

Proposed LDA Platform for Reauthorization of the Individuals with Disabilities Education Act (IDEA)

The next reauthorization of the Individuals with Disabilities Education Act (IDEA) was officially scheduled for 2009, but will not occur until 2010 at the earliest. Despite any delays in scheduling, national organizations are already reviewing current law and contemplating possible changes.

This reauthorization will be particularly critical for LDA members. The 2004 reauthorization significantly changed the construct for Specific Learning Disabilities (SLD), moving from defining SLD as a life-long struggle with learning due to neurologically based intra-individual processing deficits to a transitory condition that can be overcome with prescribed educational supports.

The LDA Public Policy/Advocacy Committee intends to be proactive in preparing for the upcoming reauthorization. The Public Policy/Advocacy Committee presents for your consideration the following platform reflecting issues that have arisen from on-going discussions held during committee and LDA Board meetings over the past four years. Once the Board has ratified this platform, it is the Committee's intent to develop position statements on these core beliefs, so that LDA will be prepared to engage actively in debates and discussions on the upcoming IDEA reauthorization.

Goal 1: Retain the current statutory definition of Specific Learning Disabilities (SLD).

Congress acknowledged SLD as a disability in federal law with passage in 1975 of the Education for All Handicapped Act (P.L. 94-142), the forerunner of the IDEA. The law provided a legal definition of SLD and provided children with Specific Learning Disabilities the same protections, safeguards, and special education services

mandated for children with more visible disabilities.

Concerns: LDA has serious concerns about a possible move to revise the SLD definition to support the use of Response to Intervention (RTI) data as the main criterion in evaluation for SLD, an emphasis that began in the 2004 IDEA statute and regulations. If indeed that were to happen, the core cognitive and neurological bases of true SLD would be lost.

Goal 2: Re-establish the connection between the current SLD definition and the SLD evaluation criteria, including the requirement for a cognitive assessment as a part of a comprehensive evaluation for SLD.

LDA acknowledges at the outset that we are not trying to turn back the clock. The organization strongly supports a pre-referral process, regardless of how it is labeled. However, LDA strongly believes that a full cognitive assessment – *not* a discrepancy “formula” – should be an integral part of a comprehensive evaluation for SLD, in order to ensure that the core nature of the disability is maintained and addressed.

Concerns: LDA has serious concerns that the focus of the 2004 criteria for identification of a student with SLD has changed. That change has moved from determining if a child has a disorder in neurological processing as shown through a cognitive assessment to a system that identifies students struggling to learn and who are not meeting State academic standards, are working below grade or age level, and are in need of academic interventions that will raise them to grade level achievement.

The link between the IDEA definition of SLD and the evaluation criteria is a cognitive assessment. That assess-

ment is used to identify the strengths and weaknesses in neurological processing that impact the student's ability to grasp concepts, process information, focus, and acquire knowledge. In addition, cognitive assessments can provide valuable information for designing interventions, writing IEP goals, and determining accommodations and modifications. These assessments also can provide students and families a better understanding of the students' specific strengths and challenges. The 2004 IDEA gave States and local school districts (LEAs) a choice regarding whether to use data from a cognitive assessment as a part of the evaluation for determining SLD. LDA feels that a cognitive assessment is a critical and necessary part of the comprehensive evaluation.

Goal 3: Clarify more specifically current provisions related to research-based pre-referral programs, e.g., RTI, in both the IDEA and ESEA.

As noted above in Goal 2, LDA strongly supports the concept of research-based pre-referral processes. For example, any student having reading difficulties should be able to receive assistance without being labeled and then, as appropriate, be referred for more intensive interventions or special education and related services.

LDA also believes that pre-referral should be included in the ESEA, as these interventions are targeted at students who are not currently receiving special education and related services.

Concerns: The current IDEA language regarding research-based interventions must be clarified in several critical areas. The IDEA should include guide-

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lines that address

- the structure of pre-referral processes, both within and across States;
- timelines regarding how long students will receive pre-referral interventions before being referred for a special education evaluation;
- parental notification when a student will receive pre-referral interventions;
- a uniform standard or definition of “research-based interventions”; and,
- how students with SLD who are succeeding in school can continue to receive special education and related services, despite the fact that they are meeting the IDEA 2004 eligibility criterion of achievement on State grade-level standards.

LDA also believes a serious discussion must be held regarding language in the regulatory comments about cost effectiveness of RTI processes, i.e., reducing the number of referrals for and children receiving special education and related services. (Pages 46750-51) More specifically, Congress should clarify what the real intention and purpose is behind the use of pre-referral processes, particularly in relation to reducing the number of students identified as having specific learning disabilities.

Goal 4: Retain the IDEA and the Elementary and Secondary Education Act (ESEA, currently known as the No Child Left Behind Act, NCLB) as separate laws.

The influence of NCLB on the IDEA has been seen in the dramatic changes to the SLD evaluation/identification criteria, with the alignment in IDEA ‘04 of the eligibility determination for SLD with State-approved grade level standards under NCLB. According to the Department of Education’s discussion on the IDEA regulations, “The first element in identifying a child with SLD should be a child’s mastery of grade-level content or in relation to State-approved grade-level standards, not abilities....[T]he group must determine that the child does not demonstrate achievement that is adequate for the child’s age or the attainment of State-approved grade level standards, when provided with learning experiences and instruction appropriate for the child’s age or State-approved grade-

level standards in one or more of the areas listed in Sec. 300.309(a)(1). The reference to ‘State-approved grade-level standards’ is intended to emphasize the alignment of the Act [IDEA] and the ESEA....” [71 Fed. Reg. 156, 46652 (2006)]

Concerns: LDA believes that the IDEA and ESEA should be separate laws that can complement each other, without changing the intent of or diverting funds from the IDEA. LDA continues to support the original intention of the IDEA as it was originally intended – a specific law to provide specialized instruction and supports for students with disabilities. For students with SLD this includes a comprehensive evaluation that illuminates a student’s strengths and weaknesses and draws the connection between the student’s neurological processing and the impact on learning. The main focus of the IDEA is to identify the disability and then, through the IEP, create a plan to assist the child to benefit from education and eventually be prepared for post-school life. In passing the original law, Congress also established a specific funding stream for the purpose of providing specialized instruction and related services for students with disabilities. Over the years this funding has eroded, and under IDEA ‘04 a significant amount of money, up to 15% of special education funds, may now be used by local school districts for early intervening services, including Response to Intervention (RTI), for *general education* students at risk of failure.

Goal 5: Define the categories of assessments, i.e., the elements, of a comprehensive evaluation for SLD, within the IDEA statute and/or regulations.

The IDEA does not currently define or provide guidelines for what constitutes a “comprehensive evaluation” for SLD or any other disability category. The regulations state only that “each public agency [must]...conduct a full and individual initial evaluation.” [Sec. 300.301(a)] The regulations require that the evaluation be conducted using a variety of assessment tools and strategies to gather functional, developmental, and academic information, including the relative contribution of cognitive, behavioral, physical or developmental factors. Beyond that general description, each school district makes its own determination about what categories of assessments will be conducted. Thus,

several school districts within the same state may use completely different sets of criteria in their comprehensive evaluations, and evaluations also vary widely from State to State.

Concern: LDA has concerns about the wide variation in the components of a comprehensive evaluation. This has become a more serious concern with the codification of RTI in IDEA 2004, a process for which there is no single template and for which there is a very limited research base. LDA strongly believes that a complete cognitive assessment should be a required component of any comprehensive evaluation for SLD.

Goal 6: Ensure that the requirements of “least restrictive environment” (LRE) remain as a cornerstone of the IDEA.

One of the cornerstones of the IDEA is the concept of LRE. Local school districts must educate students with disabilities, to the maximum extent possible, in the general education classroom. LRE also requires, for students who are not able to receive educational benefit in part or whole in the general education classroom, that a continuum of educational placements be available.

Concern: LDA believes that, with appropriate accommodations and modifications and well-trained general education teachers, the majority of students with SLD can have a positive educational experience in the general education classroom. However, LDA also believes that the IDEA must ensure that other placements are available, as necessary. Decisions about a student’s placement must continue to be made on an individualized basis focused on the unique educational needs of each student. Some students with SLD may do better in smaller classes or other settings, depending on their individual needs, and those needs must be accommodated.

Goal 7: Provide adequate and appropriate documentation for students with SLD regarding the accommodations and modifications and services received in public schools and ensure coordination with documentation requirements of post-school systems, such as higher education, vocational rehabilitation, and employers.

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The IDEA does not require school districts to conduct a reevaluation of students with disabilities if special education services are terminated due to graduation with a regular high school diploma or aging out of the system. The discussion related to the IDEA '04 regulations on post-school transition states: "While the requirements for secondary transition are intended to help parents and schools assist children with disabilities transition beyond high school, section 614(c)(5) in the Act does not require a public agency to assess a child with a disability to determine the child's eligibility to be considered a child with a disability in another agency, such as vocational rehabilitation program, or a college or other postsecondary setting."

In lieu of that evaluation, the IDEA now requires that school districts provide the student with a "summary of academic achievement and functional performance," so that the student would have some documentation of special education and related services and accommodations and modifications received.

Concerns: LDA strongly supports the need for updated assessment data at natural transition points, i.e., pre-K to elementary, elementary to middle, middle to high school, and high school to post-school. This is critically important for students with learning disabilities who are working toward a regular high school diploma with the goal of attending a postsecondary education program.

Anecdotally, LDA members have reported that the Summary of Performance (SOP) requirement has either not been implemented or not implemented well. Members also report that colleges and universities are not accepting SOPs and continue to require additional data, including IQ testing that includes assessment of cognitive factors, in order for students with SLD to receive appropriate accommodations and modifications. The IDEA provision must be monitored so that the SOP contains useful information and up-to-date data. In addition, colleges and universities must be included in the next IDEA reauthorization conversations, so that this documentation provision has real meaning for and acceptance in the higher education community.

LDA finds the lack of useful documen-

tation particularly problematic for students with SLD from lower and middle families. Families will find the high cost of providing a private evaluation prohibitive, should it be required by a post-school institution or agency, which may seriously restrict their child's options after high school.

Educational testing services and college disability support services may establish whatever criteria they consider reasonable for both undergraduate and graduate students. Therefore, the "burden of proof" regarding the student's disability and need for accommodations and modifications falls on the family. LDA believes this is an untenable situation for most families.

Goal 8: Clarify in the IDEA regulations that parents have the right to request a referral for special education evaluation at any time, including while the student is receiving services through an RTI process.

The comments to the IDEA regulations clearly state that parents have a right to request an evaluation at any time, including when students are participating in a response to intervention process (p. 46658). If parents request an evaluation and provide consent, the evaluation time line begins and information used in the evaluation must be gathered before the time line tolls.

Concern: While the language is pretty clear in the regulatory comments, the actual regulatory language [Sec. 300.309(c)] is more oblique. The regulation requires that the "public agency... promptly request parental consent to evaluate the child...and must adhere to the timeframes..." A direct statement of the parents' right to request an evaluation should be included within the sections that discuss evaluation for SLD.

Additional Activity: The Public Policy Committee recommends that LDA develop a "Parents' Bill of Rights" for parents of all students with disabilities that would include in one succinct listing all the rights to which parents are entitled under the IDEA.

GOAL 9: To assure that the reauthorization of IDEA will adequately prepare students with SLD to succeed in post-secondary education and the 21st century workforce.

The primary purpose of regular education is to prepare students for success as adults. This purpose was re-enforced

with the passage of NCLB which required state education departments to establish high school graduation standards. LDA recognizes that many students with SLD have benefited from this approach by having been exposed to the regular education curriculum. Unfortunately, there are others who have not benefited from this approach.

Concerns: The passage of NCLB and the need to increase graduation standards along with rates of graduation has effectively eliminated vocational education as an allowable high school curriculum. This has resulted in the elimination of a viable alternative for students with SLD. The current all or nothing approach to a high school diploma has led to many students with SLD dropping out of high school or exiting high school with an IEP certificate of completion, both of which greatly curtail earning potential in the modern day global economy. According to several business trade organizations, there is a desperate need for skilled tradesmen such as machinists, welders and mechanics.

In the seventies, eighties and nineties, these positions were often filled by individuals who were perhaps not interested in college but wanted a vocation as well as a good income. Countless students graduated from HS with degrees in everything from welding to carpentry. Many of these students were students with learning disabilities. These types of career paths have been effectively eliminated from the K-12 education system resulting in a potential long term threat to our nation's economic security.

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