

H.R. 1350 Will Not Accomplish the Goals of Its Proponents

According to the House Education and Workforce Committee's Fact Sheet "Improving Educational Results for Children with Disabilities," the stated goals of the House bill include:

"...Improving Education Results for Children with Disabilities Act calls for reforms **to strengthen accountability and results for students, reduce the IDEA paperwork burden** for teachers, provide **greater flexibility for local school districts to improve early intervention strategies**, reduce the number of children who are wrongly placed in special education classes, **reduce litigation** and **restore trust between parents and school districts**, and align IDEA with the bipartisan No Child Left Behind Act signed by President Bush in January 2002. NCLB requires federally-funded schools to be accountable for providing a quality education to all students, including students with special needs." (Emphasis supplied)

From:<http://edworkforce.house.gov/issues/108th/education/idea/summary.htm>

Addressing these stated goals individually:

1. Strengthen accountability and results for students

One stated goal of HR 1350 is to improve student achievement, yet the House bill would remove measures for assessing student progress toward educational goals. There is little if anything in H.R. 1350 that would actually result in increased academic results for children or increase the amount of time that teachers spend with students.

For instance:

Under current law, measurable short-term objectives/benchmarks are the major way that schools measure progress for individual IDEA eligible students in meeting their respective annual goals. Removing them will result in less, not more accountability for individual student progress.

Some have claimed that the individual student reports generated as a result of the annual statewide assessments required by NCLB will successfully *replace the measurable short-term objectives/benchmarks*. *This is not the case* because: (1) they are only mandatory in language arts and math (2005-06) and science (beginning in 2007-08); (2) they apply only to grades 3-8; and (3) even if properly implemented, these annual assessments will result in only an annual student report – short term objectives/benchmarks break down annual goals into their component parts.

Also, NCLB focuses only on academic achievement (and in only language arts, math and science, at that), while the IDEA addresses all areas of educational need for students. For example, for some students, life skills are an important part of his or her educational program. In such cases, measures of math and reading and

science achievement will provide very incomplete and insufficient information about that student's progress.

Measurable short-term objectives/benchmarks are also needed to guide the provision of related services such as occupational therapy and counseling/behavior management. None of these items are contained within the NCLB reports.

Without measurable short-term objectives/benchmarks, parents have no objective information with which to measure the child's total educational progress.

HR 1350 would allow the waiver of paperwork requirements in ten states for up to four years with no statutory criteria specifying which requirements may be waived. As far as we know, important parts of the current law, such as the requirements that specify what a student's IEP must contain or that parents must be invited to the IEP meeting might be waived in these ten states. If these waivers were provided to the nation's ten largest states, *at least 3,284,607¹ IDEA eligible students per year could be harmed by this "experiment."* *Four years is one third of the time most students spend in public school.* How is it that this waiver will increase accountability?

2. Restore trust between parents and school districts

The stated goal is that HR 1350 will restore trust between parents and schools, yet the proposed changes would only cause an already unbalanced conflict resolution system to be weighted more heavily against parents -- further eroding what little trust parents have for the system.

On April 9, 2003, Rep. John Boehner (R- OH), Chairman of the House Education & the Workforce Committee, published a document entitled

*"The Improving Education Results for Children with Disabilities Act: Separating Fact from Fiction." In this document he states "...The changes in the complaint process proposed in H.R. 1350 are designed to improve communication, **restore trust**, and strengthen cooperation between parents and school personnel. By providing options such as **binding arbitration**, parents and schools will have new opportunities to address problems without fear of costly litigation...The **one-year statute of limitations** proposed in H.R. 1350 is a protection for both parents and schools that will help ensure the timely resolution of complaints. **Reforms to the complaint process** will help restore trust and allow teachers to feel confident that they can teach without fear of frivolous litigation that could jeopardize educational opportunities for other children with disabilities.*

It is disingenuous at best to claim that the changes proposed to the due process protections in H.R. 1350 are beneficial to parents and students.

¹ This data comes from the OSEP Annual Report to Congress, 1999-2000, and includes only students aged 3-21 in the 10 states with the highest number of IDEA eligible students that year (CA, FL, IL, MI, NJ, NY, NC, OH, PA, TX). It is probably a low estimate as the total number of IDEA eligible students has tended to increase over time and because this count does not include children aged Birth - 2.

Voluntary binding arbitration as proposed in H.R. 1350 *does not provide any benefits to parents* that are not available in a due process hearing and merely takes away the parent's rights to appeal.

One-year statute of limitations would limit parents' ability to bring claims about problems that occurred more than a year ago. *This forces parents to proceed to hearing rather than negotiating*, for fear of missing the time deadline. This provision most hurts vulnerable families – those that don't execute their rights quickly because they are less literate, are less aware of their rights, have poor English skills, etc.

The cap on rates for attorney fees will only make attorneys less available to parents and *the cap does not apply to the amount that school districts may pay their own lawyers -- who are also paid with public funds*. Under current law, school districts only have to pay parents' attorneys fees when the parent wins the case against the district. The proposed rate caps would also only apply to parents who *win* their case against the school district. Also, there are no standards available to make sure that rates are set high enough so that attorneys are truly available to families. As wealthy families will be able to pay for their own lawyers, this provision again only hurts the most vulnerable of parents and children.

H.R. 1350 would permit state governors to set rates for parents' attorneys fees. As states are themselves sometimes sued by families, governors will have every incentive to set these rates very low. *In what other area of the law does the defendant decide how much to pay the plaintiff's attorney?*

H.R. 1350 proposes other changes to the conflict resolution system that will make it more difficult for parents to resolve problems with their child's educational program: such as a new meeting they must attend, and a 30-day waiting period that must expire before cases may go to hearing.

From the perspective of an individual child's parents, who are trying desperately to resolve a problem with the school district, H.R. 1350 requires the family to wait longer and jump through more hoops before the case may go to a due process hearing. Then it reduces the number of attorneys available to the family, but not to their opponent -- thus forcing these parents to prepare for and attend the hearing and any other meetings or mediation sessions alone, and provides the confusing "option" of arbitration, among other barriers. It is inconceivable that these changes would result in "restor[ing] trust between parents and school districts"

3. Reduces the paperwork burden

It is claimed that H.R. 1350 will streamline the IDEA system and free up more time for student related activities. In actuality, it will create new systems and more meetings. New systems and meetings will have to be recorded, funded and staffed, creating additional paperwork and bureaucracy. This change will create confusion, which will lead inevitably to more district/parent conflict. For example:

The law would **require a meeting** during a 30-day waiting period before a case may proceed to due process. Districts will have to document the meeting and any attempts they made to resolve the problem. This will create new paperwork and a new meeting for staff to attend.

Voluntary Binding Arbitration: This *creates a new system* of arbitrators that will need to be set up, funded, trained and administered. This also adds a new burden for the state because the state will have to monitor any system that is set up and in some cases will have to set up and administer this system.

The changes proposed in H.R. 1350 are sweeping and it will take *a great deal of time and energy to train staff* sufficiently for the system to work as it is envisioned. Just as one example, the multi year IEP makes the system more complicated as there are now two kinds of IEPs and two sets of requirements to remember and adhere to legally. Mistakes will inevitably be made, resulting in harm to children and increased conflict.

4. Reduce Litigation

H.R. 1350 will not reduce litigation because it will create new ambiguities in the law which will take us back 25 years or more, and open up issues long since laid to rest.

After 25 years of implementation, what litigation there has been² has resulted in a certain degree of clarity in the law. The dramatic changes proposed in H.R. 1350 will result in the re-litigation of many issues to interpret the new requirements.

To name a few:

In the past 25 years, virtually every circuit has struggled with the definition of "appropriateness," within the requirement of a Free Appropriate Public Education (FAPE). Now the Davis amendment will *open up that definition to litigation* all over again

If the parent submits a notice requesting a due process hearing that does not, in the district's opinion, conform to the statutory requirements, this problem would be resolved at a due process hearing, requiring *an additional hearing or ruling* by the hearing officer *prior to* the hearing on the merits of the case.

IDEA was designed in recognition of *Constitutional violations* existing at that time, after extensive litigation (e.g. the *PARC* and *Mills* cases). Some of the changes proposed in H.R. 1350 are so draconian they may open up litigation all over again. For example, disciplining a child for behaviors related to that child's disability will likely engender Constitutional challenges.

In addition, if the state education agency enforced hearing decisions, mediation agreements and arbitration decisions, rather than requiring the parent to go to court when a district refused to comply with an order or agreement, a great deal of litigation could be avoided.

² There is little frivolous litigation under the IDEA. In fact, there is little litigation under the IDEA at all. Few due process hearings are requested each year (approx. .16 % of the total number of Part B students in 1998 requested a hearing⁴). Fewer still actually proceed to hearing (approx. .054 % of the total number of Part B students in 1998) and an even smaller number proceed through the administrative process to court. This works out to about 1 in 622 students who request a hearing and 1 out of 1844 whose cases actually proceed to hearing. This percentage is based on 1998 numbers, as this is the most recent data available publicly. These figures utilize the total number of students in Part B during that period and the total number of hearings requested and held, as reported to the National Association of State Directors of Special Education (NASDSE). Therefore this does not account for cases in which parties file more than one hearing request and the reporting periods re: hearings and total student data may not correspond precisely

5. Greater flexibility for local school districts to improve early intervention strategies

Actually, right now local school districts have the ultimate discretion to design early intervention programs that meet their needs, including programs that serve non-IDEA eligible students. *The only change that H.R. 1350 makes is the opportunity for districts to fund programs for non-IDEA eligible students using IDEA funds.* Using IDEA funds for this purpose will only bind school districts with the red tape that is an inevitable result of federal assistance, as well as draining funds that are already insufficient to meet the needs of IDEA eligible students.

Conclusion

Contrary to its stated intent, HR 1350 will not improve the quality of education for students with disabilities, will not improve the relationship between parents and schools, nor will it increase parent participation in helping to create the best educational plan for their children. It will not improve the level of trust between parents and school, if anything it will create more tension between them, nor will it reduce the amount of paperwork that school staff must complete. Most importantly, it undermines the spirit and intent of the IDEA.

Contact: Robert Berlow, Council of Parent Attorneys and Advocates (COPAA), (301) 912-2281
Diane Smith, National Association of Protection and Advocacy Systems (NAPAS), (202) 408-9514

More Information

Download and distribute this **Fact Sheet**:
<http://www.wrightslaw.com/news/2003/idea.disrights.advocates.pdf>

Learn about **IDEA Reauthorization Issues & News** at
<http://www.wrightslaw.com/news/idea2002.htm>:

Read reports about the strengths and weaknesses of the IDEA and how the law should be changed at **IDEA Reports & Recommendations**:
<http://www.wrightslaw.com/info/idea2002.resources.htm>

Alerts & Newsletters

IDEA Rapid Response Network. The [Disabilities Rights Education and Defense Fund \(DREDF\)](#) launched the [IDEA Rapid Response Network](#).

To receive information about reauthorization and/or participate in the Network, send an email to preserveIDEA@dredf.org Include your name, contact information (postal address, telephone number, and email). More information about the [IDEA Rapid Response Network](#) is available on the [DREDF site](#).

Action Alert. Get news about federal legislation that may affect your child; learn what you can do to get involved. To subscribe, go to <http://www.capwiz.com/ld/home/> and click ACTION E-LIST