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The federal special education law known as the Individuals with Disabilities Education Act (IDEA) should have been reauthorized in 2009. But other laws such as the No Child Left Behind (NCLB) Act also demanded legislative action, delaying IDEA reauthorization. Now that the successor to NCLB, the Every Student Succeeds Act (ESSA), has been signed into law, IDEA moves closer to reauthorization. Indeed, perhaps the key issue will be the coordination between IDEA and ESSA to ensure students with disabilities have the necessary services and supports to succeed in school and beyond. A brief history of special education and an examination of some current trends will provide insights into where Congress may go next with this important law.

History of Special Education

IDEA guarantees a free appropriate public education to all eligible children with disabilities. Originally enacted in 1975 as the Education for All Handicapped Children Act (Public Law 94–142), the law provided children with disabilities, ages 3 to 21, equal educational access and opportunity through specially designed instruction and related services based on their individual needs. Subsequently, early intervention services to children from birth through age 2 were added, helping families address concerns before children begin school.

Prior to 1975, some children with disabilities were denied access to the school building. Many who made it inside received an inferior education, and students with a wide range of intellectual and physical disabilities were often warehoused in one special education classroom. Disability advocates brought several seminal court cases that shed light on these discriminatory practices and paved the way for federal legislation. After passage of the Education for All Handicapped Children Act, additional judicial decisions clarified the term "educational benefit" and what schools must provide to help students achieve academic success (*Board of Ed. of Hendrick Hudson v. Rowley*, 1982; *Doe v. Board of Ed. of Tullahoma*, 1993).

Today, approximately 7 million children with disabilities receive early intervention and special education services (Office of Special Education [OSEP], 2015) in the least restrictive environment (LRE), which is the most inclusive education setting possible. Students may participate fully in the general education classroom, receive some services elsewhere, or be in classrooms designed to address the specific needs of students with disabilities. Approximately 62 percent of students with disabilities spend 80 percent or more of the school day in general education classes (OSEP, 2015). A team of professionals and parents develop an individualized education program (IEP) to address each child's unique needs. Services may include counseling and behavioral interventions, nursing services, and physical, occupational, speech/language, and creative arts therapies.

Congress has reauthorized the law several times over the last 40 years. The 1986 amendments added services beginning at birth, and subsequent amendments addressed transition services to help students move to higher education, employment, and independent living. In the 1990s, the focus shifted to aligning special and general education law. The 1997 reauthorization required the IEP team to identify supports to help students participate and achieve in the general curriculum, and explain why a child might not be able to partake fully in it. For the first time, IDEA assumed students with disabilities would undergo state and district general education academic assessments, with test administration modifications, if necessary. Later, under NCLB, students with disabilities were one of four subgroups requiring special attention due to notable achievement gaps.

The 2004 IDEA reauthorization linked special and general education even further, incorporating the NCLB definition of a highly qualified teacher (HQT) and adding special education–specific language. "HQT" requirements apply to special education teachers in core subjects as defined in NCLB and to teachers with state special education certification or licensure. Lawmakers developed HQT provisions for teachers assisting students with significant cognitive disabilities who received instruction based on state-developed alternate achievement standards. A third provision covered special education teachers concentrating on multiple subjects relevant only to students with disabilities.

The 2004 law also initiated the use of response to "scientific, research-based interventions," known as Response to Intervention (RTI). Used before referral for special education evaluation, these general education interventions are called "multitiered systems of support" (MTSS) in ESSA. States could use a separate set-aside of IDEA funds for "early intervening" services for prereferral interventions. States that identified a significantly disproportionate number of students based on race for special education services were required to use early intervening funds to address students' needs.

What's Happening Now?

Two prominent trends are underway in special education: RTI, which focuses on redesigning instructional delivery, and results-driven accountability (RDA), which shifts the emphasis from ensuring legal compliance to improving outcomes for students. RTI and RDA ensure that most students with disabilities participate in general education classes and instruction.

RTI: Beginning with universal interventions for an entire class, RTI scaffolds to additional tiers with intensive interventions for struggling students. Most often, the last tier involves referral for a special education evaluation.

Disability advocates contend that RTI is a general, rather than special, education intervention. Indeed, until a student is referred for special education, schools and districts use RTI in the general education setting. Using limited special education funds for general education interventions becomes problematic, particularly since prereferral services do not necessarily benefit students with disabilities. ESSA includes optional use of Title I funds for MTSS, which raises the question: should MTSS be available through IDEA or ESSA? When the IDEA reauthorization discussion begins, disability advocates will urge Congress to remove the set-aside of special education funds for general education MTSS. More controversial may be

the discussion of whether MTSS should remain an optional part of the eligibility process for learning disability services. Some parents do not support MTSS as part of that process.

Stakeholders argue over the use of RTI to determine if children have learning disabilities. IDEA requires a comprehensive evaluation to decide if students can receive services; however, federal law does not define the components of that evaluation. Some stakeholders believe RTI models are replacing a comprehensive evaluation that assesses cognitive functioning, while others want to use RTI data to make eligibility decisions. For example, the North Carolina department of education has proposed rules for evaluating and identifying students with learning disabilities. These rules focus on achievement at the child's age and grade level and insufficient response to high-quality instruction and research-based interventions, and would not require a cognitive assessment (North Carolina Department of Public Instruction, 2015). The Learning Disabilities Association (LDA) of America, a parent advocacy organization, strongly disagrees with this position. LDA asserts that a cognitive assessment serves a critical evaluation component and that RTI does not identify processing deficits characteristic of learning disabilities (LDA, 2010).

Lawmakers must address two key questions in the next IDEA reauthorization. First, should tiered interventions targeted to general education students, including the funding set-aside, remain in IDEA? Second, will RTI data remain one evaluation component or a larger factor in determining eligibility for students with learning disabilities?

RDA: Compliance with IDEA has been synonymous with meeting all procedural requirements; yet, the law specifically calls for states to monitor school districts on "improving educational results and functional outcomes for all children with disabilities" (20 U.S.C. § 1416(a)(2)). School districts spend significant staff time and resources on documenting compliance points rather than on student achievement. This focus has not translated to better academic outcomes for children with disabilities.

NCLB heightened awareness of the achievement gap for students with disabilities by requiring disaggregation and public reporting of high-stakes assessment scores by subgroups. In 2012, OSEP in the U.S. Department of Education began shifting its oversight from procedural compliance to RDA focused on improving academic results. The initiative requires states to develop multiyear state systemic improvement plans (SSIPs) describing how they will improve outcomes for children with disabilities. States must coordinate and align these plans with their general education improvement efforts.

The state directors of special education support this effort. Nancy Reder, deputy executive director of the National Association of State Directors of Special Education (NASDSE), says that, while NASDSE hasn't developed recommendations for the IDEA reauthorization, "we do hope a new law would emphasize improving outcomes for students with disabilities by continuing the work on RDA. IDEA must align with ESSA to ensure effective and efficient coordination of these two major K–12 education laws."

The first phase of plan development was due on April 1, 2015, with states' submission of the State-Identified Measurable Result (SIMR) for children with disabilities—the specific area identified for improvement (preliminary information compiled by NASDSE). Thirty states selected reading or language

arts as their SIMR. Twelve states will focus on improving the graduation rate for students with disabilities. Other states will work on improving math proficiency, early childhood outcomes, and post-high school outcomes. OSEP will continue to monitor state performance on IDEA compliance; however, this oversight will aim to help states improve educational and functional results for students with disabilities through technical assistance and support.

What's Next?

Of the wide array of issues Congress must tackle when it reexamines IDEA, the following are among the most visible concerns:

Personnel Shortages: School districts face a critical shortage of qualified special education teachers and specialized instructional support personnel (SISP). Forty-nine states report shortages, and special education teachers leave the profession at double the rate of general education teachers. According to the National Coalition on Personnel Shortages in Special Education & Related Services (NCPSSERS), this trend disproportionately affects high-poverty school districts, with 90 percent reporting problems finding qualified personnel (2014).

In addition, organizations representing SISP, school psychologists, school nurses, and speech-language pathologists, report significant shortages (NCPSSERS, 2014). By increasing the number of students per professional, these shortages hamper these professionals' abilities to prepare and deliver high-quality, appropriate services, consult with other school staff, and complete necessary paperwork.

NCPSSERS cites several reasons for personnel shortages, including the considerable paperwork burden to meet state and local documentation requirements. Other factors contributing to shortages include fewer higher education faculty to train special education teachers and the lack of incentives (such as loan forgiveness) to lure students to the field. In addition, the stress of working in high-need communities with students who may have significant challenges leads to early burnout and lower retention rates.

Some members of Congress have tried to offer incentives to attract and retain qualified personnel. One approach allows prospective teachers who receive financial aid to teach in districts partnered with universities; their loans would be forgiven at the end of their contracts. Other bills target specific professions to staff high-need districts. Another avenue is the Public Service Loan Forgiveness Program, a federal student aid program that includes school personnel (U.S. Department of Education, 2015).

Unfortunately, requirements like the 10 years of service necessary to qualify impede participation in this program.

"The shortage of special education teachers is a perennial challenge, but one that is peaking now," according to Jane West, a higher education policy consultant. "Historically, the policy response is to lower entry standards to become the teacher of record by hiring people with little to no preparation. While this may be a short-term solution, it generates a myriad of long-term problems—exacerbating turnover, lowering student performance, and undermining the professionalism of teaching. When policymakers hold the line for long-term capacity building, we move toward a real resolution."

IDEA states that "the availability of an adequate number of qualified personnel is critical ... to serve effectively children with disabilities" (20 U.S.C. § 1450(5)). While specific hiring and personnel decisions are the purview of local school districts, IDEA designates funds for activities such as personnel preparation, professional development, and support to special education staff (20 U.S.C. § 1451–62). Improvements to this section of the law will bolster state and local efforts to attract and retain high-quality special education personnel.

Postschool Transition: IDEA promises students to prepare them for "further education, employment, and independent living" (20 U.S.C. § 1400(d)(1)(A)). Schools aim to provide students and families with transition services to reach that goal.

The current IDEA requires transition planning to commence at age 16, or younger if the IEP team determines it appropriate. Principals, parents, and teachers agree that earlier is better. For example, transition planning identifies the necessary coursework for students to reach their postsecondary goals. But doing so during the junior year of high school may not leave students sufficient time to take those courses. Amanda Karhuse, director of advocacy at the National Association of Secondary School Principals, says that "There is a real push for college and career readiness as early as the middle school years, with more counseling and discussions about post–high school aspirations and bringing more real-world application into coursework. Students with disabilities need to be planning earlier for their transition out of the K–12 system."

The fiscal bottom line may also figure into this discussion. Some stakeholders view lowering the age as a budgetary concern for school districts, because earlier services translates to more services, which means more funds required.

As students near high school graduation, IDEA requires schools to provide a summary of performance (SOP) that documents their levels of academic achievement and functional performance, accommodations and services received, and recommendations on how to meet postschool goals. Students and families can use the SOP to communicate with colleges, training programs, and potential employers. Some parents want schools to also pinpoint students' academic and functional capabilities, because some programs require such evaluations.

As a greater number of students with disabilities transition to postsecondary education or employment, the transition provision demands examination.

Due Process Procedures: Students, their families, and school districts have the right to resolve conflicts over such matters as evaluation for and provision of special education services. States must offer formal processes for filing and settling complaints. Mediation must be available, and mandated prehearing resolution sessions were added to IDEA in 2004 to help school districts resolve issues. If neither option results in an agreeable solution, the parties may end up in a due process hearing and, ultimately, in state or federal court.

Some parent advocates view the due process system as the only way to get specific services for their children. Federal courts have interpreted IDEA to mean that school districts must provide "the educational

equivalent of a serviceable Chevrolet" rather than a "Cadillac" (*Doe v. Board of Ed. of Tullahoma*, 1993). This disconnect between the legal interpretation and the level of services expected has resulted in a large body of special education case law.

General and special education administrators recommend strengthening the alternative dispute resolution provisions in the next IDEA reauthorization. The School Superintendents Association, or AASA, has called for IEP facilitation, asserting most conflicts occur during IEP development. AASA's vision would retain mediation while removing lawyers and advocates from the process. If mediation fails, the parties would meet with a state-selected independent, neutral special education consultant who would broker a compromise IEP. The superintendents' proposal makes litigation the final option if all else fails.

Sasha Pudelski, the assistant director of policy and advocacy for AASA, notes that "While it is critical to preserve the right of parents to due process, the current system has many hidden costs that inadvertently redirect dollars away from direct services and instruction for students with disabilities. The current federal approach is both inequitable and unpopular, and AASA hopes Congress engages in a serious debate about how to dramatically improve the special education dispute resolution model."

In contrast, the Council of Parent Attorneys and Advocates (COPAA) has expressed strong concerns about the AASA recommendations. Laura Kaloi, the organization's legislative consultant, notes that it will begin its formal discussions about the IDEA reauthorization with the premise that "parents are the primary enforcers of IDEA through private actions. Therefore, it is important to protect and strengthen due process hearing rights so parents are on an even playing field and children with disabilities may receive the free, appropriate public education to which they are entitled" (2015).

The use of alternative dispute resolution has offered less adversarial and expensive ways for families and schools to find meaningful solutions. The next reauthorization will see a debate over retaining and possibly enhancing the current models of alternative dispute resolution. However, some advocates will push to retain a due process hearing system, at least as a last resort.

The Real IDEA Challenge

After 40 years of IDEA implementation, students with disabilities still lag behind their peers on measures of academic achievement, high school graduation, and employability. To address these problems, Congress must consider complex questions: What is "special" about special education, and is it still the best system for students with disabilities? Should special and general education systems merge or remain separate while building on ESSA's foundation? Should stakeholders offer personalized learning plans and specialized instructional support services for every student, allowing remediation of early problems before referrals for special education? What training and skills must educators possess to provide stronger instruction and support to all students? Will Congress make the investments necessary to ensure a world-class education for every student? Nuanced, forthright discussion addressing these questions could inform the whole education system.

The road to reauthorizing IDEA is never easy. Congress must first decide if they want a complete overhaul of the law. The disability advocacy community views IDEA as civil rights legislation. Some

advocates and even some Hill staff are reluctant to begin the reauthorization process, fearing that once changes are on the table, rights may be eroded. The reauthorization conversation will not begin in earnest until a new administration takes office. The majority party in either chamber will dictate the tone, with Democrats traditionally supporting more federal oversight and Republicans supporting more decision making by local school districts. Politics aside, amending IDEA has, historically, taken several intense years of scrutiny and discussion.

Congress should use the recently enacted ESSA as the context for the next IDEA reauthorization. Congress must determine how better to align ESSA and IDEA to address the longstanding academic achievement gap and to improve postschool outcomes for students with disabilities. The days of special education as an add-on to general education cannot continue if our goal is to ensure success for all students.

It is unlikely the underpinnings of the law—the right to a free appropriate public education in the least restrictive educational setting—will change. That said, some parent advocates will push for full inclusion of students with disabilities in regular education classrooms, while others will argue to retain a choice of educational settings. There will be tough fights over changes to student assessment for special education services, the definition of a comprehensive evaluation, and the role of tiered interventions in such determinations. School districts may receive greater flexibility in fiscal and educational decision making, especially as ESSA and IDEA align. Complex discipline provisions may come under scrutiny, because they are difficult to implement and do not offer positive solutions to problematic student behaviors. And most important, Congress must recognize that the law has not achieved its aim—to ensure good outcomes for all students with disabilities. Resolving this disconnect requires all stakeholders to reexamine any aspect of the law that impedes progress toward that goal.

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