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The Individuals with Disabilities Education Act (IDEA): Paperwork in Special Education

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Summary

Congress is currently considering reauthorizing the Individuals with Disabilities Education Act (IDEA). H.R. 1350, 108th Congress, was passed by the House on April 30, 2003. S. 1248 was reported out of committee by a unanimous vote on June 25, 2003. On November 21, 2003, a unanimous consent agreement providing for floor consideration of S. 1248 was adopted. Among the issues both bills address is the amount of paperwork special education teachers have to complete. This report will discuss some of the requirements of the law that give rise to paperwork, the available statistics on the time special educators spend on paperwork, and selected issues in the House and Senate bills that are related to paperwork reduction. This report will be updated to reflect major legislative action.

Introduction

The Individuals with Disabilities Education Act (IDEA)¹ both authorizes federal funding for special education and related services (for example, physical therapy) and, for states that accept these funds,² sets out principles under which special education and related services are to be provided. The requirements are detailed, especially when the regulatory interpretations are considered. The major principles include requiring that:

¹ 20 U.S.C. §§1400 *et seq.* For a more detailed discussion of IDEA see CRS Report RL31259, *Individuals with Disabilities Education Act: Statutory Provisions and Selected Issues*, by Nancy Lee Jones and Richard N. Apling.

² Currently all states receive IDEA funding.

- States and school districts make available a **free appropriate public education** (FAPE)³ to all children with disabilities, generally between the ages of 3 and 21; states and school districts **identify, locate, and evaluate** all children with disabilities, regardless of the severity of their disability, to determine which children are eligible for special education and related services;
- Each child receiving services has an **individual education program (IEP)** delineating the specific special education and related services to be provided to meet his or her needs; the parent must be a partner in planning and overseeing the child's special education and related services as a member of the **IEP team**;
- "To the maximum extent appropriate," children with disabilities must be **educated with children who are not disabled**; and states and school districts must provide **procedural safeguards** to children with disabilities and their parents, including a right to a due process hearing, the right to appeal to federal district court and, in some cases, the right to receive attorneys' fees.

Although paperwork⁴ is required to implement many of these statutory provisions, the area that has attracted the most discussion regarding paperwork is that relating to the IEP. The IEP is described by the Department of Education (ED) as the "cornerstone of a quality education of each child with a disability."⁵ It "creates an opportunity for teachers, parents, school administrators, related services personnel, and students (when appropriate) to work together to improve educational results for children with disabilities."⁶ Once a child is identified as a child with a disability, an IEP meeting is scheduled to discuss the child's needs and write an IEP. School staff are required to contact the participants, including the parents, and to provide the parents with certain information including the purpose, time and location of the meeting, and who will be attending. The IEP must contain certain information:

³ It should be emphasized that what is required under IDEA is the provision of a free appropriate public education. The Supreme Court in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 177 (1982), held that this requirement is satisfied when the state provides personalized instruction with sufficient support services to permit a child to benefit educationally from that instruction and that this instruction should be reasonably calculated to enable the child to advance from grade to grade. IDEA does not require that a state maximize the potential of children with disabilities.

⁴ Note that the term "paperwork" encompasses activities and processes that may not involve paper products. In addition to written forms (such as plans and report cards), the term often includes meetings and other personal interactions, administrative duties, as well as computerized record keeping.

⁵ Office of Special Education and Rehabilitative Services, *Guide to the Individualized Education Program*, [<http://www.ed.gov/parents/needs/speced/iepguide/index.html>].

⁶ Ibid.

- how the child is currently performing in school (usually gleaned from evaluation of tests);⁷
- annual goals;⁸
- the special education and related services to be provided to the child, and the extent (if any) to which the child will not participate with children without disabilities in the regular classroom;⁹
- any modifications in state or district wide testing;¹⁰
- when services will begin, how often they will be provided and how long they will last;¹¹
- beginning at age 14 the IEP must address the courses the child needs to take to reach his or her post-school goals;¹²
- what transition services are necessary;¹³
- changes in rights at the age of majority;¹⁴ and
- how the child's progress is to be measured and how the parents are to be informed of the progress.¹⁵

The IEP team may also need to consider certain special facts such as behavior management strategies, needs related to limited English proficiency, communication needs, needs for braille materials, and needs for assistive technology devices or services.¹⁶

Although some teachers have noted that the IEP requirements may necessitate a voluminous IEP,¹⁷ the Department of Education's sample IEP form is five pages.¹⁸ The Department has also responded to an inquiry regarding the paperwork requirements of IDEA noting that it is "constantly reviewing its regulations to ensure that paperwork burdens on States and local school districts are minimized."¹⁹ State educational agencies are also required to review their state requirements to minimize paperwork. ED also noted that the IDEA Amendments of 1997 reduced paperwork in several ways by, for

⁷ 34 C.F.R. §300.347(a)(1); 20 U.S.C. §1414(d)(1)(A)(i).

⁸ 34 C.F.R. §347(a)(3); 20 U.S.C. §1414(d)(1)(A)(ii) and (viii).

⁹ 34 C.F.R. §347(a)(3); 20 U.S.C. §1414(d)(1)(A)(iii).

¹⁰ 34 C.F.R. §347(a)(5); 20 U.S.C. §1414(d)(1)(A)(v).

¹¹ 34 C.F.R. §347(a)(6); 20 U.S.C. §1414(d)(1)(A)(vi).

¹² 34 C.F.R. §300.347(b)(1); 20 U.S.C. §1414(d)(1)(A)(vii).

¹³ 34 C.F.R. §347(b)(2); 20 U.S.C. §1414(d)(1)(A)(vii).

¹⁴ 34 C.F.R. §347(c); 20 U.S.C. §1415(m).

¹⁵ 34 C.F.R. §347(a)(7); 20 U.S.C. §1414(d)(1)(A)(viii).

¹⁶ 34 C.F.R. §346(a)(2); 20 U.S.C. §1414(d)(3).

¹⁷ A Council for Exceptional Children (CEC) survey found that IEPs average between 8 and 16 pages [http://www.cec.sped.org/spotlight/cond/bf_findings.html].

¹⁸ Office of Special Education and Rehabilitative Services, *Guide to the Individualized Education Program*, [<http://www.ed.gov/parents/needs/speced/iepguide/index.html>].

¹⁹ 34 IDELR 236 (Dec. 12, 2000).

example, permitting initial evaluations and revaluations to be based on existing evaluation data and reports.²⁰

Time Spent on Paperwork

The most recent data on paperwork is a study by Westat for the U.S. Department of Education (ED).²¹ This study, which was based on a nationally representative telephone survey of special education teachers, found that “53 percent of elementary and secondary special education teachers reported that routine duties and paperwork interfered with their job of teaching to a *great extent*” and these teachers “typically spend over 10 percent of their time [5 hours per week] completing forms and doing administrative paperwork.”²² Among the most time consuming activities were completing and revising the individualized education program (IEP) (on average, 2 hours are spent on each IEP) and IEP meetings (on average, each meeting takes 1½ hours).²³ Although only 35% of special education teachers conduct evaluations of children with disabilities, those who do spend nearly 12 hours per month conducting assessments and reviewing assessment information.²⁴

Provisions in H.R. 1350 and S. 1248 Related to Paperwork Reduction

Both the House and Senate committee reports²⁵ accompanying their respective bills note that reducing paperwork is an important aim of the legislation. In its concluding remarks on the bill, the House report states that the bill centers on the “Committee’s principles for reform,” which among other things includes reducing paperwork.²⁶ The Senate report notes that one of the ways S. 1248 would improve IDEA is to “reduce bureaucratic paperwork for teachers.”²⁷ More specifically, both reports point to provisions in their respective bills aimed at reducing paperwork and administrative burden. The following are some examples cited in the reports:

- Both bills would require the General Account Office (GAO) to study and report on special education paperwork (H.R. 1350 Section 104 and S. 1248 Section 609).
- Both bills change the general eligibility provision for states (Sec. 612(a)) and local educational agencies (LEAs) (Sec. 613(a)) to require states and

²⁰ *Id.*

²¹ Elaine Carlson, Liwan Chen, Karen Schroll, and Sheri Klein, *SPeNCE: Study of Personnel Needs in Special Education. Final Report of the Paperwork Substudy*, Westat, Mar. 24, 2003. (Hereafter cited as *SPeNCE Paperwork Study*).

²² *Ibid.*, p. 1, emphasis added.

²³ *Ibid.*, p. 5

²⁴ *Ibid.*, p. 6.

²⁵ H.Rept. 108-77 and S.Rept. 108-185.

²⁶ H.Rept. 108-77 , p. 130.

²⁷ S.Rept. 108-185, p. 2.

- LEAs to “reasonably demonstrate” (House bill) or “provide assurances” (Senate bill) that required policies and procedures are in effect.²⁸
- Both bills would permit states to use IDEA Part B grants-to-state funds for paperwork reduction activities, including the use of technology (H.R. 1350 Section 611(e)(4)(F) and S. 1248 Section 611(e)(2)(C)(ii)).
 - Both bills would permit local educational agencies (LEAs) to use Part B funds for technology related to case management activities, such as record keeping and data collection (H.R. 1350 Section 613(a)(4)(D) and S. 1248 Section 613(a)(4)(B)).²⁹
 - Both bills would eliminate school-based improvement plans (Section 613(g) in current law).³⁰
 - Both bills would eliminate the requirement that IEPs contain benchmarks or short-term goals (Sec. 614(d)(1)(A)(ii) of current law).³¹
 - Both bills include language to prevent the addition of requirements for information in the IEP that are not explicitly required in Section 614 (Section 614(d)(1)(A)(ii) in both bills).

²⁸ Current law requires that states “demonstrate to the satisfaction of the Secretary” of Education and that LEAs “demonstrate to the satisfaction of the state” that policies and procedures are in effect. With respect to the proposed change in the state requirement, the House report notes that

[T]he change is intended to ensure that the Secretary is focused on ensuring overall compliance with the Act and not forcing States to change individual words or phrases within their laws, policies, or regulations unless there is a clear contradiction of substantive portions of the Act. For example, this provision would allow States to include in its application [sic] cites to specific policies or procedures; however, it would no longer require State {sic} to send boxes upon boxes of copies of each policy or procedure for the Department to review. (p. 94)

²⁹ The *SPeNCE paperwork study* found that “special education teachers with poor access to computer technology were 5 times as likely as those with excellent access to have insufficient time to complete administrative duties and paperwork.” (p.13) In addition, the study found that case management, on average, took up one-half hour per week of special education teachers’ time who are involved in case management.

³⁰ According to the Senate report:

S. 1248 eliminates the authority in current Section 613(g) for a School-Based Improvement Plan, because this provision has not been effective. Schools can undertake school improvement activities and realize improved educational and transitional results for children with disabilities without incurring the additional administrative and paperwork burdens required under this authority. (p. 23)

³¹ According to the Senate report:

While benchmarks and short-term objectives are thought by some to help track the child’s progress, their inclusion in IEPs contributes greatly to the paperwork burden on educators and parents, and often bears no relationship to the non-linear reality of a child’s development. . . .The committee expects that eliminating the requirements for benchmarks and short-term objectives will reduce unproductive paperwork and allow greater attention to be focused on the child’s annual IEP goals and on the methods of measuring progress and reporting that progress to parents in a meaningful way. (pp. 28-29)

- Both bills would permit multi-year IEPs, although the Senate bill limits these IEPs to children with disabilities who are 18 years of age or older (Section 614(d)(5) in both bills).
- Both bills would limit the time period during which complaints under the procedural safeguards of IDEA can be made (H.R. 1350 Section 615(b)(6)(B) and S. 1248 Section 615(f)(3)(D)).³²
- The House bill authorizes the Secretary of Education to institute a pilot program that would permit up to ten states to submit plans to waive requirements of the Act to reduce paperwork (H.R. 1350 Section 617(e)).³³
- Both bills would require the Secretary to create and disseminate model IEPs and other forms to promote consistency across states (H.R. 1350 Section 617(g) and S. 1248 Section 617(d)).³⁴

³² According to the House report, such limitation “allows local educational agencies to limit unnecessary paperwork designed to protect them from protracted, long-term litigation.” (p. 116)

³³ Several Members of the Education and the Workforce Committee, in the “Minority Views” in the House report, maintain that “some paperwork is crucial to ensure IDEA’s requirements are met” (p. 380) and voice concerns about this provision:

The paperwork reduction pilot program in H.R. 1350 has absolutely no restrictions on what paperwork could be waived. Under this program as it is currently written, a state could propose to waive IEPs or due process notices as a way of reducing paperwork. Such broad discretion will only harm efforts to improve services for children with disabilities. (p. 381)

³⁴ Reports of time spent on paperwork to vary by region of the country: from about 5 hours per week in the south to 3 hours per week in the northeast. *SPeNCE paperwork study*, p. 7.