

SENATE JOINT RESOLUTION

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1996 Regular Session  
6lr2473

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**By: Senator Derr (Frederick County Delegation)**

Introduced and read first time: February 2, 1996

Assigned to: Economic and Environmental Affairs

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1 A Senate Joint Resolution concerning

2 **Individuals With Disabilities Education Act**

3 FOR the purpose of requesting the United States Congress to reauthorize and modify the  
4 Individuals With Disabilities Education Act.

5 WHEREAS, The Individuals with Disabilities Education Act was enacted in 1975  
6 and has been amended periodically to address new issues and respond to unforeseen  
7 developments; and

8 WHEREAS, The Individuals with Disabilities Education Act represents one of the  
9 most laudable and successful enactments of Congress to serve children with disabilities  
10 and their parents. The principles that children with disabilities should have a free and  
11 appropriate education, that each child's education should be determined individually, and  
12 that the rights of children and parents should be safeguarded are widely supported; and

13 WHEREAS, When the Individuals with Disabilities Education Act was passed,  
14 Congress promised to provide 40% of the costs of implementing the Act; however,  
15 Congress has rarely contributed more than 7% of those costs. Costs of providing special  
16 education services have escalated excessively, vital staff time is squandered in satisfying  
17 unproductive procedural and paperwork requirements, and because school systems must  
18 provide services, the costs of service providers and technology have soared. Costly  
19 mandates for students with disabilities curtail the availability of services offered for other  
20 students. The Individuals with Disabilities Education Act is no longer simple; it is in many  
21 ways impractical, and many of its procedures have become complex to the point of being  
22 counterproductive; and

23 WHEREAS, Parents and educators are too often and too quickly forced into an  
24 adversarial relationship. A school system must absorb the costs of a legal action about the  
25 placement of a student with disabilities even when the school system prevails. Some  
26 parents seek damages for lost wages for attending meetings related to the educational  
27 program of their children. Mediation, though a less costly alternative than litigation, is  
28 not required in disputes under the Individuals with Disabilities Education Act; and

29 WHEREAS, Students with disabilities may be placed in private schools and school  
30 systems may be required to pay tuition even though the school system may not have been  
31 afforded an opportunity to otherwise place the student; and

32 WHEREAS, A student with disabilities cannot be suspended from school for  
33 dangerous or disruptive behavior for more than 10 days per school year unless the

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1 behavior is proven to be unrelated to the disability, providing that proof is expensive and  
2 takes much staff time, and the student is required to be kept in school while the question  
3 of relatedness is litigated. The United States Department of Education mandates that  
4 school systems provide educational services to a suspended student even if the student  
5 commits severely dangerous or disruptive acts, thereby implying that students with  
6 disabilities need not feel responsible for those acts. Some parents of regular education  
7 students who are suspended are seeking to evade discipline by claiming that the children  
8 have disabilities covered by the Individuals with Disabilities Education Act. The  
9 Individuals with Disabilities Education Act sometimes requires that dangerous children  
10 be kept in the school over the better judgement of the school system and the school  
11 system becomes liable to claims by others harmed by those children. Recent court  
12 decisions have held that referring a student with disabilities to a law enforcement agency  
13 constitutes a "change in placement" under the Individuals with Disabilities Education Act  
14 bringing all of the Act's procedural and paperwork requirements into play; and

15 WHEREAS, Replacing the current categorization of qualifying conditions in the  
16 Individuals with Disabilities Education Act with a single, broadly worded eligibility  
17 standard would create an overly broad standard that would subject school systems to  
18 increased costs and more litigation. Federal administrative agencies such as the Office of  
19 Special Education Programs and the Department of Education have expanded greatly the  
20 dictates of the Individuals with Disabilities Education Act by issuing policy letters arrived  
21 at in a secret and non-participatory manner thus excessively burdening school systems;  
22 and The Individuals with Disabilities Education Act contains numerous ambiguities and  
23 vague provisions allowing critical aspects of the Act to be decided by judges, thereby  
24 creating increased instability and frequent variation; and

25 WHEREAS, School systems are required to buy, without limit, assistive technology.  
26 Requirements for individual educational program documentation are often so  
27 burdensome as to waste valuable resources; and

28 WHEREAS, The Individuals with Disabilities Education Act requires  
29 reauthorization by Congress, and certain aspects of the Individuals with Disabilities  
30 Education Act should be modified; now, therefore, be it

31 RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND, That the  
32 United States Congress is requested to reauthorize and modify the Individuals With  
33 Disabilities Education Act; and be it further

34 RESOLVED, That Congress provide actual funding reasonably equal to the  
35 amount pledged to be funded; and be it further

36 RESOLVED, That:

37 (1) Reasonable parameters be established regarding the federal mandate that  
38 students be provided with assistive technology;

39 (2) School systems should be allowed expressly to access private and  
40 governmental insurance proceeds whenever coverage is provided for services that the  
41 school system provides;

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1 (3) The Individuals with Disabilities Education Act be administered in a common  
2 sense, collaborative manner so that parents can participate fully in educational  
3 programming;

4 (4) The Individuals with Disabilities Education Act should more appropriately  
5 balance the needs of students with disabilities with the needs of students generally;

6 (5) The Individuals with Disabilities Education Act be amended so that school  
7 systems are not required to purchase more expensive services if less expensive services are  
8 also appropriate;

9 (6) Requirements for expulsion or suspension of students with disabilities be  
10 conformed to other statutory requirements for expulsion so that dangerous situations in  
11 school can be avoided and so that disruptive students can be deterred;

12 (7) A student who possesses a gun or other dangerous weapon in school should be  
13 removed from school for a minimum of 90 days even if the student has a disability;

14 (8) Disruptive or dangerous behavior that is unrelated to a disability should be  
15 treated in a uniform manner for all children;

16 (9) Measures be taken to avoid the situation whereby, as to drug or gun  
17 possession, students with disabilities act as fronts for students without disabilities;

18 (10) The school system should not be liable for the harm done by a dangerous  
19 student when the Individuals with Disabilities Education Act requires that student to be  
20 kept in the school over the better judgement of the school system;

21 (11) The Individuals with Disabilities Education Act be amended to state clearly  
22 that referring a student to a law enforcement or juvenile justice agency is not a "change in  
23 placement" under the Act;

24 (12) The use of categorization to determine eligibility be retained;

25 (13) Costs involving challenges to student placements be apportioned more fairly  
26 in situations where the school system prevails, that attorneys fees be disallowed in some  
27 cases and capped in others, that school systems be awarded attorneys fees in some cases,  
28 that monetary damages for lost wages of parents be prohibited in some situations, and  
29 that mediation be required;

30 (14) The authority of federal agencies to extend provisions of the Individuals with  
31 Disabilities Education Act be restricted;

32 (15) Federal agencies should only be allowed to implement the Individuals with  
33 Disabilities Education Act through an open and participatory manner;

34 (16) Steps be taken so that special health services for disabled students do not  
35 unduly burden the fiscal and personnel resources of the school system;

36 (17) Congress codify judicially developed standards in the areas of appropriateness  
37 of services, duration of services, assistive technology, school health services, change in  
38 placement, and least restrictive environment;

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1           (18) A parent should be required to provide adequate notice to school systems  
2 before placing a student in a private school and that a school system have a reasonable  
3 opportunity to place otherwise the student if the parent expects the school system to pay  
4 the tuition;

5           (19) Reasonable parameters be established on the requirement that assistive  
6 technology be purchased and that school systems need not be required topurchase  
7 assistive technology that is personal or only tangential to learning;

8           (20) Requirements for individual educational programs be simplified and made  
9 more rational; and be it further

10           RESOLVED, That a copy of this Resolution be forwarded by the Department of  
11 Legislative Reference to the Maryland Congressional Delegation: Senators Paul S.  
12 Sarbanes and Barbara A. Mikulski, Senate Office Building, Washington, D.C. 20510; and  
13 Representatives Wayne T. Gilchrest, Robert L. Ehrlich, Jr., Benjamin L. Cardin, Albert  
14 R. Wynn, Steny Hamilton Hoyer, Roscoe G. Bartlett, Kweisi Mfume, and Constance A.  
15 Morella, House Office Building, Washington, D.C. 20515.