

May 12, 2004

United States Senate  
Washington, D.C. 20510

Dear Senator:

On behalf of the 1.3 million members of the American Federation of Teachers (AFT), I write to offer our views on S. 1248, the Individuals with Disabilities Education Improvement Act (IDEA). Members of the Senate have done a commendable job of crafting this bipartisan legislation, and we therefore urge its adoption.

The AFT believes that S. 1248 includes positive changes to current law and comprehensively addresses many existing problems in how schools provide services to students with disabilities. The bill also takes significant steps to reduce paperwork burdens, address disproportionate minority representation in special education, and reform cumbersome due process procedures. Although S. 1248 needs improvement in other areas, such as streamlining discipline procedures and improving the involvement of teachers and other school professionals, we support moving the bill forward at this time. A more detailed presentation of the AFT's views on the Senate's IDEA reauthorization efforts is attached.

The AFT also believes that the underlying bill can be further improved by the following amendments, and we urge all senators to support their inclusion in the final version of S. 1248.

- Hagel-Harkin Amendment on IDEA Full Funding;
- Santorum Amendment on Paperwork Reduction (if adequate student protections are included);
- Murray Amendment To Assist Homeless Students; and
- Clinton Amendment To Include the U.S. Education Department in a Governmental Study on Children's Health and Development.

If a voucher amendment is offered on the Senate floor, we urge you to vote against it. Vouchers for special education are particularly insidious because they fail to protect the very population they purport to assist. IDEA already contains substantial options for parents of students with disabilities, and private school

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vouchers are not necessary. All vouchers will do is undermine services for students with disabilities by draining resources from public schools, while failing to provide a meaningful choice to the parents of these students. Instead, decisions will be left to private schools that would be free to discriminate against the very students these programs are intended to serve. If such an amendment is adopted, we urge you to vote against final passage of S. 1248.

Finally, the AFT appreciates the effort to clarify the professional standards that special education teachers must meet to be considered “highly qualified”. We look forward to working with members as the bill goes to conference and reaching consensus on a definition.

Again, the AFT commends the Senate for producing a bipartisan bill and urges passage of S. 1248.

Sincerely,

Charlotte J. Fraas  
Director, Legislation Department

CF:kb

### Mandatory Full Funding

The AFT strongly urges your support for an amendment to be offered by Sens. Hagel (R-Neb.) and Harkin (D-Iowa) that will allow Congress to finally fulfill its promise made 28 years ago to provide 40 percent of the national average per-pupil expenditure (APPE) for every child in special education. The amendment moves to fully fund special education by combining current discretionary funds with an additional \$2 billion annually -- over the next eight years -- through a mandatory funding account to reach full funding. It is only through such an account that states can rely on a guaranteed funding source to meet the rising costs associated with serving disabled students. In addition, the AFT urges you to reject any amendment that would provide for additional special education funds by cutting other education accounts.

### Disproportionate Minority Representation

Disproportionate minority representation in IDEA is another key issue that needs to be remedied. Although more work is needed on these provisions, the AFT supports their intent. We believe that it is preferable to fund pre-referral services out of general education funds; however, we are pleased that if a local education agency (LEA) uses Part B federal grant funds for these services, the portion of such funds that the LEA treats as local funds must be used. It is important that pre-referral services not further deplete the already inadequate funds for serving students with disabilities.

The AFT also believes that in addressing minority overrepresentation the proposed provisions providing for pre-referral services do not adequately: (1) target the services to students at risk of being inappropriately identified as having a disability; (2) address the subsequent placement and matriculation disparities; or (3) consider the needs of students suffering from learning deficits who are determined by the evaluators not to be eligible for IDEA services. In addition to addressing these issues, the AFT believes that a more comprehensive approach to the problem of disproportionate minority representation would be appropriate.

### Due Process

S. 1248 makes welcome changes in IDEA's due process provisions. These changes have the potential to dramatically reduce the adversarial relationship between

schools and parents that currently pervades much of IDEA, without hampering the substantive rights of students with disabilities and their parents. For example, changes that (1) establish a two-year statute of limitations for complaints and (2) clarify that failure to comply with procedural requirements is not automatically determined to be a denial of free appropriate education (FAPE). These are just two of the positive steps included in S. 1248 that will help facilitate the ability of all parents to advocate on behalf of their child's needs.

It is worth noting that, in addition to these provisions, the AFT also is pleased that S. 1248 provides an opportunity for schools to be notified of complaints and remedy them before going to due process. This change will resolve many disputes without restricting the rights of students with disabilities and their parents. We hope that the final IDEA bill negotiated in an upcoming House-Senate conference will further simplify the due-process provisions by eliminating the state review option.

### Discipline

Although S. 1248 includes some positive changes to provisions outlining how students with disabilities may be disciplined, they are insufficient. The addition of serious bodily injury is inadequate to address the variety of dangers faced in schools. For example, students involved in off-campus gang fights or who commit arson while at school would not be included under this new authority. Instead, school districts would have to seek an order by a hearing officer to remove the student for any period beyond 10 school days.

The AFT is particularly encouraged that S. 1248 guarantees that students with disabilities will continue to receive educational services. We urge the conference committee to clarify that, in determining the placement of these students, the least-restrictive environment is not the current placement when--even with the provision of behavior supports and interventions-- the student's conduct significantly interferes with his or her learning or that of others. We would also recommend that conferees require that all alternative settings be of high quality and oriented toward addressing a student with a disability's behavioral and academic needs and transitioning the student back into the regular setting. S. 1248 takes a significant step in this direction by adding a new competitive grant program

that would provide schools with federal funds to develop high-quality alternative settings and behavioral supports and interventions.

### Paperwork Reduction

S. 1248 has a number of positive features to reduce administrative requirements on schools and teachers. First, the bill recognizes the need to simplify paperwork by eliminating benchmarks and short-term objectives from the individualized education program (IEP). S. 1248 also eliminates much of the impetus for excessive paperwork burdens by: providing schools an opportunity to remedy problems before going to due process hearings; limiting the decision of due process hearing officers to instances where a substantive denial of FAPE, instead of minor procedural infractions, has occurred; and requiring states to identify the cause of paperwork requirements not resulting from IDEA. The AFT would suggest additional changes to provide meaningful reductions in unnecessary paperwork. We believe that the law should clearly state that the current levels of performance do not have to be revised and updated after the initial IEP. We also support the language in S. 1248 that permits an IEP team member, through technology, to participate in meetings if unable to attend in person. This will help increase the involvement of all IEP team members.

We are concerned, however, that S. 1248 may undermine some of the improvements it makes to current law by both allowing (1) school districts and parents to excuse any member of the IEP team from attending all or part of an IEP meeting if they agree that the member's attendance is not necessary and (2) the LEA and the parents to change a child's IEP after the annual review without involving the IEP team. One of the most frequent complaints we receive from our members about the IEP process is the pressure they receive from school administrators to recommend the services that the LEA can "afford" or is willing to make available instead of the services that the child needs to progress in the general curriculum and toward achieving annual goals. The AFT also is concerned that a provision in S. 1248, which specifies that the LEA may refer a student for an evaluation to determine if the student is eligible for IDEA services, may be interpreted as barring teachers from being able to refer students for evaluation. We look forward to continuing to work with the conference committee to clarify these provisions.

We also are concerned that S. 1248 does not require that all service providers have appropriate access to the IEP. Far too often, school professionals, particularly paraprofessionals, complain that they are not permitted to review the very provisions of the IEP they are required to implement. We also believe that IEP teams for students with significant medical needs should include school health professionals. Both of these changes would significantly improve the efficiency and quality of services provided for students with disabilities.

In addition, the AFT is concerned that provisions in S. 1248 requiring that behavioral interventions and supports be incorporated into a student with a disability's IEP could dramatically increase the paperwork burden for education professionals. Not only is this requirement unnecessary and cumbersome, it is directly contrary to the research findings showing that the paperwork burden contributes significantly to the national shortage of special education teachers.

#### Enforcement

Provisions in S.1248 providing for the administration and monitoring of IDEA also should be re-evaluated in conference. Under these provisions, the Secretary of Education is authorized to withhold IDEA subgrants to LEAs if those schools fail to make satisfactory progress toward indicators, such as adequate yearly progress or addressing disproportionate minority representation in special education. The statute does not define "satisfactory progress" and leaves to the discretion of the Secretary how to sanction school districts not meeting this undefined standard. Moreover, the risk of such severe sanctions would give states and schools perverse incentives to make the standards for "satisfactory progress" as narrow as possible. Few school districts and states would voluntarily include disproportionate minority representation as a compliance indicator toward which they must make satisfactory progress for fear of suffering the loss of IDEA funding.

#### Professional Standards

We appreciate the effort to clarify the professional standards that special education teachers must meet to be considered highly qualified, but we are concerned that

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the Part D State Professional Development Grants include reforming tenure systems and implementing teacher testing as required activities.

Service Provider Advocacy

Unfortunately, S. 1248 fails to require LEAs to adopt a documented process that would give teachers and other service providers an avenue to report concerns regarding the identification of students with disabilities and the provision of FAPE. To be effective, such a process must include protections that will allow the people who are often most aware of a student's needs to make informed recommendations without fear of reprisals or adverse consequences. Establishing such a mechanism would give these professionals an opportunity to raise relevant issues related to a disabled child's educational needs and ultimately lead to better services for the child. This is an issue the AFT will pursue in the upcoming conference committee.