

THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT: UNDERSTANDING THE IMPACT OF FEDERAL FUNDING ON THE EDUCATION OF STUDENTS WITH DISABILITIES

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Abstract

The federal government has advocated for equal access to education since the Civil Rights Act of 1964. Since then, a number of bills have been enacted to further equal access to education. In particular, the Individuals with Disabilities Education Act (IDEA) sought to provide students with disabilities equal access to a quality education and to equip them for life-long success. Currently, there are about six million students who benefit from IDEA. In the years since IDEA has been enacted, knowledge of the best ways in which to educate students with disabilities has grown. This study explores whether IDEA has grown along with this new understanding, examining in particular whether IDEA enables students to enjoy Free Appropriate Public Education (FAPE) and the other aids that it promises to provide. Ultimately, this study finds that IDEA is not being fully funded and is thus unable to fully cover the extra costs of educating students with disabilities.

Introduction

In Fall of 2015, four-year-old Seth Murrell was just finishing up his first month at a local public preschool in Atlanta, Georgia, when his mother received a call. She was informed that her son was going to be moved from their local school to a distant school that was part of the Georgia Network for Educational and Therapeutic Support (GNETS). For the past month, Seth Murrell's mother had received a phone call from the school almost every day demanding that she pick up Seth early because he had been disrupting the classroom. The issues varied by day: one day, he would have shouted in class, another he would have spit on his teacher. The school was unwilling and unable to handle Seth's behavior any longer (Aviv, 2018).

These behaviors, which were later explained by a diagnosis of autism, led to Seth's transfer to a school for students who suffered from trauma, bipolar disorder, schizophrenia, A.D.H.D., and autism. Students like Seth were confined to small classrooms separate from their peers. Seth and his classmates were taught by teachers untrained to handle students with these disabilities. The school was unable to provide any resources to assist Seth, as they lacked a nurse, social worker, or any kind of behavioral specialist; instead, they simply encouraged Seth's mother to give him "something to keep him still" (Aviv, 2018, para. 26). In his first year at this school, Seth's aunt found him in a classroom by himself sleeping while his teacher was in another room. At some points, Seth even faced physical abuse: when he was just six years old, Seth's teacher struck him multiple times and continued to do so even after he fell to the ground (Aviv, 2018). The school that was tasked with providing a quality education for students with autism and support for their families turned out to be a nightmare for the Murrell family.

In the United States, federal legislation exists to protect students like Seth from suffering abuse or neglect at school. Since the Civil Rights Act of 1964 and the Rehabilitation Act of 1973, the federal government has sought to protect those with disabilities from discrimination and to secure their right to participate in government funded programs. In 1975, the Education for All Handicapped Children Act (EHA) was enacted to protect the rights of children with disabilities to access public education. In 1990, that piece of legislation was reissued as the Individuals with Disabilities Education Act (IDEA) to protect and support children with disabilities from infancy to 21 years of age.

IDEA provides early intervention services to help parents recognize their child's disability, ensures access to free appropriate public education, equips parents and students with tools to succeed, and enables states' efforts to educate students with disabilities. IDEA provides funding for states whose schools adhere to the standards outlined in the law, which encourage schools to hire highly qualified teachers, equip students and their families with the necessary tools to achieve unique educational

goals, and support the needs of each unique student to ensure they have the ability to take part in meaningful education with their peers.

Stories like Seth's raise a number of questions: If federal legislation like IDEA protects the fair treatment of children with disabilities in the public education system, why are students like Seth forced to suffer in schools like those in the GNETS system? Why did the public school system prohibit Seth from remaining at his local school in the first place? Why were his teachers at his State Education and Therapeutic Support school untrained to handle his disability? Why was this school unable to provide Seth and his family with necessary resources? These questions lead to a more fundamental question, which this study seeks to answer: Does IDEA actually succeed in ensuring the proper education of students with disabilities from a federal level? This study hypothesizes that IDEA is currently hindering schools in their provision for students with disabilities in that it fails to provide states with adequate funding to care for students with disabilities and does not mandate uniform contribution of funds towards special education among states.

Literature Review

Given the wide array of factors that play into the successful implementation of the Individuals with Disabilities Education Act, the literature is quite broad in scope. Scholars have analyzed everything from the means of education mandated by IDEA to the allocation of funds to the enforcement of IDEA itself.

IDEA (2004) does not actually mandate a specific approach in regards to the actual strategies and curriculum for educating students with disabilities. In alignment with its true nature as a civil rights act, IDEA simply mandates that students with disabilities be educated using the least restrictive means possible. The least restrictive means implies that to the extent possible, or to the extent a school can afford, students served under IDEA should be educated in regular classrooms with their neurotypical peers. It is generally agreed upon that IDEA's requirement of educating students in the least restrictive means is the best way of protecting students with autism's right of equal access to education. According to an article published by the Organization for Autism Research, "The practice of inclusion is based upon protecting children's access to education and benefiting from such practice. For those with [Autism Spectrum Disorder], proposed benefits often center on improved social acceptance and improved social communication" (Campbell, 2016, para. 4). The article further explained that while there is great potential for the social growth of students with autism through learning in regular classrooms, inclusion requires professional support and intervention from teachers experienced with the Autism Spectrum Disorder (ASD). Without that support, inclusive education could easily result in negative experiences for both students with ASD and their peers (Campbell,

2016). There is little dissent regarding the actual model for educating students with autism laid out in IDEA.

However, some scholars have criticized the lack of standardized support among schools to ensure the practical and successful implementation of the best practices for educating students with autism under IDEA. According to a report published by the Interagency Autism Coordinating Committee (2017), there are few national organizations that assist schools in providing students on the spectrum with a quality education that meets their needs, and schools that do so remain the minority. This report claimed that it is the lack of professional support across the board that limits the majority of these schools from implementing the quality education that IDEA strives to provide.

Claypool and McLaughlin (2017) responded to IDEA's lack of standards in implementing best educational practices in schools across the nation in their book, *How Autism is Reshaping Special Education: The Unbundling of IDEA*. In this work, the authors explored whether IDEA is necessary to ensure free appropriate public education for students with autism specifically because of the vastly unique needs of each individual student (Claypool & McLaughlin, 2017). They argued that IDEA is becoming increasingly out of touch with new advancements on the behavioral analysis and treatment of autism (Claypool & McLaughlin, 2017). They quoted Lorri Unumb, an attorney with the organization Autism Speaks, who criticized IDEA at the federal level:

IDEA is so ill-suited to provide the modifications and accommodations and the instruction that many children with autism need... it is such a patchwork from state to state. It may be that removing IDEA in states where special education works better, like New York or Massachusetts would be a disastrous step, but in states where special education doesn't work well, I wonder how much difference it would make. (2017, pp. 119-120)

Claypool and McLaughlin (2017) noted that ensuring positive results for students with autism is an extremely difficult task but concluded by demanding more from IDEA in its reauthorization. They called for IDEA to go beyond the mere provision of equal access to education and to actually address the outcome of that access. Claypool and McLaughlin (2017) also made an appeal for increased funding.

The National Council on Disability (NCD) reached a similar conclusion in their 2018 report *Broken Promises: The Underfunding of IDEA*. They cited complaints from parents of students with disabilities in which the schools responded that they lacked the funding and resources to provide special accommodations. The National Center for Learning Disabilities (NCLD) (2018) attributed such problems

to a lack of adequate funding for the implementation of IDEA. Ultimately, NCLD (2018) advocated for the full funding of IDEA, arguing that because IDEA is not fully funded, schools may have to cut programs that benefit all students to cover the additional costs of providing for students with disabilities. Schools are also more likely to struggle to recruit and retain qualified teachers due to tight budgets (NCLD, 2018).

Data and Methods

This study hypothesizes that IDEA is hindering schools from providing adequate special education and support for students with disabilities and their families because it is vastly underfunded and does not set a uniform standard for state contribution towards funding special education. This study will first identify the fundamental provisions set forth by IDEA in ensuring that each and every child who matches the qualifications receives their free appropriate public education. It will then conduct a quantitative analysis of the data recorded in reports issued by the Department of Education on the implementation of IDEA and the type of students assisted. Furthermore, this study will provide a qualitative analysis of reports issued by the National Council on Disability on the effectiveness of IDEA in public education. It will also explore several first-hand accounts of teachers and parents of students served under IDEA. Finally, this study will analyze the funding allocated to the states through IDEA in the context of Congress's original promise for funding through IDEA.

Before analyzing the impact of IDEA, it is important to clarify its role among numerous civil rights policies that protect citizens with disabilities. The first step to understanding IDEA's role is to define free appropriate public education (FAPE). FAPE was instituted by Section 504 of the Rehabilitation Act of 1973, which is an anti-discrimination act that protects the right of citizens with disabilities to take part in federally funded organizations. FAPE is defined in Section 504 as an education that a) is tailored to the individual student's needs, b) takes place in classrooms with nondisabled students (to the maximum extent appropriate for the individual with a disability), c) is periodically reevaluated to protect students against misclassification, and d) ensures the due process procedures for parents to receive notices, records of their children, and the ability to challenge their child's placement (United States Department of Education/Office for Civil Rights, 2010).

Though Section 504 and IDEA overlap in some areas, they are separate statutes. Section 504 is a civil rights code that protects the rights of those with disabilities, but it does not provide federal funding. IDEA, while a law that also protects the rights of those with disabilities, is a funding program and serves a more focused group. It is much simpler to qualify for protection under Section 504 than under IDEA,

in large part because IDEA requires proof of academic improvement from a child with a disability, while Section 504 does not. Thus, while Section 504 and IDEA have similar aims, not all students protected under Section 504 are served under IDEA, as Section 504 has a broader scope.

Research

The History and Provisions of IDEA

IDEA is “a law that makes available a free appropriate public education (FAPE) to eligible children with disabilities throughout the nation and ensures special education and related services to those children” (“About IDEA,” n.d., para. 1). It originated as the Education for All Handicapped Children Act (EHA), signed into law by President Gerald Ford in 1975. As a federal law, IDEA has limited jurisdiction on the actual methods and curriculum offered in schools across the nation. Instead, IDEA (2004) recognizes the authority of the states and encourages states to collaborate with schools, local agencies, and parents of students with disabilities in order to formulate the best possible strategies for educating children according to their specific needs.

According to IDEA (2004), each state must ensure that every eligible child has access to FAPE and has an Individualized Education Program (IEP) or an Individualized Family Service Plan (IFSP) by their third birthday. As part of providing FAPE and an IFSP, states must provide nonacademic services such as “counseling services, athletics, transportation, health services, recreational activities, special interest groups, or clubs by the public agency” (34 CFR § 300.107, 2006). IDEA tasks state and local governments with the responsibility of formulating effective aid; however, it also establishes federal standards for an effective educational system. These include defining and maintaining high academic standards, providing transportation and other health services, and formulating programs based on scientific research. It further mandates access to trained personnel and support for parents (IDEA, 2004). The states are required to comply with these statutes in order to receive federal funding (“About IDEA,” n.d.).

In order to ensure that all children who are eligible for IDEA are being helped, states must follow a standardized process. First, states are legally obligated by what is known as the “Child Find” mandate to find every child with a disability that could potentially be eligible for IDEA services. Second, schools must evaluate the child to determine their eligibility. If a child is found eligible, the school staff must host an IEP meeting with the parent in which they analyze the child’s current performance, decide on annual goals and transportation needs, and discuss the child’s participation in regular classrooms and state and district-wide tests. Finally, schools must provide services according to the child’s IEP, track the child’s progress, and meet with the

parents annually to re-evaluate the IEP. Once every three years, a child may be re-evaluated to ensure that they are still eligible to be served under IDEA (United States Department of Education/Office of Special Education and Rehabilitative Services, 2000).

Students Served Under IDEA

In December 2004, the most recent reauthorization of IDEA added a requirement that the Department of Education publish an annual report of the children it serves (Department of Education, 2018). According to the Department of Education's latest report, 6,048,882 students between the ages of 6 and 21 were served under IDEA in 2016 (Department of Education, 2018). Those students are divided into seven different categories according to their disability: autism, emotional disturbances, intellectual disabilities, speech or language impairments, specific learning disabilities, other health impairments, and other disabilities combined. The largest category by far is specific learning disabilities, which accounts for over one third of the students served under IDEA (Department of Education, 2018).

Another significant demographic served is children with autism. IDEA defines autism as "a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three that adversely affects a child's educational performance" (34 CFR § 300.8(c)(1)(i), 2006). The Department's 2018 report indicated that the population of children with autism under IDEA has steadily increased since 2010. According to the report, 6.4% of the population served under IDEA was diagnosed with autism (Department of Education, 2018). According to the Department's most recent report, the percentage of students with autism served under IDEA now stands at 9.6% (Department of Education, 2018).

IDEA's Implementation of FAPE

The Department's report also monitors whether students with autism are receiving FAPE by recording the extent to which students with disabilities are educated in the same classrooms as their peers without disabilities. Out of the students diagnosed with autism served under IDEA, 39.4% spent 80% or more of the day in a regular classroom, 18.0% spent between 40% and 79% of the day in a regular classroom, 33.4% spent less than 40% of the day in a regular classroom, and 9.2% spent the entirety of the day outside of the regular classroom (Department of Education, 2018). The numbers indicate that not all students with autism are being educated using the least restrictive means.

It is impossible to judge solely from this quantitative analysis why the majority of students are spending less than 80% of class time in regular classrooms. It could be because some students could not operate in the least restrictive environments or

perhaps because teachers are untrained to educate students with autism. Schools may simply not have the finances or resources needed to enable these students to operate in regular classrooms. Most likely, these numbers are due to a combination of these factors. Either way, these numbers reveal IDEA's ineffectiveness in equipping schools to provide maximum regular classroom time for students with autism.

Accounts of Teachers and Parents Operating under IDEA

In order to uncover why students with disabilities are not being adequately served under IDEA, it is necessary to look at the qualitative sources. The best sources for information on the effectiveness of IDEA are teachers, school principals, and most importantly, parents of students with disabilities.

In 2016 alone, the Office of Civil Rights received about 6,000 complaints alleging violations of various rights of students with disabilities (Department of Education, 2018). There were 1,177 complaints alleging that students were being subjected to different treatment, exclusion, or denial of benefits. Another 1,209 complaints mentioned suffering due to retaliation from the schools. Yet another 2,141 complaints were raised claiming that students were being denied FAPE (Department of Education, 2018). The Department of Education's 2018 report included several specific examples of these complaints. For instance, the San Bernardino County Office of Education was found to have violated Section 504 of the law. The office did not have the right procedures in place to identify students' disabilities, and consequently, students did not receive the individual aid they needed.

The National Council on Disability's 2018 report included accounts from several parents regarding IDEA's ineffectiveness. One parent was told that the school could not afford to pay for evaluations to diagnose their child with a disability. The parent of another student with autism and other disorders said, "Right now, my child is receiving four hours of parent training and a bus. And that's it" (NCD, 2018, p. 36). Another parent commented that her child "needed speech therapy, but [that] even if it's necessary, the school district doesn't pay for it" (NCD, 2018, p. 35). The testimony of these parents suggests that schools are suffering as a result of the lack in funding from IDEA.

Funding at the Federal, State, and Local Level

IDEA (2004) created a structure in which "full funding" by the federal government would cover 40% of the average per pupil expenditure for each student served under IDEA in each state. However, as a 2018 National Education Association (NEA) report noted, actual funding has never even come close to "full funding."

This report indicated that since 2009, the percentage of the average per pupil expenditure covered by IDEA has decreased and now sits at 14.6%, its lowest level since 2001 (National Education Association, 2018). It added that because of the lack

of funding through IDEA, even more responsibility for funding special education has been pushed onto the states (National Education Association, 2018). This multi-billion dollar burden has affected each state to a varying degree. In Georgia, the state must now provide about \$698 million in funding which could have been covered under IDEA. Likewise, California and Texas each had to pay approximately \$1.8 billion because “full funding” was not provided (National Education Association, 2018). In total, the federal government has left a hefty \$21.5 billion of its potential funding up to the states (National Education Association, 2018).

An additional factor, though, makes the consequences of this issue unpredictable: IDEA sets no uniform standard mandating that states direct their money towards special education. In fact, IDEA does not direct any funding from the states towards the extra costs of special education. While some states will make a good faith effort to reconcile IDEA’s lack of funding for special education, other states will direct less of their own funds towards special education. Special education suffers more in some states than in others because there is no law outlining a required amount of state funding for the additional costs of educating students with disabilities.

In March of 2019, Congress introduced a bill to gradually increase IDEA funding over ten years. If this bill passes, IDEA’s funding will jump from about \$11.9 billion to \$43.3 billion (S. 866, 2019). This bill was also introduced into the House of Representatives in February of 2014 (H.R. 4136, 2014), reintroduced to the House in 2015 (H.R. 551, 2015) and introduced to the Senate in 2018 (S. 2542, 2018). However, even if this bill passes, students with disabilities will continue to suffer in the public school system while states wait a decade for IDEA to reach “full funding.” During the wait, there is no guarantee that states will provide schools with the requisite funding to meet the requirements of IDEA in providing FAPE and outside support for students with disabilities.

Conclusion

Students with disabilities are suffering. They are not receiving the free appropriate public education that was guaranteed them in 1973 through the Rehabilitation Act. First-hand accounts from parents and teachers have demonstrated that schools across the nation are unable to provide an education tailored to the needs of each unique student because they cannot afford to hire special education teachers. Schools are failing to provide support for students and parents outside of the classroom through counseling and therapy because they are unable to afford qualified staff. Data shows that many students with disabilities, particularly those with autism, are still being taught by restrictive means, instead of in regular classrooms. The evidence is clear—schools are underperforming because

they are not receiving the necessary funding to fulfill their IDEA-outlined role of providing resources to students with disabilities and their parents.

Schools do not have the funding they need to provide for students with disabilities because they bear an expensive burden that should be carried at the federal level. IDEA promised up to 40% of the average per pupil expenditure since its reauthorization in 2004. However, IDEA fails to meet even half of that potential today. Moving forward, three steps should be taken in order for special education in the United States to provide effectively for students with disabilities.

First, the long term goal should be to establish full funding under IDEA. Over time, the federal government needs to increase funding through IDEA to reach the 40% of the average per pupil expenditure for every student served under IDEA. Once IDEA is fully funded, states can refocus their budget on improving programs that benefit all students.

Second, while the first step is underway, there needs to be a temporary solution ensuring that states allocate a standard amount of funds towards special education. As states wait for fuller funding through IDEA, the federal government should mandate a required sum of funding from the states be directed towards special education. This sum would gradually decrease as federal funding through IDEA gradually increased.

Finally, more research should be conducted on how states can efficiently use their funding for special education. There is no current or exact data that measures how much states and districts pay towards special education. Not only are states not required to pay anything towards special education, but they are also not held accountable for keeping track of the expenditures if they do so. Since there is no recent data recording spending on special education at the state and local level, no clear evidence demonstrates how much it actually costs to educate a student with disabilities. Provision of counseling, nurses, and individualized attention to students with disabilities indicates that special education is far more expensive than educating other students. Each additional cost will vary depending on the student's individual needs. However, it is important to have at least a baseline understanding of the range of additional costs so that the public school system can work towards more efficient use of funds in special education.

Throughout the history of this nation, brave men and women have fought for the right to equal opportunity. Today, that battle continues for students with disabilities in the education system. In order to protect students' fundamental right to free appropriate public education and support, the United States must increase funding through IDEA and mandate its direction towards special education.

Reference List

34 CFR § 300.107 (2006).

34 CFR § 300.8 (2006).

About IDEA. (n.d.). Retrieved from <https://sites.ed.gov/idea/about-idea/#IDEA-History>

Aviv, R. (2018, September 24). Georgia's separate and unequal special-education system. *The New Yorker*. Retrieved from <https://www.newyorker.com/magazine/2018/10/01/georgias-separate-and-unequal-special-education-system>

Campbell, J. (2016). The importance of peers in inclusive education for individuals with ASD. *Organization for Autism Research*. Retrieved from <https://researchautism.org/the-importance-of-peers-in-inclusive-education-for-individuals-with-asd/>

Claypool, M. K. & McLaughlin, J. M. (2017). *How autism is reshaping special education: The unbundling of IDEA*. Lanham, MD: Rowman & Littlefield.

IDEA Full Funding Act, H.R. 4136, 113th Cong. (2014).

IDEA Full Funding Act, H.R. 551, 114th Cong. (2015).

IDEA Full Funding Act, S. 2542, 115th Cong. (2018).

IDEA Full Funding Act, S. 866, 116th Cong. (2019).

Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400 *et seq.* (2004).

Interagency Autism Coordinating Committee. (2017). Interagency Autism Coordinating Committee strategic plan for Autism Spectrum Disorder. Retrieved from <https://iaacc.hhs.gov/publications/strategic-plan/2017/>

National Center for Learning Disabilities Policy Team. (2018). Idea full funding: Why should Congress invest in special education? *National Center for Learning Disabilities*. Retrieved from <https://www.nclld.org/archives/action-center/what-we-ve-done/idea-full-funding-why-should-congress-invest-in-special-education>

National Council on Disability. (2018). *Broken promises: The underfunding of IDEA* (Rep.). Retrieved from https://ncd.gov/sites/default/files/NCD_BrokenPromises_508.pdf

National Education Association. (2018). IDEA funding gap. Retrieved from https://www.nea.org/assets/docs/IDEA-Funding-Gap-FY-2017-with-State-Table.pdf?fbclid=IwAR0EoNjMSXh6OH2_QFhE1NloWFootkw4K7KFJY3iHfQ0tNR877cjQpUFmts

United States Department of Education/Office for Civil Rights. (2010). Free appropriate public education for students with disabilities: Requirements under section 504 of the Rehabilitation Act of 1973. Retrieved from <https://www2.ed.gov/about/offices/list/ocr/docs/edlite-FAPE504.html>

United States Department of Education/Office of Special Education and Rehabilitative Services. (2000). A guide to the individualized education program. Retrieved from <https://www2.ed.gov/parents/needs/speced/iepguide/index.html#closer>

United States Department of Education/Office of Special Education and Rehabilitative Services. (2018). *40th annual report to Congress on the implementation of the Individuals with Disabilities Education Act, 2018* (Rep.). Retrieved from <https://www2.ed.gov/about/reports/annual/osep/2018/parts-b-c/40th-arc-for-idea.pdf>