



CONSORTIUM
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For more information, please contact:

Paul Marchand (202) 783-2229

Katy Beh Neas (202) 347-3066

Leslie Jackson (301) 652-2682

Jane West (202) 289-3903

Stephen Spector (301) 306-7070

House Bill Jeopardizes the Future of Children with Disabilities, Promotes Litigation National Disability Coalition Opposes HR 1350

The Individuals with Disabilities Education Act (IDEA) is among the most important pieces of civil rights laws for children with disabilities ever passed in this country. This law guarantees a free, appropriate, public education to children with disabilities. It also supports needed services to infants, toddlers and preschoolers with disabilities and their families as well as supports to the education system that are critical for schools to meet their obligations to these students. Prior to its passage in 1975, at least one million children with disabilities in the United States were excluded entirely from the education system; many other children with disabilities were in segregated settings, had only limited access to the educational system and were therefore denied an appropriate education. Today, approximately six and one-half million children with disabilities receive appropriate early intervention, preschool and special education and related services thanks to the IDEA.

On April 30, H.R. 1350, the "Improving Education Results for Children with Disabilities Act," was approved by the House of Representatives on a largely partisan vote of 251-171. This bill dramatically revises IDEA. The Consortium for Citizens with Disabilities Education Task Force -- comprised of more than 70 national organizations representing students with disabilities and their families, teachers, related services personnel, program operators, state agencies and disability advocates -- strongly opposes this bill.

On April 29, thirty-nine national organizations hand-delivered letters to every member of the House expressing our continued strenuous opposition to H.R. 1350. In addition, parents all across the country expressed their opposition to the bill by placing calls and sending emails and faxes to their legislators. These actions followed the communication from some 14,500 parents, teachers and other concerned citizens who earlier this year expressed their opposition to potential changes to the current IDEA law, especially changes to the discipline provisions of the IDEA.

H.R. 1350, developed by Education and Workforce Committee Chairman John Boehner (R-OH) and Education Reform Subcommittee Chairman Mike Castle (R-DE), significantly weakens services and supports for children and undermines their protections and rights. The bill became worse with the adoption of amendments that jeopardize the chances of children with disabilities to achieve an equal opportunity to a free, appropriate public education and would leave many of our most vulnerable children far behind. Our most significant concerns are outlined below.

**1331 H Street, NW, Suite 300 • Washington, DC 20005 • PH 202/783-2229 • FAX 467-4179 •
Info@c-c-d.org • www.c-c-d.org**

KEY ISSUES OF CONCERN IN H.R. 1350

Change to Definition of FAPE Will Increase Litigation

H.R. 1350 changes the definition of “free appropriate public education” to codify the 1982 Supreme Court *Rowley* decision as follows: “include an appropriate preschool, elementary, or secondary school education in the State involved that is reasonably calculated to provide educational benefit to enable the child with a disability to access the general curriculum...” This new definition will increase litigation in special education, not decrease it as the House Committee claims to be trying to do. The U.S. Supreme Court ruled on the definition of “appropriateness” in the *Rowley* decision many years ago and Circuit Courts have interpreted it further since. This amendment provides sufficient change to the “FAPE” definition that it could re-open this settled matter for court interpretation, leading to further federal court litigation at the expense of both parties.

Discipline and Due Process Provisions will Create Adversarial Relationships Between Parents and Schools and Punish Students for Having a Disability

Discipline

H.R. 1350 radically reverses many of the carefully developed discipline provisions of the 1997 Amendments to IDEA (IDEA '97). These provisions provide “a balanced approach to the issue of discipline of children with disabilities that reflects the need for orderly and safe schools and the need to protect the right of children with disabilities to a free appropriate public education (FAPE)” (U.S. Office of Special Education Programs, 1997). Evidence shows that the discipline provisions of IDEA '97 not only allow school administrators the flexibility to maintain safe and orderly schools, but also protect students with disabilities (U.S. GAO, 2001). H.R. 1350 allows school personnel to unilaterally remove a child with a disability from his or her current placement for the violation of any school rule, while at the same time removing the protection of the manifestation determination to assess whether the behavior is related to the child’s disability. Furthermore, H.R. 1350 removes the requirements for functional behavioral assessment, development of behavior intervention plans and review of the appropriateness of the current individualized education program (IEP) and placement. Research clearly shows that the discipline requirements of IDEA '97 are working to keep students in school, and that school safety is not compromised by existing discipline law. The provisions of H.R. 1350 will potentially increase school dropout rates and delinquency by removing appropriate educational services for students whose school success depends upon these services. Eliminating the manifestation determination will lead to an explosion of litigation. It is imperative that the discipline provisions of H.R. 1350 be eliminated!

Due Process Provisions

H.R. 1350 contains several provisions that significantly weaken the ability of parents to get the educational services and supports they need for their children. For example, the bill encourages the use of voluntary binding arbitration. Voluntary binding arbitration and its corresponding limitations are inappropriate in this situation where a child's needs change over time. What may work for this school year may change as the child develops new skills. Further legal disputes will arise about how long the arbitration is binding. The bargaining positions of the parties are too unequal to rely on binding arbitration when one party is an individual parent and the other is a school district.

H.R. 1350 creates a new maze of options and new burdens on parents that, singly or in combination, will severely chill the prospect of many families moving forward with due process. For example, the bill mandates a one-month waiting period before any parent complaint can go to due process regardless of the problem or issue. This provision will cause delay and is unnecessary. In addition, a new one-year statute of limitations could run out before parents will even discover certain types of violations, especially if their child is unable to report to them when services have not been provided. Moreover, the statute of

limitations is inconsistent with child find and will deprive children whose needs are ignored for years with no possibility of remediation.

Another concern is that H.R. 1350 permits the Governor of each state to determine the amount of reasonable attorney fees to be reimbursed to the parents. No other civil rights law allows defendants or those acting in their place to set prevailing plaintiffs' fees. Only parents who prevail in judicial proceedings collect attorneys' fees. The provision in H.R. 1350 will make it even harder for parents to secure their child's rights, and will curtail the number of parents who can access their child's due process protections under IDEA. In addition, the bill does not give the Governor the authority to limit the fees that can be paid to school district attorneys. Only fees paid to parents are affected. The bill also includes a provision that requires parents to present their case in a mandatory resolution session without the reimbursement for attorney's fees that is available for due process hearings. If the case proceeds to a due process hearing, the parents can only raise issues that were in the complaint or part of the resolution session. Most parents do not have the legal training that is required to foresee all the issues under IDEA that are available for them to raise at the resolution session. In each of these provisions, the bill places additional burdens on parents.

Changes in the IEP Reduce Accountability

H.R. 1350 claims to reduce paperwork for teachers. It threatens annual Individualized Education Plan (IEP) reviews due to the new three-year IEP option and eliminates the short-term objectives and benchmarks by 2005-2006 (except for those students taking alternative assessments). This change was made without any scientific research to document that these provisions will reduce paperwork. Many parents report that the short term objectives are the most important measure of progress for their children and the best way to keep schools accountable for progress toward their IEP goals. CCD also remains concerned that the three-year IEP, as constructed in the bill, would result in students not receiving appropriate services. While this is an optional choice for students and parents, many could either be confused by it or feel coerced to accept this option. We believe that an annual IEP is necessary to review students' progress and to make necessary modifications. If parents are pressured to accept a three-year IEP, parental participation and the school's accountability to parents will decrease.

Paperwork Reduction Dangers

H.R. 1350 contains a provision that allows the U.S. Dept. of Education to give approval to up to ten states to waive requirements under IDEA in order to remove paperwork burdens. These pilot projects have no limitations and could result in the loss of IEPs, due process, related services, and other vital protections under the law.

Provisions to address shortages in Highly Qualified Personnel are inadequate and insufficient to improve results for students with disabilities

The shortage of qualified personnel has hampered the full implementation of IDEA for 25 years. In the No Child Left Behind Act, Congress determined that every child should have a highly qualified teacher. It is critical that the same standard be applied to special education and related services personnel. Without such application, we cannot expect to increase the achievement levels or outcomes for students with disabilities served by IDEA. Indeed, virtually every contentious issue related to IDEA – discipline, disproportionate representation of minorities, over-identification of students referred to special education and others – needs to be addressed by ensuring an adequate supply of appropriately trained and highly qualified personnel.

While the bill makes some important progress in this area, critical problems remain. We applaud the elimination of the three-year provision that allows unqualified teachers and related services personnel to

teach students with disabilities. However, the elimination of the “highest requirement” provision for related services providers serves to lower standards at a time when quality and high standards were never more important. A lack of standards related to state certification in special education will continue to allow people without sufficient special education skills to be certified as special education teachers. Personnel standards in Part C should be consistent with those set in Part B. In addition, we believe that related services personnel should be included throughout all aspects of Part D activities. Finally, the significant infusion of funds needed to address the shortage of highly qualified special education teachers and related services personnel is not provided for.

IDEA required to pay more than fair share to address general education problems

H.R. 1350 directs 15% of IDEA funds for pre-referral services, support services required by No Child Left Behind and other activities. In addition, 20% of increases in appropriations for Part B may be used as local funds. Also, nothing in the bill precludes schools from keeping children in a pre-referral category indefinitely. While the activities authorized may have merit, we remain concerned about funding them with the insufficient supply of Part B funds that does not even sufficiently address the needs of students with disabilities who are currently served under the law. While we support collaboration and joint funding, in this instance special education is being asked to finance more than its fair share.

Commitment to fully funding IDEA remains unmet

H.R. 1350 does not provide mandatory full funding for IDEA. In addition to addressing the issue of increasing the number and quality of personnel, we believe that providing mandatory full funding for IDEA would go a long way in addressing many of the issues that the Committee is attempting to address in this bill. The lack of appropriate funding has been used by some as justification for their inability or refusal to provide a free public education that is appropriate for students with disabilities. Congress promised, in 1975, to pay 40 percent of the national average per pupil cost to help schools offset the excess cost of educating students with disabilities. Estimates put current federal funding levels at 18% for fiscal year 2003. We believe that Congress must live up to its commitment to fully fund IDEA and keep its promise to students with disabilities and their families.

Gap between research and practices widened

The bill proposes to move the research functions under IDEA out of the Office of Special Education Programs and into the Institute for Educational Sciences. We oppose this move. In an era when scientifically based research should provide the foundation for programs and services, it is critical that research be directly linked to programs and practices. The research mandate for IDEA is critically tied to the mission of IDEA. Administering these programs in the same agency is critical to ensure the infusion of research-based practice throughout IDEA programs.

H.R. 1350 put on fast track to cut off public review and input

While claiming that plenty of time had been provided for input, the fact of the matter is that from the time the bill was introduced to final passage, only six weeks was available to review, analyze and communicate this lengthy piece of legislation to parents across the country. This tactic was utilized to avoid true scrutiny of the bill. Indeed, one must wonder how the 435 members of the House had the time to consider a 300 page bill since they voted two days after they returned from recess. In fact, some of us who contacted members’ offices were told they didn’t know the bill was being considered. Additionally, honest attempts by parents of children with disabilities, their friends, neighbors, and advocates to exercise their right to express their concerns about the bill to Members of the House were wrongly characterized as

a “disinformation” campaign. Those most effected by this bill, students with disabilities and their families, were not heard.

The Senate must not replicate the House attack on families of children with disabilities

The Senate plans to introduce a bipartisan bill to reauthorize IDEA before the Memorial Day recess. The Consortium for Citizens with Disabilities Education Task Force will continue to work with Members of the House of Representatives and the Senate to develop a final bill to reauthorize IDEA that will increase academic and functional outcomes for students with disabilities. The Consortium hopes that the Senate will seriously consider all of the above concerns as well as our Principles for the IDEA Reauthorization, which are attached to this document, and will establish a process, once a bill is introduced, that will allow all stakeholders, especially parents of children with disabilities, the necessary time to fully participate in the legislative process.



Principles for the Individuals with Disabilities Education Act (IDEA)

Public education for all is a cornerstone of our democracy. It is the mechanism by which this nation prepares all students to pursue the benefits of freedom and to exercise fully their rights and responsibilities as citizens. In 1975, Congress enacted the law now known as the Individuals with Disabilities Education Act (IDEA). This law provides eligible children with disabilities a free, appropriate public education. IDEA has several sections: Part B provides grants to states to implement services to preschool and school-aged children. Part C provides grant to states to implement statewide comprehensive systems of early intervention services for infants and toddlers with disabilities and their families. Part D provides grants to create and support the special education infrastructure through research, dissemination, applying research findings to instructional practice, parent training, and effective personnel preparation and technical assistance. Part B is permanently authorized. Parts C and D are scheduled for reauthorization in 2003.

Thanks to IDEA, more than six million children receive special education and related services. The law establishes a two-prong eligibility standard. Special education and related services of IDEA are available to students who have disabilities and who need special assistance to benefit from education. Once a child is found eligible, a team including the child's parents and representatives of the public education system develops an individualized education program (IEP) or individualized family service plan (IFSP) that includes the services and supports necessary to meet each child's unique needs.

Our system of public education is responsible for educating all students, including students with disabilities. Only when special education and general education work together can we be confident that no child will be left behind.

The CCD Education Task Force understands policymakers are committed to increasing educational outcomes for students with disabilities served by IDEA. We welcome that goal. In reauthorizing IDEA, the Task Force urges policymakers to analyze carefully each issue of concern to determine whether the concern results from a problem with the current statute or a problem of inappropriate, ineffective or incomplete implementation of the current statute. Such an analysis should guide policymakers in determining whether changes are required to enhance implementation of current law or whether requirements of the statute need to be changed. CCD urges Congress to adhere to the following principles during the reauthorization process.

All children should be provided a quality public education that promotes academic success. The tyranny of low expectations has produced limited academic success among too many students, including students with disabilities. Research shows student achievement significantly improves when teachers and other faculty hold high expectations for students. All children, including children with disabilities, must be identified and provided a free, appropriate public education in the least restrictive environment (LRE).

Each child's education should be tailored to meet his or her unique needs. Students with disabilities often require specific services, aside and apart from curriculum adaptation, to enable them to learn. The IEP and the IFSP are developed through a family/public agency partnership and must guide the provision of early intervention, preschool, special education and related services most appropriate to meet each child's needs. An effectively developed and implemented education program prepares a child for the transition from

early intervention to preschool, from preschool to school, from school to post-secondary education, work, independent living, and full participation in our community.

Parental involvement is critical to providing appropriate education to children with and without disabilities. Parents must be assured the opportunity to maintain an effective voice in making decisions at every level about the education of their children with disabilities. Quality education demands a collaborative effort among students, parents, schools, and communities.

Accountability and monitoring programs must be improved. The Federal Government must ensure state special education programs comply with the IDEA. To do this effectively, it must have adequate data regarding IDEA implementation to validate its monitoring and the capacity to sanction states when necessary. Sanctions should be predictable and applied equally to all states and territories, based on student outcomes. However, compliance with the law's due process requirements is also essential so parents can ensure accountability for their children's educational programs. Similarly, states have a duty to require local educational agencies to comply with the law, and need the same tools as federal enforcement agencies in order for true accountability to exist.

All educational personnel, including administrators, principals, teachers, paraprofessionals and related services personnel, must be qualified to educate students with disabilities. Too often personnel have not received the necessary training in effective methods of educating students with disabilities. With the majority of students with disabilities spending considerable amounts of their school days in general education settings, ensuring general educators have the skills and the commitment to work effectively with students with disabilities is paramount. The presence of qualified personnel is critical to achieving positive student outcomes. High dropout rates among students with disabilities are correlated to shortages of qualified personnel. Ensuring qualified personnel is a critical component of educational accountability.

Shortages of qualified personnel must be decreased and eventually eliminated. The shortage of special education teachers and related services personnel is chronic and persistent. Currently, over 600,000 students with disabilities are taught by special education teachers who are unqualified or under-qualified. IDEA, including Part D, must support recruitment and retention of certified, qualified teachers. Shortages of special education and related services faculty at institutions of higher education must also be addressed, as they curtail the research, leadership and training capacity of the field.

Assistive technology training for all personnel is key to academic success. Special education administrators, educators, related services providers and paraprofessionals, should receive ongoing training by assistive technology (AT) education experts, to understand and implement the use of AT in the classroom.

Early intervention and preschool services must be available to all eligible children. Programs authorized by Part C and Section 619 of Part B allow states to create family-centered systems of services across multiple programs and funding streams to ensure infants, toddlers and preschoolers are prepared for school and learning. States must have the resources to effectively screen, identify, and serve all eligible children to maximize their abilities to enter school ready to learn.

Effective research-based instruction should be used whenever possible. An intensive effort must be made to bridge the gap between research and practice and effectively provide research-based instruction to all students, in all academic areas.

All schools must provide effective research-based reading instruction to all students, including children with disabilities. All children with disabilities must have access to research-based early reading programs. However, early reading programs may not eliminate the need for identifying and providing services to a child who does not learn to read because of a disability. Rigorous efforts at early identification must be

accompanied by intensive, long-term, individualized, research-based instruction for children whose reading or other academic difficulties are due to their disability rather than to inadequate instruction.

IDEA should give increased attention to racial, ethnic and linguistic diversity to prevent inappropriate overrepresentation or under representation of minority children in special education.

Some overrepresentation of minorities in special education may be due to the well-documented link between poverty and disability. However, overrepresentation of minority students in some categories of disability significantly exceeds what would be predicted by the impact of poverty. Underrepresentation also occurs in certain categories. Students must be served based on their educational needs. Since 1997, states are required to collect racial data and to intervene where overrepresentation is identified. Further, there is no financial incentive in the law to over-identify students for special education. All students are required to have appropriate access to the general curriculum and to participate in local and state accountability systems.

All levels of government must continue to participate in the implementation of IDEA. The federal government must set the standard for meeting the responsibilities described in IDEA. A strong federal role is essential to ensuring uniform and effective implementation and practice of IDEA.

Fully funding IDEA is paramount to ensuring all eligible students receive quality services. States are required by the Constitution to educate all students with disabilities. Congress enacted IDEA to assist them in carrying out this responsibility. Unfortunately, Congress has only funded up to 18% of the cost of educating students with disabilities. Part B of IDEA authorizes the federal government to pay up to 40% of the cost. It is time for Congress to honor its promise. Funding for Part C, the Infants and Toddlers Program, Part B's Section 619 preschool program, and Part D, IDEA support programs, have not even kept pace with inflation. Significant increases are critical to ensure high quality services are provided to all students with disabilities.

The civil rights of children with disabilities and their families must be fully maintained. The core substantive rights to a free, appropriate, public education (FAPE) in the least restrictive environment (LRE) are the heart of IDEA. Children with disabilities are entitled to an individualized education that meets their unique needs. An explanation is required if a decision is made by the child's Individualized Education Program (IEP) team to serve the child in a setting that is other than the general education setting.

Procedural safeguards are necessary to assure that educational decisions are determined appropriately. Parents must be fully informed of their children's rights and (can) participate in a meaningful way in all decision making related to their child. IDEA's due process provisions give parents the opportunity to challenge school district decisions. These provisions help level the playing field by correcting the imbalance of the legal and fiscal resources available to school districts and those resources available to families. Quality education demands a collaborative effort among students, parents, schools, and communities.

School systems should provide a safe environment, conducive to teaching and learning. Efforts to achieve this goal must not be based on the lack of understanding about the nature of the child's disability or the effect of the disability on behavior. All students must be accountable for their actions when they violate school codes of conduct. Schools must not use discipline as the means to deny the effective implementation of a child's IEP. To ensure safe schools and communities and continued student achievement, any student who is suspended or expelled must have access to immediate and appropriate services, including educational and mental health services necessary to prevent the behavior from reoccurring.

Cessation of services should be prohibited. Ceasing educational and other services for students as a means of disciplining them violates the principle of leaving no child behind. Any student with violent or disruptive behavior must have their needs addressed through the provision of appropriate and effective services, such as positive behavioral supports. When education and services are denied, students are more likely to become involved in illegal activities. School dropout rates and delinquency will increase and

communities will be less safe. Furthermore, loss of progress due to lack of services is particularly difficult to recoup for students with disabilities.

All schools should establish and implement research-based, effective programs that prevent school violence. Effective research-based programs include classroom management strategies to help reduce classroom disruption and increase student learning; positive behavior intervention programs addressing the emotional, behavioral, and educational needs of students; and professional development to reduce the level of inappropriate disciplinary actions. All school staff must be trained to recognize and respond appropriately to troubled youth.

Adaptive Physical Activity Council	Heumann & Associates
American Academy of Child and Adolescent Psychiatry	Higher Education Consortium for Special Education
American Association on Mental Retardation	Learning Disabilities Association
American Council of the Blind	NISH
American Counseling Association	National Alliance for the Mentally Ill
American Foundation for the Blind	National Association of Developmental Disabilities
American Music Therapy Association	Councils
American Occupational Therapy Association	National Association of Private Special Education Centers
American Physical Therapy Association	National Association of Protection and Advocacy Systems
American Psychological Association	National Association of School Psychologists
American Speech-Language-Hearing Association	National Association of Social Workers
American Therapeutic Recreation Association	National Association of State Directors of Special Education
Association for Education and Rehabilitation of the Blind and Visually Impaired	National Association of State Mental Health Program Directors
Association of Maternal and Child Health Programs	National Center for Learning Disabilities
Association of Tech Act Projects	National Coalition on Deaf-Blindness
Association of University Centers on Disabilities	National Consortium of Physical Education and Recreation for Individuals with Disabilities
Autism Society of America	National Down Syndrome Congress
Bazelon Center for Mental Health Law	National Down Syndrome Society
Brain Injury Association of America	National Mental Health Association
Children and Adults with Attention Deficit/Hyperactivity Disorder	National Parent Network on Disabilities
Conference of Educational Administrators of Schools and Programs for the Deaf	National Therapeutic Recreation Society
Council for Exceptional Children	Rehabilitation Engineering and Assistive Technology Society of North America
Council for Learning Disabilities	Research Institute for Independent Living
Council of Parent Attorneys and Advocates	Sbina Bifida Association of America
Disability Rights Education and Defense Fund	School Social Work Association of America
Division for Early Childhood of the Council for Exceptional Children	The American Dance Therapy Association
Division for Learning Disabilities of the Council for Exceptional Children	The Arc of the United States
Easter Seals	The International Dyslexia Association
Epilepsy Foundation	Teacher Education Division, Council for Exceptional Children
Family Voices	Tourette Syndrome Association
Federation of Families for Children's Mental Health	United Cerebral Palsy Associations
Helen Keller National Center	

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