

Executive Summary

POSITION PAPER ON THE RE-AUTHORIZATION OF IDEA

WESTERN STATES BENCHMARKING CONSORTIUM

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The Western States Benchmarking Consortium (WSBC), a group of six high performing school districts in the western states, has identified common concerns and issues regarding the implementation of the Individual with Disabilities Education Act (IDEA). As such, the Consortium has identified critical issues for practitioners with recommended strategies toward solutions as Congress prepares to reauthorize IDEA.

STATEMENT OF THE PROBLEM

Prior to the 1975 implementation of the Education for All Handicapped Act, currently known as the Individuals with Disabilities Education Act (IDEA), access to public education for students with disabilities was extremely limited. Today over 96% of all students with disabilities are educated in public school settings. The original intent of IDEA, which focused on guaranteed access to a free and appropriate public education (FAPE), brought about a positive change in educational opportunities available to students with disabilities.

During the past 28 years, efforts at the federal, state and local levels have served to significantly enhance educational access for disabled students. Likewise, the combination of 38 years of experience with the Elementary and Secondary Education Act and 47 years of experience with school related civil rights initiatives have significantly enhanced educational access for all students.

However, with the onset of the educational reform movement and the passage of the No Child Left Behind (NCLB) legislation, there has been an fundamental shift in emphasis towards the attainment of a common set of educational outcomes. A focus on education access is no longer sufficient. System emphasis must now be placed upon proactive instructional interventions designed to reach common targeted outcomes. Continued emphasis on the process of access will not lead to the desired outcomes. The compressed timelines associated with NCLB target attainment of these prescribed common educational outcomes within 12 years. This time frame is substantially more aggressive than the 28-47 years devoted to reaching the current levels of educational access. Attainment of these ambitious outcomes will require bold initiatives which refocus efforts and resources towards proactive, intensive, instructional interventions.

While access to educational opportunities and procedural safeguards for students with disabilities has increased dramatically, sufficient support necessary to sustain these efforts and refocus program efforts towards the above specified academic outcomes has not been in place. Today,

the original intent of IDEA has been buried in a maze of regulations, paperwork, financial demands, and legal burdens placed on school districts. The demand to meet the intensive programmatic needs and process requirements of an increasing number of students with significant disabilities threatens to overwhelm districts as they attempt to meet the needs of ALL students. In many districts, a disproportionate level of funding is being siphoned away from general education to support special education services. This was never the intent of IDEA.

Specific problem areas include an overemphasis on sorting and labeling students, lack of emphasis on intensive pre-referral interventions, flawed accountability requirements, burdensome paperwork and process requirements, excessive evaluation and program documentation requirements, cumbersome and ineffective discipline procedures, escalating staff retention and recruitment difficulties, an overly adversarial climate, and a serious lack of sufficient and effective funding mechanisms. These concerns are supported by the findings of the President's Commission on Excellence in Special Education, which concluded that the system values process and legalistic compliance over student outcomes. Likewise numerous reports and position papers, such as the February, 2002 Paper from the IDEA Funding Coalition, cite serious deficiencies in the amount and mechanisms used for special education funding.

The combination of burdensome processes, adversarial climate, insufficient resources, and resulting shortage of highly qualified personnel seriously threatens the ability of the system to carry out the current intent of the law. These constraints seriously limit the systems' ability to attain the bold educational outcomes articulated by NCLB. There is a need for an immediate review and reform of IDEA.

The Western States Benchmarking Consortium proposes a number of specific recommendations for the reauthorization of IDEA related to pre-referral interventions, accountability for learning, process and paperwork requirements, evaluations, Individualized Education Program (IEP) requirements, discipline and safety, staff retention and recruitment, dispute resolution, and funding. Effectively addressing these concerns and the associated recommendations will increase the likelihood of meeting the dual mandates of providing (FAPE) to students with disabilities while helping ALL students achieve high education standards.

We welcome and encourage dialogue with key stakeholders including legislators, education and government officials, policy makers, and associations. We are requesting the opportunity to actively participate in this dialogue prior to the reauthorization of IDEA.

RECOMMENDATIONS FOR THE REAUTHORIZATION OF IDEA

PRE-REFERRAL INTERVENTION

- Provide all staff with training and technical assistance to be able to identify and provide early intervention to those students who require targeted academic support in order to succeed.

- Identify and promote early intervention strategies in the general education environment (kindergarten and above) to safeguard against inappropriate referral, testing and identification for special education services. The dissemination of effective early intervention strategies, practices, and programs will produce student results.
- Allow the flexibility to use special education resources to support early interventions (kindergarten and above) and to prevent literacy and math problems from developing, thereby reducing the need for long-term special education services and as a by-product reduce behavioral difficulties related to academic frustration
 - Apply funds towards *preventive* implementation of effective research based instructional strategies allowing schools to put in place intensive programs that prevent later literacy difficulties.
 - Support the collaboration of general and special educators by funding programs that provide the interventions which result in student success and fewer referrals to special education.

FOCUS ON STUDENT LEARNING: ACCOUNTABILITY

- Focus on student outcomes rather than processes.
- Outline one unified accountability system (IDEA/ESEA/NCLB) based on sound principles and practices for students with disabilities.
- Designate the IEP as the primary accountability mechanism for determining adequate yearly progress and standard attainment (IEP = AYP).
- Adopt tracking and reporting measures comparing individual student growth over time not one point in time.

PAPERWORK AND PROCESS: THE LEGAL FRAMEWORK

- Refocus IDEA on student achievement and reduce focus on procedures and process.
- Reduce and simplify Prior Written Notice requirement for refusal to initiate or change services when requested by the parent, based on the fact that information in this prior notice will be addressed and resolved at the IEP meeting with parent participation.
- Consolidate procedural notices.
- Simplify Procedural Safeguards, providing the notice only upon initial referral for an evaluation, once annually and upon request.
 - Allow the Department of Education to follow the Title 1 model with all regulations, including interpretative rules published for notice and comment (rulemaking) in the Federal Register.
 - Provide non-regulatory guidance in writing to assist in the implementation.

EVALUATION

- Revise its use of open-ended language in order to clarify that evaluations are to address the relevant areas of need and disability and that unnecessary testing is discouraged.
- Replace the requirement for the three-year re-evaluation with more authentic evaluation when needed (i.e., student isn't making adequate progress and the IEP Committee

believes an evaluation would provide information to assist in developing a more appropriate IEP).

- Replace the requirement that a full evaluation be completed prior to dismissal; there should be adequate authentic information to make the decision about dismissal without a full evaluation which is a costly and unnecessary procedure.
- Replace the parental consent requirement for re-evaluations with a parent notification requirement to avoid potential legal challenges which take resources and time.
- Limit IEE request opportunities to the specific area of disagreement that the parent has identified clearly to the IEP Committee, as well as limiting the opportunity for an IEE to be paid by the LEA once following the initial evaluation and once every three years thereafter based on sufficient justification.
- Include more global disability descriptions, which would make the evaluation process more efficient (e.g., behavioral disabilities, language disabilities, learning disabilities, physical disabilities, cognitive disabilities).

INDIVIDUALIZED EDUCATION PROGRAM (IEP)

- Consider a simplified IEP focusing on the following components:
 - **Student Needs:** description of the student's special education and related service needs based on identified disability
 - **Measurable Goals:** measurable annual goals that would address the student's needs and be based on performance from the preceding year; align with and reference local curricular standards
 - **Special Education and Related Services:** list and describe the special education and related services to be provided to meet the annual goals; necessary accommodations and modifications; participation time with general education and non-disabled peers when applicable
 - **Measuring and Reporting Progress:** definition of the extent to which the student will participate in the state assessment system; how progress toward attaining the annual goals will be measured, and how progress will be reported to the student's parents; the number of reporting periods should be no fewer than the number of progress reports to the general education students in the individual school districts

Require that annual IEPs change only those components needing revision to ensure continued adequate yearly progress; this would reduce the need for an entire IEP document to be re-created every year when changes may not be indicated.

- Limit the number of parental requests for IEP meetings throughout the annual review cycle in order to ensure that staff is focusing time on instruction.
- Implement a study of IEP forms to identify unnecessary sections and create a uniform IEP to facilitate ease of programming when students move from one district/state to another.
- Differentiate the required school district members at IEP meetings by the purpose of the meeting (i.e., annual reviews would require district representative, general and special education teachers, but a meeting to revise only a section of the IEP would require only

those individuals for whom the change directly affects their instructional services). In many cases, a general education teacher and/or district representative may not always be required.

DISCIPLINE AND SAFE SCHOOLS

- Create uniform discipline requirements and processes for all students in schools that apply to both general and special education students.
- Simplify the multi-layered discipline requirements and procedures.
- Limit the ability of parents to ask for an evaluation for special education services when a student's behavior threatens the safety of others.
- Modify the "stay put" provision of the law to ensure that all students have a safe learning environment.
- Create a reasonable and effective procedure for removing a student from school if they engage in dangerous or unsafe behaviors.

RETENTION AND RECRUITMENT OF HIGHLY QUALIFIED STAFF

- Create a federal income tax credit for those who serve in special education fields experiencing personnel shortages.
- Improve pre-service programs for general and special education teacher candidates in order to address the diverse learning needs of students and move towards a more unified system of education.
- Provide incentives for partnerships with institutions of higher learning for teacher training.
- Provide incentives such as noncompetitive grants and forgivable student loans to attract teacher candidates to special education.
- Fund in-service professional development efforts that foster the use of research-based practices with a focus on learning and student outcomes.
- Increase funding for teacher training in the existence and implementation of assistive technology in the classroom.
- In regard to teacher standards and requirements, IDEA should not further reduce the availability of certified candidates by allowing more flexibility and waivers in shortage fields.
- Counter NCLB legislation that special educators should also be certified in content subject areas.
- Address the reasons special educators most often cite as they leave the profession:
 - excessive volume of paperwork
 - inordinate amount of time spent preparing for and attending meetings
 - an adversarial and legalistic work environment
 - inadequate salaries

DISPUTE RESOLUTION: FOCUS ON EDUCATION, NOT LITIGATION

- Streamline procedural safeguards and provide Procedural Safeguards Notice (Section 615(d)(1) only when student is referred for an evaluation annually when requested
- Cap the amount of attorney's fees by consideration of the following:
 - add a national hourly cap and an aggregate case cap on attorneys' fees
 - allow states to impose a regional cap on attorneys' fees
 - implement an IDEA version of small claims court (no attorney claims)
 - provide billing guidelines that prevent frivolous claims
 - disallow payment of fees for attendance at unnecessary meetings or where no good faith attempts are made at dispute resolution
- Delete the unnecessary prior written notice obligation (Section 615 (b)(3)(B)) for an LEA "refusal to initiate or change" when requested by the parent, based on the fact that information in this prior notice will be addressed and resolved at the IEP meeting with parental participation.
- Reduce redundancy by limiting duplicative procedural notifications.
- Narrow the open ended, unlimited demands for Independent Education Evaluations (Section 615 (b)(1)) by allowing them to be provided:
 - once during the initial evaluation period
 - once every third year based on an appropriate educational rationale
- Limit the reimbursements for Independent Education Evaluations (IEE).
- Limit the number of due process hearing days.
- Require advocates and hearing officers to undergo special education training and/or certification.
- Include special education hearing officers as a part of the state administrative hearing process.

FUNDING

- Increase federal funding to the 40% target level over the next six years.
- Make IDEA funding mandatory.
- Allocate funds based upon a fixed percentage of the district population (three year average).
- Encourage schools to intervene early with effective strategies in an effort to reduce the need for special education at a later time by:
 - allowing for the use of special education funds to support pre-referral interventions, which can support a tiered curricular intervention approach to assessment
 - maintaining a constant level of funding for a fixed percentage of the population even if early interventions serve to subsequently reduce the number of special education eligible students (particularly as student performance expectations increase under ESEA)
- Support funding for staff development to train teachers and other school personnel in identification and early intervention.
- Develop separate funding mechanism for individual high cost students.
- Strengthen interagency financing provisions by requiring other agencies to use the full range of their legislated authority to help finance services for school children with disabilities (i.e., remove barriers to accessing Medicaid reimbursement for school-based services).
- Require states to maintain their level of effort.