



Ohio House Budget Restores Funding for Children with Medical Handicaps

The Ohio House members made the BCMH program (Bureau for Children with Medical Handicaps) a priority in the state budget by fully restoring funds and adding \$7.4 million over the next two years.

Services provided through BCMH funding include vital services such as treatment, diagnosis, and treatment for children who have severe medical needs such as hemophilia, spina bifida, cerebral palsy and cystic fibrosis.

The State budget addresses care for persons with mental retardation by continuing the program of support through a system of intermediate care facilities for persons with mental retardation (ICF/MR). Currently over 8,000 individuals are receiving care through this Medicaid program. The Ohio House has chosen to continue the current funding method in the state budget instead of changing all these persons to a waiver program which currently does not exist.

Special Education Funding in the State Budget

Basic aid for fiscal year 2006 and 2007 has been set at \$5,283 and \$5,399 respectively. This per-pupil amount is what forms the foundation or base amount for all pupils. It is a local and state partnership amount which may vary from 0% state share to as high as 82% state share or higher,

depending on district wealth and local millage.

Special education costs are then added based on a system of six weights. These amounts are currently funded at 90% of the cost-based methodology per fiscal year 2001 costs. No increased percentage for this item is found in the House version of the 2006-2007 budget. These weights are also based on local/state share percentages.

The Catastrophic Special Education costs have been increased to \$18 million per year from \$15 million for FY2005.

Parent Mentors funding is maintained at \$1.5 million. Preschool special education units are held at the current cost level. County Boards of MR/DD and public schools receive these funds.

Mark your calendars and plan to attend

Third annual OCECD conference "Partnering for Progress: Improving Results for ALL Children."

October 19, 2005, 8:00 a.m. – 4:15 p.m.
Greater Columbus Convention Center
Registration is required, but is free,
including lunch. Watch for future issues of
FORUM for more details.

Flexibility, Alternatives Needed for Students with Disabilities

U.S. Secretary of Education Margaret Spellings announced the details of a new *No Child Left Behind* policy designed to help states better assist students with disabilities, and pledged to continue working with states to ensure they have the flexibility needed to raise student achievement. The guidelines follow up on the Secretary's announcement last month to chief state school officers that she would provide states with additional alternatives and flexibility to implement *No Child Left Behind*.

The new guidelines reflect the latest scientific research that shows 2% of students with academic disabilities can make progress toward grade-level standards when they receive high-quality instruction and modified assessments. Under the new flexibility option announced today, eligible states may adjust their state-set progress goals to reflect the need for modified assessments; this is a separate policy from the current regulation that allows up to 1% of all students being tested (those with the most significant cognitive disabilities) to take an alternate assessment.

"There is a new equation at the Department of Education: the 'bright-line' principles of *No Child Left Behind*, such as annual testing and reporting of subgroup data, plus student achievement and a narrowing of the achievement gap, plus overall sound state education policies, equals a new, common-sense approach to implementation of the law. Today's special education guidance is the first example of this new approach," Secretary Spellings said.

"Under this policy, to be made final under a new rule, students with academic disabilities will be allowed to take tests that are specifically geared toward their abilities, as long as the state is working to best serve those students by providing rigorous

research-based training for teachers, improving assessments and organizing collaboration between special education and classroom teachers," Secretary Spellings continued. "If you stand up for the kids and provide better instruction and assessment, we will stand by you.

"Recent research from the National Institutes of Health indicates clearly that good instruction actually improves how the student learns. New evidence-based instructional programs geared toward the needs of individual children are opening educational doors for students who never before had a chance to succeed academically. Recent advances in medical interventions also hold considerable promise for many of our students with the most significant disabilities."

The new guidelines outline the process for how eligible states can implement this new policy in the short term until the Department issues final regulations on the policy.

Short-Term Options

States that meet the eligibility guidelines can adjust their 2005-08 school year state-set progress goals (Adequate Yearly Progress, or AYP) for students with disabilities, based on the 2004-05 school year assessments. This option applies only to schools or districts that did not make AYP based solely on the scores of its students with disabilities subgroup. Eligible states that currently assess students based on modified achievement standards will be able to use those assessments for AYP calculations this year. Only states that intend to develop modified achievement standards and assessments are eligible for short-term flexibility.

from page 2: No Child Left Behind

The eligibility guidelines include: Each state must meet Title I and IDEA requirements that are directly related to achievement and instruction for the full range of students with disabilities, including:

** Statewide participation rates for students with disabilities, for purposes of measuring AYP, must be at or above 95%;

** Appropriate accommodations must be available for students with disabilities;

** Alternate assessments in reading/-language arts and mathematics must be available for students with disabilities who are unable to participate in the regular assessment, even with accommodations, and results from those assessments must be reported; and

** The state's subgroup size for students with disabilities must be equal to that of other student groups.

Each state would request to amend their accountability plan and provide details on their actions taken to raise achievement for students with disabilities, and evidence that such efforts are improving student achievement.

Long Term Policy

The Department is working on a regulation to implement the new policy and will release seek comments from local school districts, parents and others before finalizing a regulation.

The goal of the regulations is to:

** Ensure that states hold these students to challenging, though modified, achievement standards that enable them to approach, and even meet, grade-level standards;

** Ensure access to the general curriculum to ensure students are taught to the same high standards;

** Measure progress with high-quality alternate assessments so parents are confident that their student is learning and achieving;

** Provide guidance and training to Individualized Education Program (IEP) teams to identify these students properly; and

** Provide professional development to regular and special education teachers.

States must continue meeting the requirements of NCLB related to students with disabilities. To increase the state's ability to provide rigorous assessment, instruction, and accountability for students with disabilities, the Department of Education will direct \$14 million to improve assessments, help teachers with instruction, and conduct research for students with disabilities who are held to alternate and modified achievement standards in 2005. Additional funds will be directed in 2006.

No Child Left Behind is the bipartisan landmark education reform law designed to change the culture of America's schools by closing the achievement gap among groups of students, offering more flexibility to states, giving parents more options and teaching students based on what works. Under the law's strong accountability provisions, states must describe how they will close the achievement gap and make sure all students, including those with disabilities, achieve academically. More information about the new policy and the No Child Left Behind Act is available at www.ed.gov.

IDEA Reauthorization C

The reauthorized *Individuals with Disabilities Education Act (IDEA)* was signed into law on December 3, 2004, by President George W. Bush. The provisions of the act will be effective on July 1, 2005, with the exception of some elements of the definition of "highly qualified teacher" that took effect upon the signing of the act. This article addresses only the changes to provisions regarding the content of Individualized Education Programs (IEPs) of IDEA that will take effect on July 1, 2005. It does not address any changes that may be made by the final regulations.

[Editor's Note: In Ohio, the standards currently in place, "Ohio's Standards for Schools Serving Children with Disabilities", will remain in force until new Ohio Standards are approved by the State Board of Education, probably sometime in 2006-2007 school year.]

IDEA 2004

1. Changes regarding present levels of educational performance.

- IEPs must include: Present levels of academic achievement and functional performance; and a statement of measurable annual goals, including both academic and functional goals
- IEPs must include a description of benchmarks, or short-term objectives only for children who take alternate assessments aligned to alternate achievement standards.

2. Changes regarding assessments in the IEP.

- A statement of any individual appropriate accommodations that is necessary to measure academic achievement and functional performance on statewide and district-wide assessments.

- If the IEP team determines that the child will take an alternate assessment, a statement must be provided that indicates why the IEP team selected a particular alternate assessment, and why it is appropriate for the child.

3. Changes to annual goals.

- IEPs are required to include a statement of measurable annual goals, including academic and functional goals.

4. Changes to measuring progress and reporting.

- IEPs are required to include a description of how the child's progress toward meeting the annual goals will be measured; and a description of when periodic progress reports will be provided to the parents.
- Reporting may include: quarterly reports; or other periodic reports concurrent with issuance of report cards.

5. Changes to statement of services.

Adds to the statement of the special education and related services and supplementary aids and services, for the child or on behalf of the child—that they be based on peer-reviewed research, to the extent practicable.

6. Changes to transition requirements.

Beginning not later than the first IEP to be in effect when the child turns 16 [note: eliminates age 14 requirements] and then updated annually thereafter, the IEP must include:

- Appropriate measurable post-secondary goals based upon age-appropriate transition assessments

Changes IEP Provisions

related to training, education, employment and independent living skills, where appropriate;

- Transition services needed to assist the child in reaching those goals, including courses of study; and
- Beginning not later than one year before the child reaches the age of majority under state law, a statement that the child has been informed of the child's rights under this title, if any, that will transfer to him or her on reaching the age of majority.

7. Requirements for children with disabilities transferring within a state and between states.

- **Within-state transfers:** In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same state, the new local educational agency (LEA) must provide such child with a free appropriate public education (FAPE), including services consistent with the previous district's IEP, in consultation with parents, until it adopts the previously held IEP or develops and implements a new IEP that is consistent with federal and state law.
- **Between-state transfers:** In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another state, the new LEA must provide such child with FAPE, including services consistent with the previous IEP, in consultation with parents, until the new LEA conducts an evaluation pursuant to Section 814(a)(1), if determined to be necessary by such agency, and

develops a new IEP that is consistent with federal and state law.

- **Transmittal of records:** To facilitate the transition for a child described above, the new school shall take reasonable steps to promptly obtain and transfer the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school; and the previous school must take reasonable steps to promptly respond to such request.

8. Rule of construction.

Nothing in Section 814 shall be construed to (1) require that additional information be included in a child's IEP beyond what is explicitly required in Section 814, or (2) require the IEP team to include information under one component of a child's IEP that is already contained under another component of such IEP.

Effective May 13, Dr. Troy Justesen will serve as Acting Director of the Office of Special Education Programs (OSEP) and will continue to serve as Acting Deputy Assistant Secretary. As acting OSEP director, Dr. Justesen will be working to operationalize the Secretary of Education's Action Plan to Increase State Capacity in Instruction, Assessment, and Accountability for Students with Disabilities while completing the regulatory process for the 2004 IDEA regulations. Also, Dr. Edward Anthony will serve as Acting Commissioner of the Rehabilitation Services Administration in addition to his responsibilities as Director, Office of Policy and Planning.

Supreme Court to Hear Burden of Proof Case

The U.S. Supreme Court has agreed to hear an appeal of a Fourth Circuit Court case. The issue is who has the burden of proof in a special education due process hearing. Two of the judges in the earlier case said it was the side that requested the hearing. The third judge, Judge Luttig (who is considered by many to be very conservative), said that the schools should have the burden of proof. The outcome could have major ramifications on special education cases from this point forward.

The U.S. Supreme Court granted certiorari to hear Brian Schaffer's appeal of an adverse Fourth Circuit ruling in favor of Montgomery County, Maryland Public Schools assigning the burden of proof to the party that initiates a due process hearing.

The Fourth Circuit court said: "In sum, the IDEA does not allocate the burden of proof, and we see no reason to depart from the general rule that a party initiating a proceeding bears that burden. Congress was aware that school systems might have an advantage in administrative proceedings brought by parents to challenge IEP's. To avoid this problem, Congress provided a number of procedural safeguards for parents, but assignment of the burden of proof to school systems was not one of them. Because Congress took care in specifying specific procedural protections necessary to implement the policy goals of the Act, we decline to go further, at least insofar as the burden of proof is concerned. Accordingly, we hold that parents who challenge an IEP have the burden of proof in the administrative hearing. We reverse the judgment of the district court and remand for further proceedings consistent with this opinion."

Judge Luttig, in his dissent, stated: "I fear that, in reaching the contrary conclusion, the majority has been unduly influenced by the fact that the parents of the disabled student in this case have proven to be knowledgeable about the educational resources available to their son and sophisticated (if yet unsuccessful) in their pursuit of these resources. If so, it is regrettable. These parents are not typical, and any choice regarding the burden of proof should not be made in the belief that they are. For the vast majority of parents whose children require the benefits and protections provided in the IDEA, the specialized language and technical educational analysis with which they must familiarize themselves as a consequence of their child's disability will likely be obscure, if not bewildering. By the same token, most of these parents will find the educational program proposed by the school district resistant to challenge: the school district will have better information about the resources available to it, as well as the benefit of its experience with other disabled children. With the full mix of parents in mind, I believe that the proper course is to assign the burden of proof in due process hearings to the school district. I respectfully dissent."

The question presented is simply which side has the burden of proof, the party who initiates the hearing, or parents or schools.

Middle School Challenges

The transition to middle school is a major leap for most students. Instead of one classroom and one teacher, students typically find themselves in a larger school building with several teachers and many changes.

When students with disabilities, who may not have had appropriate instruction in all the building-block subject matter, encounter demands like researching and writing long papers, listening to long lectures without a break, or preparing comprehensive projects which purport to demonstrate student knowledge, trouble seems to follow these students.

The recent focus on standards-based curriculum and testing has created both challenges and opportunities for students with disabilities. Students are asked to think and inquire more critically about information, rather than just answering a teacher's question with simple facts. Some students with disabilities will need more individualized instruction, adapted goals, or alternative assessments to meet newly established state content standards.

Content standards specify what children are expected to know and be able to do in academic subjects. Academic content standards contain coherent and rigorous content and encourage the teaching of advanced skills (No Child Left Behind Act, 2002). The curriculum is the plan made for guiding learning in schools and the implementation of those plans in the classroom. A standards-based curriculum is one in which the plan guides the learning of the content standards. Most classroom curricula rely almost exclusively on printed text and are not easily accessible to students with sensory, physical, emotional, or cognitive disabilities who need alternative

ways of accessing and processing information.

The use of universal design in middle school settings could benefit both students and teachers. It is an approach that makes it easier for teachers to accommodate different learning styles. The aim is to create curricula that are flexible enough to challenge the most gifted students, as well as students with disabilities, by providing alternative ways to explore content, using multiple approaches at various levels of complexity. This approach has great potential for students with disabilities -- whether sensory, physical, emotional, or cognitive -- by providing alternative ways of accessing and processing information. Various means such as audio, video, text, speech, Braille, photographs, or images are used to convey ideas. Also, universal design in learning allows students to use multiple means to express what they know through writing, speaking, drawing, or video recording.

Examples of universal design: If a student learns best through listening, he can use a computer to read stories and information aloud. If a student learns more easily with large print or Braille, curriculum materials can easily be provided in this format. If a student can explain things best by using word processing software and a keyboard then that is provided. If a student needs help to find the important points, a computer program should be provided so that the student learns by doing.

We have long since passed the time when a Braille book is a luxury, a computer is too costly, and assistive technology is just a dream of parents. All these tools and many more must be provided to all students to meet the reality of a law called *No Child Left Behind*.

Resource Available in Spanish & English

A new resource for parents of children with disabilities is available in both English and Spanish. Entitled **Steps to Success: Communicating with Your Child's School**, this resource offers specific communication skills that may be helpful to parents as they develop and maintain partnerships with their child's school. The materials were developed by Consortium for Appropriate Dispute Resolution in Special Education (CADRE) and the National Dissemination Center for Children with Disabilities (NICHCY).

To obtain the Spanish version: www.directionservice.org/cadre/successesp.cfm

For the English version of the document: www.directionservice.org/cadre/success.cfm

Letter to the Editor

Dear **FORUM** Editor:

Just a note of appreciation for your efforts in producing and distributing **FORUM**. It provides more information, succinctly, than anything else I read. As a teacher, I really appreciate that. Your newsletter is a wonderful source of information for me, as well as my staff, other colleagues, and parents of my students. I look forward to each issue.

Having attended your previous two conferences, I also look forward to your next one. It is an outstanding effort to coordinate the people and agencies who work to improve the lives of children with disabilities, and all who live, care, and work to serve them. Kudos! Keep up your good works.

Signed: Anne Gibson, Upper Arlington OH

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