

The IDEA was been re-authorized on November 19!

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IDEA Rapid Response Network (RRN)
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ALL OVER BUT THE SHOUTING

IDEA was reported out of the conference committee on Wednesday, November 17, 2004.

The House passed the conferenced bill with a vote of 397 - 3 on November 19, and the Senate agreed to it by unanimous consent on **November 19**.

WHAT DID WE LOSE AND WHAT DID WE GAIN?

The bill we ended up with looks very much like the Senate bill, with a lot of refinements that occurred over the last months and weeks. DREDF will do a complete analysis of the law that is emerging and what it means for our families and supporters and children, as well as a post-mortem of the process, in the fullness of time. But we can say now that the voices of parents and advocates were heard loud and clear, that we DID make a difference in the outcome, and that, given the political and strategic circumstances and the situation on the Hill during this reauthorization process, our hard work and dedication paid off in getting our children the best possible bill we could get. Is it perfect or ideal? No. Is it fully funded? No. But we need to keep fighting and not be defeated by any sense of despair or failure.

We lost some protections. It remains to be seen how "measurable annual goals" and quarterly progress reports will work to replace short-term objectives and benchmarks; up to 15 states may be granted an opportunity to pilot optional three-year IEPs; students who violate school codes will have to remain in an interim placement pending an appeal of the manifestation determination (a hearing must occur within 20 days).

Yet we also held back ferocious assaults on discipline provisions and due process protections, and we prevailed in several key areas, from an increase in the number of certified special education teachers to expanded access to assistive technology to sanctions on states that do not comply with the law.

And we retained continued services for students moved to alternate placements, attorney fee reimbursements for parents who prevail in due process hearings, and functional behavior assessments and manifestation determinations. As we said in RRN #30 on September 30, 2003, there are also key improvements in this bill: provisions for alternate assessments, positive behavioral supports, school to life transitions, assistive technology, and personnel standards.

In RRN #31, from November 6, 2003, we wrote: ". . . we should consider ourselves as having dodged a bullet if we can emerge from conference with a bill more closely resembling the Senate's than the House's." We worked hard to dodge that bullet, and we succeeded. A great deal of the credit for what we achieved goes to Connie Garner, Senator Kennedy's Disability Policy Advisor and chief staffer on the HELP Committee for IDEA. A parent herself, Connie Garner is a true champion of children's rights, and the parent and advocacy communities are indebted to her. We were happy to hear Senator Kennedy acknowledge her work both in his conference speech and on the Senate floor.

WHAT HAPPENS NOW?

Everyone's efforts resulted in the bill being better than we feared, but not as good as we would have liked. The first thing to say is that the voices of parents were raised, we were heard, and we made a difference.

In the main, the principals of IDEA are preserved. The extremely negative provisions in the House bill have been eliminated, and parents' rights remain largely intact. The final bill does contain a few changes that are weaker or that can be interpreted to be weaker than current law. Thus it is important that parents and advocates have the best strategies to deal with these new provisions. Now is the time to disseminate accurate information about the changes, develop advocacy strategies, and ensure that parents of IDEA students are trained in the new 2004 provisions.

Here are some examples:

1. Advocates fought against the early resolution meeting now set forth in the bill on the grounds that parents may feel coerced to go to a meeting after the filing of a complaint and be intimidated into signing a legally binding document under duress. This concern is very real. Parents need to know that they can opt out of this meeting if they choose to go to mediation. Parents must know that they do not have to sign the document in the meeting, but should take it home to consider.

2. The new manifestation determination does not specify that a manifestation will be found if the child's disability impairs the child's ability to understand or control the behavior or if the IEP has not been appropriately implemented. Under the new language, a manifestation will be found any time the conduct was caused by OR had a direct and substantial relationship to the child's disability or the failure to implement the IEP. We should be arguing that this standard is at least as strong as current law. If a child's disability impairs the child's ability to understand or control his behavior, it necessarily follows that the conduct was substantially related to the disability.

3. The attorney fees provision has gotten a lot of attention. Parents should know that the reauthorization did no more than incorporate civil rights attorney fees law that has been established since 1978!

In other words, DON'T GIVE IN TOO EASILY. We can work with the new law! Our children have not lost their rights. DREDF will be developing more comprehensive materials on advocacy strategies.

TO JOIN THE RRN: Visit www.dredf.org and complete our online subscription form. Earlier Briefings can also be found on our website: www.dredf.org. We now have over 4000 subscribers.

The RRN will continue to appear as the rest of the IDEA regulation process unfolds, and DREDF will maintain this electronic communication list as a mechanism for contacting parents whenever legal or legislative issues emerge that concern special education and children with disabilities