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INDIVIDUALS WITH DISABILITIES EDUCATION ACT

INTRODUCTION

The purpose of this briefing paper is two-fold: 1) to give an overview of the Individuals with Disabilities Education Act (IDEA); and 2) to describe the four major objectives identified for the IDEA reauthorization.

Background

The IDEA is the primary vehicle by which the Federal government maintains a partnership with states and localities to provide programs and services to disabled children. The IDEA is up for reauthorization in the Congress this year. As you know, reauthorization is a process wherein a law is reviewed, extended and modified, if needed.

The major purposes of the IDEA are to ensure that all children with disabilities have available to them a "free appropriate public education" (FAPE), that includes special education and related services designed to meet their unique needs; to ensure that the rights of children and youth with disabilities and their parents are protected; to assist states and localities in providing for the education of all children and youth with disabilities; and to assess and ensure the effectiveness of efforts to educate children with disabilities.

All programs and services authorized under the IDEA are administered through the Office of Special Education Programs at the Department of Education. This Office is responsible for programs that provide a free, appropriate public education to children and youth with disabilities; programs to expand and improve special education; grants to state education agencies; state program monitoring; programs to train special education personnel; and research into improved methods of special education. OSEP is also responsible for providing technical assistance to states and other grantees to help them implement programs and operate in compliance with IDEA.

In Part B (basic state grants) state education agencies, and through them, local education agencies are authorized to receive funds. A state's allocation is based on a relative count of children with disabilities being served. Over 4.5 million children with disabilities nationwide, ages 3-21, are receiving special education and related services. For purposes of federal funding, children with disabilities include: children with mental retardation; children with speech, language, hearing and visual impairments; children with serious emotional disturbances; children with orthopedic impairments; children with specific learning disabilities; children with autism; children with traumatic brain injury; and other children with multiple disabilities who require special education and related services.

There are 14 discretionary grant programs authorized by Parts C through G of the IDEA. These programs provide a variety of complementary and support functions, including the training of teachers and other special educators.

1. Evaluation and Program Information (Section 618)
2. Regional Resource and Federal Centers (Section 621)
3. Services for Deaf-Blind Children and Youth (Section 622)
4. Early Education for Children with Disabilities (Section 623)
5. Programs for Children with Severe Disabilities (Section 624)
6. Postsecondary Education (Section 625)
7. Secondary Education and Transitional Services (Section 626)
8. Programs for Children and Youth with Serious Emotional Disturbance (Section 627)
9. Grants for Personnel Training (Section 631) and Grants to State Education Agencies and Institutions for Traineeships (Section 632)
10. Parent Training (Section 631)
11. Clearinghouses (Section 633)
12. Research in the Education of Individuals with Disabilities (Sections 641 and 642)
13. Instructional Media for Individuals with Disabilities (Sections 651 and 652)
14. Technology, Educational Media, and Materials for Individuals with Disabilities (Section 661)

The IDEA has an 1994 appropriation of approximately \$3 billion, with a little over \$2 billion of that going to support grants to the states; \$326 million supports preschool state grants and \$213 million supports programs that serve infants and toddlers with disabilities. The discretionary programs cited above total nearly \$250 million.

Legislative history

Originally enacted in 1975, the IDEA has been amended several times. In 1986, the law was amended by P.L. 99-457 to provide special funding incentives for states to provide a free appropriate public education for all eligible preschool children with disabilities ages three through five. These children number around 400,000 nationwide. The Part H early intervention program was authorized in 1986 to help states develop programs for infants and toddlers with disabilities. Increased enrollment in this program reflects the growing number of children affected by factors such as poverty, prenatal drug or alcohol exposure, and HIV infection.

The early intervention program has since been amended to include provisions to: Strengthen the role of the family in service delivery; improve the transition from early intervention to preschool; increase participation of underserved populations; enhance services to the "at-risk" population; and change the delivery of services from segregated to integrated settings.

The Early Education for Children with Disabilities Program, Part C, Section 623 supports demonstration, outreach and research activities to address the special needs of infants, toddlers, preschoolers, and young children with disabilities birth through age eight and their families.

Amendments in 1990 and 1991 included:

Improved outreach to low-income, minority, rural and other underserved populations;

Promoting the use of assistive technology devices and services to enhance the development of infants and toddlers with disabilities;

Addressing the early intervention needs of infants and toddlers prenatally exposed to maternal substance abuse; and

Encouraging the delivery of services in integrated rather than segregated settings.

Reauthorization

The primary goal driving our reauthorization efforts is to improve outcomes for students with disabilities since disabled students have much higher dropout rates, lower employment rates, much lower enrollment in postsecondary education, and earn less income when in the labor market. This can be achieved by creating a framework for improving outcomes that is aligned with overall school reform and by enhancing the capacity of the education system to accommodate diversity. We know that when students with disabilities have access to appropriate curriculum and supports, and when teachers have appropriate training, that these children have a higher probability of improved outcomes. We are focusing our attention on strategies known to be successful in improving teaching and learning, and attempting to reduce the divide between general and special education.

OSEP has undertaken several tasks to prepare for the reauthorization, including a systematic and careful review of issues and options related to the delivery of special education services.

Topical areas have been identified around which work groups have formed to develop issues and options papers on subjects ranging from funding formulas to prevention. We have held seven outreach meetings to hear legislative recommendations from DC-based national organizations and we have requested written suggestions from them. We have convened several topical conference calls with the Assistant Secretary. We held a second round of outreach to garner more information from groups, states, policy experts, and other concerned parties and individuals and have begun to solicit their reactions to our preliminary recommendations. With the assistance of the Secretary's teacher in-residence, a focus group met to provide their perspectives on issues relevant to reauthorization. Next week the Federal Register will publish an official Notice requesting public comment.

The Department plans to transmit a bill to Congress in early 1995.

REAUTHORIZATION OBJECTIVES

We approach this reauthorization with a strong agreement about the major problems it must attempt to address: there is a separate system of special education at the state and local level and separate "programs" and "places" for children with disabilities at the school level. There is an excessive categorization of children and this categorization fails to result in the necessary instructional interventions and services. Children with disabilities suffer from significantly lower expectations and poorer educational outcomes compared to children in regular education. Inadequate attention, resources, and training are devoted to addressing these problems and improving the outcomes of all children with disabilities.

We have formulated four reauthorization objectives to respond directly to these problems. They include:

- Align IDEA with state and local school reform efforts to ensure a unitary system that enables children with disabilities to benefit from those efforts;

- Ensure that IDEA better meets the needs of each child with a disability through earlier intervention, greater inclusion of children with disabilities in regular classrooms and noncategorical approaches to services;

- Reduce unnecessary paperwork and focus resources on teaching and learning; and

- Provide for more meaningful participation of parents.

Taken together, these objectives are designed to lead to higher expectations for all children with disabilities. They are intended to promote both a comprehensive, systemic approach to education at all levels -- state, local and school -- and more effective and individualized approaches at the classroom level. This contrasts with the categorical and often fragmented approach that currently pervades all levels of special education. We recognize that achieving these goals will also require regulatory and administrative changes, some of which are already being undertaken by OSEP.

THE WHITE HOUSE

Carol H. Rasco

Secretary Riley -
Bill Halston has given
me a report on your
August 31 meeting on
IDEA Reauthorization.
Thank you for the
personal time and
commitment you are
giving to this issue!

Sincerely,
Carol

August 31, 1994

orig: CHR
xc: Stan
Jeremy } fyi

TO: CHR
FROM: Bill Galston
SUBJ: Reauthorization of IDEA

This morning I attended a two-hour meeting on IDEA chaired by Secretary Riley at the Department of Education. A number of outside experts were present (a list is attached to this memo).

As you might imagine, many issues were discussed, including:

- o the significance of Goals 2000 as a framework for special education; the distinction between kids who can meet national education goals with special services and those for whom the goals must be realistically adjusted

- o performance-based evaluation rather than the current special education obsession with process

- o ~~perverse program incentives that generate overassignment to special education programs~~

- o ~~the need to avoid programmatic and physical segregation of special ed from "regular ed" whenever possible~~

- o ~~the importance of moving to earlier and more concentrated intervention as an alternative to longterm placement in special ed for many kids~~

- o ~~the central role of programs such as Reading Recovery in effective early intervention~~

No firm conclusions were reached, but it's clear that Secretary Riley is now taking a personal interest in this legislation and intends to conduct a series of meetings--including some with critics and skeptics, none of whom were present in the room today.

List of experts and invited guests for the August 31 IDEA meeting
with Secretary Riley

Brian McNulty, Ph.D. is Assistant to the Commissioner of Education in Colorado and Executive Director of the Office of Special Services. Prior to this, Dr. McNulty was State Director of the Special Education Services unit for seven years.

Diane Lipton is Staff Attorney with Disability Rights Education and Defense Fund (DREDF), a national law and policy center working for the civil rights of people with disabilities. She is the director of DREDF's State Support Center, which provides technical assistance on disability and special education law to legal services offices throughout California. Ms. Lipton is also the Director of DREDF's Children with Disabilities and Family Advocacy Program.

Robert Slavin is Director of the Early and Elementary School Program at the Center for Research on Effective Schooling for Disadvantaged Students at Johns Hopkins University. Dr. Slavin has authored and co-authored more than 140 article and 14 books. He focuses on early reading intervention programs such as Success for All. He has coined the term "neverstreaming" to describe a focus on keeping all children in the mainstream curriculum and class by intervening early to prevent academic difficulties.

Charlene Green is Associate Superintendent in the Chicago Public Schools. She is disabled and comes from a minority background.

Asa Hilliard is a professor of educational psychology in the Department of Educational Psychology and Special Education at Georgia State University. He focuses on the evaluation and assessment used to place students into special education. He recommends changing the assessment tools and to provide "dynamic assessments" with meaningful information and full description of how each student functions.

Edward Lee Vargas is Division Superintendent for Support Services, Santa Ana Unified School District, Santa Ana, California. He has a background as a special education teacher. He is mostly concerned about increasing accountability and about providing schools with the flexibility to improve the academic performance of special education students.

John Pannell is principal at Malcolm X Elementary School. His school is part of the early childhood inclusion programs in the District of Columbia.

Nancy Williams is a third grade teacher at Myersville Elementary School in Myersville, Maryland. She has experience with both regular and special education students.

To: Secretary Riley
From: Mike Smith
Judy Heumann
Date: 12/9/94

Attached is a briefing paper on the status of the IDEA reauthorization. We will be meeting to discuss it with you on Monday, December 12th from 1:30 to 3:00.

As you know, we are planning to submit a reauthorization proposal in February. However, we believe that it is important to begin sharing details of our proposals with Hill staff and constituency groups as soon as possible in order to begin to build support for the new directions we will be proposing.

The paper lays out our "vision" for the reauthorization. It then includes specific recommendations for statutory changes that the two of us both agree on in 8 key areas: assessments, IEPs, initial and triennial evaluation, eligibility, federal and state funding formulas, discretionary programs (professional development, technical assistance, research and parent training), due process requirements and state plans. You have already seen and agreed with our proposals for assessments and the discretionary programs. The other issues in the paper we are presenting to you for the first time.

In order to make our meeting with you as productive as possible, we plan to spend very little time summarizing our proposals. Instead, we hope to answer the questions that you have about the proposals and to describe how we believe they will be received by the Hill and constituency groups.

We have been already have confidential discussions about this document with a small number of key groups and as well as with Senator Harkin's staff. Overall, the response to our proposals has been positive. The most concerns have been raised about our proposals for the federal funding formula, eligibility and discretionary programs. On the formula and eligibility, there is agreement that these are the right policy directions -- but that they will be controversial. On the discretionary programs, there is general concern about the loss of specific programs that serve important special interests.

Once we have your agreement to go forward on the specific proposals, we plan quickly to share a revised version of this paper with Carol Rasco and then with both Democratic and Republican Hill staff and with key constituency groups.

You should note that we have not included several important issues in this paper, particularly discipline, attorneys fees, schoolwide projects, increased fiscal flexibility for states, school districts and schools, and the details of proposals on technical assistance. We plan to come to you over the next month for your decisions on these and other issues.

cc: Terry Peterson, Kay Casstevens, Tom Hehir, Carol Cicowski, Colleen McGinnis, Jessica Levin, Theda Zawaiza, Sue Craig, Patty Guard

DRAFTIDEA Reauthorization

School districts and states around the nation are actively engaged in education reform. The Clinton administration has forged new partnerships with states and communities to support their efforts to develop flexible, coherent and comprehensive strategies for educational improvement based on high standards for all students. The Goals 2000: Educate America Act, the School to Work Opportunities Act and the reauthorization of the Elementary and Secondary Education Act promote these comprehensive strategies based on high academic and occupational standards, improving teaching, and strengthening parental involvement.

The reauthorization of the Individuals with Disabilities Education Act (IDEA) must reflect this momentum both in spirit and letter. The IDEA was enacted in November, 1975, and has undergone numerous reauthorizations. The latest amendments were added in 1991. As we undertake the reauthorization process again we must view this endeavor as an opportunity to review a good law and improve and strengthen it based on 20 years of experience and implementation.

The right of children with disabilities to a free, appropriate public education is grounded in the United States Constitution. Prior to the enactment of the law, almost one million children with disabilities were excluded entirely from public schools. Two landmark court decisions, Pennsylvania Association for Retarded Children v. Commonwealth (1971) and Mills v. Board of Education of the District of Columbia (1972), established the constitutional responsibility of States and local school districts to educate individuals with disabilities. The drafting of the IDEA was guided by the principles of these court decisions and was intended to assist the States in meeting their constitutional obligations.

To quote from Sec. 601(c) of IDEA: "It is the purpose of this Act to assure that all children with disabilities have available to them, within the time periods specified in section 612(2)(B), a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of children and their parents or guardians are protected, to assist States and localities to provide for the education of all children with disabilities, and to assess and assure the effectiveness of efforts to educate children with disabilities."

As we review the purpose and intent of IDEA within the framework of twenty years of implementation, we recognize our vision must reflect the progress that has occurred and the opportunities available to children with disabilities that were unthinkable twenty or even ten years ago. Today, a basic goal of the law -- assuring that children with disabilities have access to education -- has been largely achieved. Today, families can have a vision for their child. They can participate in a planning process for their child which is inclusive, both in school and community, and moves toward a future with employment opportunities, residential community options and varying degrees of independence.

In the past twenty years, results for children with disabilities have improved dramatically.

Children with disabilities are no longer excluded from education. Graduation rates are higher. Rates of competitive employment are higher. Today, 56.8% of youth with disabilities are competitively employed within five years of leaving school. This compares favorably to the situation of Americans with disabilities of working age, only one third of whom are employed. [add data on savings from employment] The number of children served in costly residential facilities declined 24% from 1978 to 1988 -- leading to a cost savings of over \$1 billion. [add data on savings from deinstitutionalization of developmentally delayed]

In addition, the research and understanding of how to improve educational results for children with disabilities has increased significantly. As a result of twenty years of research, demonstration, dissemination and technical assistance, there exists an important knowledge base about effective strategies for teaching and learning for children with disabilities and a significant number of States, school districts and individual schools that are translating that knowledge into improved practice.

IDEA has been a primary factor in this progress and must continue to open doors for persons with disabilities. As the Americans With Disabilities Act recognizes, disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. And, improving educational results for children with disabilities is an essential element of empowering individuals with disabilities to maximize employment, economic self-sufficiency, independence and integration into society.

However, while there has been great progress, there remain tremendous challenges. Over the past two decades, implementation of the law has focused on access to a free and appropriate education and procedural safeguards to ensure that access. While attention to these issues is critical, we know that it is not enough. Now that children with disabilities have been included in the classroom, the critical issue is to improve educational results. Despite progress, educational outcomes for students with disabilities remain less than satisfactory. The students served under IDEA are very diverse and represent a broad range of abilities. Too many students, without appropriate interventions or supports, are failing courses and dropping out of school. Enrollment in post-secondary education is low and there is a correspondingly high rate of unemployment. Often these students get in trouble with the law and spend significant time in jail. Results for students with learning disabilities and emotional disabilities are particularly poor -- and these students are approximately 60% of all students served under IDEA.

We also know after twenty years that there is no "quick" or "easy" fix. Hoping that the right thing will happen is not sufficient, nor can we continue along the current pathway without some improvements in the law. As we construct our vision for the reauthorization of the IDEA we must take an honest look at what we have learned from the past twenty years and make improvements to reflect these findings. In this spirit, we have the opportunity to improve IDEA to ensure both that the fundamental objectives of the law are more likely to be achieved and that the existing rights and protections for children and their families are preserved and maintained.

An original goal of IDEA was to ensure access to educational opportunity. An equally

important goal was to ensure that student's educational services and placement are determined on an individualized basis, based on the unique needs of the child, in the least restrictive environment. To reach these goals we must focus on teaching and learning, educational results, individualized approaches in the least restrictive environment, and ensuring that students with disabilities graduate from high school prepared for independent living and work or continued education. We must build on the experience and research developed in the past twenty years. As we know more about how children learn, we know that all students with disabilities, given the opportunity, can achieve more than we ever believed possible. It is our responsibility, within the framework and the spirit of the law, to provide this opportunity.

Our vision is constructed on a framework of five key principles that clearly define our mission to improve results for students with disabilities.

- (1) Align IDEA with State and local school reform efforts to enable students with disabilities to benefit from those efforts.
- (2) Promote high expectations for students with disabilities and access to the general curriculum in the regular classroom, wherever appropriate.
- (3) More effectively address individual student needs in the least restrictive environment.
- (4) Ensure that those who are closest to students -- families, teachers and principals -- have the knowledge and training they need to work effectively with students and with each other.
- (5) Focus resources on teaching and learning.

The pages that follow suggest some new directions that will be critical to achieving each of these principles. Both the five principles and the new directions are drawn from extended and in-depth consultations with a range of organizations and individuals committed to improving results for students with disabilities. These principles and new directions reflect a serious and comprehensive review of suggestions and recommendations generated by the Federal Register notice requesting comment on the IDEA reauthorization. Some issues, such as discipline and Part H, will be addressed in separate documents.

The new directions are designed to achieve these principles will require carefully selected refinements in Part B of IDEA as well as substantial redesign of Parts C through G. These new directions strengthen the law by making it more meaningful for children with disabilities and their families and in no way diminish the opportunities and safeguards guaranteed in IDEA as it stands today.

Families of children with disabilities stand on the brink of an exciting era -- an opportunity to take giant steps toward a life of independence and fulfillment for their son or daughter. The results of families, schools and advocates working together for the past twenty years are

beginning to come to fruition as students are leaving the school system better equipped to live and work in their communities. However, there is still much work to be done.

I. ALIGN IDEA WITH STATE AND LOCAL SCHOOL REFORM EFFORTS TO ENSURE A SYSTEM THAT ENABLES STUDENTS WITH DISABILITIES TO BENEFIT FROM REFORM

School districts and states around the nation are actively engaged in education reform. Goals 2000, School to Work, and ESEA promote comprehensive strategies for education reform based on high academic and occupational standards, improving teaching, and strengthening family involvement. To ensure that children with disabilities benefit from these reform efforts, we should strive for a system of education that helps all children, including children with disabilities, learn to high standards. This reauthorization can help to foster the development of such a system.

To understand what it really means to align IDEA with federal, state, and local school reform efforts, it helps to look at the major reform components. These include 1) challenging standards and aligned assessments for all children; 2) comprehensive state and local reform plans; 3) high-quality professional development aligned to the standards; 4) comprehensive technical assistance; and 5) whole school, rather than categorical, reform efforts. On a basic level, alignment could mean the linking of special education programs and processes with each of these components. On a more fundamental level, however, this goal strives to promote the transformation of our current programmatically-driven education system into an education system for all children.

We envision an education system that would set higher expectations for all students, give all students the opportunity to learn to challenging standards, and take responsibility and be accountable for the success of all children. To the extent appropriate, students with disabilities would have access to the same curricula aligned with the State's content standards that other students are receiving and be included in State and local assessments. The needs of students with disabilities would be considered as part of State and local planning for regular education and not regarded solely as special education's responsibility. All teachers (both regular and special) would be trained to teach to high standards. And the needs of all children would be considered as States revise licensing and certification standards for teachers, as local educational agencies reform governance and management to focus on improving teaching and learning, and as schools mobilize the involvement of families and the community in reforming schools. In this context, special education would not be regarded as a separate program or place for children with disabilities but a source of supports for children with disabilities who need them for a meaningful and effective education.

The new directions we describe below are critical to the development of a system that meets this vision.

II. PROMOTE HIGH EXPECTATIONS AND ACCESS TO THE GENERAL CURRICULUM IN THE REGULAR CLASSROOM

A critical element of aligning IDEA with state and local education reform efforts is promoting high expectations for children with disabilities commensurate with their unique needs and access to the general curriculum in the regular classroom, when appropriate. We know from experience and from research that when we have high expectations for students with disabilities, ensure their access to the general curriculum whenever appropriate, and provide them the necessary accommodations and supports, many can achieve to high standards -- and all can achieve more than society has historically expected. Despite our knowledge, the education system too often fails to have challenging standards for these students or even to take responsibility for their academic progress. Instead, too often, the system provides a "watered down" curriculum, fails to set meaningful educational goals, and excludes them from state assessments. While the original intent of IDEA was to ensure access to an appropriate education based on individual needs, including access to the general curriculum to the maximum extent possible, special education is now too often seen as a "place" to send students rather than a set of services and supports designed to ensure students have meaningful and effective access to the general curriculum and achieve to high standards.

There are two complementary and inter-related strategies for promoting high expectations: (1) including students with disabilities in state assessments, and (2) strengthening the IEP process to focus on access to the general curriculum and educationally meaningful goals.

Challenging standards and aligned assessments are a central component of state and local school reform efforts. One strategy to help ensure that the education system has high expectations for students with disabilities and includes them in school reform efforts is to require that these students be included in state assessments and the results be publicly reported. When schools are required to assess students with disabilities and report on the results, schools are more likely to focus on improving outcomes for students with disabilities and students are more likely to have access to the general curriculum.

But, including students in assessments is not alone sufficient to meet these goals. The IEP -- which plays a central role in the implementation of IDEA -- must also effectively support them. However, there is much concern in the field that IEPs too often fail to include meaningful educational goals designed to provide students with access to the general curriculum and the special education and supports to enable them to attain high standards. While current law does not prevent teachers from developing such an IEP, current law does not sufficiently promote the development of effective IEPs.

Experience offers insight into why this is the case: IEP meetings are often a discussion of only the few hours each day or each week the child is "in" special education and of short term objectives that bear little relation to how children learn or their parents' aspirations for them. The IEP team is not required explicitly to explain why services are not being provided

in the regular classroom, if that is the case. And, since the law does not require regular education teachers to attend IEP meetings, for those students who spend much of their day in the regular classroom, the discussion of what instructional approaches and services are necessary to enable the student to achieve to high standards often takes place without the teacher with whom the student spends most of her time. As a result, the IEP process too often results in a paper exercise characterized by fragmented goals, lower expectations, and instructional irrelevance.

There is a fair amount of consensus that this is in stark contrast to what IEP meetings should be -- an opportunity for parents and the child's teachers to discuss a student's progress, how he will have access to the general curriculum to the extent appropriate and achieve to high standards, what special education services and accommodations she needs to achieve to high standards, whether he will be included in standard or in alternative assessments, and the extent to which the student can receive these services in the regular classroom. After 20 years of experience, we have learned much about how the effectiveness of IEPs, but the law has not changed to reflect our knowledge. In this reauthorization we should increase the utility of the IEP to preserve the individualized educational planning that is central to effective teaching and learning while reducing paperwork requirements that do not benefit families, students or teachers.

New Directions for Assessments:

- o Amend IDEA to require states to include all students with disabilities in the general assessments aligned with a state's content standards, with few exceptions.
- o Recognizing that a small number of students with significant cognitive disabilities cannot appropriately be included in the state assessments that are aligned with their state's content standards, states-- in their IDEA plans-- would justify the extent to which they propose not to include students with disabilities from the state's assessments, and would phase in alternative assessments for students whose participation in the general state assessment is not appropriate and to report on their performance.
- o States would report on results of assessments for students with disabilities.
- o The IEP would justify when the inclusion of a student in the general state assessment is not appropriate and to document the alternative assessment used.
- o As appropriate, provide guidance that generally an exclusion rate exceeding 1-2% of the general population may be an initial indicator of a potential problem.

New Directions for IEPs:

- o Amend the IEP provisions of IDEA to create a more useful IEP that contains the following elements:
 - (1) a description of the student's present levels of performance, including how the student's disability affects his ability to access the general curriculum and his present level of performance in relationship to that curriculum;
 - (2) description of the supports and accommodations provided to enable participation in the regular curriculum and assessments and enable achievement to high standards, including supports to the student's teacher;
 - (3) statement of where these supports and accommodations (including special education instruction) will be provided and, if they are not provided in the regular classroom, document why they are not;
 - (4) if a student, because of the nature of his disability or the special education services he is receiving, needs different goals than those reflected in the general curriculum, a statement of measurable annual goals, how those goals will be assessed, and a description of the supports and accommodations provided to enable the child to meet those goals, including supports to the student's teacher [no short term objectives would be required];
 - (5) the projected date for initiation and anticipated duration of special education services, supports and accommodations;
 - (6) consideration of the student's progress, based on on-going classroom assessment, and whether the student continues to need special education or related services;
 - (7) if a student has failed to achieve expected progress in the general curriculum or the annual goals of the IEP, a revision of the student's program to address this failure;
 - (8) for students 14 and over, a plan for transition, including attention to the student's course of study (e.g., participation in a school to work or vocational education program) as well as the transition services to be provided consistent with current requirements; and
 - (9) consideration of the parents' aspirations for their child and

statement of how the parents will be kept regularly apprised of their child's progress (by means such as periodic report cards, parent-teacher meetings, etc....).

- o Amend IEP provisions to require that at least one of the student's regular education teacher(s), in addition to the special education teacher, attend the IEP meeting.

III. MORE EFFECTIVELY ADDRESS INDIVIDUAL NEEDS IN THE LEAST RESTRICTIVE ENVIRONMENT

A central purpose of the IDEA is to ensure an effective and individualized education designed to address each child's unique needs in the least restrictive environment. However, for many children, this promise has not been met. In the years since the law was first enacted, we have discovered that certain provisions of the law create disincentives for individualized approaches in the least restrictive environment. Analysis of our experience over the past 20 years shows that the initial and triennial reevaluation requirements, the current categorical eligibility criteria, and the funding formula all create significant barriers to individualized services for students in the least restrictive environment. We discuss each in turn.

Evaluation, Annual Review and Triennial Reevaluations

In order to help students achieve to higher standards, parents and teachers need to have usable information about the student's functional abilities and what supports and services she needs --how does the student learn, what instructional strategies are most effective for this particular student, what progress should be expected, what supports or accommodations are necessary to ensure meaningful access to education. The initial and triennial evaluation and annual review are the tools for obtaining this vital information. In order to be effective, they should be instructionally-relevant, functional analyses that help parents and teachers understand both whether the student requires special education and related services and how best to enable the student to achieve to high standards.

However, far too often, initial and triennial reevaluations consist of a battery of standardized tests that are not or only partially related to the student's instruction or academic progress. They look primarily at which of the thirteen disability categories the student fits within in order to place a label on the child -- rather than focusing attention on how the child functions in the classroom. And, annual reviews often fail to take a hard look at the results of on-going classroom based assessment, what changes in the child's program are necessary to improve results, or whether the child continues to need special education and related services. Most professionals agree that the current statute and regulations result in excessive

attention to identifying and labeling the disability rather than identifying the child's educational needs.

Evaluations and triennial reevaluations as currently implemented also detract resources from the primary goals of teaching and learning. School psychologists spend most of their time administering evaluations and reevaluations with little instructional relevance rather than working directly with students, parents and teachers to improve results for students. In fact, even students with clearly permanent disabilities must be subjected every three years to a battery of tests to determine whether they remain disabled. Streamlining evaluation and reevaluation procedures to focus them on what is necessary will free up the time of school psychologists and other staff to help more students.

New Directions for Evaluation, Annual Review and Triennial Reevaluations:

Initial Evaluation

- o Modify regulations governing initial evaluation to promote more functional, instructionally relevant evaluations.

Annual Review

- o Amend IEP provisions to require that the annual review include consideration of both student progress based on on-going classroom assessment and whether the child continues to need special education or related services.

Triennial Reevaluation

- o Under current law, agencies are required to determine whether the child has a disability at each reevaluation -- even if the parent and school agree that the child continues to have a disability. Moreover, the reevaluation must address all areas of suspected disability, regardless of the utility of the information for the parent or the school or whether they already have that comprehensive information from other sources. In addition, current practice in many districts is to simply re-administer the same procedures that we used in the initial evaluation, regardless of their current appropriateness.

These new directions would make reevaluation provisions more functional by giving the reevaluation team flexibility to determine, based on professional and parental judgment, what procedures are necessary to effectively determine what -- if any -- special education services the student needs to achieve to high standards. In a change from current law, public agencies would not be required as part of each reevaluation to make a new determination as to whether the child has a disability, unless the public agency or the parent believes that such a determination is warranted.

In particular, the reevaluation provisions would be amended as follows:

(1) Define "reevaluation" as procedures conducted by a multidisciplinary team or group of persons to determine the child's current level of performance and educational needs, including whether the student continues to need special education services. The procedures used to conduct a reevaluation must include those tailored to assess specific areas of educational need and not merely those designed to provide single general intelligence quotient.

(2) While continuing the requirement that a reevaluation be conducted for each child with a disability every three years, or more frequently if conditions warrant or if the child's parent or teacher requests a reevaluation, make the reevaluation more functionally useful. To this end, require that, when a reevaluation is to be conducted, the public agency shall, using a multidisciplinary team or group of persons, review existing assessment and evaluation data regarding the child, and determine what additional data are needed to determine the child's current level of performance and educational needs, including whether the student continues to need special education services.

(3) Require that, when a reevaluation is to be conducted, the public agency shall provide prior written notice to the child's parents that:

- (a) Summarizes existing assessment and evaluation data regarding the child;
- (b) Informs the parent as to whether the evaluation will include a determination of whether the child continues to have a disability;
- (c) Describes the evaluation procedures that the public agency proposes to conduct, and the purpose for each such procedure; and
- (d) In cases when the agency is not proposing to include a determination of continued disability, informs the parents that they may request that the reevaluation also include a determination of whether the student continues to have a disability.

Eligibility

Research shows that the instruction and services a student needs depends upon an individualized functional analysis of the child, not the child's particular disability category. Nonetheless, current law fosters a categorical approach to instruction and service delivery that focuses solely on the disability category without recognizing that many students within each

~~category have very different functional abilities and instructional needs.~~

The thirteen disability categories in the law define who is eligible to be served under IDEA. In many cases, once a student is identified as being in a particular disability category, he is assigned to a program for students in that disability category to be taught by a teacher trained in that disability category. However, the thirteen categories in the law are based on medical models and stereotypical patterns of performance for groups of persons and do not convey accurate information about an **individual** student's educational needs or how the disability affects an **individual** student's ability to succeed educationally.

Federal law does not require the labeling of individual students, although it does require reporting on the number of students in each disability category. However, the current statutory requirement that children be found to be in one of thirteen medically determined categories in order to be eligible under IDEA in combination with statutory reporting requirements have fostered a categorical approach to evaluating, labeling, placing and serving children. This categorical approach is inconsistent with the basic principle of IDEA that children should be served based on individual needs rather than stereotypical assumptions.

~~Not only is this categorical approach contrary to our fundamental goals and our research on best instructional practices, but also giving students labels such as "mentally retarded" or "emotionally disturbed" stigmatizes these students and breeds low expectations. And, children understanding from their label that they are not expected to succeed, fulfill our expectations by performing poorly.~~

~~The practice of labeling children in one of 13 categories also detracts from the central goal of schools: teaching and learning. States are spending considerable resources on evaluations to determine the appropriate diagnostic label (such as mentally retarded, learning disabled, autistic) for each child -- with little educational benefit.~~

Some states are already moving to less categorical approaches to eligibility and service delivery -- and are achieving better educational results for students with disabilities. However, they find their progress toward more efficient and effective approaches hampered by the current federal eligibility requirements. A revised eligibility definition could give those states the flexibility to move forward toward less categorical approaches, while permitting other states to retain their current eligibility criteria.

Under a revised eligibility definition, the same children would be identified as disabled and in need of special education services -- but the processes of identification would be instructionally relevant.

New Directions for Eligibility:

- o Amend IDEA to replace the current eligibility definition with a functional

definition based on the first part of Section 504. A child with a disability eligible for services under IDEA would be defined as a child who has a physical, mental, or emotional impairment which substantially limits one or more major life activities, and who by reason thereof requires special education.

This change in eligibility criteria would not affect who is eligible for services under IDEA. All students who are currently eligible would remain eligible under the new definition. And, as under current law, only students who are in need of special education services as a result of their disability, would be eligible. Nor would this change require states to radically change their eligibility criteria-- they could retain what they now use, including a discrepancy definition for learning disability if they so wished. However, states that were ready to move towards less categorical eligibility criteria and assessments, consistent with section 504, would be able to.

Formula

To achieve our goal of ensuring that every child receives an appropriate education in the least restrictive environment and receives services based on individual needs not label, it is critical that federal and state financing systems do not create disincentives for appropriate placements and services. Unfortunately, current law and many state financing systems do just that.

Twenty years ago, when the federal law was first developed, Congress found that one million children with disabilities were excluded entirely from the public school system and many children with disabilities were participating in regular school programs but their disabilities prevented them from having a successful school experience because they were undetected. A critical purpose of the law was to ensure that children with disabilities were identified and served. A funding formula that funded states based on the number of students identified and served created appropriate incentives to identify children and serve them under IDEA. And, those incentives have been successful -- over 5 million students are served under IDEA and the number increases every year.

Today, the major policy concern is not that millions of disabled children are not identified or not enrolled in school. Critical issues instead are that too many children are served in inappropriately restrictive environments, and, in some communities, that children -- particularly minority children -- are often inappropriately identified as disabled in order to generate funding to either remove them from the regular classroom or purchase extra services for them.

The current federal funding formula often creates incentives that add to these problems -- and creates disincentives for those states that seek progressive solutions to them. For example, states such as Vermont and Pennsylvania have embarked on aggressive programs of early

intervention and pre-referral in order to serve students with disabilities in a less restrictive and more appropriate manner. Yet, as they engage in these practices to serve children early and inclusively -- practices that educators and families agree are exemplary -- they find the number of students identified as needing special education services -- and thus their federal funding -- is declining. The federal funding formula thus is a direct disincentive to best practice. Allocating funding to states based on census -- that is, the total number of children in the state -- would create incentives for states to undertake reforms such as pre-referral and early intervention and disincentives for over-representation of minorities. Such a change would not affect procedural safeguards or the requirement to identify and serve all children with disabilities who need special education. Allocating funding to states based on census would also simplify administration of the program -- reducing data collection burdens and avoiding the problems of inaccurate child counts.

State funding formulas frequently also contain disincentives to appropriately serving students in the least restrictive environment. For example, in some states, if a district seeks to keep a child in his neighborhood school because it believes that the student is appropriately served in the regular classroom, the state will not pay for the supports and accommodations that child needs to be able to succeed in that less restrictive environment. The lack of state funding in this instance is due solely to the state's funding formula, not the needs of the student. Indeed, that same state would pay most or all of the cost of an expensive separate placement. Not surprisingly, research shows that states that pay districts more for teaching special education students in restrictive environments have fewer students in the regular classroom.

New Directions for the Formula:

- o Amend IDEA so that allocations to states over and above their FY1995 funding levels would be based on the total number of children in the state, regardless of the number of children identified as disabled.
- o Amend IDEA to require states to demonstrate that their state funding formula does not create incentives for providing education in a more restrictive environment than is permitted by the LRE provisions.

IV. ENSURE THAT FAMILIES, TEACHERS AND PRINCIPALS HAVE THE KNOWLEDGE AND TRAINING THEY NEED TO WORK EFFECTIVELY WITH STUDENTS AND WITH EACH OTHER

Developing an educational system in which each child with disabilities has the benefit of high expectations, access to the general curriculum with the individualized supports and accommodations he needs, in the regular education classroom where appropriate, requires improved practice by teachers and administrators and new relationships between teachers and families. Achieving this goal will not be possible unless families, teachers and principals

have the knowledge and training they need to work effectively with students and with each other.

Developing knowledge, training, and better working relationships will require new approaches that build on our increased knowledge of what works for improving educational results for children with disabilities. First, the discretionary programs authorized under Parts C through G of IDEA should be restructured in ways that support: (1) intensive and powerful professional development that enables general education and special education teachers and principals to help students with disabilities achieve to high standards; (2) research that continually expands our knowledge of how to improve educational results for students with disabilities; (3) technical assistance that assists educators in using the lessons from research in the classroom; and (4) increased attention to assisting families in helping their children achieve to high standards. Second, specific steps should be taken to strengthen working relationships between families and schools in three critical areas -- increasing involvement of families in decision-making, improving information available to families, and reducing adversarial dispute resolution.

A. Restructuring the Discretionary Authorities

For 19 years, the discretionary authorities have played a critical role in supporting the development of knowledge about the needs of children with disabilities. However, few dispute that these 14 programs are not achieving their potential and could do far more in supporting the efforts of families, teachers, schools, administrators, researchers and institutions of higher education to work together to improve educational results for children with disabilities. Under current law, the 14 separate discretionary programs are free-standing and self-contained rather than tools for meeting the broader purposes of IDEA and improving the implementation of Parts B and H. Not only does the multiplicity and narrow focus of the programs impede the development of powerful, coherent approaches to improving results for students with disabilities, but also there are significant gaps in current authorities (e.g., model projects for students with learning disabilities are limited to children under 8 years old; model projects for drop-out prevention are limited to students who are in high school or who are severely emotionally disturbed). In addition, administering the numerous discretionary programs requires significant federal staff. As we work to make government smaller and more efficient, there will be fewer OSEP staff to administer these programs -- making effective administration problematic.

What is needed is a comprehensive and coordinated approach for using discretionary funds to improve results for students with disabilities by ensuring that families and teachers have the knowledge and training they need to be effective. This will require a new emphasis on systemic approaches to improving implementation of Parts B and H; a powerful research strategy; a well-coordinated system of technical assistance that addresses the most pressing needs of States efficiently and effectively; enhanced ability for State agencies to carry out their own plans for program improvement through professional development, technical assistance and systems change activities; and better coordination with other program

improvement activities funded other such authorities as Goals 2000 and ESEA.

Perhaps no other activity will be more critical in our effort to improve results for students with disabilities than ensuring that teachers and other staff serving students with disabilities have the necessary skills and knowledge to address their special needs. The need for professional development is particularly acute as States provide for participation of students with disabilities in curriculum aligned with State standards and the placement of more students in regular classrooms.

Historically, special education and regular education have operated as separate systems, with separate bureaucracies and separate training programs, even though today the majority of students with disabilities spend all or part of their time in regular education classes. Most "regular" education teachers have never received training on working with students with disabilities. Most special education personnel are ill-equipped to work in regular classrooms because their training focuses on serving students with disabilities primarily in segregated environments. This situation is slowly changing as more States are requiring special education training for new regular education teachers, and as more institutions of higher education are combining their schools of special and regular education. However, these reforms only affect new teachers. The bulk of the educational work force remains without education or training to serve students with disabilities.

Current professional development activities too often perpetuate this status quo. States are required to plan for comprehensive systems of personnel development (CSPDs) but are given few resources to implement them. Because training of regular and special education teachers proceeds on different tracks, little training is given regular education personnel to provide special education services even though most students with disabilities are educated in regular education classrooms for all or part of the day. And, insufficient training is given special education teachers in the content knowledge necessary to help students with disabilities learn to high standards or the skills necessary to work in integrated classrooms.

Moreover, institutions of higher education are the primary recipients of Part D funding but too often function independently of the needs of States for personnel. And, programs to develop new pre-service and in-service training programs are not linked with ongoing State personnel development activities or to broader State and national goals such as the development of model national standards or cross-categorical certification. Finally, the many separate independent awards made under Part D hinder overall reform of teacher training and systemic changes (e.g., portable certification requirements and reducing overspecialization) that would help address the need for qualified personnel.

What is needed is high quality professional development for all teachers and school administrators who work with students with disabilities designed to ensure high expectations, access to the general curriculum and appropriate services and supports provided, whenever possible, in the regular classroom.

New Directions for Discretionary Authorities:

- o Amend IDEA to create four powerful new discretionary authorities that would replace the current Parts C through G. The four new authorities would be: (1) Professional Development; (2) Research and Knowledge Development; (3) Technical Assistance and Systems Change; and (4) Family Training. Each is described below. In order to ensure that issues concerning the special needs of children with low-incidence disabilities are adequately addressed in the four discretionary authorities, there would be a floor for discretionary spending on low-incidence disability.

o Professional Development

A restructured IDEA professional development authority would contain the following four elements: (i) National activities to support state of the art practices and promote portability and cross-categorical approaches; (ii) Activities to build capacity of colleges and universities to ensure strong leadership in regular and special education administration and teacher training; (iii) Regional grants to colleges and universities for increasing supply and quality of personnel to work with students with low-incidence disabilities; and (iv) Grants to SEAs for training of all teachers and principals working with students with disabilities tied to ESEA, Goals 2000 and an IDEA professional development plan. Each is described in detail below.

(i) **National activities to leverage the professional development system and build capacity of institutions of higher education and state professional development programs and promote state of the art practices.** This would be a general authority for national activities such as development of exemplary measures of assessing teachers and staff for licensure and certification; activities to promote cross-categorical approaches to training, certification, and licensure; and, activities that promote portability of certification.

(ii) **Activities to develop capacity of institutions of higher education to ensure strong leadership in regular and special education administration and teacher training.** Currently, approximately \$10.7 of Part D funds are used to support the development of special education leadership personnel, including teacher trainers, administrators, and researchers. In order to improve results for students with disabilities, this program should focus on ensuring that Ph.D level leadership personnel in both regular and special education have the skills and training necessary to help students with disabilities achieve to high standards.

The new authority would continue to provide scholarships and stipends, but

would maximize their effectiveness in improving pre-service training by: (1) giving preferences to institutions that connect their special education and general education programs; (2) supporting attention to special education issues in regular education programs for principals and other administrators; and (3) targeting awards to programs that are research-based and support best practices.

(iii) Grants to institutions of higher education for increasing supply and quality of low-incidence personnel. In many areas of the country there are significant shortages of personnel qualified to work with students with low-incidence disabilities -- autism, traumatic brain injury, deaf, blind, deaf-blind, significant and multiple disabilities. However, the current program is not effectively meeting the need. There are now several hundred separate grants supporting pre-service for low-incidence personnel. Not only does the geographical distribution of grants bear no relationship to the distribution of teacher shortages, but also most programs are extremely small -- many with only one professor.

A restructured low-incidence pre-service program would phase in a regional approach to support the development and long-term support of high-quality programs. Elements of the program would include: (1) grants would be made for pre-service programs by region for each low-incidence disability category; (2) grants would be fewer and larger to promote high quality programs and to promote cross-categorical approaches; (3) grants would be made to institutions of higher education or to regional consortia of such institutions and SEAs; (4) grantees would have to show how their program would meet the needs of the States in the region; and (5) grants would support portability of credentials by requiring States to indicate how they are working with other States in the region and with the grantee to ensure portability of certification for students trained in the program.

(iv) Grants to SEAs for IDEA professional development plan to support training of all teachers working with students with disabilities. The new authority would build on the newly enacted professional development authorities of Goals 2000 and ESEA to create a cohesive approach to the training of all teachers. It would also make IDEA professional development a driving force for improving the entire IDEA program by giving States the tools to address professional development under IDEA in return for increased accountability for attaining positive outcomes for students with disabilities.

In order to give States the ability to develop viable training systems, funds would be distributed to the States on a formula basis to meet their professional development needs for teachers of students with disabilities. At the heart of

this new authority would be a state plan for IDEA professional development linked to both the overall state IDEA plan and to the State's Goals 2000 and ESEA plans for professional development.

The State IDEA professional development plan would provide the framework for professional development for all teachers and administrators working with students with disabilities and the framework for expenditure of all IDEA funds used by the State for professional development (both grants under Part D and any of the Part B 20% State set-aside used for professional development).

The new authority would encourage deep attention to in-service training and increasing the quality of the current work force, while also recognizing the State's obligation to take responsibility for teacher shortages in high incidence areas. We believe that, except in exceptional circumstances, market forces should ensure an adequate supply of high incidence personnel.

In addition, the state plan would be tied to OSEP monitoring by requiring States to show how their professional development strategy addresses deficiencies identified in monitoring (including insufficient numbers of personnel). Currently, there is no link between state CSPD efforts and monitoring findings. Requiring state plans to address monitoring findings -- and giving states resources to address problems -- would create a "continuous improvement feedback loop" that could be a significant step in our efforts to improve implementation of IDEA.

Research and Knowledge Development

This authority would support research, development, model demonstrations, outreach, and synthesis studies for all disability categories and all age ranges. It would invite broad-based planning from various constituencies in developing a comprehensive, long-range research and development agenda and would support large scale evaluations and assessments that have the potential to significantly increase our knowledge and improve the implementation of IDEA. Research would be systematically developed through demonstrations, disseminated through outreach systematically, and linked to technical assistance.

Technical Assistance and Systems Change

This authority would support a range of coordinated technical assistance activities, such as statewide systems change grants, resource centers, and linkages to the comprehensive technical assistance centers to be funded under ESEA. Activities would be designed to ensure that the most current knowledge is rapidly communicated to educators; to enhance the ability of

State education agencies to carry out their own plans for program improvement; and to promote better coordination with other program improvement activities funded under such authorities as Goals 2000 and ESEA in order to leverage those resources and provide for the inclusion of students with disabilities in school reform activities.

o Family Training

This authority would build upon and strengthen current family training projects.

B. Strengthening Working Relations between Families and Schools

Families are a child's first and best teacher and their most important advocates. While the IDEA creates a strong framework for family-school collaboration, more could be done to strengthen working relationships between families and schools. Building upon current family training centers and heightening their focus on improving educational results for children is an essential element of an overall strategy. We believe that other key elements of an overall strategy include increasing involvement of families in decision making, improving notice requirements, and reducing the adversarial nature of the complaint and hearing process.

Involvement of families in decisions about their child's education are at the heart of the IDEA framework for family-school collaboration. Yet, families are often excluded from fundamental decisions regarding the placement of their child. While families are required by law to be included in IEP meetings, there is no requirement that placement decisions be made by the IEP team or that families be included in making placement decisions.

Detailed notice to families of their rights is a critical safeguard, yet families often receive notice of their rights in a blizzard of overwhelming and duplicative notices written in confusing "legalese." Current law requires full explanation of all rights whenever the school notifies the family of a proposal or refusal to initiate or change the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education to the child -- which can happen several times a year. IDEA reauthorization should ensure that families receive -- in understandable language and format, and with appropriate frequency -- the information they need to make informed decisions; and should also reduce the amount of redundant information that public agencies are currently required to provide to families.

The complaint and hearing process are central to implementation of the law. However, due process should be a last resort when less adversarial methods of resolving differences have failed. Due process hearings generally are very costly in terms of time and financial resources, and severely strain families' and school personnel's emotional resources and good will. Moreover, our experience under the Act indicates that due process is most commonly a very lengthy process and student needs may go months or years without being addressed while lawyers continue to battle. Many states have created mediation systems which have

been extremely successful in resolving family-school disputes quickly and effectively. However, states are not required to offer mediation to families, and in a number of states, families often have no opportunity to resolve disputes by mediation.

New Directions:

- o Modify regulations to require states to include families in placement decisions.
- o Amend IDEA notice provision to require that families receive notice of all essential safeguards once a year and that they receive notice of specialized information whenever that information is relevant. (For example, notice of specific due process hearing requirements would be provided when the school proposes an initial evaluation, when the family or agency initiates a hearing, or when the family requests information.)
- o Require state agencies to offer mediation as an option for dispute resolution and require the school district to engage in mediation if the family wishes to mediate. Ensure that mediation cannot be used to delay or deny access to due process.

V. FOCUS RESOURCES ON TEACHING AND LEARNING

Over the past twenty years, the IDEA and the implementation of the law have focused on process without sufficient attention to educational results for children with disabilities. The focus on process without an equally strong focus on educational results for children with disabilities, in turn, burdens schools, teachers and families with instructionally irrelevant activities and unnecessary paperwork. It will be far more difficult to achieve the significant improvements embodied in the other four principles without concomitant changes in how states and locals focus their attention and use their resources. The IDEA reauthorization must maximize the extent to which special education resources are devoted to teaching and learning of children with disabilities and must promote a greater focus on quality and results, not solely on process and compliance.

Many of the new directions discussed above will help to focus resources on teaching and learning. In particular, our proposed new directions for IEPs, eligibility, initial and triennial evaluations, and mediation will help to focus energy and resources on activities with clear educational benefits.

In the case of IEPs, new attention to access to the general curriculum and state assessments will help ensure a focus on educational results. And, the replacement of short-term objectives with meaningful annual goals and regular reporting to the family of the child's progress, will eliminate a paperwork requirement that most agree has little educational value.



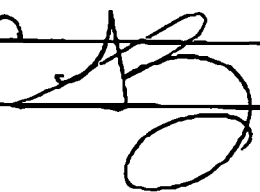
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DRAFT**IMPROVING THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT:
IDEA Reauthorization**

School districts and states around the nation are actively engaged in education reform. The Clinton administration has forged new partnerships with states and communities to support their efforts to develop flexible, coherent, and comprehensive strategies for educational improvement based on high standards for all students. The Goals 2000: Educate America Act, the School-to-Work Opportunities Act, and the Improving America's Schools Act (IASA, the reauthorization of the Elementary and Secondary Education Act), promote these comprehensive strategies based on high academic and occupational standards, improving teaching, and strengthening parental involvement.

The reauthorization of the Individuals with Disabilities Education Act (IDEA) must reflect this momentum both in spirit and letter. The IDEA was enacted in November, 1975, and has undergone numerous amendments, most recently in 1991. As we undertake the reauthorization process again we must view this endeavor as an opportunity to review a good law and improve and strengthen it based on 20 years of experience and implementation.

The right of children with disabilities to a free appropriate public education is grounded in the United States Constitution. Prior to the enactment of the law, one million children with disabilities were excluded entirely from public schools. Two landmark court decisions, Pennsylvania Association for Retarded Children v. Commonwealth (1971) and Mills v. Board of Education of the District of Columbia (1972), established that the responsibility of states and local school districts to educate individuals with disabilities is derived from the Fourteenth Amendment of the United States Constitution. The drafting of the IDEA was guided by the principles of these court decisions and a recognition of the federal role in ensuring that all children with disabilities in the nation were provided the equal opportunity that the Constitution guaranteed. The federal government plays a particularly important role in assisting the states in meeting their constitutional obligation to ensure the education of children with disabilities. In addition to safeguarding the rights of children with disabilities and their parents, the federal government supports state efforts through fiscal aid to states and through development of the knowledge and practices necessary to ensure a free appropriate education under the IDEA.

We reaffirm our commitment to the basic purposes of the IDEA as articulated in the statute. Each student must be ensured a free appropriate public education. Each child's education must be determined on an individualized basis and designed to meet his or

her unique needs, in the least restrictive environment. And, the rights of children and their families must be ensured and protected through procedural safeguards. (See 20 U.S.C. secs. 1400 and 1412.) This reauthorization is intended to build on -- and in no way undermine -- these basic purposes.

As we review the purpose of the IDEA within the framework of twenty years of implementation, we recognize our vision must reflect the progress that has occurred and the opportunities now available to children with disabilities that were unavailable twenty or even ten years ago. Before the enactment of the IDEA, one million children with disabilities were excluded from school altogether, and many others were housed in institutions such as the Willowbrook State School for the Mentally Retarded in New York and the Pennhurst State School and Hospital in Pennsylvania, which failed to address their educational needs. Today, one of the basic goals of the law -- ensuring that children with disabilities are not excluded from school -- has been largely achieved. Today, families can have a positive vision for their child's future. They can participate in a planning process for their child, both in school and community, that leads toward a future with higher education, employment opportunities, community living options, and increased degrees of independence.

In the past twenty years, results for children with disabilities have improved dramatically. Graduation rates are higher. More students are going on to college. Today, half of all adults with a disability have completed some college or received a degree -- compared to only 30% in 1986. Students enrolled in occupationally-oriented vocational education programs are particularly likely to pursue post-secondary education. Rates of employment are higher. Today, 56.8% of youth with disabilities are competitively employed within five years of leaving school.

Moreover, the number of children served in costly state institutions has declined significantly. For example, there has been a 62% reduction in the number of children with mental retardation placed in residential facilities between 1978 and 1987. Today, just over one percent of all children with disabilities live in institutions. This has led to a lifetime benefit to those individuals and society.

Our research and understanding of how to improve educational results for children with disabilities have also improved significantly. As a result of more than twenty years of research, demonstrations, dissemination, and technical assistance, there exists an important knowledge base about effective strategies for teaching and learning for children with disabilities. A number of states, school districts, and individual schools are translating that knowledge into improved practice.

IDEA has been a primary catalyst for this progress and must continue to open doors for persons with disabilities. Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. As the Americans with Disabilities Act recognizes, improving educational results for children with disabilities is an essential element of empowering individuals with disabilities to maximize employment, economic self-sufficiency, independence, and integration into society.

However, while there has been great progress, there remain tremendous challenges. Over the past two decades, implementation of the IDEA has focused on access to a free and appropriate education and procedural safeguards to ensure that access. While attention to these issues is critical, we know that it is not enough. Now that children with disabilities are in school, the critical issue is to improve educational results. Despite progress, educational outcomes for students with disabilities remain less than satisfactory. The students served under the IDEA are very diverse and represent a broad range of abilities. Too many students, without appropriate interventions or supplementary aids and services, are failing courses and dropping out of school. When appropriate interventions are not provided, these students too often get in trouble with the law and spend significant time in jail. Enrollment in post-secondary education is low. And, while employment rates are improving, they are still unsatisfactory. Results for students with learning disabilities and emotional disabilities are particularly poor -- and these students are approximately 60% of all students served under the IDEA. Moreover, children from culturally and linguistically diverse backgrounds are often inappropriately identified and served. In some cases, children with disabilities are not identified and served. In other cases, particularly with African-American children, students are over-identified and placed in overly restrictive settings.

Improving educational results for children with disabilities requires a focus on ensuring that student's educational services and placement are determined on an individual basis, according to the unique needs of the child, in the least restrictive environment. This means that we must focus on teaching and learning, individualized approaches, educational results and ensuring that students with disabilities graduate from high school prepared for independent living and work or continued education. We must build on the experience and research developed in the past twenty years. As we know more about how children learn, we know that all students with disabilities, given the opportunity, can achieve more than we ever believed possible. It is our responsibility, within the framework and the spirit of the law, to provide this opportunity.

We also know after twenty years that there is no "quick" or

"easy" fix. Hoping that the right thing will happen is not sufficient, nor can we continue along the current path without some improvements in the law. In this reauthorization, we have the opportunity to improve the IDEA to ensure both that the fundamental objectives of the law are more likely to be achieved and that the existing rights and protections for children and their families are preserved and maintained.

Our vision is constructed on a framework of five key principles that clearly define our mission to improve results for students with disabilities.

- (1) Enable students with disabilities to benefit from state and local reform efforts by aligning IDEA with those efforts.
- (2) Promote high expectations for students with disabilities and access to the general curriculum in the regular classroom, wherever appropriate.
- (3) Address individual student needs in the least restrictive environment.
- (4) Ensure that those who are closest to students -- families, teachers and principals -- have the knowledge and training they need to work effectively with students and with each other.
- (5) Focus on teaching and learning to enable states, districts and schools to use resources more effectively.

The pages that follow suggest some new directions that will be critical to achieving each of these principles. Both the five principles and the new directions are drawn from extended and in-depth consultations with a range of organizations and individuals committed to improving results for students with disabilities. These principles and new directions reflect a serious and comprehensive review of suggestions and recommendations generated by the Federal Register notice requesting comment on the IDEA reauthorization. Some issues, including discipline and Part H, will be addressed in separate documents.

The new directions designed to achieve these principles will require carefully selected refinements in Part B of the IDEA as well as substantial redesign of Parts C through G. These new directions will strengthen the law by making it more effective for children with disabilities and their families and in no way diminish the opportunities and safeguards guaranteed in the IDEA as it stands today.

Families of children with disabilities stand on the brink of an

exciting era -- an opportunity to take giant steps to help their children have a life of independence and fulfillment. The combined efforts of families, educators, and advocates working together for the past twenty years are beginning to result in students leaving the school system better equipped to live and work in their communities. However, there is still much work to be done.

I. ENABLE STUDENTS WITH DISABILITIES TO BENEFIT FROM STATE AND LOCAL SCHOOL REFORM EFFORTS BY ALIGNING THE IDEA WITH THOSE EFFORTS

School districts and states around the nation are actively engaged in education reform. Goals 2000, School-to-Work, and the IASA promote comprehensive strategies for education reform based on high academic and occupational standards, improving teaching, and strengthening family involvement. To ensure that children with disabilities benefit from these reform efforts, we should strive for a system of education that helps all children, including children with disabilities, learn to high standards. This reauthorization can help to foster the development of such a system.

To understand what it really means to align the IDEA with federal, state and local school reform efforts, it helps to look at the major reform components. These include: 1) challenging standards and aligned assessments for all children; 2) comprehensive state and local reform plans; 3) high-quality professional development aligned to the standards; 4) comprehensive technical assistance; 5) whole school, rather than categorical, reform efforts; and, 6) links among schools, parents and communities. On a basic level, alignment could mean the linking of special education programs and processes with each of these components. On a more fundamental level, however, this goal strives to promote the transformation of our current programmatically-driven education system into an education system for all children that meets the individual needs of each child.

We envision an education system that would set higher expectations for all students, give all students the opportunity to learn to challenging standards, and take responsibility and be accountable for the success of all children. To the extent appropriate, students with disabilities would have access to the same curricula aligned with the state's content standards that other students are receiving and, with reasonable accommodations, be included in state and local assessments. The needs of students with disabilities would be considered as part of state and local planning for regular education and not regarded solely as special education's responsibility. All teachers (both regular and special) would be trained to teach to high standards. Schools would ensure communication between parents and teachers.

Students would receive needed health and social services through collaboration between families, schools, other public agencies and other providers. And the needs of all children would be considered as states revise licensing and certification standards for teachers, as local educational agencies reform governance and management to focus on improving teaching and learning, and as schools mobilize the involvement of families and the community in reforming schools. In this context, special education would not be regarded as a separate program or place for children with disabilities but a source of special education and related services for children with disabilities who need them for a meaningful and effective education.

The new directions we describe below are critical to the development of a system that meets this vision.

II. PROMOTE HIGH EXPECTATIONS AND ACCESS TO THE GENERAL CURRICULUM IN THE REGULAR CLASSROOM

A critical element of aligning the IDEA with state and local education reform efforts is promoting high expectations for children with disabilities commensurate with their unique needs and access to the general curriculum in the regular classroom, when appropriate. We know from experience and from research that when we have high expectations for students with disabilities, ensure their access to the general curriculum whenever appropriate, and provide them the necessary accommodations and supplementary aids and services, many can achieve to high standards -- and all can achieve more than society has historically expected. Despite our knowledge, the education system too often fails to have challenging standards for these students or even to take responsibility for their academic progress. Instead, too often, the system provides a "watered down" curriculum, fails to set meaningful educational goals, and excludes them from state assessments. While the original intent of the IDEA was to ensure access to an appropriate education based on individual needs, including access to the general curriculum to the maximum extent possible, special education is now too often seen as a "place" to send students rather than a set of special education services designed to ensure students have meaningful and effective access to the general curriculum and achieve to high standards.

There are two complementary and inter-related strategies for promoting high expectations: (1) including students with disabilities in state assessments; and (2) improving the IEP process to focus on access to the general curriculum, where appropriate, and educationally meaningful goals.

Challenging standards and aligned assessments are a central component of state and local school reform efforts. One strategy

to help ensure that the education system has high expectations for students with disabilities and includes them in school reform efforts is to require that these students be included in state assessments and the results be publicly reported. When schools are required to assess students with disabilities and report on the results, schools are more likely to focus on improving results for students with disabilities and students are more likely to have access to the general curriculum.

But including students in assessments is not alone sufficient to meet these goals. The IEP -- which plays a central role in the implementation of the IDEA -- must also effectively support them. However, there is much concern in the field that IEPs too often fail to include meaningful educational goals designed to provide students with access to the general curriculum and the special education and related services to enable them to achieve to high standards. And, the annual review of the student's progress at the IEP meeting often fails to take a hard look at the results of on-going classroom assessment to determine whether a revision of the child's program is necessary or the student continues to need special education or related services. While the current law does not prevent teachers from developing effective IEPs and conducting effective IEP meetings, current law does not sufficiently promote best practices.

Experience offers insight into why this is the case: IEP meetings are often a discussion of only the few hours each day or each week the child is "in" special education and of short-term objectives that bear little relation to how children learn or their parents' aspirations for them. The IEP team is not required explicitly to explain why services are not being provided in the regular classroom, if that is the case. And, since the law does not require regular education teachers to attend IEP meetings, for those students who spend much of their day in the regular classroom, the discussion of what instructional approaches and services are necessary to enable the student to achieve to high standards often takes place without the teacher with whom the student spends most of her time. In effect, IEP meetings focus on "access to special education" rather than access to education. Moreover, because of the requirement that the IEP contain short-term objectives for every goal, teachers spend significant energy developing a multitude of detailed and lengthy objectives that have little instructional utility. As a result, the IEP process too often results in a paper exercise characterized by fragmented goals, lower expectations, and instructional irrelevance.

There is a fair amount of consensus that this is in stark contrast to what IEP meetings should be -- an opportunity for parents and the child's teachers to discuss a student's progress based on on-going classroom assessment and other appropriate information, how he or she will have access to the general

curriculum to the extent appropriate and achieve to high standards, what changes in the child's program are necessary to improve achievement, whether the child continues to need special education and related services, and, if so, what special education services and accommodations the student needs to achieve to high standards, whether he or she will be included in standard or in alternative assessments, and the extent to which the student can receive these services in the regular classroom.

After 20 years of experience, we have learned much about the effectiveness of IEPs, but the law has not changed to reflect our knowledge. In this reauthorization we should increase the utility of the IEP to preserve the individualized educational planning that is central to effective teaching and learning while reducing paperwork requirements that do not benefit families, students, or teachers.

New Directions for Assessments:

- o Amend the IDEA to require states to include students with disabilities in the general assessments aligned with a state's content standards, with few exceptions.
- o Recognizing that a small number of students with significant cognitive disabilities cannot appropriately be included in the state assessments that are aligned with their state's content standards, states -- in their IDEA plans-- would justify the extent to which they propose not to include students with disabilities in the state's assessments, and would phase in alternative assessments for students whose participation in the general state assessment is not appropriate and would report on their performance.
- o As appropriate, provide non-statutory guidance that excluding more than 1-2% of all students from the general state assessment may be an initial indicator of a potential problem.
- o States would report on results of assessments for all students with disabilities.
- o When the student is included in the general state assessment, the IEP would explain what reasonable accommodations, if any, are needed. If the child is given an alternative assessment, the IEP would justify why inclusion in the general state assessment is not appropriate and document the alternative assessment to be used.

New Directions for IEPs:

- o Amend the IEP provisions of the IDEA to create a more useful IEP process that contains the following elements:
 - (1) a description of the student's present levels of performance, including how the student's disability affects his or her ability to access the general curriculum;
 - (2) a description of the special education and related services and accommodations necessary to enable participation in the general curriculum and assessments and enable achievement to high standards, including supports to the student's teacher;
 - (3) if a student needs different goals than those of the general curriculum, a statement of measurable annual goals, how those goals will be assessed, and a description of the special education and related services and accommodations necessary to enable the child to meet those goals, including supports to the student's teacher;
 - (4) for all students, a statement of where special education and related services and accommodations will be provided, the projected initiation and duration of services and accommodations, and, if they are not provided in the regular classroom, document why they are not;
 - (5) review of the student's progress, based on on-going classroom assessment, in relation to the general curriculum or the annual goals of the IEP, and a revision of the student's program to address lack of expected progress;
 - (6) for students 14 and over, a plan for transition, including attention to the student's course of study (e.g., participation in a school to work or vocational education program) as well as the transition services to be provided consistent with current requirements; and
 - (7) consideration of the parents' aspirations for their child and a statement of how the parents will be kept regularly apprised of their child's progress (by means such as periodic report cards, parent-teacher meetings, etc....).

- o As part of developing a more instructionally relevant IEP that includes measurable annual goals and regular reporting to parents on their child's progress, short-term objectives would no longer be required. However, educators could include them whenever they believed them to be useful.
- o Amend IEP provisions to require that at least one of the student's regular education teachers, in addition to the special education teacher, participate in the IEP meeting.

III. ADDRESS INDIVIDUAL NEEDS IN THE LEAST RESTRICTIVE ENVIRONMENT

A central purpose of the IDEA is to ensure an effective and individualized education designed to address each child's unique needs in the least restrictive environment. However, for many children, this promise has not been met. In the years since the law was first enacted, we have discovered that certain provisions of the law create disincentives for individualized approaches in the least restrictive environment. Analysis of our experience over the past 20 years shows that too many children are still not receiving an individualized education in the least restrictive environment, as the law contemplates. Below we discuss strategies for achieving this central purpose of the law through attention to the following areas: (1) initial evaluation and triennial reevaluation; (2) the current categorical eligibility criteria; (3) the funding formula; (4) the incidental benefit rule; and (5) the problem of disproportionate representation of linguistically and culturally diverse students. We discuss each in turn.

Initial Evaluation and Triennial Reevaluation

In order to help students achieve to higher standards, parents and teachers need to have usable information about the student's abilities and what special education and related services he or she needs -- how does the student learn, where should instruction begin, what instructional strategies are most effective for this particular student, what progress should be expected, what supports or accommodations are necessary to ensure meaningful access to education. The initial evaluation and triennial reevaluation, as well as the annual review of the IEP, are the tools for obtaining this vital information. In order to be effective, they should assess how the child is progressing in the general curriculum and responds to various instructional approaches within the curriculum.

However, far too often, initial evaluations and triennial

reevaluations consist of a battery of standardized tests that are not or are only partially related to the student's instruction or academic progress. Too often, they look only at which of the thirteen disability categories the student fits within in order to place a label on the child, without looking at how the disability affects the individual student's ability to succeed educationally. While determining what category a child is in can often provide helpful information, it may do little to assist educators and parents in making individualized decisions based on the student's unique needs. Most professionals agree that the current statute and regulations result in excessive attention to simply identifying the disability rather than gathering valuable information about what the individual student knows and needs to be able to learn to his or her full potential.

Initial evaluations and triennial reevaluations as currently implemented also detract resources from the primary goals of teaching and learning. School psychologists spend most of their time administering evaluations and reevaluations with little instructional relevance rather than working directly with students, parents, and teachers to improve results for students. Even students with clearly permanent disabilities must be subjected every three years to a battery of tests to determine whether they remain disabled. Moreover, each initial evaluation and triennial reevaluation is estimated to cost an average of \$2,000. Streamlining evaluation and reevaluation procedures to focus them on what is necessary will free up resources and the time of school psychologists and other staff to help more students.

New Directions for Initial Evaluations and Triennial Reevaluations:

Initial Evaluation

- o Modify regulations governing initial evaluation to focus on instructionally relevant information, in addition to determining the existence of the child's disability. For example, while the evaluation would determine that a child has a disability that affects his or her ability to read, it would focus on which instructional techniques would help this particular child learn.

Triennial Reevaluation

- o Make reevaluation provisions more functional through the following changes:

(1) While continuing the requirement that a reevaluation be conducted at least every three

years by a multi-disciplinary team, require the team, based on professional and parental judgment, to review existing assessment and evaluation data regarding the child, and give it discretion to determine what additional data are needed to determine the child's present level of performance and educational needs, including whether the student continues to need special education and related services.

(2) In order to ensure that parents have input into the reevaluation process, require that the public agency provide notice to the child's parents that:

- (a) Summarizes existing assessment and evaluation data regarding the child and describes the evaluation procedures that the public agency proposes to conduct, and the purpose for each such procedure; and
- (b) When the agency is not proposing to determine continued disability because it believes that the child's disability is permanent, informs the parents that they may request that the reevaluation also include a determination of whether the student continues to have a disability.

- o These provisions for triennial reevaluations would differ from current law in the following ways. First, public agencies would not be required as part of each reevaluation to make a new determination as to whether the child has a disability, unless the public agency or the parent believes that such a determination is warranted. Second, the reevaluation would not be required to address every area of suspected disability, if the parent and multi-disciplinary team agree that the information was not useful or that comprehensive information from other sources was already available. Third, the provisions would clarify that the current practice in many districts of simply re-administering the same procedures that were used in the initial evaluation is neither necessary nor appropriate in all cases.

Eligibility

Identifying that a student has a disability is a natural element of the life of a child with a disability and can help to explain what accommodations and special education and related services

the student needs in order to achieve to his or her full potential. However, the type of disability should not itself determine the instruction and services a child needs or the child's placement. Research shows that the instruction and services a student needs are best determined by an individualized analysis of the child's abilities and skills. Nonetheless, current law fosters a categorical approach to instruction and service delivery that focuses solely on the disability category without recognizing that many students within each category have very different functional abilities and instructional needs.

The thirteen disability categories in the statute and regulations form the basis for who is eligible to be served under the IDEA. In many cases, once a student is identified as being in a particular disability category, the student is assigned to a program for students in that disability category to be taught by a teacher trained in that disability category. However, the thirteen categories in the law are based on medical models and stereotypical patterns of performance for groups of persons and do not convey accurate information about an individual student's educational needs or how the disability affects an individual student's ability to succeed educationally.

Federal law does not require the labeling of individual students, although it does require reporting on the number of students in each disability category. However, the current requirement of reporting and designation of children in one of thirteen medically determined categories in order to be eligible under the IDEA have fostered a narrow, categorical approach to evaluating, labeling, placing, and serving children. This categorical approach is inconsistent with the basic principle of the IDEA that children should be served based on individual needs in the least restrictive environment rather than based on stereotypical assumptions.

Not only is this categorical approach contrary to our fundamental goals and our research on best instructional practices, but also giving students labels such as "mentally retarded" or "emotionally disturbed" can stigmatize these students and breed low expectations. And, children understanding from their label that they are not expected to succeed, fulfill our expectations by performing poorly.

The practice of labeling children in one of 13 categories also detracts from the central goal of schools: teaching and learning. States are spending considerable resources on evaluations to determine the appropriate diagnostic label (such as mentally retarded, learning disabled, autistic) for each child -- with little educational benefit.

Some states are already moving to less categorical approaches to eligibility and service delivery. However, they find their

progress toward more efficient and effective approaches hampered by the current federal eligibility requirements. A revised eligibility definition could give those states the flexibility to move forward toward less categorical approaches, while permitting other states to retain their current eligibility criteria.

Under a revised eligibility definition, the same children would be identified as disabled and in need of special education and related services -- but the processes of identification would be instructionally relevant. It would help to identify what the child knows, what accommodations and services the child needs to be able to learn to high standards, and enable students, families, and teachers better understand the child's needs and appropriate instructional strategies. It will also ensure that services and placement would be based on the individual student's need -- and not the student's disability category.

New Directions for Eligibility:

- o Amend the IDEA to replace the current eligibility definition with a functional definition based on the federal definition of disability used in section 504 of the Rehabilitation Act and in the Americans with Disabilities Act. A child with a disability eligible for services under the IDEA would be defined as "a child who has a physical or mental impairment which substantially limits the major life activity of learning, and who by reason thereof requires special education."

This definition would include all children who have the following impairments and who by reason thereof require special education: autism, deaf-blindness, hearing impairments, deafness, visual impairments including blindness, mental retardation, multiple disabilities, speech or language impairments, serious emotional disturbance, orthopedic impairments, traumatic brain injury, specific learning disabilities, and other health impairments. However, for purposes of eligibility, children would not need to be placed in any particular category so long as they were within the general functional definition.

This change in eligibility criteria would not affect who is eligible for services under the IDEA. All students who are currently eligible would remain eligible under the new definition. And, as under current law, only students who are in need of special education services as a result of their disability would be eligible. Thus, children who are currently identified under section 504 would not now be eligible

under IDEA unless they required special education services.

Nor would this change require states to radically change their eligibility criteria-- they could retain what they now use, including a discrepancy definition for learning disability, if they so wished. However, states that were ready to move toward less categorical eligibility criteria and assessments, consistent with the new definition, would be able to do so. And, to support the efforts of the states, federal research efforts would devote considerable attention to improving and disseminating knowledge about eligibility criteria and assessment instruments -- including an examination of appropriate, research-based alternatives to the current discrepancy definition for learning disabilities.

Formula

To achieve our goal of ensuring that every child receives an appropriate education that meets his or her unique needs in the least restrictive environment and receives services based on individual needs not label, it is critical that federal and state financing systems do not create disincentives for appropriate placements and services. Unfortunately, current law and many state financing systems do just that.

Twenty years ago, when Part B was first adopted, Congress found that one million children with disabilities were excluded entirely from the public school system and many children with disabilities were participating in regular school programs but their disabilities prevented them from having a successful school experience because they were undetected. A critical purpose of the law was to ensure that children with disabilities were identified and served. A funding formula that funded states based on the number of students identified and served created appropriate incentives to identify children and serve them under the IDEA. And, those incentives have been successful -- over 5 million students are served under the IDEA and the number increases every year.

Today, the major policy concern is not that millions of disabled children are not identified or not enrolled in school. Critical issues instead are that too many children are served in inappropriately restrictive environments, and, in some communities, that children -- particularly minority children -- are often inappropriately identified as disabled in order to generate funding to either remove them from the regular classroom or purchase extra services for them.

The current federal funding formula often creates incentives that add to these problems -- and creates disincentives for those states that seek progressive solutions to them. For example, states such as Vermont and Pennsylvania have embarked on aggressive programs of early intervention and pre-referral in order to serve students with disabilities in a less restrictive and more appropriate manner. Yet, as they engage in these practices to serve children early and inclusively -- practices that educators and families agree are exemplary -- they find the number of students identified as needing special education and related services -- and thus their federal funding -- is declining. The federal funding formula thus is a direct disincentive to best practice.

Allocating funding to states based on census -- that is, the total number of children in the state -- would create incentives for states to undertake reforms such as pre-referral and early intervention and disincentives for over-representation of minorities. Such a change would not affect procedural safeguards or the requirement to identify and serve all children with disabilities who need special education and related services. Nor would it require that states adopt census formulas for the distribution of state special education funds. Allocating federal funding to states based on census would also simplify administration of the program -- reducing data collection burdens and avoiding the problems of inaccurate child counts. Such a change in the federal formula would also be a critical counterpart to changes in the eligibility criteria. Changing eligibility criteria without a concomitant move to a census-based federal funding formula could create inappropriate incentives for states to develop more expansive definitions of eligibility.

State funding formulas frequently also contain disincentives to appropriately serving students in the least restrictive environment. For example, in some states, if a district seeks to keep a child in his or her neighborhood school because it believes that the student is appropriately served in the regular classroom in that school, the state will not pay for the supports and accommodations that child needs to be able to succeed in that less restrictive environment. The lack of state funding in this instance is due solely to the state's funding formula, not the needs of the student. Indeed, that same state would pay most or all of the cost of an expensive separate placement. Not surprisingly, research shows that states that pay districts more for teaching special education students in restrictive environments have fewer students in the regular classroom.

New Directions for the Formula:

- o Amend the IDEA to create incentives for appropriate practice by basing federal allocations to states over and above their FY1995 funding levels on the total

number of children in the state, regardless of the number of children identified as disabled.

- o Amend IDEA to require states that have state funding formulas for special education that provide greater funding for students in more restrictive placements to demonstrate, in their state plan, that their state formula does not result in placements that are more restrictive than is permitted by the LRE provisions.

Incidental Benefit Rule

Just as the current federal funding formula creates disincentives for appropriate placements and services, the rules the federal government imposes for tracking how the federal dollars are used create disincentives for serving children in the regular classroom, wherever appropriate.

Serving a disabled child in the regular classroom often means that a special education teacher or aide will work in the regular classroom with that child and that child's regular education teacher. However, under the Department's general administrative regulations, whenever a special education teacher works in a regular classroom with both disabled and non-disabled students, only the time spent working with disabled students may be paid for by IDEA funds. The regulations allow only an "incidental benefit" to non-disabled students -- and "incidental benefit" is very narrowly defined. In practical terms, this means that personnel must spend an inordinate amount of time on paperwork to document the time and effort spent on working with disabled and non-disabled children so that only that portion of the salary attributable to time spent with solely with disabled children is paid for by IDEA.

Research and experience shows that the presence of the special education teacher or aide can significantly enhance the educational experience of all the children in the classroom, not only the children identified as disabled. The special education teacher or aide can help the disabled child or children work in small groups with non-disabled children, can assist in maintaining classroom discipline, and can intervene early with children who may not yet be identified as disabled but are at significant risk of being identified because of their difficulties in learning. However, the incidental benefit rule discourages such practices -- directly contradicting what we know about good educational practice.

Requiring this detailed fiscal tracking of IDEA funds derives from a desire to make schools accountable for how they use every federal dollar. However, under the current IDEA, funds do not "follow" the child. Once the federal funds are allocated to the

school district based on the number of children with disabilities in that district, the district need not distribute the funds to schools based on their enrollment of children with disabilities - the federal funds could be used for special education services entirely in one school, or for one child or for one activity. Given this flexibility in use of funds, requiring detailed accounting when the district chooses to use federal funds in regular classrooms adds little accountability.

Moreover, we have learned from advances in a variety of fields that there are other types of accountability and methods of ensuring accountability that could support -- rather than detract from -- more effective educational services under the IDEA. The most important type of accountability for IDEA could be accountability for student results. Including students in assessments and reporting results -- as we suggest above -- is a critical element in developing meaningful accountability in the IDEA. A second level of accountability is accountability for required services. The IEP process and the due process protections embedded in the law ensure this accountability. When these other forms of accountability are in place, accountability for tracking inputs should become less critical, particularly, when, as is the case in the IDEA, the federal funding is only a small percent of the overall funding for special education.

We propose a different formulation of the fiscal tracking requirement -- one that would create incentives for appropriate services while at the same time ensuring that children served under the IDEA continue to benefit from federal funding. This new formulation would loosen the limitation on the benefits non-disabled students can receive from the IDEA funds as long as three conditions are met: (1) the funds are used to purchase special education services; (2) the services are provided in the regular classroom; and (3) children with disabilities benefit from these services and continue to receive all the services required by their IEPs.

New Directions for the Incidental Benefit Rule:

- o Allow school districts to use their Part B funds to provide special education services in the regular classroom, without having to track whether benefits might accrue to non-disabled students -- so long as children being served under the IDEA benefit from these services and continue to be appropriately served.

Linguistically and Culturally Diverse Students

Although special education has generally been viewed as a valued service, there is another side to this for some children from minority backgrounds. African-American children are identified

for special education and placed in restrictive settings and stigmatizing, dead-end programs at much higher rates than other children. Conversely, Asian and Native American children are often under-represented in special education. Schools often have difficulty in appropriately identifying and serving children with limited English proficiency. A major challenge is to ensure that children from diverse linguistic and cultural backgrounds are appropriately served under the IDEA.

The new directions we outline here will help reduce inappropriate incentives that foster inappropriate identification, placement, and services. For example, our new directions for assessments and IEPs will reduce incentives to place children in restrictive placements in order to avoid being accountable for their academic progress and will promote for all children high expectations rather than "watered down" curriculum and dead-end programs. Our new directions for evaluation, triennial reevaluation, and eligibility will remove stigmatizing labels and provide for periodic assessment that is instructionally relevant and designed to determine whether the child continues to need special education services. Our new directions for the federal and state funding formulas will remove fiscal incentives to over-identify children and to place them in restrictive settings. And, our new directions for fiscal tracking will promote educational supports in the regular classroom.

IV. ENSURE THAT FAMILIES, TEACHERS AND PRINCIPALS HAVE THE KNOWLEDGE AND TRAINING THEY NEED TO WORK EFFECTIVELY WITH STUDENTS AND WITH EACH OTHER

Achieving the principles we have outlined above for all students with disabilities -- aligning IDEA with state and local school reform efforts; promoting high expectations for students with disabilities and access to the regular curriculum in the regular classroom, when appropriate; and more effectively addressing individual students' needs in the least restrictive environment - - will not be possible without improved practice by teachers and administrators and new relationships between teachers and families. Implementing these new directions in assessments, IEP practice, evaluation, eligibility and other critical areas will not be possible unless families, teachers, and principals have the knowledge and training they need to work effectively with students and with each other.

Developing knowledge, training, and better working relationships will require new approaches that build on our increased knowledge of what works for improving educational results for children with disabilities. First, the discretionary programs authorized under Parts C through G of the IDEA should be strengthened to better support research, technical assistance, and parent training. Second, the provisions governing professional development in the

discretionary programs and Part B should be transformed to create a powerful and coherent system for training all educators working with children with disabilities. Third, specific steps should be taken to strengthen working relationships between families and schools in three critical areas -- increasing involvement of families in decision-making, improving information available to families, and reducing adversarial dispute resolution.

A. Restructuring the Discretionary Authorities

For 19 years, the discretionary authorities have played a critical role in supporting the development of knowledge about the needs of children with disabilities. Each of the 14 programs was created to address a specific need that the field had identified as important. Many of the programs have helped to address those needs. For example, the systems change grants in the areas of transition and severe disabilities have been instrumental in directing attention to and improving practice in these critical areas. OSEP funded research -- particularly the recent National Longitudinal Transition Study of Special Education -- has greatly expanded our knowledge about how to improve educational results for children with disabilities. The National Early Childhood Technical Assistance System (NEC'TAS) has provided coordinated, comprehensive, research-based technical assistance that has effectively assisted states in implementing the infants and toddlers program authorized under Part H.

While the 14 discretionary programs have made important contributions over the years, few dispute that they are not achieving their potential and could do far more in supporting the efforts of families, teachers, schools, administrators, researchers, and institutions of higher education to work together to improve educational results for children with disabilities. Under current law, the 14 separate discretionary programs are free-standing and self-contained. The multiplicity and narrow focus of the programs promotes fragmentation. Few programs manage to provide substantial support to or to have a substantial impact on more than a few states or districts. Having developed separately over the years to address specific issues, they bear little relationship to each other or even to the key challenges the states are facing in the implementation of Part B. Moreover, there are significant gaps in current authorities (e.g., model projects for students with learning disabilities are limited to children under 8 years old; model projects for drop-out prevention are limited to students who are in high school or who are severely emotionally disturbed). In addition, administering the numerous discretionary programs requires significant federal staff. As we work to make government smaller and more efficient, there will be fewer OSEP staff to administer these programs -- making effective administration problematic.

We envision a streamlined, comprehensive, and coordinated approach for the discretionary programs that will be more effective in improving results for children with disabilities while also making effective use of the resources of the discretionary programs. This new approach would have the following elements. First, the explicit goal and focus of the programs would be improving the implementation of Parts B and H. Second, to meet that goal, the programs would concentrate on developing meaningful and timely information on improving results for students with disabilities and then putting that information into the hands of those who need it -- states, school districts, educators and parents. Third, recognizing the key role that the states play in implementing the law, the programs would enhance the ability of state agencies to carry out their own plans for program improvement by providing flexible resources for professional development and systems change activities based on an IDEA state improvement plan. Fourth, recognizing the importance of federal monitoring in ensuring compliance with the IDEA, the programs would link support for professional development and systems change activities to state efforts to address critical compliance issues such as teacher shortages. Finally, the programs would support the alignment of the IDEA with state and local reform efforts by ensuring linkages with other program improvement activities funded under such authorities as Goals 2000 and ESEA.

New Directions for Discretionary Authorities:

- o Amend the IDEA to create five powerful new discretionary authorities that would replace the current Parts C through G. The five new authorities would be: (1) Research and Demonstrations; (2) Technical Assistance and Systems Change; (3) Technology Development and Support; (4) Parent Training; and (5) Professional Development.

In order to ensure that issues concerning the special needs of children with low-incidence disabilities continue to be adequately addressed in the areas where there is currently categorical funding by type of disability -- severe emotional disturbance, deaf-blindness, severe disabilities -- there would be a minimum floor for discretionary spending across the five new discretionary authorities to meet the needs of children in these disability categories equal to current appropriations dedicated to these areas.

- o **Research and Demonstrations**

This new authority would support research, development, model demonstrations, outreach, and synthesis studies