

# Looming Reauthorization Battle Threatens Rights of Kids with Disabilities Under IDEA '97 by Matthew D. Cohen, J.D.

The Individuals with Disabilities Education Act Amendments of 1997 (IDEA'97) comprise the federal law that establishes the extensive requirements for special education programming and the detailed procedural safeguards that protect children with disabilities throughout the United States. The special education law, originally called the Education for All Handicapped Children Act of 1975, was adopted in 1975 through Public Law 94–142. In 1997, the passage of IDEA Amendments brought significant changes to the special education system, further improving the services provided to children with disabilities and addressing many problems in the system. However, the efforts of various powerful interest groups and policy makers now threaten many of the important advances embodied in IDEA '97 and even some of the foundations of the original 1975 law.

The federal special education law calls for review and reauthorization of the law every five years. Originally, IDEA was due for reauthorization in 1995, but enormous controversy surrounding the law led to protracted negotiations over its language and requirements. After extensive public debate and unprecedented input from major constituencies interested in the law, such as disability groups, teachers' unions, professional organizations of school administrators and others, the law was finally amended and reauthorized in 1997. The law incorporated a number of sweeping changes.

Many continue to advocate for the services children with disabilities receive under IDEA, but it will take all of our combined efforts to succeed.



# There is a broad consensus among the many groups concerned about special education in the U.S. that the system is not working as it should.

- Major revisions to the IEP process, including required participation by regular education teachers, provisions for ensuring greater parent input, and new documentation requirements to ensure that promised services were delivered on time and in the intended location.
- A new requirement that the IEP include explicit provisions for positive behavioral interventions and supports for children with behavioral difficulties.
- A specific requirement that the IEP delineate all services, modifications and supports, including, where appropriate, instructional methods and who will be responsible for them.
- The IEP now must specify not only the supports that the child needs, but also the supports that the staff requires in order to serve the child effectively.
- A new emphasis on providing children with disabilities with access to the general curriculum. Based on the common sense recognition that the general curriculum represents what we think students need to know, children with disabilities would be at a permanent disadvantage if they are never given access to the same instructional material provided to students without disabilities.

■ Extensive procedural safeguards and interventions for children with disabilities or suspected disabilities who have behavior problems, which may lead to suspension or expulsion, including requirements that there may be no exclusion for more than 10 days unless the behavior is unrelated to disability and that the children continue to get services designed to address the behavior that got them into trouble.

In addition to these important changes, the regulations implementing IDEA, which were issued in 1999 by the U.S. Department of Education, include another major change that is vitally important to children with AD/HD. For the first time, these new regulations formally incorporated AD/HD within the Other Health Impaired category of disability within IDEA. This was an important step in removing the confusion and uncertainty that children with AD/HD had suffered with respect to whether they were entitled to special education services.

## **Room for Improvement**

There is a broad consensus among the many groups concerned about special education in the United States

that the system is not working as it should. There is concern that some children of color may be disproportionately and inappropriately placed in special education, while other children who need special education, including children of color and some children with AD/HD, may not be receiving it. The evaluation and IEP process is time consuming and there is growing research showing that the outcomes for children in special education are still often problematic. There is considerable evidence that many school districts throughout the United States are not fully complying with the procedures of IDEA. Indeed, the National Council on Disability issued a report in 2000, using data generated by the U.S. Department of Education, which found that no state was in substantial compliance with the IDEA. Furthermore, there is agreement that the special education due process procedure is an imperfect means for resolving disputes. It is time consuming and expensive, and tends to breed acrimony and distrust. Finally, there is also general agreement that the federal government should fulfill its original promise to provide funding at the level of 40 percent of all special education funds, which it promised prior to the passage of the first special education law in 1975. However, the consensus around the shortcomings of the system breaks down when it comes to finding solutions to these problems. And herein lies the threat to IDEA and children with disabilities.

### Threats to IDEA

Currently, the Washington policymakers are considering proposals that threaten services and protections for children with disabilities. Some of the proposals set out to do the following:

- Exclude children with behavioral disorders from participation in the special education system and limit periods of remediation and accommodation for children with mild neurological impairments.
- Substantially scale back the detailed requirements of the IEP process, ostensibly to make it less burdensome and more efficient, with a resulting reduction in the ability of the parents to hold schools accountable for the way the process works.
- Reconsider and narrow the directive that children be served in the least restrictive environment to the maximum extent appropriate.
- Implement block grants or educational vouchers which claim to give states and parents more control over how federal educational dollars are spent, but would actually make it easier for states to lower the bar for the services required for children with disabil-

# **Glossary of IDEA Terms**



ADA Americans with Disabilities Act—A federal law prohibiting discrimination in programs, services and physical access by state and local governmental agencies (including schools) and places of public accommodation; generally subsumed by IDEA and §504 with respect to elementary and secondary education disputes. 42 U.S.C. §12131 et seq.

**Appendix A** An Appendix to the federal IDEA regulations which provides the Department of Education's answers to the most frequently asked questions about how the IEP process is supposed to work.

**DSM-IV** Diagnostic and Statistical Manual, 4th Edition—A publication of the American Psychiatric Association designed to codify the diagnostic evidence for psychiatric disorders.

**IDEA** Individuals with Disabilities Education Act. 20 U.S.C. §1401 et seq., formerly known as the Education for All Handicapped Children Act (PL94–142), the "special education" law.

**IEP** The Individualized Education Plan developed for each child eligible for special education, based on the child's unique needs, with parent participation, containing a statement of the child's present level of performance, educational needs, goals and measurable objectives. Is reviewed at least annually.

**Section 504** A federal law which prohibits discrimination on the basis of disability in any program or activity which receives federal financial assistance (including the schools). 29 U.S.C. §794.

**U.S.C.** United States Code—the laws of the U.S. —Matthew D. Cohen, J.D.

ities. It would also make it more likely that children with more severe disabilities would be "stuck" in public education, while other children would be more likely to access private options.

■ Subject children with disabilities to regular education disciplinary exclusion, even for behavior directly related to their disabilities. A better solution would require that all children, disabled or not, who are subject to disciplinary exclusion instead be provided

18 attention@chadd.org / August 2002 / attention@chadd.org 19

### The Reauthorization of IDEA '97

intensive intervention to address the problems that got them into trouble.

- Do away with the current IDEA categorical eligibility and replace it with the eligibility standard used under Section 504 and the Americans with Disabilities Act, which would be subject to the highly restrictive interpretations of eligibility that are currently being adopted by the U.S. Supreme Court.
- Limit the ability of parents to recover attorney's fees if they prevail in a special education impartial due process hearing. This would have the effect of limiting access to attorneys to the very rich, since few middle class families can afford to pay for lawyers, especially when there is no possibility of recovering the fees. Fee recovery can occur only when an impartial hearing officer rules that the school has violated the child's right to a free appropriate education and orders substantial relief, which should not happen if the school is doing its job. Also, organizations which provide free services to poor families are often dependent on fee recovery to fund future services.

### **Immediate Priorities**

The evaluation and

**IEP** process is time consuming and there

is growing research

showing that the outcomes for children in

special education are

still often problematic.

In the coming months, much attention will be focused on U.S. special education policy. A presidential commission on special education was expected to issue a report on the special education system in late June or July. Congressional hearings on possible changes to IDEA have already begun and will probably continue into the fall. It is likely that Congress also will consider proposals for modifying IDEA as early as this fall, if not sooner. The time for action in response to these threats is now. Only with widespread and vocal support from the parent and advocacy communities will the rights of children with disabilities be protected. Here is what you can do:

- Regularly monitor e-mail and printed newsletters from disability groups to stay abreast of what is happening in Washington so you can better communicate your concerns about the latest proposals to your legislators. By the time you read this article, it is entirely possible that these items may either already be incorporated into formal proposals or have been replaced with other more (or less) desirable options. To stay abreast of developments and the current state of the discussions, consult CHADD's website (www.chadd .org) and the sites of other disability organizations.
- If a Department of Education or Congressional hearing is being held in your area, plan to attend and bring as many other interested persons as you can. Anyone can provide written testimony, even if there



isn't time to testify. The presence of large numbers of concerned parents alone sends the message: don't take our rights and services away.

- Convey the following messages to your congress-
- Don't dismantle IDEA—enforce it! Don't dismantle IDEA—fund it!
- Protect existing eligibility categories!
- Maintain the requirements of IDEA necessary to assure quality services and meaningful parent participation through the IEP process!
- Ensure funding that is fair and equitable and supports access to appropriate programs for all kids!
- Maintain procedural safeguards and services for kids with behavioral problems!
- Ensure that parents have adequate access to legal representation and that schools continue to reimburse attorneys' fees when parents prevail!

Many individuals and organizations continue to advocate for the services children with disabilities receive under the Individuals with Disabilities Education Act, but it will take all of our combined efforts to succeed.

Matthew D. Cohen, J.D., is past president of CHADD, a partner at the law firm of Monahan & Cohen in Chicago, and an adjunct professor of law at Loyola University Law School. He is nationally recognized for his work in special education law and has considerable experience in healthcare and mental health law

© Copyright by Matthew D. Cohen. Reprinted by CHADD with permission of the author. The opinions expressed herein are the opinion of the author and may or may not represent the opinions of CHADD's Board of Directors.

**20** attention@chadd.org / August 2002

