



*A Union of Professionals*

## Special Education Network ALERT

**May 2004**

### **IDEA Reauthorization**

On Thursday, May 13, the Senate, by a 95-3 vote, approved a bipartisan bill to reauthorize the Individuals with Disabilities Education Act (IDEA). The American Federation of Teachers (AFT) strongly supports the positive changes to the current law as proposed in S.1248. This bill took significant strides to address disproportionality, paperwork reduction and arduous due process procedures. However, there are still components of S.1248 that are in need of improvement such as improving the roles and responsibilities of teachers, related service providers and other school staff in addition to streamlining the discipline procedures.

Lawmakers reached a compromise on paperwork reduction and recovery of attorney's fees from frivolous lawsuits. The pressing issue of paperwork reduction was addressed by allowing the Education Department to waive certain paperwork requirements for 15 states. The number of states is down from the 20-state pilot program proposed by the Republicans and up from the original 10-state pilot proposed by the House last year.

S.1248 will also allow school districts to recover attorney's fees should a court determines a parent's lawsuit frivolous. Within the current law, only prevailing parents can be reimbursed for attorney's fees.

Regrettably, a key Democratic amendment guaranteeing annual federal spending increases was narrowly defeated by a margin of four votes. Senators, did however, approve a Republican amendment that would increase spending for special education by \$2.2 billion per year up to six years. Under this amendment, Congress can increase aid; but, are not obligated to do so.

S.1248 will now go to a pre-conference session with the House of Representatives. Reconciliation with the House version of the Bill, HR 1350, will have to occur on some of the key issues which include teacher qualifications, enforcement, data collection and procedural safeguards.

Leading Democrats are calling for a pre-conference meeting to address these key issues. Listed below is a comparison of the four pre-conference topics:

## Highly qualified teacher definition for special educators

<p><b>HR 1350</b></p> <p>Aligns the definition with No Child Left Behind (NCLB). This means special educators teaching core subject areas must meet degree and certificate requirements by SY 05-06</p>	<p><b>S.1248</b></p> <p>Allows special educators teaching core subjects in middle and high schools to co-teach with another educator who is deemed proficient in a core academic subject.</p>
<b>Enforcement</b>	
<p><b>HR 1350</b></p> <p>Comparable language as S.1248</p>	<p><b>S.1248</b></p> <p>Requires states to meet compliance benchmarks in free, appropriate public education (FAPE) in the least restrictive environment (LRE); transition services, disproportionality and the exercise of general supervisory authority.</p>
<b>Data Collection</b>	
<p><b>HR 1350</b></p> <p>Would require data to be collected from program information and through sampling to monitor and address disproportionality.</p>	<p><b>S.1248</b></p> <p>Would require examination of relevant State data and information annually to determine if State is making satisfactory progress or is in compliance.</p>
<b>Procedural Safeguards</b>	
<p><b>HR 1350</b></p> <p>Reduces the overall number of procedural safeguards. Includes a provision that a parent or attorney representing a child may not have a due process hearing until they provide written notice to the local educational agency (LEA) or state educational agency (SEA). It also added voluntary binding arbitration and one-year statute of limitations for filing a complaint.</p>	<p><b>S.1248</b></p> <p>Would require notices to be sent annually. Parents retain the rights to receive procedural safeguard notices on three other occasions; at initial referrals; when a complaint is filed; and at their request.</p>

Now that the full House and Senate have passed their respective bills, the Conference Committee (generally made up of the same House and Senate committee leaders who first developed the bills) are appointed to reconcile the differences between the two bills and report out a final version of the legislation. This final version would then go back to both the House and Senate for a final vote. If this version of the legislation is passed by both the House and the Senate, it goes to the President for signature and becomes law. The conference process may not occur quickly. Assuming that the House and Senate do manage to go to conference on IDEA, there are very few legislative days left for the 108<sup>th</sup> Congress.