

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is a darker shade of blue. The hourglass is centered on the page.

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*The Individuals with Disabilities Education Act: Overview of
P.L. 108-446*

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Abstract. The Individuals with Disabilities Education Act (IDEA) is the main federal program concerning the education of children with disabilities. It authorizes state and local aid for special education and related services for children with disabilities and contains detailed due process protections for children with disabilities and their parents. On December 3, 2004, President Bush signed "the Individuals with Disabilities Education Act Improvement Act" (P.L. 108-446), a major reauthorization and revision of IDEA. The new law preserves the basic structure and civil rights guarantees of IDEA but also makes significant changes in the law. Most provisions of P.L. 108-446 go into effect on July 1, 2005. This report discusses several of the major changes made by the reauthorization.

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The Individuals with Disabilities Education Act (IDEA): Overview of P.L. 108-446

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Summary

The Individuals with Disabilities Education Act (IDEA) is the main federal program concerning the education of children with disabilities. It authorizes state and local aid for special education and related services for children with disabilities and contains detailed due process protections for children with disabilities and their parents. On December 3, 2004, President Bush signed “the Individuals with Disabilities Education Act Improvement Act” (P.L. 108-446), a major reauthorization and revision of IDEA. The new law preserves the basic structure and civil rights guarantees of IDEA but also makes significant changes in the law. Most provisions of P.L. 108-446 go into effect on July 1, 2005. This report will briefly discuss several of the major changes made by the reauthorization. For more detailed information see CRS Report RL32716, *Individuals with Disabilities Education Act (IDEA): Analysis of Changes Made by P.L. 108-446*, by Richard N. Apling and Nancy Lee Jones. This report will not be updated.

The Individuals with Disabilities Education Act¹ is both a grants statute and a civil rights statute. It provides federal funding for the education of children with disabilities and requires, as a condition for the receipt of such funds, the provision of a free appropriate public education (FAPE). The statute also contains detailed due process provisions to ensure the provision of FAPE. Originally enacted in 1975, the act responded to increased awareness of the need to educate children with disabilities, and to judicial decisions requiring that states provide an education for children with

¹ 20 U.S.C. §1400 *et seq.*

disabilities if they provided an education for children without disabilities.² Although much of the basic structure of IDEA has been retained, P.L. 108-446 does make a number of significant changes. Among these are the definition of “highly qualified” teachers, calculation of maximum state grants, funding for high-need children with disabilities, revised state performance goals and requirements for children’s participation in state and local assessments, changes in the private school provisions, exceptions to certain financial requirements, changes in procedural safeguards, and changes in compliance monitoring to focus on student performance.

Highly Qualified Teacher. P.L. 108-446 links its definition of “highly qualified” to the definition in Section 9101(23) of the Elementary and Secondary Education Act (ESEA)³ but modifies that definition as it applies to special education teachers. P.L. 108-446 provides additional requirements and options to the definition with respect to special education teachers. If the special education teachers meet the IDEA criteria, they are considered to have met the ESEA requirements to be highly qualified. First of all, to be highly qualified under IDEA, **all special education teachers** (whether they teach “core subjects”⁴ or not) must hold at least a bachelor’s degree and must obtain full state special education certification or equivalent licensure.⁵ Special education teachers who have emergency, temporary, or provisional certification do not meet the IDEA definition. In addition, P.L. 108-446 modifies the ESEA requirements with respect to two groups of special education teachers: those **who teach only the most severely disabled children** and those who **teach more than one core subject**. One significant modification that P.L. 108-446 makes is that new special education teachers in these groups can meet the definition of “highly qualified” through state examinations, such as “a high objective uniform State standard of evaluation” (i.e., HOUSSE). Under ESEA, this option is available only to veteran teachers.⁶

Maximum Grant Calculation and Authorizations. Prior to the enactment of P.L. 108-446, the maximum amount states could receive under the Part B grants-to-states program was based on 40% of the national average per pupil expenditure (APPE) for

² For a more detailed discussion of the congressional intent behind the enactment of P.L. 94-142 see CRS Report 95-669, *The Individuals with Disabilities Education Act: Congressional Intent*, by Nancy Lee Jones.

³ The ESEA definition of “highly qualified” applies only to teachers of core academic subjects and differentiates between new and veteran teachers and between those teaching at the elementary level and above the elementary level. Thus, under ESEA, the “highly qualified” definition would apply only to those special education teachers who teach core subjects (albeit this is probably most special education teachers). For information on ESEA requirements, see CRS Report RL30834, *K-12 Teacher Quality: Issues and Legislative Action*, by James Stedman.

⁴ ESEA §9101(11) defines “core academic subjects” to include “English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.” P.L. 108-446 cross-references this definition (§602(4)).

⁵ §602(10)(B).

⁶ For further information on the definition of “highly qualified,” see CRS Report RL31383, *The Individuals with Disabilities Education Act (IDEA): Implications of Selected Provisions of the No Child Left Behind Act (NCLBA)*, by Richard N. Apling and Nancy Lee Jones. (Cited hereafter as *Implications of NCLBA*).

public K- 12 education times the number of children with disabilities the state serves.⁷ The sum of these maximum grants is often referred to as IDEA “full funding.” P.L. 108-446 maintains this maximum-grant calculation through FY2006. Thereafter, the maximum grant will be 40% of APPE times the number of children with disabilities the state served in school year 2004-2005 adjusted by the annual rates of change in the state’s population in the age range comparable to ages for which the state provides FAPE for children with disabilities⁸ (85% of the adjustment) and in the state’s children living in poverty in the same age range (15% of the adjustment).⁹ In addition, P.L. 108-446 provides specific authorization levels for FY2005-FY2011, aimed at reaching “full funding” in the latter fiscal year.¹⁰

Risk Pools for High-Need Children with Disabilities.¹¹ Provision of medical¹² or other expensive services to ensure FAPE has resulted in very high costs for some school districts. P.L. 108-446 aims to address these high costs by permitting states to reserve 10% of the funds reserved for other state activities (or 1 to 1.05% of the overall state grant) to establish and maintain a risk pool to assist LEAs serving high-need children with disabilities. States taking advantage of this option must develop and annually review a state plan in which the state determines which children with disabilities are high need,¹³ sets out the procedures by which LEAs participate in the risk pool,¹⁴ and determines how funds are distributed. Funds distributed from the risk pool must only pay for “direct special education and related services” for high need children with disabilities and may not be used for legal fees or related costs. If some funds are not distributed for services for high need children, they are to be distributed to LEAs according to the substate formula.¹⁵

⁷ P.L. 105-17 §611(a)(2).

⁸ For most states this age range is 3 to 20 or 3 to 21.

⁹ §611(a)(2). For example, if a state’s relevant population for school year 2007-2008 rose by 3% above its 2004-2005 population and its number of children living in poverty rose by 2% above the 2004-2005 number, then its 2007-2008 maximum grant would be the appropriate APPE for that year times the 2004-2005 number of children with disabilities served increased by 2.85% (85% of 3% plus 15% of 2% = 2.55% + 0.3% = 2.85%).

¹⁰ P.L. 108-446 authorizes “such sums” for succeeding fiscal years (preserving the permanent authorization of the Part B grants-to-states program) (§611(i)).

¹¹ (§611(e)(3)).

¹² These provisions, contained in previous law and continued in the 2004 reauthorization, have been interpreted by the Supreme Court to mean that schools must provide medical services unless they are provided by a doctor or hospital. *Independent School District v. Tatro*, 468 U.S. (1984); *Cedar Rapids Community School District v. Garret F.*, 526 U.S. (1999).

¹³ P.L. 108-446 requires that the cost for serving these children must be greater than three times the national average per pupil expenditure (APPE) as defined in Section 9101 of the ESEA (§611(e)(3)(C)(ii)(I)(bb)).

¹⁴ State-determined LEA eligibility criteria must take “into account the number and percentage of high need children with disabilities served ...” (§611(e)(3)(C)(ii)(II)).

¹⁵ §611(e)(3)(I).

Private Schools. A child with a disability may be placed in a private school by the LEA or SEA as a means of fulfilling the FAPE requirement for the child in which case the cost is paid for by the LEA. A child with a disability may also be unilaterally placed in a private school by his or her parents. In the latter situation, the cost of the private school placement is not paid by the LEA unless a hearing officer or a court makes certain findings. However, IDEA does require some services for children in private schools, even if they are unilaterally placed there by their parents. Exactly what these services are or should be has been a contentious subject for many years. The 1997 reauthorization of IDEA expanded the private school provisions and the 2004 reauthorization includes several changes to the provisions relating to children who are placed in private school by their parents. The provisions relating to children placed in private schools by public agencies were not changed.

Generally, children with disabilities enrolled by their parents in private schools are to be provided special education and related services to the extent consistent with the number and location of such children in the school district served by a LEA pursuant to several requirements (§612(a)(10)(A)(i)). This provision was changed from previous law by the addition of the requirement that the children be located in the school district served by the LEA. The Senate report described this change as protecting “LEAs from having to work with private schools located in multiple jurisdictions when students attend private schools across district lines.”¹⁶ P.L. 108-446 adds requirements that the LEA consult with private school officials and representatives of the parents of parentally placed private school children with disabilities. In addition, the new law adds compliance procedures which allow a private school official to submit a complaint to the SEA about the consultation and, if the private school official is dissatisfied with the SEA’s response, he or she may submit a complaint to the Secretary of Education.

Performance Goals and Indicators. P.L. 108-446 revises state requirements for performance goals and indicators mainly by linking these to requirements under the ESEA. In the prior version of IDEA, states were required to have performance goals for children with disabilities that were “consistent, to the maximum extent appropriate, with other goals and standards for children established by the state” and to establish indicators to measure performance.¹⁷ P.L. 108-446 changes this provision to require that a state’s performance goals “are the same as the State’s definition of adequate yearly progress (AYP),¹⁸ including the State’s objectives for progress by children with disabilities” under ESEA.¹⁹ P.L. 108-446 also links performance indicators to ESEA requirements: a state’s indicators for measuring progress must include “measurable annual objectives for progress by children with disabilities” under ESEA.²⁰

¹⁶ S. Rep. No. 185, 108th Cong., 1st Sess. 15-16 (2003).

¹⁷ P.L. 105-17 §612(a)(16)(A)(ii) and (B).

¹⁸ For further information on AYP, see CRS Report RL32495, *Adequate Yearly Progress (AYP): Implementation of the No Child Left Behind Act*, by Wayne Riddle.

¹⁹ §612(a)(15)(A)(ii).

²⁰ §612(a)(15)(B). See also the discussion of performance plans under §616 *infra*.

Participation in Assessments. P.L. 108-446 amends assessment participation requirements to align them with ESEA requirements.²¹ IDEA now requires that **all** children with disabilities be included in **all** state and district-wide assessments, including assessments required under ESEA, with accommodations or alternative assessments if necessary and as included in the child’s individualized education program (IEP).²² P.L. 108-446 now assumes that states have developed guidelines for accommodations (§612(a)(16)(B)) and that states have implemented guidelines for alternative assessments. (§612(a)(16)(C)) Such alternative assessments must follow ESEA requirements — most notably they must be “aligned with the State’s challenging academic content standards and challenging student academic achievement standards.” (§612(a)(16)(C)(ii)(I)) P.L. 108-446 also provides states with the option of adopting alternative academic standards as permitted by ESEA regulations. If the number of those tested is sufficient to ensure statistical reliability and confidentiality, the achievement of children with disabilities is to be compared with the achievement of all children and such comparisons are to be publically reported. Finally, P.L. 108-466 requires the state and districtwide tests adhere to “universal design principles” to the extent feasible.²³

Exceptions to Local Maintenance of Effort. Like many other federal education programs, IDEA requires states and LEAs to maintain fiscal effort (MOE), which, generally in IDEA, requires that state and local spending on special education not be reduced from one year to the next (i.e., a 100% MOE). Prior law allowed certain exceptions to local MOE, one of which allowed LEAs to “treat as local funds” for the purpose of meeting the MOE requirement up to 20% of any annual increase in their IDEA grant.²⁴

P.L. 108-446 makes major changes to this exception. First of all, LEAs may use up to **50%** of the increase in their IDEA grant to “reduce the level of expenditure” for special education (§613(a)(2)(C)(i)). In addition (unlike prior law), P.L. 108-446 requires LEAs exercising this option to use the funds for “activities authorized under the Elementary and Secondary Education Act of 1965” (§613(a)(2)(C)(ii)) and for early intervention services discussed below. P.L. 108-446 continues to provide state authority to prohibit LEAs from using this authority, except that it modifies the criteria for exercising the prohibition and **requires** states (prior law **permitted** states) to exercise the prohibition if warranted.²⁵

Procedural Safeguards. Section 615 of IDEA provides procedural safeguards for children with disabilities and their parents. This section has been a continual source

²¹ Under the previous version of IDEA, states were required to include children with disabilities “in general State and district-wide assessment programs, with appropriate accommodations, where necessary.” For children who could not participate in these assessments, states had to develop and implement alternative assessments and guidelines for participation in these alternative assessments. (P.L. 105-17 §617(a)(17)(A)).

²² §612(a)(16)(A).

²³ For further discussion of assessment requirements, see *Implications of NCLBA*.

²⁴ P.L. 105-17 §613(a)(2)(C).

²⁵ P.L. 108-446 extends this MOE exception to a state that “pays or reimburses all local educational agencies within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services” (§613(j)).

of controversy, especially the provisions relating to the discipline of children with disabilities. The House and Senate bills differed dramatically in their §615 language. The changes made by P.L. 108-446 include adding provisions relating to homeless children, adding a two year statute of limitations for the filing of a complaint and a two year statute of limitations regarding requests for a hearing, adding additional requirements for hearing officers, and specifically allowing the local educational agency, not just the parents, to file for a due process hearing.

One of the major changes was the addition of a “resolution session.” This is a preliminary meeting between the parents and the LEA and IEP team held within 15 days of receiving the parent’s complaint. The reason for this addition was to attempt to resolve disputes prior to the more adversarial due process hearing. The House report noted that the resolution session “is intended to improve the communication between parents and school officials, and to help foster greater efforts to resolve disputes in a timely manner so that the child’s interests are best served.”²⁶ If an agreement is reached during the resolution session, the parties must execute a legally binding agreement signed by both parties and which is enforceable in court.

The new law includes limitations on issues that are allowed to be raised in the due process hearing in an attempt to ensure that the parties know, with clarity and specificity exactly what the problems are. The party requesting the hearing is not allowed to raise issues at the due process hearing that were not raised in the due process complaint notice. In addition, P.L. 108-446 also requires that the decision made by a hearing officer be made on substantive grounds “based on a determination of whether the child received a free appropriate public education.” However, if a matter alleges a procedural violation of IDEA, the law would allow a hearing officer to find that a child did not receive FAPE under certain conditions.

Congress kept the same basic structure for attorneys’ fees and allows a court, in its discretion to award reasonable attorneys’ fees as part of the cost to a prevailing party. However, the 2004 reauthorization allows for attorneys’ fees not only against the local educational agency but also in some situations against the attorney of a parent or the parent.

Compliance Monitoring. Generally, Congress determined that the previous law on monitoring focused too much on compliance with procedures and in the 2004 reauthorization, shifted the emphasis to focus on student performance.²⁷ Under the new law, the Secretary of Education is to monitor implementation of part B by oversight of the general supervision by the states and by the state performance plans. The Secretary is to enforce part B as described in §616(e) and to require states to monitor implementation by LEAs and to enforce part B. Under P.L. 108-446, the primary focus of federal and state monitoring activities is to be on improving educational results and functional outcomes for children with disabilities and ensuring that states meet the program requirements. (§616(a)(2)) The new law lists certain priority areas for monitoring which are to be monitored using quantifiable indicators.

²⁶ H. Rep. No 77, 108th Congress, at 114 (April 29, 2003).

²⁷ See S.Rep. No. 185, 108th Cong., 1st Sess. 46 (2003); H.Rep. No. 77, 108th Cong., 1st Sess. 120 (2003).