

FRCD Newsletter

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New IL Budget Shows Increases in Disability Programs

Illinois Governor Rod Blagojevich's proposed FY 2009 Budget, announced as part of the Governor's Budget Address on February 20, shows increases in education, early childhood, and early intervention programs, children's mental health programs, and the childcare assistance program.

- Elementary and Secondary Education Programs show a proposed increase of \$300 million, which includes funding for early childhood, education, special education, general state aid for public schools and teacher recruitment programs.
- Early Intervention Programs show an increase of \$7.4 million, to support physical, occupational, and speech therapy, vision and hearing services, social work services, and counseling services.
- Children's Mental Health Programs show a \$1 million increase to support initiatives of the Children's Mental Health Act of 2003, including: prevention, intervention, and treatment.
- State-supported Child Care shows a cost-of-doing business increase in provider reimbursement rates. The Child Care Assistance Program assists approximately 100,000 low-income families to pay for child care by providing access to subsidies.
- A one-time tax credit for families with incomes up to \$75,000/year (and \$150,000/year for parents filling jointly), for a total of \$1.2 billion "economic stimulus" package.

Funding for these programs is dependent on passage of revenue proposals which include tax increases, the lease or sale of the Illinois State Lottery operations, sale of a gambling casino license, and other options.

(Information from Voices for Illinois Children News Alert (2/20/08); Ounce of Prevention e-mail, (2/21/08).)

The Family Resource Center on Disabilities (FRCD) is having a painless fundraiser through the Jewel Shop & Share Program on March 17, 18, & 19, 2008. A great way to financially support FRCD by doing your Easter shopping on those dates at your neighborhood Jewel Food Store. For more information, see the coupons accompanying this Newsletter, or contact Cindy Fah-Ok, at FRCD, 20 E. Jackson Blvd., Room 300, Chicago, IL 60604, (312) 939-3513 (voice), (312) 939-7297 (fax).

**NCLB Trumps IDEA,
Appeals Court Rules
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NCLB Trumps IDEA, Appeals Court Rules

A federal appeals court has turned away a lawsuit by two Illinois school districts and four families that said the No Child Left Behind (NCLB) Act was in conflict with requirements of the main federal special education law.

A three-judge panel of the U.S. Court of Appeals for the 7th Circuit, in Chicago, ruled unanimously on February 11 that even if the NCLB law was at odds with the Individuals with Disabilities Education Act, the special education law “must give way” because NCLB is the newer statute.

The 1,600-student Ottawa High School District and 2,000-student Ottawa Elementary School District 141, along with the parents of four students in special education in the districts’ schools, had sued U.S. Secretary of Education Margaret Spellings in 2005.

The suit said that the IDEA’s requirement that each special education student have an individualized education program runs contrary to the No Child Left Behind law’s requirement that special education students count as a distinct subgroup whose test results help determine whether a school makes adequate yearly progress, the key NCLB measure for holding schools accountable.

A federal district judge in Chicago had dismissed the suit last year, ruling that the school districts and families did not have legal standing because they had suffered no concrete injuries under the NCLB law.

The 7th Circuit Court panel reversed the lower court on that issue, holding the the school districts, at least, had standing to sue the secretary of education under NCLB because, the court said, the law requires them to “pay for more tests than they would administer if left to their own devices.”

That part of the ruling may be significant for other districts that seek to challenge the No Child Left Behind law. The appellate court took note of the Jan. 7 ruling by its neighboring court, the U.S. Court of Appeals for the 6th Circuit, in Cincinnati, that revived a major lawsuit challenging the NCLB law as an unfunded mandate. (See Education Week, January 16, 2008.)

But the 7th Circuit panel quickly moved on to conclude that, on the merits, the Illinois suit “is too weak to justify continued litigation.”

The court said that even if the No Child Left Behind law, passed by Congress in 2001 and signed by President Bush in 2002, had provisions that conflicted with the IDEA, the descendant of federal legislation enacted in the 1970s, the newer law must take precedence.

“Plaintiffs’ view that an earlier law can repeal a later one by implication has time traveling in the direction,” the 7th Circuit court said. It added that nothing the 2004 reauthorization of the IDEA superseded the testing requirements of the NCLB, which itself is the latest reauthorization of the Elementary and Secondary Education Act of 1965.

“The 2004 amendments were designed in part to conform the [IDEA] to the [NCLB law], not to displace it,” the court said. “Thus the asserted conflict is between legislation enacted in 2001 and a structure that was adopted in states between 1970 and 1990, and 2001 statute must prevail to the extent of any conflict.”

The 7th Circuit covers Illinois, Indiana, and Wisconsin.

John M. Izzo, a Flossmoor, Illinois, lawyer for the plaintiffs, said many schools are running into conflicts between requirements of the NCLB law and the IDEA.

“If Congress was trying to reconcile the two, I don’t think they did so successfully,” said Mr. Izzo, who added that an appeal is under consideration.

Samara Yudof, a spokeswoman for the U.S. Department of Education, said department officials were pleased by the “favorable decision.”

(Reprinted from: Education Week, February 20, 2008, written by Mark Walsh.)
