved achievement of students with disabilities and provide federal grants and national activities to support State and local efforts to improve results.

Most of the IDEA 2004 amendments in Parts A, B and C and subpart 1 of Part D become effective on July 1, 2005. The highly qualified teacher provisions and subparts 2, 3 and 4 of Part D became effective upon enactment of the bill on December 3, 2004. Federal regulations to implement IDEA must be completed within 12 months of enactment and New York State (NYS) must align its own laws and regulations governing special education. A team of representatives from the Office of Vocational and Educational Services for Individuals with Disabilities, Office of Counsel and the Office of Elementary, Middle, Secondary and Continuing Education are analyzing the changes needed to State law and regulation. Work began in December to notify the public, Department and professional development network staff of the key provisions of the Act.

The attached chart identifies some of the major changes in IDEA 2004, related NYS provisions and anticipated implementation implications for our State in the following areas:

- highly qualified teachers,
- personnel qualifications,
- individualized education programs (IEPs),
- specific learning disabilities,

- funding,
- dispute resolution,
- early intervention,
- paperwork reduction,
- discipline,
- federal and State monitoring, and
- children enrolled in nonpublic schools by their parents.

Amendments to Individuals with Disabilities Education Act

Attachment

Topic	IDEA Provisions	NYS Provisions	Implementation Implications
<p>Highly Qualified Special Education Teachers</p>	<ul style="list-style-type: none"> • Special education teachers teaching to alternate achievement standards for students with significant cognitive disabilities must meet the requirements of a highly qualified special education teacher at the elementary level. In the case of a special education teacher teaching above the elementary level, the teacher must have subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, to effectively teach those standards. • Special education teachers, not new to the profession, teaching multiple subjects can use the High Objective Uniform State Standard of Evaluation (HOUSSE) provision of No Child Left Behind (NCLB) Act to demonstrate competence in the core subjects. • New special education teachers teaching multiple subjects who meet the highly qualified standard in at least one core 	<ul style="list-style-type: none"> • Since 1995 NYS has been effectively using a consultative model between general and special education teachers to ensure subject matter competency. This model will no longer be allowable for public schools under IDEA 2004. 	<ul style="list-style-type: none"> • Special education, especially bilingual special education, is already a shortage area. If the “highly qualified” teacher requirements are interpreted by the United States Department of Education to extend to special education teachers in approved private schools, it could create even greater teacher shortages.

Topic	IDEA Provisions	NYS Provisions	Implementation Implications
Highly Qualified Special Education Teachers (continued)	<p>subject area (mathematics, English language arts and science) have two years from the date of employment to use the HOUSSE to show competence in other subjects.</p> <ul style="list-style-type: none"> • Clarifies that the highly qualified provisions do not create a right of action on behalf of an individual student or class. 		
Personnel Qualifications	<ul style="list-style-type: none"> • Eliminates previous requirement that standards for a teacher or related service provider be based on highest requirement applicable to a specific profession or discipline. • Eliminates previous requirement for a Comprehensive System of Personnel Development (CSPD) designed to ensure an adequate supply of qualified special education, general education and related services personnel. The State must now establish and maintain qualifications to ensure that personnel necessary to carry out IDEA 2004 are appropriately and adequately trained, including knowledge and skills to serve children with disabilities. • The State must develop a policy that includes a requirement that 	<ul style="list-style-type: none"> • There are new NYS certificate titles for special education developmental ranges (birth-grade 2, grades 1-6, grades 5-9 generalist or content specialist and grades 7-12 content specialist), which became effective February 2004. • Current NYS teacher certification and licensure requirements will meet the mandate that the State has established and maintains qualifications to ensure that personnel necessary to carry out IDEA 2004 are appropriately and adequately trained, including knowledge and skills to serve children with disabilities. 	<ul style="list-style-type: none"> • The State will need to develop a policy or regulation requiring local educational agency (LEA) personnel plans.

Topic	IDEA Provisions	NYS Provisions	Implementation Implications
Personnel Qualifications (continued)	<p>LEAs take measurable steps to recruit, hire, train and retain highly qualified personnel to provide special education and related services.</p>		
Individualized Education Programs (IEPs)	<ul style="list-style-type: none"> • Repeals the requirement for benchmarks and short-term objectives on IEPs except for students with significant cognitive disabilities taking the alternate assessment. • Allows exceptions to IEP team members' attendance at meetings when parents and schools agree. • Consolidates all transition planning requirements to begin by age 16. Adds a requirement for a summary of the academic and functional performance of the student upon termination of eligibility (regular diploma or age 21). • Allows states to submit proposals to allow parents and LEAs the opportunity for a 3-year IEP that coincides with a student's natural transition points. • Allows a parent and LEA to agree not to convene an IEP meeting to make changes to an IEP and instead to develop a 	<ul style="list-style-type: none"> • Short-term objectives or benchmarks are required on IEPs of all students with disabilities in NYS. • A statement of transition service needs is indicated on the IEP at age 14 for courses of study and at age 15 post-school outcomes must be identified related to the student's needs, preferences and interests. • Requires CSE membership beyond the current or reauthorized IDEA provisions. 	<ul style="list-style-type: none"> • A policy decision is needed regarding retaining our current requirements for transition planning at ages 14 and 15 or consolidation to one age (14, 15 or 16). • A policy decision is needed to determine whether NYS will apply for the three-year IEP option. • A determination is needed as to whether the CSE membership and IEP requirements in NYS law and regulation should mirror the mandate relief in the IDEA 2004.

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Individualized Education Programs (IEPs) (continued)	<p>written document to amend or modify an IEP.</p>		
Specific Learning Disabilities	<ul style="list-style-type: none"> • State or LEAs may use a process that determines if a student responds to scientific, research-based interventions (“response to intervention model”) as part of the evaluation process to determine if a student has a learning disability. • Repeals the requirement that the LEA must consider whether a student has a severe discrepancy between achievement and intellectual ability. 	<ul style="list-style-type: none"> • Current regulations require that a student who exhibits a discrepancy of 50 percent or more between expected and actual achievement must be deemed to have a learning disability. (In NYS, more than 47 percent of students with disabilities are identified as having a learning disability.) 	<ul style="list-style-type: none"> • The State will need to advise LEAS of their ability to opt for the “response to intervention model.” • Procedures and criteria for determining whether the student has responded to scientific, research-based interventions will need to be developed. • A policy decision is needed as to whether NYS will retain reference to a discrepancy model when determining if a student has a learning disability.
Funding	<ul style="list-style-type: none"> • Authorizes appropriations over a seven-year period to fully fund IDEA (40%) subject to budget allocations. • Allows state to reserve 10% for state-level activities (9% if the state does not opt for LEA Risk Pool). • Gives states the option of using 10 percent of their state-level funds to establish and make disbursements to LEAs to address needs of high cost 		<ul style="list-style-type: none"> • NYS has a current funding formula to support high cost students with disabilities (public and private excess cost aid). A cost analysis will need to be done to determine whether to opt for the IDEA LEA Risk Pool. • All interagency agreements may need to be updated. This will require a commitment from other State agencies.

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Funding (continued)	<p>students with disabilities and to support innovative cost sharing by LEAs (LEA Risk Pool).</p> <ul style="list-style-type: none"> • Allows LEAs that are in compliance with IDEA 2004 to use up to 50 percent of their annual increase for activities authorized under the Elementary and Secondary Education Act (ESEA). • Allows LEAs to use 15 percent of their IDEA funds to provide services and supports for non-disabled students having difficulty academically or behaviorally (early intervening services). • Requires that states ensure that interagency agreements are “current” prior to expenditure of Part B funds. 		
Dispute Resolution	<ul style="list-style-type: none"> • Adds requirements and timelines to ensure parties are informed of (through complaint notices and prior notices) and have opportunities to resolve complaints (through IEP resolution sessions and mediation) prior to the initiation of an impartial hearing. • Retains the option of a two-tiered process for review of the decision of an impartial hearing 	<ul style="list-style-type: none"> • In NYS, impartial hearing officers are State trained and certified independent individuals who are appointed by the LEA from a rotational list. • NYS regulations impose stringent timelines for the hearing process that exceed federal requirements. • NYS has a two-tiered hearing system, with appeals to the 	<ul style="list-style-type: none"> • Guidelines for an IEP resolution session will need to be developed. • Timelines for hearings need to be revisited in light of new procedures to ensure a timely process for parents and LEAs. • Statute of limitations to be applied in NYS needs to be determined.

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Dispute Resolution (continued)	<p>officer, with an appeal to the State educational agency (SEA).</p> <ul style="list-style-type: none"> • Establishes a 90-day statute of limitation for a judicial review of an SEA decision on appeal, unless State law provides otherwise. • Limits the issues in an impartial hearing to those indicated in a complaint notice, unless both parties otherwise agree. • Holds attorneys liable for the cost of frivolous lawsuits. • Establishes a two-year timeline for requesting a hearing. 	<p>State Review Officer (SRO).</p> <ul style="list-style-type: none"> • New York law currently uses a one-year statute of limitations for impartial hearings and a 4-month statute of limitations for review of SRO decisions. 	
Early Intervention	<ul style="list-style-type: none"> • States have the flexibility to develop a seamless system to serve children with disabilities from ages birth to five by providing an option for parents to continue their child in an early intervention (EI) program through age five. This determination must be jointly developed by the Part C and Part B lead agencies. 	<ul style="list-style-type: none"> • A child's eligibility for continued receipt of EI services ends on the child's third birthday, unless the child has been referred to the Committee on Preschool Special Education (CPSE) and determined to be eligible for preschool special education programs and services. Public Health Law establishes time periods when only 4410 eligible children can continue to receive early intervention services if requested by the parent(s). 	<ul style="list-style-type: none"> • The Department of Health and the State Education Department will need to jointly decide if this option will be available in NYS. • This option impacts approved EI and private approved preschool 4410 providers. • IDEA 2004 provides no additional funding to support the option.
Paperwork Reduction	<ul style="list-style-type: none"> • Allows 15 states to apply for waivers of statutory or regulatory requirements for four 		<ul style="list-style-type: none"> • NYS will need to consult with its constituency to determine whether it should apply and if

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	<p>years to reduce paperwork and non-instructional time burdens. The state would have to submit a report regarding the effectiveness of the waiver.</p>		<p>so, determine what paperwork can be reduced or eliminated.</p>
<p>Discipline of Students with Disabilities</p>	<ul style="list-style-type: none"> • Streamlines the discipline requirements. • Adds authority for school personnel to remove students with disabilities to interim alternative educational settings when a student causes serious bodily injury to another. 	<ul style="list-style-type: none"> • State policies and procedures are consistent with IDEA 1997 requirements. 	<ul style="list-style-type: none"> • Changes to State statute and regulations required.
<p>Federal and State Monitoring</p>	<ul style="list-style-type: none"> • Focuses federal and State monitoring on improving educational results and functional outcomes and ensuring states meet program requirements, with emphasis on those most closely relating to improving educational results. • Establishes monitoring priorities and enforcement actions. 	<ul style="list-style-type: none"> • VESID's Quality Assurance Review process is aligned with IDEA 2004 requirements for focused reviews. 	<ul style="list-style-type: none"> • May require changes to the State's performance plans and additional public data reporting and enforcement actions.
<p>Children Enrolled in Nonpublic Schools by their Parents</p>	<ul style="list-style-type: none"> • Assigns responsibility for child find, consultation with private schools and provision of equitable services to the school district where the nonpublic school is located. 	<ul style="list-style-type: none"> • Under State statute, the district of residence is responsible for child find and provision of IEP services. 	<ul style="list-style-type: none"> • Requires a statutory change. • Will change responsibility for child find, consultation with private school representatives and IEP implementation from district of residence to district where the nonpublic school is located.