

# Waste Land Special Education

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## Introduction

Americans are a compassionate people who rightly have committed themselves to providing special education—education devoted to the needs of children with physical or mental disabilities. They have expressed this commitment since our nation’s founding by means of care within the family—and parents rightly retain the first responsibility for care of their children, which government has no right to abridge. But Americans also have directed increasing amounts of local, state, and federal governmental resources toward special education. Since 1975, the Education for All Handicapped Children Act (later renamed the Individuals with Disabilities Education Act) has governed the federal commitment to special education.

The Federal commitment to special education, unfortunately, has been very badly managed. The Office of Special Education Programs (OSEP) within the United States Education Department (ED) includes a tangle of formula and discretionary grant programs. The ED is incapable of determining how much good they do. Indeed, the ED cannot tell policymakers or the public whether these programs do any good at all. The ED, moreover, imposes discriminatory and dysfunctional regulations on the state and local programs it funds, above all via Equity Requirements in IDEA and “disparate impact” prohibitions. These regulations actually prevent state and local governments from providing proper amounts of special education, if the provision is “inequitable.” The ED finally imposes unfunded and undefined mandates on state and local governments, which lead to the provision of special education by patchwork response to lawsuit rather than by deliberate and reasoned policy. The federal commitment to special education means well, but it does not serve the American people well—nor the children who need special education.

The federal commitment to special education must be reformed. This will require more than reforming ED, or even eliminating ED and transferring special education to (say) the Department of Health and Human Services. Proper reform also requires revising the Individuals with Disabilities Education Act so that it no longer imposes unfunded and undefined mandates on state and local governments. The federal government must support special education properly—and not simply delegate responsibility for special education to the states and governments. Americans should combine compassion, effectiveness, and accountability as they provide special education—education for Americans who need it most.

## History Overview

The Education for All Handicapped Children Act (1975) began regular federal funding of and intervention in special education. Congress then declared that,

(1) the special educational needs of handicapped children are not being fully met; (2) one million of the handicapped children in the United States are excluded entirely from the public school system and will not go through the educational process with their peers; and (3) it is in the national

interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the laws.<sup>1</sup>

The federal government transferred its special education programs to the Education Department when that was founded in 1980. In 1990, federal special education laws and funding were reauthorized and renamed as the Individuals with Disabilities Education Act (IDEA) (1990).<sup>2</sup> This revision included greater attention to the individual education of special education students, and even stronger emphasis that special education should take place in the least restrictive environment. IDEA has been revised by successive amendments in the ensuing decades. Federal special education now is housed administratively in the Office of Special Education Programs (OSEP), which is a component of the Office of Special Education and Rehabilitative Services. The 2025 Fiscal Year 2025 Budget Request for Special Education was \$15.67 billion.<sup>3</sup>

## Program Overview

The Individuals with Disabilities Education Act (IDEA) of 2004 provides grantmaking authority to OSEP, which allows the Department to provide formula grants for the states and discretionary (i.e., competitive) grants to both institutions of higher education and other nonprofit organizations for various uses.

OSEP funds multiple projects. First among them is the IDEA Formula Grant Program. IDEA Part B provides for formula grants to states and grants to preschools, whereas IDEA Part C provides for intervention programs for infants and toddlers with disabilities. The formula used to determine funding is outlined in IDEA Section 611(d). IDEA includes data collection and reporting requirements for grant recipients, so IDEA Part B also provides discretionary grants for the “Technical Assistance on State Data Collection.”

Part D provides for six different programs/services. First are the “State Personnel Development Grants,” which help states reform and improve their professional development systems for those working in special education.<sup>4</sup> Second are the awards for “Personnel Development to Improve Services and Results for Children with Disabilities,” which go directly to those working or intending to work in special education and help states meet their needs for adequate numbers of certified personnel.<sup>5</sup> Third are the services of “Technical Assistance and Dissemination,” which, as the name suggests, provide technical assistance for the other services offered under IDEA.<sup>6</sup> Fourth are the grants for “Technical Assistance on State Data Collection,” which complements “Technical Assistance and Dissemination” but focuses on grants to states.<sup>7</sup> Fifth are the grants for “Education Technology, Media and Materials for Individuals with Disabilities,” which help make technology and educational materials available to those with disabilities.<sup>8</sup> Sixth, and finally, are the Parent Training and Information Centers, which help to ensure that parents of children with disabilities have access to information, training, and other resources.<sup>9</sup>

In order to manage these programs, OSEP itself is divided into two divisions: the Monitoring and State Improvement Planning Division<sup>10</sup> and the Research to Practice Division,<sup>11</sup> with the latter further divided into four teams. Three of those teams focus on particular stages of a disabled student’s educational attainment. There is the Early Childhood and Parent Team,<sup>12</sup> the Elementary and Middle School Team,<sup>13</sup> and the Secondary, Transition, and Post-Secondary Team.<sup>14</sup> The fourth team focuses on OSEP’s National Initiatives.<sup>15</sup> In addition to its very clear organizational structure and programs, IDEA also requires data collection and reporting on special education programs. The IDEA Data Center provides technical assistance for data collection to recipients of IDEA-funded programs.<sup>16</sup>

A broad majority of Americans endorse the declaratory principle of the Education for All Handicapped Children Act, that “it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the laws.” This broad support will likely continue for the foreseeable future. Whether or not housed in the Education Department, the federal government will continue to provide support for special education. It should do so at least at the current level of real spending.

## Federal Bureaucracy: Incapable of Evaluating Its Own Efficiency

OSEP currently consists of a bureaucratic labyrinth of formula and discretionary grants. OSEP probably spends this money very inefficiently—and we can only say “probably” because OSEP provides virtually no information that allows policymakers or the public to judge the efficiency of its programs. It does not appear that OSEP personnel themselves know for certain whether the money they spend for special education does any good. OSEP’s evaluation of its spending programs generally presents a hodgepodge of ineffective performance measures, along with information that OSEP frequently has not met its own education targets.

OSEP’s self-evaluations include the following:

- *Formula Grants:* OSEP disburses the great majority of its special education funding to the states. Its program performance information for formula grants includes objective measures of how disabled students score on various educational measures, but there is no way to assess how federal funds have contributed to those scores, or what has been their return on investment. OSEP also provides quantitative information about educational targets—and how, where data is provided,<sup>17</sup> these generally have not been met. These statistics do not break down disabled students by degree or nature of disability, which also makes these performance evaluations even less informative.<sup>18</sup>
- *Preschool Grants:* OSEP’s measures of its Preschool Grants generally comprise soft measures such as “the percentage of children who entered the program below age expectations in positive social-emotional skills (including social relationships) who substantially increased their rate of growth by the time they exited the program.”<sup>19</sup>
- *Grants for Infants and Families:* OSEP’s measures of its Grants for Infants and Families generally comprise soft measures such as “the percentage of infants and toddlers who entered the program below age expectations in positive social-emotional skills (including social relationships) who substantially increased their rate of growth by the time they exited the program.”<sup>20</sup>
- *State Personnel Development (SPD):* OSEP cited remarkably weak and soft data to justify its work: “Of the 74 DCLT [District–Community Leadership Team] members who responded to the Inclusive Multi-Tiered System of Supports Implementation Scale: Mental Health Supplement, 95 percent reported knowing how to implement trauma-responsive practices and 100 percent responded that continued collaboration would improve mental health outcomes for children and youth.

DCLTs translated these beliefs into practice, monitoring the progress of 30 students through a trauma-responsive support planning process, with 93 percent of students making progress in their targeted areas.”<sup>21</sup>

- *Technical Assistance and Dissemination*: OSEP’s program performance measures included weak and soft measures, such as “the percentage of Technical Assistance and Dissemination products and services deemed by an independent review panel of qualified experts to be of high relevance to educational and early intervention policy or practice.”<sup>22</sup>
- *Personnel Preparation*: OSEP’s program performance measures included weak and soft measures, such as “percentage of projects that incorporate scientifically- or evidence-based practices in their curricula.”<sup>23</sup>
- *Parent Information Centers*: OSEP deputed review to “an independent review panel of experts.”<sup>24</sup> This procedure is subject to abuse.
- *Educational Technology, Media, and Materials*: OSEP uses soft performance measures, such as “the percentage of Educational Technology, Media, and Materials projects judged to be of high relevance to improving outcomes of infants, toddlers, children and youth with disabilities.”<sup>25</sup>
- *Special Olympics Education Programs*: OSEP uses soft performance measures, such as “the percent of school liaisons who report that Unified Champion Schools helps raise awareness about students with intellectual disabilities.”<sup>26</sup>

OSEP does include some more effective efficiency measurements. Generally it provides claims to efficiency that do not provide actual information about how well it performs. OSEP appears incapable of informing American citizens and policymakers about how well it is fulfilling the mandate to provide special education.

## Federally Imposed Discrimination

OSEP, in addition to funding programs of uncertain efficiency, imposed blatantly discriminatory and counterproductive requirements on special education. The Equity Requirements in IDEA, for example, require that,

school districts deemed to overrepresent minority students in special education assignment, or in discipline amongst special education students, are tagged by their state education agencies as engaging in “significant disproportionality,” and are required to reallocate 15 percent of their IDEA Part B money into coordinated early intervening services that are intended to address the “root causes of disproportionality.” In practice, this can mean raiding special education funding to pay for CRT-inspired “equity” consultants and professional development.

This is especially problematic given that both of the assumptions behind Equity in IDEA are flawed. Special education services provide extra assistance to students; they do not harm them. And according to the most rigorous research on the subject, conducted by Penn State’s Paul Morgan, black students are actually underrepresented in special education once adequate statistical controls are made. That means that this regulation effectively further depresses the provision of valuable services to an already underserved group.<sup>27</sup>

Although the Trump administration has barred the use by the federal government of discriminatory “Diversity, Equity, and Inclusion” policies,<sup>28</sup> the Equity Requirements in IDEA do not yet appear to have been rescinded.

In previous administrations, moreover, ED has applied disparate impact theory to special education, in ways that threaten to make it impossible to function. In 2016, ED wrote a DCL stating that the “over-identification, under-identification, and belated evaluation of students of color to determine whether they have disabilities and need special education services can violate Title VI and Section 504, and in so doing harm students’ civil rights to equal educational opportunity.”<sup>29</sup> This DCL threatens states and school districts with investigation for civil rights violations whether they do or don’t identify students who need special education—and, in effect, makes *any* action in special education the potential target for investigation under civil rights law. This ill-considered extension of disparate impact theory threatens to render all special education permanently dysfunctional. The Trump administration appears to have rescinded this Dear Colleague Letter, but a future administration might revive it.

## Federally Imposed Unfunded Mandates

Federal law allows Congress to avoid substantial accountability for its special education requirements, because of its resort to *unfunded and loosely defined mandates*. IDEA’s greatest effect on states and Local Education Agencies (LEAs) is the legal requirement that states and LEAs provide adequate special education. This requirement is not funded and not explicitly defined. Because IDEA is not tightly defined, it has led to government by lawsuit—the provision of special education services determined ad hoc by lawsuit rather than by consistent policy at the federal, state, or local level. Even if congressmen were (for example) to convert current federal special education spending into a formula block grant to the states, they would retain IDEA’s unfunded mandates on the states and LEAs, and its incentives toward government-by-lawsuit. They also would retain the perverse practical consequence government-by-lawsuit, that it skews special education payments toward better-off families, since they are the ones who are able to afford to sue school districts.<sup>30</sup>

One consequence of IDEA’s unfunded and loosely defined mandates has been an explosion of spending in special education at the state and local level, arguably to the detriment of regular school expenditures. Federal special education subsidies already provide an incentive for states and LEAs to define students as needing special education, so that they can receive more federal money: “In 1975, 8% of the school aged population was identified as having a disability as demonstrated by the number of students receiving Individualized Education Plans (IEP’s). In 2021-2022, 15% of students had an IEP.”<sup>31</sup> Fear of lawsuits also has led states and LEAs to expand special education spending. IDEA’s requirement that states and LEAs educate special education students as much as possible in regular schools—in the “Least Restrictive Environment”—compounds the costs it imposes, since providing special education in every school is far more expensive than providing special education in a smaller number of specialized educational institutions. There is substantial evidence that special education funding, protected by subsidy and by fear of lawsuits, is “crowding out” regular public education spending.<sup>32</sup>

## Conclusions

Federal support for special education, embodied in the requirements of the IDEA Act, has created in the Office of Special Education Programs (OSEP) an administrative labyrinth incapable of measuring the effectiveness of its own spending, and which has imposed race discriminatory requirements on states and LEAs. The IDEA Act's unfunded and undefined mandates provide an incentive for states and LEAs to fund special education, even at the expense of regular education, and have transformed special education into "government-by-lawsuit." The federal government carries out extremely badly its mandate to provide support for special education.

## Recommendations

- Make OSEP an administratively distinct unit separated from the Rehabilitation Services Administration (RSA), whether in the Education Department or the Department of Health and Human Services (HHS).
- So long as OSEP continues to administer programs, generalize the best existing practices within OSEP for efficiency measures, replace the existing soft, weak performance measures with effective performance measures that actually will inform policymakers and the public of how well OSEP is performing, and enforce existing legislative requirements that ED only use research no more than five years old.
- So long as OSEP continues to administer programs, rescind all remaining discriminatory programs and regulations within special education, such as Equity Requirements in IDEA. These programs not only are discriminatory in themselves but also have led to the Kafkaesque result that minority children are denied needed special education on the grounds of "disparate impact." Seek statutory reforms that will ensure that no future administration can restore discrimination within special education by administrative action.
- Since OSEP has proven itself incapable of assessing the effect or efficiency of its programs, convert all special education formula and discretionary grants "into a no-strings formula block grant targeted at students with disabilities and distributed directly to local education agencies by Health and Human Service's Administration for Community Living."<sup>33</sup>
- Congress should revise the IDEA Act to cap the financial liabilities of the states and LEAs at a set proportion of its own spending on special education. IDEA currently commits the federal government to pay 40% of states' average per-pupil special education expenditure. The federal government has never met this commitment. IDEA should be revised to requires states and LEAs to match federal special education expenditures that they receive at a 3:2 ratio, but not to legally require them to spend more. The federal government's current 40% commitment, in other words, should provide a cap to the mandate for special education funding. The federal government should increase its own special education funding if it wishes the states and LEAs to increase theirs.



- Congress should revise the IDEA Act to state explicitly that states and LEAs are not legally liable to provide any service that will increase expenses beyond the defined requirement for federal and state spending on special education.
- Congress should revise the IDEA Act to encourage states to provide precise and objective definitions of disability, to encourage states to provide sliding scale formulas for disability to ensure that funding goes to the most disabled, and to provide means tests for special education funding.

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