

Financing Special Education in New Jersey
New Jersey School Boards Association
September 2007

Federal and State Regulations

The Individuals with Disabilities Improvement Act of 2004, is the federal law that governs and protects the education of children with disabilities. This law, a reauthorization of the Individuals with Disabilities Act (1997), contains a number of changes that are viewed differently by various units of government and segments of the education community. The federal government touts a law that maintains protection for the disabled, and which offers opportunities to minimize paperwork and non-instructional activities. Some Advocates contend the changes to the law have weakened the safeguards for students, and they warn parents to be vigilant. The one area of agreement is that the new law will not provide full funding. There are permitted amounts to be spent on IDEIA. However, the amount appropriated for the coming year is significantly less than the law permits.

The following list details the major changes made by IDEIA 2004:

- A definition of “highly qualified” special education teachers and a requirement that all special education teachers be highly qualified;
- Provisions aimed at reducing paperwork and other non-educational activities (e.g., a paperwork reduction pilot program);
- Provisions aimed at ensuring special education and related service for children with disabilities who are homeless or otherwise members of highly mobile populations;
- Authorization for states to use IDEIA funds to establish and maintain “risk pools” to aid school districts and other local education agencies (LEAs) that provide high-cost IDEIA services;
- Modifications to requirements for parents who unilaterally place their children with disabilities in private schools to help ensure equal treatment and participation for such children;
- Revised state performance goals and requirements for children’s participation in state and local assessments to align these requirements with those in the Elementary and Secondary Education Act of 1965 (ESEA);
- Authority for LEAs that qualify to offset some expenditures for special education with annual increases in their federal IDEIA grant;
- Authority for LEAs to use some of their local IDEIA grant for “early intervening services” aimed at reducing or eliminating the future need for special education for children with educational needs who do not currently qualify for IDEIA;

- Major changes in compliance monitoring to focus on student performance, not compliance with procedures;
- Authority to extend Part C services for infant and toddler services beyond the age of two;
- Provisions aimed at clarifying the use of public and private insurances;
- Revised regulations for attendance at IEP meetings; and
- Significant changes to procedural safeguards, including:
 - The addition of a resolution session prior to a due process hearing to encourage the parties to resolve their dispute;
 - Revised test regarding the manifestation determination;
 - Addition of a new category – where a child has inflicted serious bodily injury on another person – to the school’s ability to place a child with a disability in an interim alternative educational setting;

School districts in New Jersey have their special education programs governed by New Jersey Administrative Code, Title 6A, Chapter 14 Special Education. This chapter must reflect the current federal law, the Individuals with Disabilities Improvement Act (IDEIA) of 2004. In effect, Chapter 14 sets forth how the New Jersey State Department of Education will implement the federal law. Although New Jersey may not enact rules and regulations that provide fewer services and protections than IDEIA, it may exercise autonomy and hold school districts to a higher standard in certain areas.

There are two thoughts on Federal Legislation. One subscribes to the premise that IDEIA should be the law of the land and students should receive only the protections it provides. The other sees the federal law as minimal requirements and that it is incumbent upon each state to maintain local regulations that guarantee implementation of high quality programs that help all students.

Education is traditionally a state responsibility shared with the local districts, and it is an area in which where each state has a great deal of latitude. This point is emphasized by the following from IDEIA, Section 608(b): “State rules, regulations, and policies in this title shall support and facilitate local educational agency and school-level system improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards.”

It is also incumbent on the states to set forth specific program options with appropriate criteria to implement the requirements in IDEIA to provide students a free and appropriate public education (FAPE). In compliance with all federal protocols, the State Department of Education, Office of Special Education Programs issued three memos to provide guidance in implementation of IDEIA of 2004. An October 20, 2006 memo listed 43 rules, regulations or policies that are state-imposed and not specifically required by federal regulations. However, 12 of them refer to clinics & agencies, non-public programs, and receiving schools and do not directly affect public school districts. When

you consider the magnitude and scope of this federal legislation, a list of only 30 additional state-imposed regulations indicates a State Department of Education that is willing to work within the federal requirements as much as possible.

The following is a list of the rules, regulations or policies that are state-imposed beyond IDEIA:

1. N.J.A.C. 6A:14-2.3 (h) – Maintained NJ timeframes for notice;
2. N.J.A.C. 6A:14-2.3 (k)8 – Added notice prior for audio-taping an IEP meeting;
3. N.J.A.C. 6A:14-2.6(d)11 – Added procedures for enforcement by the NJDOE;
4. N.J.A.C. 6A:14-2.7 (r) – Added conditions regarding emergent relief;
5. N.J.A.C. 6A:14-2.7 (s) – Added procedures for emergent relief;
6. N.J.A.C. 6A:14-2.7 (t) – Added procedures and timelines for enforcement by the NJDOE;
7. N.J.A.C. 6A:14-3.1 (a) and (d)– Refined functions and added to responsibilities of Child Study Teams;
8. N.J.A.C. 6A:14-3.2 – Defined responsibilities of a Case Manager;
9. N.J.A.C. 6A:14-3.3 (e) – Added procedures for intervention and referral of preschoolers;
10. N.J.A.C. 6A:14-3.4 (i) – Added procedures regarding reports and assessments from other districts, agencies or individuals;
11. N.J.A.C. 6A:14-3.5 (a) – Maintained NJ timeframe regarding sending evaluation reports to parents
12. N.J.A.C. 6A:14-3.5 (c)11 – Maintained “Social maladjustment” as an eligibility category;
13. N.J.A.C. 6A:14-3.7 (e)2 – Maintained short-term objectives;
14. N.J.A.C. 6A:14-3.7 (e) 9 – Maintained the age for transition at 14;
15. N.J.A.C. 6A:14-3.7 (e)10 – Maintained the statement of transition from elementary to secondary in the IEP;
16. N.J.A.C. 6A:14-3.7 (e)16 – Maintained the timeline regarding progress reports to parents;
17. N.J.A.C. 6A:14-3.7 (i)1 – Maintained the annual review for preschool students with disabilities in last year of eligibility for a preschool program;
18. N.J.A.C. 6A:14-3.7 (i)2 – Maintained the annual review for elementary students in last year in elementary school;
19. N.J.A.C. 6A:14-4.1 (g) – Clarified procedures visions governing transfer students;

20. N.J.A.C. 6A:14-4.3 (d) – Maintained and clarified specific program options/criteria to implement requirements in IDEIA 2004 to provide students FAPE;
21. N.J.A.C. 6A:14-4.4 – Maintained and clarified specific program options/criteria to implement requirements in IDEIA 2004 to provide students FAPE;
22. N.J.A.C. 6A:14-4.5 – Maintained and clarified specific program options/criteria to implement requirements in IDEIA 2004 to provide students FAPE;
23. N.J.A.C. 6A:14-4.6 – Maintained and clarified specific program options/criteria to implement requirements in IDEIA 2004 to provide students FAPE;
24. N.J.A.C. 6A:14-4.7 – Maintained and clarified specific program options/criteria to implement requirements in IDEIA 2004 to provide students FAPE;
25. N.J.A.C. 6A:14-4.8 – Maintained and clarified specific program options/criteria to implement requirements in IDEIA 2004 to provide students FAPE;
26. N.J.A.C. 6A:14-4.8 – Maintained and clarified home instruction due to temporary illness or injury;
27. N.J.A.C. 6A:14-4.9 – Maintained authority of the County Office of Education to grant exceptions to program requirements;
28. N.J.A.C. 6A:14-4.10 – Maintained conditions for participation in Statewide assessment;
29. N.J.A.C. 6A:14-4.11 (c)-(e) – Maintained conditions regarding issuance of a diploma and participation in graduation exercises;
30. N.J.A.C. 6A:14-5.1 – Maintained and clarified requirements for providing educational and related services;
31. N.J.A.C. 6A:14-5.2 – Maintained and clarified approval procedures for clinics and agencies;
32. N.J.A.C. 6A:14-6.2 – Maintained and clarified provisions governing a State-funded program to provide services to students in nonpublic schools;
33. N.J.A.C. 6A:14-6.3 – Maintained fiscal provisions governing a State-funded program to provide services to students in nonpublic schools;
34. N.J.A.C. 6A:14-6.4 – Maintained reporting requirements governing a State-funded program to provide services to students in nonpublic schools;
35. N.J.A.C. 6A:14-6.5 – Maintained possible placements in accredited nonpublic schools that are not approved for the education of disabled students;
36. N.J.A.C. 6A:14-7.1 – Maintained and clarified general requirements for provision of programs in receiving schools to implement requirements in IDEIA 2004 to provide students FAPE;
37. N.J.A.C. 6A:14-7.2 – Maintained and clarified requirements for establishing new receiving schools to implement requirements in IDEIA 2004 to provide students FAPE;

38. N.J.A.C. 6A:14-7.3 – Maintained and clarified requirements for amendments to policies and procedures in receiving schools to implement requirements in IDEIA 2004 to provide students FAPE;
39. N.J.A.C. 6A:14-7.4 – Maintained and clarified fiscal and reporting requirements for provision of programs in receiving schools to implement requirements in IDEIA 2004 to provide students FAPE;
40. N.J.A.C. 6A:14-7.5 – Maintained and clarified district responsibilities in placing students with disabilities in receiving schools to implement requirements in IDEIA 2004 to provide students FAPE;
41. N.J.A.C. 6A:14-7.8 – Maintained fiscal requirements for provision of programs in receiving schools to implement requirements in IDEIA 2004 to provide students FAPE;
42. N.J.A.C. 6A:14-7.9 – Maintained reporting requirements for provision of programs in receiving schools to implement requirements in IDEIA 2004 to provide students FAPE; and
43. N.J.A.C. 6A:14-10.2 (a) – Maintained requirements for contracting with early intervention programs for students age three;

Our task is to consider the financial impact on school districts of those additional state imposed regulations. In talking with special education directors across the state, there was no consensus concerning the majority of state-imposed regulations. For the most part regulations require an extra procedural step or an additional statement of staff responsibility. There are not necessarily additional financial obligations associated with each state imposed regulation. For example, IDEIA 2004 eliminated the requirement for short-term objectives in the IEP for all students except those who are taking an alternate proficiency assessment. These short-term objectives have been a longstanding part of the IEP and New Jersey chose to maintain them. IDEIA 2004 still mandates a description of how progress will be measured and the New Jersey-required short-term objectives can serve that purpose. One could also argue that the benchmarks or short-term objectives provide the special education teacher with additional information and insights and actually save time by eliminating the need for additional meetings if a child is not progressing.

There are several state-imposed regulations that create a dedication of staff time that could be translated into dollars. A number of Directors questioned why the State felt the need to implement Transition Services at age 14 for New Jersey rather than age 16 as required in IDEIA 2004. While this regulation does not have a major impact on child study team member time, additional time must be devoted to Transition Services over and above what is federally required. The topic becomes a financial one in the context of the allocation of child study team time and the amount of time available to provide counseling and other consultative services.

Several State code regulations created significant financial problems for Directors. The program requirement to limit elementary resource and special classes to a three-year rather than a four-year age span is seen as creating financial havoc, especially for small-

sized districts. The argument from Directors is that finances are especially difficult right now and this change will necessitate additional staff and create space issues without necessarily creating an educational benefit. They felt that there was no need to reduce the age range, when students have the same functional level. This is not a problem for all districts since the medium- and large-sized districts have sufficient populations of students to accommodate a three-year age span. However in those smaller districts for which it is a concern, it is most meaningful.

This issue of Alternate Proficiency Assessment for our most involved students has been a significant issue for directors of special education and their teaching staffs since its inception. The federal government through No Child Left Behind (NCLB) has created new regulations that U.S. Secretary of Education Spellings claims “provide states and schools with greater flexibility by allowing them to more accurately evaluate these students’ academic progress and tailor instruction based on individual needs.” These new regulations allow states to develop modified academic achievement standards based on grade-level content and alternate assessments based on those standards. The federal guidelines now allow for 2% of all proficient scores from the district to come from students who take an alternate assessment based on modified achievement standards. In addition, there is a 1% limit for student scores on the alternate assessment based on alternate achievement standards, which are used for students with significant cognitive disabilities. This is a more flexible stand by the federal government. Many education groups, specifically the National Education Association (NEA), oppose the caps as an arbitrary limitation that undermines the integrity of the IEP process in regard to student assessment.

The introduction of this new modification will cause the New Jersey State Department of Education to revisit the Alternate Proficiency Assessment (APA). Fortunately the Department has received a great deal of feedback from special education directors, principals and professional associations, primarily the New Jersey Principals and Supervisors Association (NJPSA), which has worked tirelessly for Alternate Proficiency Assessment (APA) reform. It appears that most special education staff members throughout the state feel that there must be a better way to accomplish alternate assessments.

The common concerns of Directors and teachers regarding the APA are the inordinate amount of time required over the length of the process, the need for extensive training, the need for specific criteria for scoring and a more objective measurement of student progress. Teachers in particular felt that the assessment process took away too much time from instruction itself.

It is acknowledged that the issue of alternate proficiency assessment is extremely complex, yet the solution needs to yield valid information. Most research indicates that the element most critical to the success of an alternate assessment program is teacher training in assessment and standards based instructional practices coupled with adequate staff time to appropriately compile the data.

There are two other items of interest in the IDEIA 2004; a multi-year Individual Education Program (IEP) Pilot project and a paperwork reduction pilot project. In the pilot program for multi-year IEPs, the Secretary of Education can approve proposals from up to 15 states to allow local school districts to offer, with parental consent, a multi-year IEP for not longer than three years. While most educators and parents support an annual conference to review student progress, several Directors felt this pilot program could serve a purpose. They question the need for goals and objectives for students involved in an in-class support program since they are in the regular program. A proposal addressing in-class support students might have been beneficial to explore.

The pilot program for paperwork reduction authorizes the Secretary of Education to grant waivers of statutory and regulatory requirements for a period not to exceed four years to 15 states that propose to reduce excessive paperwork and non-instructional tasks. The need for a reduction in paperwork is a common cry from Directors and child study team members. One Director commented that there would be a wealth of volunteers if New Jersey wanted to offer a proposal to the U.S. Department of Education.

New Jersey Department of Education did not submit a proposal for either Pilot Program.

While there are several issues that Directors of Special Education would like to see changed in New Jersey code, the costs of special education in New Jersey are not excessively burdened by our regulations. The major points of change as outlined above are:

1. Simplify the Alternate Proficiency Assessment (APA) process; and
2. Allow waivers to the Three-Year Age Span for small districts.