

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4928

To amend the Individuals with Disabilities Education Act to improve the individualized education program, to increase parental participation in the development of and improving information about the special education program, to provide for the establishment of mediation procedures relating to services provided to children under that Act, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 10, 1994

Mr. BALLENGER (for himself, Mr. GOODLING, Mr. FAWELL, and Mr. BARRETT of Nebraska) introduced the following bill; which was referred to the Committee on Education and Labor

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## A BILL

To amend the Individuals with Disabilities Education Act to improve the individualized education program, to increase parental participation in the development of and improving information about the special education program, to provide for the establishment of mediation procedures relating to services provided to children under that Act, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “IDEA Improvement  
3 Act of 1994”.

4 **SEC. 2. AMENDMENTS TO INDIVIDUALIZED EDUCATION**  
5 **PROGRAM TO INCREASE ACHIEVEMENT OF**  
6 **ANNUAL GOALS UNDER THE PROGRAM.**

7 (a) AMENDMENTS TO DEFINITION OF INDIVIDUAL-  
8 IZED EDUCATION PROGRAM.—Section 602(a)(20) of the  
9 Individuals with Disabilities Education Act (20 U.S.C.  
10 1401(a)(20)) is amended—

11 (1) in subparagraph (A), by inserting before the  
12 comma at the end the following: “, or, where appro-  
13 priate, a statement of the present levels of edu-  
14 cational performance of such child in the general  
15 educational program established for nondisabled  
16 children”;

17 (2) in subparagraph (B), by inserting before  
18 the comma at the end the following: “, and, where  
19 appropriate, a statement of the annual goals de-  
20 signed to help the child succeed in the general edu-  
21 cational program established for nondisabled chil-  
22 dren”;

23 (3) in subparagraph (E), by striking the “and”  
24 at the end;

25 (4) in subparagraph (F)—

1 (A) by striking “instructional objectives”  
2 and inserting “the annual goals described in  
3 subparagraph (B)”; and

4 (B) by striking the period at the end and  
5 inserting a comma; and

6 (5) by adding at the end the following new sub-  
7 paragraph:

8 “(G) a description of how the services des-  
9 ignated under the previous individualized edu-  
10 cation program of the child have been modified  
11 if, according to the criteria and procedures des-  
12 ignated in subparagraph (F), the previous an-  
13 nual goals described in subparagraph (B) were  
14 not substantially achieved.”.

15 (b) REVISION OF INDIVIDUALIZED EDUCATION PRO-  
16 GRAM FOR FAILURE TO SUBSTANTIALLY ACHIEVE AN-  
17 NUAL GOALS.—Section 614(a)(5) of such Act (20 U.S.C.  
18 1414(a)(5)) is amended by adding at the end before the  
19 semicolon the following: “, except that the local edu-  
20 cational agency or intermediate educational unit shall,  
21 with respect to each child with a disability who has failed  
22 to substantially achieve the annual goals of the individual-  
23 ized education program for the prior school year, revise  
24 the provisions of such program for such child accordingly  
25 at the beginning of the next school year”.

1 **SEC. 3. INCREASING PARENTAL PARTICIPATION IN THE DE-**  
2 **VELOPMENT OF AND IMPROVING INFORMA-**  
3 **TION ABOUT THE SPECIAL EDUCATION PRO-**  
4 **GRAM.**

5 (a) INCREASING PARTICIPATION BY PARENTS.—Sec-  
6 tion 615(b)(1)(A) of the Individuals with Disabilities Edu-  
7 cation Act (20 U.S.C. 1415(b)(1)(A)) is amended by in-  
8 serting “and to participate in meetings” after “to examine  
9 all relevant records”.

10 (b) IMPROVING COMMUNICATION WITH PARENTS.—  
11 Section 615(b)(1)(C) of such Act (20 U.S.C.  
12 1415(b)(1)(C)) is amended by inserting “, with clearly  
13 written explanations of relevant terminology,” after “writ-  
14 ten prior notice”.

15 (c) PUBLICATION OF PROCEDURAL SAFEGUARDS  
16 UNDER ACT.—Section 617 of such Act (20 U.S.C. 1417)  
17 is amended by adding at the end the following new sub-  
18 section:

19 “(e) In carrying out the Secretary’s duties under this  
20 part, the Secretary shall—

21 “(1) not later than 6 months after the date of  
22 the enactment of this subsection, produce a publica-  
23 tion that—

24 “(A) clearly describes the procedural safe-  
25 guards available to children with disabilities

1 and the parents or guardians of such children  
2 under this part;

3 “(B) includes the steps such children and  
4 parents or guardians should take to avail them-  
5 selves of such safeguards; and

6 “(C) includes a description of the proce-  
7 dures relating to eligibility, initial evaluation,  
8 development of the individualized education pro-  
9 gram or the individualized family services pro-  
10 gram, and educational placement, and the re-  
11 sponsibilities of States and local educational  
12 agencies in carrying out the requirements of the  
13 Act; and

14 (2) make such publication available in various  
15 forms, including electronic form, to appropriate Fed-  
16 eral and State agencies and the general public.”.

17 **SEC. 4. ESTABLISHMENT OF MEDIATION PROCEDURES**  
18 **UNDER THE SPECIAL EDUCATION PROGRAM**  
19 **AND THE EARLY INTERVENTION SERVICES**  
20 **PROGRAM FOR INFANTS AND TODDLERS**  
21 **WITH DISABILITIES.**

22 (a) MEDIATION UNDER PART B.—

23 (1) STATE PLAN REQUIREMENT.—Section  
24 613(a) of the Individuals with Disabilities Education  
25 Act (20 U.S.C. 1413(a)) is amended—

1 (A) in paragraph (14), by striking at the  
2 end “; and” and inserting a semicolon;

3 (B) in paragraph (15), by striking the pe-  
4 riod at the end and inserting “; and”; and

5 (C) by adding at the end the following new  
6 paragraph:

7 “(16) provide for procedures that will allow  
8 parties to disputes involving the provision of free ap-  
9 propriate public education to children with disabil-  
10 ities by any State educational agency, local edu-  
11 cational agency, or intermediate educational unit  
12 which receives assistance under this part to resolve  
13 such disputes through mediation in accordance with  
14 section 615(f).”.

15 (2) PROCEDURAL SAFEGUARD REQUIRE-  
16 MENT.—Section 615 of such Act (20 U.S.C. 1415)  
17 is amended—

18 (A) in subsection (a), by striking “sub-  
19 section (e)” and inserting “subsection (f);

20 (B) by redesignating subsection (f) as sub-  
21 section (g); and

22 (C) by inserting after subsection (e) the  
23 following new subsection:

24 “(f)(1) The procedures required by this subsection  
25 shall allow parties to disputes involving the provision of

1 free appropriate public education to children with disabil-  
2 ities by any State educational agency, local educational  
3 agency, or intermediate educational unit which receives as-  
4 sistance under this part to resolve such disputes through  
5 mediation.

6 “(2) Such procedures shall meet the following re-  
7 quirements:

8 “(A) The procedures shall ensure that the me-  
9 diation process—

10 “(i) is voluntary and may be waived by any  
11 party to the dispute at any time during such  
12 process; and

13 “(ii) is not used to deny or delay access by  
14 a parent or guardian to due process hearings  
15 under this section.

16 “(B) The State shall maintain a list of individ-  
17 uals experienced in mediation and knowledgeable in  
18 laws and regulations relating to the provision of spe-  
19 cial education and related services.

20 “(C) The State shall bear the cost of the medi-  
21 ator in the mediation process.

22 “(D) Each session in the mediation process  
23 shall be scheduled in a timely manner and shall be  
24 held in a location that is convenient to the parties  
25 to the dispute.

1           “(E) An agreement reached by the parties to  
2 the dispute in the mediation process shall be set  
3 forth in a written mediation agreement.

4           “(F) Discussions that occur during the medi-  
5 ation process shall be confidential and may not be  
6 used as evidence in any subsequent due process  
7 hearings, and the parties to the mediation process  
8 may be required to sign a confidentiality pledge  
9 prior to the commencement of such process.”.

10       (b) REGIONAL RESOURCE CENTER REQUIREMENT.—  
11 Section 621(a) of such Act (20 U.S.C. 1421(a)) is amend-  
12 ed—

13           (1) in paragraph (4), by striking at the end “,  
14 and” and inserting a comma;

15           (2) in paragraph (5), by striking the period at  
16 the end and inserting “, and”; and

17           (3) by adding at the end the following new  
18 paragraph:

19           “(6) provide information to and training for  
20 agencies, institutions, organizations, and parents re-  
21 lating to techniques and approaches for informal dis-  
22 pute resolution, including mediation.”.

23       (c) PARENT TRAINING AND INFORMATION PRO-  
24 GRAMS.—Section 631(e)(5) of such Act (20 U.S.C.  
25 1431(e)(5)) is amended—

1 (1) in subparagraph (E), by striking at the end  
2 “, and” and inserting a comma;

3 (2) in subparagraph (F), by striking the period  
4 at the end and inserting “, and”; and

5 (3) by adding at the end the following new sub-  
6 paragraph:

7 “(G) understand the use of mediation as a  
8 means of resolving disputes relating to the provision  
9 of special education and related services.”.

10 (d) MEDIATION UNDER PART H.—

11 (1) STATE APPLICATION REQUIREMENT.—Sec-  
12 tion 678(a) of such Act (20 U.S.C. 1478(a)) is  
13 amended—

14 (A) in paragraph (8), by striking at the  
15 end “, and” and inserting a comma;

16 (B) by redesignating paragraph (9) as  
17 paragraph (10); and

18 (C) by inserting after paragraph (8) the  
19 following new paragraph:

20 “(9) a description of the procedures that will  
21 allow parties to disputes involving the provision of  
22 early intervention services for infants and toddlers  
23 with disabilities under this part to resolve such dis-  
24 putes through mediation in accordance with the pro-  
25 cedural safeguards contained in section 615(f).”.

1           (2) PROCEDURAL SAFEGUARD REQUIRE-  
2           MENT.—Section 680 of such Act (20 U.S.C. 1480)  
3           is amended by adding at the end the following new  
4           paragraph:

5           “(9) Procedures that will allow parties to dis-  
6           putes involving the provision of early intervention  
7           services for infants and toddlers with disabilities  
8           under this part to resolve such disputes through me-  
9           diation in accordance with the procedural safeguards  
10          contained in section 615(f).”.

11 **SEC. 5. COORDINATION OF SERVICES UNDER THE SPECIAL**  
12 **EDUCATION PROGRAM.**

13          (a) INTERAGENCY AGREEMENTS.—

14           (1) IN GENERAL.—Section 612 of the Individ-  
15           uals with Disabilities Education Act (20 U.S.C.  
16           1412) is amended by adding at the end the follow-  
17           ing:

18           “(8) The State education agency and other ap-  
19           propriate State and local agencies have entered into  
20           interagency agreements in accordance with section  
21           613(a)(13).”.

22           (2) EFFECTIVE DATE.—The amendment made  
23           by paragraph (1) shall take effect on October 1,  
24           1996.

1 (b) COORDINATION WITH EVEN START, HEAD  
2 START, AND RELATED PROGRAMS.—

3 (1) IN GENERAL.—Section 614(a)(1) of such  
4 Act (20 U.S.C. 1414(a)(1)) is amended—

5 (A) in subparagraph (D), by striking “;  
6 and” and inserting a semicolon;

7 (B) in subparagraph (E), by striking the  
8 semicolon and inserting “; and”; and

9 (C) by adding at the end the following new  
10 subparagraph:

11 “(F) provide for coordination of such pro-  
12 grams, where appropriate to strengthen the  
13 ability of parents or guardians of children with  
14 disabilities to address the needs related to such  
15 disabilities, with the Even Start program au-  
16 thorized under part B of chapter 1 of title I of  
17 the Elementary and Secondary Education Act  
18 of 1965 (20 U.S.C. 2741 et seq.), the Head  
19 Start program authorized under the Head Start  
20 Act (42 U.S.C. 9831 et seq.), and other pro-  
21 grams that provide family literacy services or  
22 other services in which parents or guardians of  
23 children with disabilities are eligible to partici-  
24 pate;”.

1           (2) DEFINITION OF FAMILY LITERACY SERV-  
2           ICES.—Section 602(a) of such Act (20 U.S.C.  
3           1401(a)) is amended by adding at the end the fol-  
4           lowing new paragraph:

5           “(28) The term ‘family literacy services’ has the  
6           meaning given such term in section 637(4) of the  
7           Head Start Act (42 U.S.C. 9832(4)).”.

8   **SEC. 6. REQUIREMENT OF GOOD FAITH ATTEMPT TO RE-**  
9                           **SOLVE CONTROVERSIES FOR REIMBURSE-**  
10                          **MENT OF ATTORNEY’S FEES.**

11          Section 615(e)(4)(F) of the Individuals with Disabil-  
12          ities Education Act (20 U.S.C. 1415(e)(4)(F)) is amend-  
13          ed—

14                 (1) in clause (ii), by striking “; or” and insert-  
15                 ing a semicolon;

16                 (2) in clause (iii), by striking the period at the  
17                 end and inserting “; or”; and

18                 (3) by adding at the end the following:

19                 “(iv) the parent or guardian did not exercise  
20                 good faith in attempting to resolve the controversy  
21                 prior to filing a complaint and requesting an impar-  
22                 tial due process hearing under this section.”.

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