



## National Council on Disability

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An independent federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families.

### Letter of Transmittal

February 7, 2018

President Donald J. Trump  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Mr. President:

On behalf of the National Council on Disability (NCD), I am pleased to submit this report titled *Broken Promises: The Underfunding of IDEA*. This report is part of a five-report series on the Individuals with Disabilities Education Act (IDEA) that examines the past-to-current funding levels for all parts of the IDEA, analyzes the impact that the lack of full-funding has had on states in meeting their obligations to provide a free and appropriate public education to students with disabilities, and provides recommendations regarding future funding.

As you know, the right of students with disabilities to receive a free and appropriate public education in the least restrictive environment is solidly rooted in the guarantee of equal protection under the law granted to all citizens under the Constitution. Over the past 42 years, the Federal Government has recognized and supported this right through providing billions of dollars in special education funding to assist the states in meeting their responsibilities in this area. NCD has repeatedly called on Congress to fully fund IDEA. The Federal Government's failure to meet its promised funding obligation has stressed many state and local budgets to the point where many districts routinely struggle to meet student needs. In 1975, Congress promised to cover 40 percent of the average cost to educate a child with disabilities. Congress later amended the law to say that the Federal Government would pay a "maximum" of 40 percent of per-pupil costs. Today, the Federal Government pays less than half of what it originally promised in 1975.

Students with disabilities are particularly vulnerable to the adverse effects of funding issues, which can include delays in evaluations or rejection of requests for independent educational evaluations, inappropriate changes in placement and/or services, and failures to properly implement individualized education programs (IEPs). This report analyzes and summarizes several of the types of funding mechanisms proposed by Congress via bills in the last several congresses, as well as funding history, state funding formulas and budget tables, and district funding.

NCD stands ready to assist the Administration in ensuring the right to a free and appropriate public education for students with disabilities as set forth in IDEA.

Respectfully,

A handwritten signature in black ink, appearing to read "Clyde E. Terry". The signature is fluid and cursive, with the first name being the most prominent.

Clyde E. Terry  
Chairperson

(The same letter of transmittal was sent to the President Pro Tempore of the U.S. Senate and the Speaker of the U.S. House of Representatives.)

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## Executive Summary

In 1975, when Congress passed the first iteration of the Individuals with Disabilities Education Act (IDEA) mandating that all children with disabilities be provided a free appropriate public education in the least restrictive environment (LRE), it also promised states the Federal Government would provide 40 percent of the average per pupil expenditure to help offset the cost of educating eligible students. In the nearly 43 years since the law's passage, Congress has never lived up to that funding promise.

The failure to provide adequate federal funding has left states and districts burdened to find the fiscal resources required to meet their IDEA obligations.

To better understand how the persistent underfunding of IDEA impacts students with disabilities, the National Council on Disability (NCD) undertook research for this report. Using a mixed methods study, key questions were used to examine the history of the IDEA funding, identifiable impacts in districts and schools resulting from a lack of full funding, and the effect a lack of funding has had on services to students.

In this report, NCD found that the lack of federal support places considerable pressure on state and local budgets, resulting in a range of actions including one state placing an illegal cap on IDEA identification, districts and schools limiting hiring of personnel and providers, districts and schools restricting service hours, and districts and schools reducing or eliminating other general programs. There is unanimous support to increase annual federal IDEA funds and agreement that increases would allow districts to improve outcomes and use freed-up local funds to support all students. Finally, no large-scale national study has been conducted since the early 2000s, which limits researchers and policymakers' ability to understand the true costs of special education, and maintenance of effort (MOE) requirements can serve as a disincentive to districts piloting innovative or expanded services.

To address these findings, we recommend the following to Congress, the Department of Education, and state policymakers:

- Increase funding to the maximum authorized amount
- Provide flexibility in IDEA's MOE requirements that also protect student civil rights
- Establish a funding threshold beyond which increases will be tied to improved results for students with disabilities

# List of Acronyms

AASA	The American Association of School Administrators
APPE	average per pupil expenditure
ARRA	American Recovery and Reinvestment Act
BCA	Budget Control Act
CEC	Council for Exceptional Children
CEIS	Coordinated Early Intervening Services
COPAA	Council of Parent Attorneys and Advocates
EAHCA	Education for All Handicapped Children Act
EHA	Education of the Handicapped Act
FAPE	free appropriate public education
GAO	U.S. Government Accountability Office
IDEA	Individuals with Disabilities Education Act
IEP	individualized education program
LEA	local educational agency
LRE	least restrictive environment
MOE	maintenance of effort
NCD	National Council on Disability
OCR	U.S. Department of Education's Office for Civil Rights
SEA	state educational agency
SEEP	Special Education Expenditure Project



## Introduction

The National Council on Disability (NCD) has long advocated for Congress to provide federal funds for special education as authorized in the Individuals with Disabilities Education Act (IDEA). Most recently, in its statement on the 40th anniversary of IDEA, NCD pointed out that “(I)n 1975, Congress promised to cover 40 percent of the average cost to educate a child with disabilities, but decades later, broken promises and disagreements over the Federal Government’s funding responsibilities remain. Congress later amended the law to say that the Federal Government would pay a ‘maximum’ of 40 percent of per-pupil costs. Today, the Federal Government pays less than half of what it originally promised in 1975, or roughly 18 percent of the total.”<sup>1</sup>

Research for this report found that comments received in preparation for NCD’s 2002 report, *Individuals with Disabilities Education Act Reauthorization: Where Do We Really Stand?*, remain valid today. In particular, one commenter stated, “Congress must fund 40 percent of special education as promised so long ago. The lack of sufficient federal IDEA funds generates resentment and discrimination against children with disabilities in their public schools. Any new funding must be linked to state/local school districts’ compliance with and enforcement of IDEA statutory requirements. Anything else will continue to fuel noncompliance.”<sup>2</sup>

IDEA’s substantive right to a free appropriate public education (FAPE), requiring that the individual needs of each student drive special education services and instruction, is independent of the availability of resources. However, the individualized nature of special education and the stark reality of the limitations on state and local funding are often at odds, resulting in district-level decisions that ration and deny services and supports to meet the unique needs of students with disabilities. More than two decades ago, NCD heard from parents that, while a lack of resources is not an acceptable excuse under the equal protection provisions of the Constitution upon which IDEA is based, school districts continue to use lack of funding as an excuse to limit the level of support and services to students with disabilities.<sup>3</sup> Interviews conducted to inform this report revealed the same.

Policymakers need additional information on the federal funding of IDEA. NCD sought to gather that information. In this report, we address the following questions:

- What obligations does the Federal Government have to fund IDEA and at what level?
- What are the past-to-current funding levels for all parts of IDEA by the Federal Government?
- What identifiable impacts has the lack of full funding had on schools' abilities to meet their obligations under IDEA?
- What is the impact that lack of funding has had on services to students?

## **Research Methods**

To address these questions, the NCD research team conducted a mixed methods study gathering stakeholder perspectives, as well as policy and quantitative information. The research questions provided a basis for analysis of the history, trends, and current status of federal law—both authorizing and appropriations; examination of available research and descriptive data; and consideration from the experiences of stakeholders—parents, school personnel, district and state officials or their national organization(s), and officials from the Department of Education.

### ***Qualitative Analysis***

To gather stakeholder perspectives, the NCD research team conducted interviews and held five forums—four regional and one national. Specifically, the NCD team conducted 25 semistructured interviews with key stakeholders, including Department of Education officials; state and local administrators; and representatives from disability rights organizations, professional associations, and parent organizations to determine perspectives on federal funding for IDEA.

In the second phase of research, we gathered perspectives from parents and students through four regional focus groups in California, Illinois, Texas, and Virginia. NCD recruited participants through the Council of Parent Attorneys and Advocates

(COPAA)'s member network, local parent networks, and state and national partners in the forum locations. In total, 72 people participated in the regional forums. Only 30 percent of regional forum participants were COPAA members and 70 percent were non-COPAA members. Of the 72 participants in the regional forum, 38 percent were parents or students of color.

The third phase of data collection occurred during an online forum at COPAA's national conference. In total, 58 people participated in the forum. Twenty-three percent were people of color. An additional 23 people responded through an email address.<sup>4</sup> In addition to the 72 participants at the forum, there was a total of 81 people who responded in the focus groups, the national forum, and the email responses.

In all settings, NCD used a semistructured question protocol to gain perspectives about parent and child experiences with IDEA. Data was recorded and transcribed to identify themes among the experiences (see appendix for protocols).

### ***Policy Analysis and Literature Review***

To understand the policy context, we conducted a thorough review of current policy on the issue of IDEA federal funding, examining specifically any relevant statute, regulations, or guidance on the topic.

### ***Quantitative Data***

In our quantitative review, NCD gathered descriptive statistics and reviewed data from the IDEA Annual Reports to Congress, Annual Budget Justifications, Annual IDEA Child Counts, as well as other available national data sets. This quantitative review helps to provide an overarching picture of the topic nationally and enhances the individual perspectives gathered from the qualitative components.

### ***Limitations***

In this study, NCD recruited participants through COPAA's member network, local parent networks, and state and national partners in the forum locations. Additionally, we purposefully selected interview participants based on location and position. Therefore, the qualitative data identified in the report should not be viewed as generalizable, but

rather as perspectives of individuals within those positions. The qualitative data offers individual first-person perspectives to complement the quantitative aspects of this report.

# **Chapter 1: History of Funding of the Individuals with Disabilities Education Act (IDEA)**

IDEA,<sup>5</sup> originally enacted in 1975 as the Education for All Handicapped Children Act (EAHCA), provides federal funding through state formula grants to assist states with the excess costs of educating children with disabilities. States must provide a free appropriate public education (FAPE) to all children with disabilities as a condition of receiving federal IDEA funds. Thus, IDEA is both a grants statute and a civil rights statute.

The availability of federal funds to educate children with disabilities predates EAHCA by several years.<sup>6</sup> It was the Elementary and Secondary Education Amendments Act of 1966 that first authorized a federal assistance program for states to educate children with disabilities.<sup>7</sup> That program was repealed in 1970 and federal assistance for children with disabilities was consolidated under the Education of the Handicapped Act (EHA). Funding was then incorporated into the EAHCA upon its passage in 1975.

EAHCA introduced a funding formula that would provide each state with a maximum grant equal to the state's number of children with disabilities receiving services multiplied by a percentage of the national average per pupil expenditure (APPE). The APPE percentage was authorized to gradually increase—starting at 5 percent in fiscal year 1978 (FY1978) and increasing to 40 percent in 1982. The 40 percent APPE funding level, which was permanently authorized, has come to be known as “IDEA full funding.” The Senate Committee on Labor and Public Welfare stated the reason for the funding formula as follows:

The Committee wished to develop a formula which would target funding and eligibility for funding on the population of handicapped children for whom services would be provided. The Committee adopted this formula to provide an incentive to states to serve all handicapped children and to assure that the entitlement is based on the number of children receiving special education and related services within the State and for whom the State or the local

educational agency is paying for such education. The formula in existing law, the Education of the Handicapped Act, distributes Federal funds to the States on the number of all children, aged three to twenty-one within such State. The Committee has developed a formula which generates funds on the basis of the handicapped children receiving an education within a State.<sup>8</sup>

IDEA has undergone several reauthorizations since 1975. The most significant change to the funding formula occurred in the 1997 reauthorization.<sup>9</sup> Congress became increasingly concerned that tying funding to the number of students receiving special education was acting as an incentive to overidentify students as needing special education. This concern was particularly acute regarding children of color and to the disability categories of specific learning disability, intellectual disability, and emotional disturbance.<sup>10</sup> This concern appeared to be justified because the number of children with disabilities being served had grown from 4,475,011 in 1987 to 5,775,519 in 1996—an increase of 33 percent in just 10 years.<sup>11</sup>

To address this concern, Congress designed a new state allocation formula, moving from a formula based on the number of children receiving special education in the state to a formula based on the total population of children in each state and the percentage of those children who are living in poverty. Congress believed this approach would reduce or eliminate any financial incentives to overidentify students needing special education. Congress added the poverty factor to recognize the link between poverty and disability.<sup>12</sup>

The funding formula adopted in the 1997 reauthorization was to take effect beginning the year that federal appropriations for state grants exceeded \$4.9 billion. Appropriations reached that threshold in FY2000. The formula also guaranteed states a minimum, set at the amount received in the year prior to the threshold year of FY2000. Thus, states were guaranteed to receive their FY1999 level of funds.<sup>13</sup>

Any new funds appropriated for state grants were to be allocated to a state based on the total population of children ages three to 21 in that state, broken out in the following manner:

- 85 percent based on the total population of all children ages three to 21
- 15 percent based on the state's share of children living in poverty

The 1997 reauthorization maintained the maximum authorization of 40 percent of the APPE, which remains in effect today.

Prior to the 2004 reauthorization of IDEA, funding was authorized as “such sums as may be necessary.”<sup>14</sup> In contrast, IDEA 2004<sup>15</sup> included specific amounts of authorized funding for several years. The amounts were designed to provide significant annual increases, culminating in a funding level for FY2011 that was the amount estimated to provide “full funding.”

For the purpose of carrying out this part, other than Section 1419 of this title, there are authorized to be appropriated—

\$12,358,376,571 for fiscal year 2005

\$14,648,647,143 for fiscal year 2006

\$16,938,917,714 for fiscal year 2007

\$19,229,188,286 for fiscal year 2008

\$21,519,458,857 for fiscal year 2009

\$23,809,729,429 for fiscal year 2010

\$26,100,000,000 for fiscal year 2011; and

such sums as may be necessary for fiscal year 2012 and each succeeding fiscal year.<sup>16</sup>

The 2004 IDEA also introduced a new provision that allowed school districts to use IDEA federal funds to serve children who were not eligible for special education. Called Coordinated Early Intervening Services (CEIS), this provision allows districts to use up to 15 percent of IDEA Part B federal funds to serve children in kindergarten through grade 12 (with emphasis on students in kindergarten through grade three) not currently

identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment. This provision is known as “voluntary CEIS.”

In the case of districts identified by the state as having significant disproportionality in the identification, placement, and/or discipline of students with disabilities based on race or ethnicity, the district is required to use 15 percent of its IDEA Part B funds to provide comprehensive CEIS to serve children, particularly but not exclusively, in those groups that were significantly overidentified. This requirement is known as “mandatory CEIS.”<sup>17</sup>

States were not required to report the data on the amount of IDEA funds used by districts to provide CEIS to the Department of Education until the 2009–2010 school year. The data collection was instituted in conjunction with the American Recovery and Reinvestment Act of 2009 (ARRA). Reported data shows little impact of this provision on the overall IDEA funding provided to local districts. In the 2014–2015 school year, only 457 districts were required to use IDEA funds for CEIS due to disproportionality, or just 3 percent of districts nationwide.<sup>18</sup>

Year	Amount of IDEA Part B funds spent on voluntary CEIS (in millions)	Amount of IDEA Part B funds spent on mandatory CEIS (in millions)	Total amount of IDEA Part B funds spent on CEIS (in millions)
2009–2010*	\$260.1	\$306.9	\$567.0
2010–2011	\$115.4	\$163.9	\$279.3
2011–2012	\$109.3	\$107.2	\$216.5
2012–2013	\$84.6	\$239.6	\$324.2
2013–2014	\$80.5	\$176.1	\$256.6
2014–2015	\$69.8	\$198.4	\$268.2

\*Funds made available by the ARRA were subject to EIS.

Source: Annual reports of Part B Maintenance of Effort Reduction and Coordinated Early Intervening Services.

Concerned with the small number of districts being found to have disproportionality, in 2016 the Department of Education promulgated new federal regulations regarding the method used by states to identify local districts as having significant disproportionality. Implementation of these new requirements could result in a substantial increase in the number of districts that will be required to spend 15 percent of their IDEA Part B funds on CEIS going forward. However, the new regulations also allow districts to use some of these funds to serve students already receiving special education services in certain cases.<sup>19</sup>

## Authorizations Versus Appropriations

At no time since Congress established the federal funding formula in the EAHCA (in 1975) has the amount of funds appropriated matched the authorized amount. While IDEA is the *authorizing* legislation—laying out the amount authorized to be appropriated—this amount only provides guidance regarding the amount of funds to carry out the authorized activities. However, it does not guarantee that such amounts will, in fact, be made available to states and local districts. Ultimately, the regular appropriations bills passed annually by Congress determine the amount *appropriated*. If

Congress fails to pass annual appropriations bills, funding is provided via continuing resolutions and omnibus appropriations measures.

In the case of IDEA Part B, the appropriations process has resulted in substantial underfunding throughout the history of the legislation. Annual appropriations have also been positively influenced by ARRA in 2009 and negatively influenced by the automatic spending cuts to government programs through sequestration and the spending caps placed on future discretionary appropriations. The Budget Control Act of 2011 brought about both sequestration and the spending caps.<sup>20</sup>

**IDEA Part B Grants to States**

IDEA Part B distributes funds to states under two sections: Section 611 provides funds for children ages three to 21 receiving special education in public schools and Section 619 provides preschool grants for children ages three to five.

**IDEA Part B, Section 611**

The following table shows the history of federal appropriations from fiscal years 1988 through 2017 for IDEA Part B, Section 611 (children ages three to 21) in both dollars and as a percentage of the APPE.

<b>Federal Appropriations for IDEA Part B, Section 611 (children ages 3–21)</b>				
<b>Fiscal year</b>	<b>Children served (in thousands)</b>	<b>Appropriation (in thousands of dollars)</b>	<b>Federal share per child served (dollars)</b>	<b>Percentage of APPE</b>
1988	4,236	1,431,737	338	9%
1989	4,347	1,475,449	339	8%
1990	4,419	1,542,610	349	8%
1991	4,567	1,854,186	406	9%
1992	4,727	1,976,095	418	8%
1993	4,896	2,052,728	419	8%
1994	5,101	2,149,686	421	8%

<b>Federal Appropriations for IDEA Part B, Section 611 (children ages 3–21)</b>				
1995	5,467	2,322,915	425	8%
1996	5,629	2,323,837	413	7%
1997	5,806	3,107,522	535	9%
1998	5,978	3,807,700	636	11%
1999	6,133	4,310,700	701	11%
2000	6,274	4,989,685	793	12%
2001	6,381	6,339,685	991	14%
2002	6,483	7,528,533	1,159	15%
2003	6,611	8,874,398	1,340	17%
2004	6,723	10,068,106	1,495	18%
2005	6,820	10,589,746	1,558	18%
2006	6,814	10,582,961	1,551	18%
2007	6,796	10,782,961	1,584	17%
2008	6,718	10,947,511	1,609	17%
2009	6,599	22,805,211*	3,453	33%
2010	6,614	11,505,211	1,736	16%
2011	6,552	11,465,960	1,745	16%
2012	6,543	11,577,855	1,766	16%
2013	6,574	10,974,866**	1,674	15%
2014	6,593	11,472,848	1,743	16%
2015	6,691	11,497,848	1,717	16%
2016	6,691	11,912,848	1,777	16%
2017	6,814	12,002,848	1,761	16%

\*2009 includes funds made available under the ARRA (P.L. 111-15).  
\*\*2013 reflects the impact of sequestration required under the Budget Control Act of 2011.  
Source: U.S. Department of Education. "Special Education Fiscal Year 2017 Budget Request." <http://www2.ed.gov/about/overview/budget/budget17/justifications/h-specialed.pdf>. (Accessed July 31, 2017.)

This table shows that in nearly 30 years (1988–2017), the offset of federal funding provided by Congress to states for the APPE for IDEA-eligible children ages three to 21 has only once been funded above 18 percent. In the last eight years, funding has remained flat at about 16 percent.

***IDEA Part B, Section 619 Preschool Grants Program***

The following table shows the actual federal appropriations for fiscal years 1988 through 2017, the number of children ages three to five served, and the federal share of the cost per child served.

<b>Federal Appropriations for IDEA Part B, Section 619 (preschool grants for children ages three–five)</b>			
<b>Fiscal year</b>	<b>Children served (in thousands)</b>	<b>Appropriation (in thousands of dollars)</b>	<b>Federal share per child served (dollars)</b>
1988	288	201,054	698
1989	322	247,000	767
1990	352	251,510	715
1991	367	292,766	798
1992	398	320,000	804
1993	441	325,773	739
1994	479	339,257	709
1995	522	360,265	689
1996	549	360,409	656
1997	562	360,409	642
1998	572	373,985	654
1999	575	373,985	651
2000	589	390,000	662
2001	599	390,000	652
2002	617	390,000	632

<b>Federal Appropriations for IDEA Part B, Section 619 (preschool grants for children ages three–five)</b>			
2003	647	387,465	599
2004	680	387,699	571
2005	702	384,597	548
2006	704	380,751	546
2007	714	380,751	533
2008	710	374,099	527
2009	709	774,099*	1,092
2010	732	374,099	511
2011	738	373,351	508
2012	745	372,646	500
2013	749	353,238**	472
2014	745	353,238	474
2015	753	353,238	469
2016	753	368,238	489
2017	753	368,238	489
<p>Note: Beginning in 1991, IDEA required that services be made available to all children with disabilities ages three to five as a condition for receiving funding for children in this age range under the Grants to States program.</p> <p>*2009 includes funds made available under the ARRA (P.L. 111-15).</p> <p>**2013 reflects the impact of sequestration required under the Budget Control Act of 2011.</p> <p>Source: U.S. Department of Education. “Special Education Fiscal Year 2017 Budget Request.”</p> <p><a href="http://www2.ed.gov/about/overview/budget/budget17/justifications/h-special.ed.pdf">http://www2.ed.gov/about/overview/budget/budget17/justifications/h-special.ed.pdf</a>. (Accessed July 31, 2017.)</p>			

This table highlights that, for nearly 30 years (1988–2017), the federal funding provided to states—to offset the cost of special education to preschool age children ages three to five—has consistently declined. This has occurred despite the fact that the number of preschool age children served by states has nearly tripled.

### ***IDEA Part C Grants for Infants and Families***

IDEA Part C provides grants to states to assist in providing services to children with disabilities, from birth to age two, and their families. Allocations are based on the number of children in the general population ages birth through two years in each state. IDEA 2004 authorized the appropriation of “such sums as may be necessary” for each of the fiscal years 2005 through 2010. The following table shows federal appropriations for IDEA Part C for infants and families for fiscal years 1988 through 2017.

<b>Federal Appropriations for IDEA Part C (grants for infants and families)</b>	
<b>Fiscal year</b>	<b>Appropriation (in millions of dollars)</b>
1988	67,000
1989	68,800
1990	79,500
1991	117,000
1992	174,900
1993	213,200
1994	253,200
1995	315,600
1996	315,800
1997	315,800
1998	350,000
1999	370,000
2000	375,000
2001	383,600
2002	417,000
2003	434,200
2004	444,400
2005	440,800

<b>Federal Appropriations for IDEA Part C (grants for infants and families)</b>	
2006	436,400
2007	436,400
2008	435,700
2009	439,400
2010	439,400
2011	438,500
2012	442,700
2013	419,700*
2014	438,500
2015	438,600
2016	458,600
2017	458,600
*2013 reflects the impact of sequestration required under the Budget Control Act of 2011. Source: Early Childhood Technical Assistance Center. "Part C National Program Data." <a href="http://ectacenter.org/partc/partcdata.asp">http://ectacenter.org/partc/partcdata.asp</a> (Accessed July 31, 2017.)	

This table shows that, over the course of 30 years (1988–2017), the federal funding provided to states—to offset the cost of early intervention and special education to infants and toddlers—has incrementally risen.

### **Supplement Not Supplant**

In general, federal funds appropriated under IDEA Part B may only be used to cover the excess costs of providing special education and related services to students with disabilities. Federal funds must supplement (or increase) the level of other federal, state, and local funds expended for special education and related services and in no case supplant these funds. This requirement is known as *supplement not supplant*. In 1975, it was included in EAHCA and reads as follows:

[States must] provide satisfactory assurance that Federal funds made available under this part (A) will not be commingled with State funds, and (B) will be so

used as to supplement and increase the level of State and local funds expended for the education of handicapped children and in no case to supplant such State and local funds, except that, where the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Commissioner may waive in part the requirement of this clause if he concurs with the evidence provided by the State.<sup>21</sup>

This requirement was maintained in both EHA amendments of 1986<sup>22</sup> and 1990.<sup>23</sup>

### **Maintenance of Effort**

In addition, IDEA includes separate maintenance of effort provisions that apply independently at the state and local level. The term *maintenance of effort* (MOE) generally refers to a requirement placed upon many federally funded grant programs that the state educational agency (SEA) and local educational agencies (LEAs) or school districts demonstrate that the level of state and local funding remains constant from year to year.

IDEA 1997<sup>24</sup> added new language identifying four exceptional circumstances an LEA may use to justify a reduction in MOE, and more than one may be applicable in each year. An LEA may reduce its required local MOE if the reduction in expenditures is attributable to the following:

- The voluntary departure or departure for just cause of special education personnel
- A decrease in enrollment of students with disabilities
- An individual child with disabilities moves out, graduates, ages out, or no longer needs an exceptionally costly program
- The termination of costly long-term purchases, such as the acquisition of equipment or construction of school facilities
- The assumption of cost by the high-cost fund that may be operated by the SEA

IDEA 2004 expanded on the circumstances that allow an LEA to adjust its MOE. This additional provision, known as the “50 percent rule,” is triggered in any fiscal year for which the federal allocation exceeds the amount received in the previous year and provides that:

- LEAs may use up to 50 percent of the increase in their IDEA grant to reduce the level of local expenditures for special education.
- LEAs exercising this option are required to use the freed-up funds for “activities authorized under the Elementary and Secondary Education Act of 1965” and for early intervention services.
- States could prohibit an LEA from using this option if the LEA did not meet “the requirements of this part.”
- States prohibit the use of this MOE exception for LEAs that are “unable to establish and maintain programs of free appropriate public education” or for LEAs that do not meet targets in the state’s performance plan (i.e., receive less than a “meets requirements” rating, including a finding of disproportionality).<sup>25</sup>

This new provision allowing an adjustment to MOE was intended to provide LEAs with fiscal relief from the costs of local special education programs when they received a significant increase in federal special education funding. Importantly, this new reduced level of expenditures can be maintained in subsequent years until and unless the LEA voluntarily increases its local spending on special education.

This provision became significantly more important when ARRA passed in 2009. ARRA provided an increase in IDEA Part B, Section 611 funds of \$11.3 billion. ARRA funds were considered part of the FY2009 federal appropriation and were subject to the 50 percent rule in that year.

To track MOE reductions by LEAs, the Department of Education instituted new data collection beginning with FY2009. The reported data shows that relatively few LEAs exercised the option to reduce local spending up to 50 percent of the increase in federal funds. In the 2009–2010 school year, LEAs reduced local spending by a mere \$1.5

billion, a fraction of what was allowable given the huge increase provided by ARRA. Reductions in subsequent years have been limited to LEAs in a handful of states amounting to a few million dollars. Most recently, districts reduced local spending by just \$5 million.<sup>26</sup> Still, when viewing the ongoing shortfall of federal funding for IDEA, it is important to keep in mind that any increase provided through increased appropriations could potentially provide only half of the increase for special education at the local level should LEAs exercise this provision.

### ***Federal Regulations on Maintenance of Effort***

On April 28, 2015, the Department of Education issued new regulations regarding LEA MOE. The Department identified a need for LEA MOE revisions based on fiscal monitoring, audits, and questions from states and others. The regulations made no changes to the funding formula.

The regulations became effective July 1, 2015. The major changes in the revised regulations include:

- Clarification of the eligibility and compliance standard, explaining that the SEA must determine that the LEA budgeted for the education of children with disabilities at least the same amount of local, or state and local, funds as it actually spent for the education of children with disabilities during the most recent fiscal year for which information is available, and that the LEA will maintain the same level of funding in order to receive federal funds.
- Explanation of the Subsequent Years rule, which clarified that the level of effort that an LEA must meet in the year after it fails to maintain effort is the level of effort that would have been required in the absence of that failure and not the LEA's actual reduced level of expenditures in the fiscal year in which it failed to meet the compliance standard.
- Specification of the consequences for an LEA's failure to maintain effort, clarifying that when an LEA fails to meet the MOE compliance standard, the SEA is liable in a

recovery action to return to the Department of Education, using nonfederal funds, an amount equal to the amount by which the LEA failed to maintain.

SEAs are responsible for ensuring that LEAs adhere to these regulations.<sup>27</sup>

### ***Federal Reports on Maintenance of Effort***

A 2014 U.S. Department of Education Office of the Inspector General's report, *Management Information Report on IDEA Maintenance of Effort Flexibility*,<sup>28</sup> provided suggestions for the next reauthorization of IDEA designed to avoid the unintended consequences of a large, one-time increase in appropriations, such as that provided by ARRA. Suggestions include the following:

- Congress could limit SEA or LEA spending reductions under the flexibility provisions at IDEA §§ 613(a)(2)(C) and 613(j) that are attributed to a large, yet temporary federal funding increase to only the period when the flexibility is exercised.
- Alternatively, Congress could prohibit any SEA or LEA spending reduction using flexibility for those supplemental federal funds received as the result of a large, yet temporary funding increase. These limitations could be accomplished through amendments to the IDEA flexibility provisions or as part of any future legislation providing a large, yet temporary supplemental IDEA appropriation.

A report by the U.S. Government Accountability Office (GAO)<sup>29</sup> in October 2015 examined the issue of MOE and offered options that Congress might consider in the next reauthorization of the IDEA regarding MOE. The report found that

because the MOE requirement lacks flexibility, it can discourage districts from altering their baseline of special education spending, even when doing so would benefit students with disabilities or result in more efficient delivery of the same services. For example, despite other grant provisions in IDEA that promote innovation, some district officials commented that the MOE requirement can serve as a disincentive to districts' efforts to pilot innovative or expanded services requiring a temporary increase in funds because it would commit them to higher spending going forward. In addition, some

district officials noted that prioritizing special education spending to meet MOE resulted in cuts to general education spending that affected services for all students, including the many students with disabilities who spend much of their days in general education classrooms.

GAO recommended:

To help districts address key challenges in meeting MOE and mitigate unintended consequences that may affect services for students with disabilities, while preserving the safeguard for funding for students with disabilities, Congress should consider options for a more flexible MOE requirement. This could include adopting a less stringent MOE requirement to align with the MOE requirements in other education programs or adding to or modifying exceptions. For example, current exceptions could be changed to allow one-time increases in spending without changing a district's MOE baseline in order to encourage pilot innovations or to allow certain spending decreases (e.g., state caps on teacher benefits), as long as a district can demonstrate the decrease does not negatively affect services.<sup>30</sup>

### ***Congressional Action on Maintenance of Effort***

A bill introduced in the House of Representatives in 2015—H.R. 2965, Building on Local District Flexibility in IDEA Act<sup>31</sup>—sought to expand the exceptions to the MOE requirement for LEAs. Specifically, under the bill, an LEA may reduce its level of expenditures for the education of children with disabilities below the level of those expenditures for the preceding fiscal year where such reduction is attributable to (1) improved efficiencies that do not result in a reduction of special education services; or (2) the reduction of expenditures for employment-related benefits provided to special education personnel, provided that such reduction of expenditures does not result in a reduction in special education services.

Additionally, a state could waive the MOE requirement for an LEA for one fiscal year at a time if the state determines that (1) all children with disabilities have available to them a FAPE; or (2) the LEA has not reduced the level of expenditures for the education of

children with disabilities for such fiscal year disproportionately to other expenditures, and granting a waiver would be equitable due to exceptional or uncontrollable circumstances or a precipitous and unforeseen decline in the LEA's financial resources.

H.R. 2965 received full support from the American Association of School Administrators (AASA).<sup>32</sup> At the same time, a leading special education advocacy group for professionals, the Council for Exceptional Children (CEC),<sup>33</sup> voiced more limited support for an expansion to MOE, stating, "CEC urges Congress to develop policy that includes targeted exceptions that will meet the needs of LEAs without jeopardizing services for children with disabilities, e.g. universal personnel expenditures, technology advances, instructional services."<sup>34</sup> It is expected that these organizations will recommend and support substantial changes to the MOE requirement in the next reauthorization of IDEA.



## Chapter 2: Efforts to Obtain Full Funding

Coalitions comprised of education organizations have worked for years to secure increased appropriations for IDEA. In 2002, the IDEA Full Funding Coalition—a working group of nine nonprofit education associations—developed a proposal to make IDEA funding mandatory and increase federal appropriations from 17 percent to 40 percent of the APPE gradually over six years.<sup>35</sup> The IDEA Full Funding Coalition annually writes to Congressional appropriators urging increased funding for IDEA.<sup>36</sup> These efforts have been supported by the introduction of IDEA full funding bills in almost every session of Congress.<sup>37</sup> In fact, support for increases to IDEA funding is largely a bipartisan issue. Despite this support, significant increases in funding remain elusive.

Increased funding was also a key recommendation of the report by the President's Commission on Excellence in Special Education. The report, *A New Era: Revitalizing Special Education for Children and Their Families*,<sup>38</sup> issued in 2002 to influence the impending IDEA reauthorization, contained several specific recommendations, which went beyond simply increasing federal funding. Most important among the report's recommendations were the following:

- Efforts should be undertaken to determine the true excess costs of special education and use this information to set a threshold percentage of funding.
- Funding increases beyond the threshold should be based on improved academic and post-school outcomes of students with disabilities.
- The Federal Government should assume a significant responsibility for funding of the most expensive students.
- Allow states and LEAs to pool Part C and Section 619 funds to create seamless systems of early intervention services.
- The Federal Government should conduct studies on special education spending and spending on general education and other special needs programs for students with

disabilities to inform the nation about the costs and expenditures of special education and related services.

The recommendations of the President's Commission were largely ignored in the 2004 reauthorization of IDEA. They remain worthwhile to explore in the next IDEA reauthorization.

NCD's 2008 report, *The No Child Left Behind Act and the Individuals with Disabilities Education Act: A Progress Report*,<sup>39</sup> recommended increased funding for IDEA and also expressed concern regarding the CEIS provision incorporated in IDEA 2004, stating that "Helping students with disabilities access a higher-level curriculum requires more support services, potentially more learning time, better-trained teachers, collaborative teaching, and new instructional approaches. The current requirement to spend 15 percent of IDEA on early intervention services on nonspecial education students diverts funding from an already needy population."<sup>40</sup>

## Chapter 3: Cost of Special Education

A discussion of federal funding for special education is not complete without a serious examination of what is known about the true costs of providing special education and related services to the nation's 6.0 million school-aged students with disabilities.

The last comprehensive study of special education costs was conducted 15 years ago and published in 2004.<sup>41</sup> The 1997 reauthorization of IDEA required data collection and studies to measure and evaluate the impact of IDEA and the effectiveness of state efforts to provide a FAPE to all children with disabilities. The resulting Special Education Expenditure Project (SEEP) was conducted by the Center for Special Education Finance at the American Institutes for Research. SEEP produced a series of reports examining a range of issues associated with special education expenditures.

While actual expenditures reported by SEEP are unhelpful in 2017, SEEP also reported on the expenditure ratio of special education to general education. SEEP reported that, overall, the expenditure ratio was 1.9. In other words, the nation spent 90 percent more on a special education student than on a regular education student using data collected during the 1999–2000 school year.<sup>42</sup>

SEEP also reported this expenditure ratio by disability category and found wide variance in the additional costs. Expenditures for students with specific learning disabilities were 1.6 times the expenditure for a regular education student, whereas expenditures for students with multiple disabilities were 3.1 times higher.<sup>43</sup>

This finding is particularly relevant when taken in the context of the significant changes that have occurred within the overall population of students with disabilities over the past 15 years. In particular, there has been a dramatic decline in the number of students in the category of special learning disabilities and explosive growth in the category of autism.

The two disability categories with the lowest expenditure ratios—specific learning disabilities (1.6) and speech/language impairments (1.7)—have both declined in the number of students served between 1999 and 2014.<sup>44</sup> Meanwhile, disability categories with significantly larger expenditure ratios have shown substantial growth.

For example, the category of autism represented just 1 percent of all special education students in 1999. In 2014, autism accounted for 9 percent of all students served by IDEA. Given the autism expenditure ratio of 2.9, this shift in the makeup of the population served would result in a significant increase in the overall cost of special education in schools and districts.

Similarly, the category of other health impairments accounted for 4 percent in 1999 and increased to 14 percent in 2014. Here, too, the expenditure ratio is higher than the overall average at 2.0. Thus, while the special education school-aged population increased only 4.5 percent between 1999 and 2014,<sup>45</sup> the shift in disability categories is likely driving up the overall cost of special education because the increases are coming from categories whose students have typically cost significantly more to educate, while the declining categories had the lowest expenditure ratios.

The difficulty of studying special education expenditures and reporting what is truly the excess cost of providing special education and related services to students also shows in attempts to provide reliable data on state-level education funding. For example, the 2016 Michigan Education Finance Study, a data-focused analysis of the revenues and expenditures of school districts in the state, found that there was no way to fully and accurately account for all special education expenditures at the per-student level using current state-collected data. The report suggested creating a system to track actual special education expenditures for districts at the district level.

Without reliable data from a large-scale national study on special education expenditures and expenditure ratios, it is impossible to:

- Draw conclusions about the amount of federal funding needed to support states and local districts in their efforts to provide FAPE for students with disabilities. In 1975, when lawmakers arrived at the authorization level of 40 percent of APPE as part of EAHCA, the speculation was that students with disabilities would, on average, double the cost of general education students. NCD has no reliable data to substantiate whether this ratio would be accurate, let alone sufficient.

- Understand what, if any, level of encroachment exists. NCD knows that the public investment in K–12 schools has declined dramatically in many states over the last decade. According to the Center on Budget and Policy Priorities, cuts at the state level force local school districts to scale back educational services, raise more local revenue to cover the gap, or both.<sup>46</sup> What is not known is the impact this lack of spending is having on the delivery of special education, including whether local districts are encroaching on general education budgets to maintain special education services and whether services to special education students are being reduced arbitrarily to fit the available funding.



## Chapter 4: Impact of Lack of Federal Funding

Because states and districts recognize their legal obligation to provide FAPE for all eligible students regardless of the level of federal funding, officials are not prone to associate a lack of federal funding with student outcomes. However, federal officials have discovered that in some states, unlawful caps have been placed on either the number of eligible students or the amount of services provided, or both. A recent example of this is the special education identification and eligibility cap imposed by the Texas Education Agency, which was exposed in 2016 through in-depth reporting by the *Houston Chronicle*.<sup>47</sup>

While much advocacy has been and continues to be spent on increasing federal funding for IDEA, the past several decades have seen few significant increases and, more important, a decline in funding as a percentage of APPE, which peaked at 18 percent in 2004. In addition, as reported by the Center on Budget and Policy Priorities, the austerity brought about by the Budget Control Act and sequestration has resulted in a loss of 8 percent of purchasing power between 2010 and 2017 in both large federal education programs, Title I and IDEA.<sup>48</sup> Meanwhile, as noted in this report, the relative costs of serving children in special education is escalating.

### Parent Insight

Through the regional focus groups and/or the national forum, parents reported that schools and districts have openly admitted that resources are limited, and therefore the school is unable to provide a comprehensive set of services and supports to the child. Some parents reported that after an individualized education program (IEP) meeting, the principal, teacher, or other school personnel has privately admitted or even apologized to them about their inability to provide more to the child, citing a lack of resources, predetermined limits, specific caps, or maximums placed on certain services by schools or districts. The following are just some of the statements made by parents:<sup>49</sup>

- “She [the child] also needed speech therapy, but even if it’s necessary, the school district doesn’t pay for it.”
- “[The school] district has an agenda, a plan for what they will offer and it has to do with the school district’s budget.”
- “I was told there is no continual placement for three-year-olds and no ability to offer an area of inclusion. I was also told if I wanted my daughter to be around typical-developing peers, I would have to pay for that myself.”
- [With an already identified child suspected of additional disabilities] “I was told it [the evaluation] could not be done. The school said, ‘we cannot afford to pay for the evaluation(s) and we cannot afford another teacher to pull her out for resources.’”
- “There is an across-the-board watering down of related services. So many of these students are either getting their services watered down or they’re not getting the related services and support they actually need.”
- [For a student with autism] “The default is, ‘well, I’m sorry we don’t have something for higher functioning kids on the autism spectrum with behavioral problems.’ They don’t want to do even the minimal stuff, and there is no continuum of placement.”
- “My child was getting five hours a week, but at the last IEP meeting the supervisor said they would only be able to offer four hours—because the state only pays for four hours.”
- A parent of a student with autism, pragmatic disorder, articulation disorder, Tourette syndrome, and attention deficit hyperactivity disorder said: “Right now, my child is receiving four hours of parent training and a bus. And that’s it.”<sup>50</sup>

The shortage of special education teachers and related service providers is often cited as a reason why districts are unable to deliver services. These shortages can be the product of personnel shortages, budget constraints, or both. One parent reported that “the school principal apologized [when they couldn’t provide a needed support] and said, ‘we only have one counselor for the entire school, and we are trying to hire another one.’”<sup>51</sup> Other parents reported that qualified staff were unavailable for in-home

education. Generally, the forums reinforced that parents are discouraged about the availability of trained staff to teach children with a broad range of disabilities and needs.

A 2016 complaint filed against Trenton Public Schools<sup>52</sup> illustrated the impact of such shortages. In these cases, parents were frequently forced to resort to taking action through complaints to the U.S. Department of Education's Office for Civil Rights (OCR). In fact, the 2016 report from OCR reported the largest year-over-year increase in complaints—more than 60 percent.<sup>53</sup> In 2016, OCR received nearly 6,000 complaints alleging violations of disability laws. One-third (2,141) of those complaints alleged a violation of FAPE. According to one OCR official interviewed for this report, a majority of the complainants are IDEA-eligible children.

## **Medicaid in Schools**

One growing method local districts use to cope with the lack of federal funding to support special education and related services is Medicaid. Since 1988, Medicaid has permitted payment to schools for certain medically necessary services provided to children under IDEA through an IEP or individualized family service plan. According to a 2017 report by the AASA,<sup>54</sup> districts rely on Medicaid to pay for nurses, therapists, and other key personnel that provide IDEA services for students with disabilities, as well as equipment and technology. IDEA-eligible students and others benefit from Medicaid's Early and Periodic Screening, Diagnostic, and Treatment, which provides screenings and treatments for things such as immunizations, hearing and vision problems, developmental delays, and more.

The National Alliance for Medicaid in Education estimates that 1 percent of all Medicaid reimbursement goes to local school districts—between \$4 and \$5 billion annually. Parents reported specific conversations with schools where discussions occurred during IEP meetings to determine first the level of reimbursement from health insurance, including Medicaid, which then helped decide what level of service to provide the child. In one parent's words, "any decision made by the district mainly comes down to money. So, when making their decisions, they consider what will be covered. This typically takes priority over the individual educational needs of the child."<sup>55</sup>

While Medicaid provides revenue that districts can use to help fund related services such as speech/language therapy and occupational therapy, obtaining such funds also creates additional paperwork. One national association reported that its therapists spend 25 to 35 percent of their time on Medicaid paperwork—time that could be spent serving students. This additional burden also contributes to staff turnover.<sup>56</sup>

## Chapter 5: Perspectives of Key Stakeholders

Interviews were conducted with a cross section of more than 25 key stakeholders, including Department of Education officials; state and local administrators; and representatives from disability rights organizations, professional associations, and parent organizations. These interviews, combined with input taken from parents participating in the regional focus groups and national forum, revealed that there is a constant and common refrain that IDEA funding matters greatly. Highlights of these interviews include:

- Unanimous support for a substantial increase in federal funding of IDEA. Most agree that additional federal funding would allow districts to improve outcomes for students with disabilities. In addition to providing more intensive services, districts could use freed-up local funds to support all students, including those with disabilities.<sup>57</sup>
- Recommendation that additional federal funding should also include the expectation for improved outcomes for students with disabilities. More funding should not simply support the status quo and should be tied to full compliance with IDEA.<sup>58</sup>
- Reports that lack rigorous compliance with IDEA's Child Find<sup>59</sup> requirement is used to limit the numbers of students needing to be served due to costs associated with special education.<sup>60</sup>
- Agreement that the lack of federal funding contributes to the ongoing "silo" approach to educating students with and without disabilities, resulting in inappropriate segregation of students with disabilities away from their peers.<sup>61</sup>
- Agreement that the full impact and potential of IDEA is hard to determine when adequate funding has never been provided by Congress.<sup>62</sup>
- Concern for the ongoing and pervasive low expectations by adults for students and that students with disabilities are doing about as well as should be expected. This persistent mind-set continues when, in fact, special education supports and services

are intended to allow students to meet the same expectations as all other students.<sup>63,64</sup>

- Agreement that parents of students with disabilities continue to need more information and support.<sup>65</sup>
- Worry and acknowledgement that there is a lack of personnel to provide specialized instruction and methodology, and that the lack of qualified personnel leads to large caseloads, which in turn contributes to the high turnover of staff. As a result, new, inexperienced, and overloaded personnel are too often teaching students with disabilities.<sup>66</sup>
- Recognition that there is an increasing need for more behavioral supports, services, and implementation of evidence-based practices to support the growing number of students who need help.<sup>67</sup> Without more support, students encounter negative consequences, such as excessive disciplinary actions, and aversive practices such as restraint and seclusion, as confirmed by the Civil Rights Data Collection.<sup>68</sup>
- Acknowledgment of the increasing overlap of special education and poverty that demand services delivered via a “whole child” perspective.<sup>69</sup>
- Recommendation that MOE requirements should provide more flexibility and fully support the civil rights of students.<sup>70</sup>

## Chapter 6: Findings

Utilizing key questions to examine the history of IDEA funding from the Federal Government to states, identifiable impacts in districts and schools resulting from a lack of full funding, and the effect a lack of funding has had on services to students, in this report NCD finds the following:

### **Impact: Federal Underfunding**

The lack of federal support to meet the original commitment Congress made to meet the excess cost of special education places considerable pressure on state and local budgets, resulting in a range of actions including:

- One state placing an illegal cap on IDEA identification of students
- Districts and schools limiting hiring of personnel and providers, which contributes to high turnover and shortages in the field
- Districts and schools restricting service hours
- Districts and schools reducing or eliminating other general programs

Current IDEA law allows states to use CEIS funds for students not eligible for special education (under certain conditions), which limits availability of IDEA funding for eligible children. Additionally, MOE provisions often undermine innovation and can serve as disincentives to districts wishing to pilot advanced or expanded services to IDEA-eligible students.

There is unanimous support and agreement among stakeholders to encourage policymakers to:

- Increase annual federal IDEA funds with the expectation to see an increase in student achievement.
- Examine ways to create more flexibility with funding increases while protecting students' civil rights.

Such increases would allow districts and schools to improve outcomes and use freed-up local funds to support all students.

Finally, schools and districts now over-rely on federal funding such as Medicaid to help offset the costs of key personnel such as nurses, psychologists, and counselors; to provide district and schoolwide services such as screenings and therapies; and to provide assistive technology and physical equipment for children.

### **Impact: No Large-Scale National Study**

No large-scale national study on the impact of IDEA funding on districts and schools as it relates to the provision of services to students has been conducted since the early 2000s. The lack of verifiable data limits researchers' and policymakers' ability to understand the true costs of special education. Available civil rights data does show an increasing overlap of special education and poverty, which demand services delivered via a "whole child" perspective. Moreover, stakeholders acknowledged that there is an increasing demand in schools to provide behavioral supports and evidence-based practices. Considering the school-level data showing that students with disabilities are at greater risk of disciplinary actions including suspension, expulsion, restraint, and seclusion, there is no available data connecting the provision of IDEA services or lack of services provided to IDEA-eligible children, especially those living in poverty.

Congress' historical approach to flat funding IDEA creates apathy and acceptance in school buildings each day where—until there is more funding—families generally have to take what they are offered. School administrators, teachers, and families are yoked together because children qualify for and need individualized, specially designed instruction and support. Yet, this is generally not available because a substantially underfunded mandate hamstrings everyone.

## Chapter 7: Recommendations

NCD has long recommended that Congress provide the federal funds authorized by IDEA to support the excess cost of special education. As evidenced by the findings of this report, not only has Congress failed to provide such funds, but in fact has decreased funding in recent years.

The recommendations that follow are based on independent reports and input from stakeholders interviewed to inform this report.

### **The U.S. Congress should:**

1. Authorize funding levels that gradually increase funding to the maximum amount of 40 percent of APPE (or use a more evidence-based funding formula).
2. Tie full funding of IDEA to full enforcement and compliance with IDEA, including meeting the requirements of Results Driven Accountability, as implemented in 2014.
3. Establish a funding threshold beyond which increases will be tied to improved results for students with disabilities.
4. Scrutinize the impact and effectiveness of policies that allow the use of IDEA federal funds for services to students not eligible for special education, for example CEIS.
5. Examine ways to help states and districts support and serve high-cost students.
6. Explore ways to provide more flexibility in IDEA's MOE requirements that also protect student civil rights.
7. Add a provision that addresses adjustments to MOE and more for any large, one-time increase in federal funding (e.g., the 2008 ARRA, which provided states a substantial, one-time, annual increase in IDEA and other federal funds).

**The U.S. Department of Education should:**

8. Commit to conducting frequent, large-scale studies regarding the true costs of special education to inform policy.
9. Strengthen ways to connect IDEA funding to state compliance requirements including using its authority to withhold funding from states with ongoing, unaddressed noncompliance issues and findings.

**States should:**

10. Provide greater oversight and guidance to districts to help maximize federal funds flowing to schools and avoid caps, maximum level, or other efforts to limit services and supports.
11. Rigorously monitor LEA compliance with IDEA and use its authority to withhold funds until noncompliance is corrected.
12. Provide training and technical assistance to IEP teams on Child Find, FAPE, and LRE, which are research-based practices that support the academic and behavioral needs of students.
13. Advocate for an increase to IDEA funding.

## Endnotes

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<sup>1</sup> National Council on Disability, *NCD Statement on the 40th Anniversary of IDEA*. (Washington, DC: Author, 2015), accessed October 29, 2017, <http://www.ncd.gov/newsroom/2015/ncd-statement-40th-anniversary-idea>.

<sup>2</sup> National Council on Disability, *Individuals with Disabilities Education Act Reauthorization: Where Do We Really Stand?* (Washington, DC: Author, 2002), accessed October 18, 2017, <http://www.ncd.gov/publications/2002/July52002>.

<sup>3</sup> National Council on Disability, *Improving the Implementation of the Individuals with Disabilities Ed Act: Making Schools Work for All of America's Children*, (Washington, DC: Author, 1995), accessed October 18, 2017, <https://ncd.gov/publications/1995/09051995>.

<sup>4</sup> There is no demographic information from the 23 email responses.

<sup>5</sup> Individuals with Disabilities Education Improvement Act of 2004, Pub. L. 108-446, 118 Stat. 2647 (December 3, 2004).

<sup>6</sup> Kyrie E. Draggio, *The Individuals with Disabilities Education Act (IDEA) Funding: A Primer* (Washington, DC: Congressional Research Service, 2016).

<sup>7</sup> Pub. L. 89-750, 80 Stat. 1191 (November 3, 1966).

<sup>8</sup> U.S. Congress, Senate Committee on Labor and Public Welfare, *Education of the Handicapped Act as Amended Through December 31, 1975*. Report No. 72-611, 94th Cong., 2d Sess. (June 2, 1975).

<sup>9</sup> Individuals with Disabilities Education Act Amendments of 1997, Pub. L. 105-17, 11 Stat. 37 (June 4, 1997).

<sup>10</sup> U.S. Department of Education, *Twenty-first Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act*, 1999, accessed October 18, 2017, <https://www2.ed.gov/about/reports/annual/osep/1999/index.html>.

<sup>11</sup> Ibid.

<sup>12</sup> Supra at 8.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Individuals with Disabilities Education Improvement Act of 2004, Pub. L. 108-446, 118 Stat. 2647 (December 3, 2004).

<sup>16</sup> Ibid.

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<sup>17</sup> U.S. Department of Education, Office of Special Education Programs, *Topic Brief: Early Intervening Services*, 2006, accessed October 18, 2017, <http://idea.ed.gov/explore/view/p-old/.root.dynamic.TopicalBrief,8,.html>.

<sup>18</sup> U.S. Department of Education. “IDEA Section 618 State Level Data Products: Maintenance of Effort Reduction and Coordinated Early Intervening Services, 2014–2015,” August 31, 2016, accessed October 18, 2017, <https://www2.ed.gov/programs/osepidea/618-data/state-level-data-files/index.html#bmoeceis>.

<sup>19</sup> U.S. Dept. of Education. *Fact Sheet: Equity in IDEA*, 2016, accessed October 18, 2017, <https://www.ed.gov/news/press-releases/fact-sheet-equity-idea>.

<sup>20</sup> Pub. L. No. 112-25, 125 Stat. 240 (August 2, 2011).

<sup>21</sup> Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, 89 Stat. 773 (November 29, 1975).

<sup>22</sup> Education of the Handicapped Act Amendments of 1986, Pub. L. No. 99-457, 100 Stat. 1145 (October 8, 1986).

<sup>23</sup> Education of the Handicapped Act Amendments of 1990, Pub. L. No. 101-476, 104 Stat 1103 (October 30, 1990).

<sup>24</sup> *Supra* at 8.

<sup>25</sup> *Supra* at 14.

<sup>26</sup> U.S. Department of Education, *IDEA Section 618 State Level Data Products, Maintenance of Effort Reduction and Coordinated Early Intervening Services, 2014–2015*, August 31, 2016, accessed October 18, 2017, <https://www2.ed.gov/programs/osepidea/618-data/state-level-data-files/index.html#bmoeceis>.

<sup>27</sup> U.S. Department of Education, Office of Special Education and Rehabilitative Services, *OSEP Memo 15-10*, 2015, accessed October 18, 2017, <https://osep.grads360.org/#communities/pdc/documents/8628>.

<sup>28</sup> U.S. Department of Education, Office of Inspector General, *Management Information Report on IDEA Maintenance of Effort Flexibility*, 2014, accessed October 18, 2017, <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2014/x09n0006.pdf>.

<sup>29</sup> U.S. Government Accountability Office, *Special Education: More Flexible Spending Requirement Could Mitigate Unintended Consequences While Protecting Services*, 2015, accessed October 18, 2017, <http://www.gao.gov/products/GAO-16-2>.

<sup>30</sup> *Id.* at 37.

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<sup>31</sup> Building on Local District Flexibility in IDEA Act, H. B. 2965, 114th Congress, 2015, accessed October 18, 2017, [www.congress.gov/bill/114th-congress/house-bill/2965](http://www.congress.gov/bill/114th-congress/house-bill/2965).

<sup>32</sup> American Association of School Administrators, *Support HR 2965: The BOLD (Building on Local District) Flexibility in IDEA Act*, n.d., accessed October 18, 2017, [http://www.aasa.org/uploadedFiles/Policy\\_and\\_Advocacy/files/IDEA%20MoE%201-Pager.pdf](http://www.aasa.org/uploadedFiles/Policy_and_Advocacy/files/IDEA%20MoE%201-Pager.pdf).

<sup>33</sup> Council for Exceptional Children, *Issue Brief, Maintenance of Effort*, 2015, accessed October 18, 2017, <https://www.specialeducationlegislativesummit.org/wp-content/uploads/2015/07/IDEA-Maintenance-of-Effort-FINAL-2015.pdf>.

<sup>34</sup> Id. at 1.

<sup>35</sup> National Education Association, "IDEA Funding Coalition Offers Proposal," n.d., accessed October 18, 2017, <http://www.nea.org/home/18750.htm>.

<sup>36</sup> AASA: The School Superintendents Association et al. *Letter to Members of the Senate and House Appropriations Committees to Increase IDEA Funding for FY2017*, March 10, 2016, accessed October 18, 2017, <https://www.nassp.org/Documents/nassp/Letters%20to%20Policymakers/IDEA%20letter%20031116%20FINAL.pdf>.

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<sup>39</sup> National Council on Disability, *The No Child Left Behind Act and the Individuals with Disabilities Education Act: A Progress Report*, 2008, accessed October 18, 2017, <https://ncd.gov/publications/2008/01282008>.

<sup>40</sup> Id. at 19.

<sup>41</sup> Thomas Parrish and Phil Esra. *The Special Education Expenditure Project (SEEP): Synthesis of Findings and Policy Implications*, in *Forum*, April 2006, accessed October 18, 2017, [http://nasdse.org/DesktopModules/DNNspot-Store/ProductFiles/217\\_d5fd28bb-dd1f-4b11-abb5-cbdd9e7e1583.pdf](http://nasdse.org/DesktopModules/DNNspot-Store/ProductFiles/217_d5fd28bb-dd1f-4b11-abb5-cbdd9e7e1583.pdf).

<sup>42</sup> Jay G. Chambers, Thomas B. Parrish, and Jenifer J. Harr, *What Are We Spending on Special Education Services in the United States, 1999–2000?* (Palo Alto, CA: American Institutes for Research in the Behavioral Sciences, 2002), accessed October 18, 2017, <http://files.eric.ed.gov/fulltext/ED471888.pdf>.

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- <sup>47</sup> Brian M. Rosenthal, “Denied,” *Houston Chronicle*, September 10, 2016, accessed October 18, 2017, <http://www.houstonchronicle.com/denied/>.
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- <sup>49</sup> Participants, 2016, Regional Focus Group or National Forum.
- <sup>50</sup> Palaich Augenblick and Associates, *Michigan Education Finance Study*, 2016, accessed October 18, 2017, [http://www.michigan.gov/documents/budget/Michigan\\_Education\\_Finance\\_Study\\_527806\\_7.pdf](http://www.michigan.gov/documents/budget/Michigan_Education_Finance_Study_527806_7.pdf).
- <sup>51</sup> Participant, 2016, Regional Focus Group or National Forum.
- <sup>52</sup> David Foster, “Civil Rights Complaints Filed Against Trenton Schools, DOE for Discrimination,” *The Trentonian*, October 21, 2016, accessed October 18, 2017, <http://www.trentonian.com/article/TT/20161021/NEWS/161029927>.
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<sup>54</sup> Sasha Pudelski, *Cutting Medicaid: A Prescription to Hurt the Neediest Kids*, (Alexandria, VA: AASA, The School Superintendents Association, 2017), accessed October 18, 2017, [http://aasa.org/uploadedFiles/Policy\\_and\\_Advocacy/Resources/medicaid.pdf](http://aasa.org/uploadedFiles/Policy_and_Advocacy/Resources/medicaid.pdf).

<sup>55</sup> Participant, 2016, Regional Focus Group or National Forum.

<sup>56</sup> Telephone interview, 2016.

<sup>57</sup> Telephone interview, 2016.

<sup>58</sup> Telephone interview, 2016.

<sup>59</sup> 34 C.F.R. § 300.111: Child find. (a) General. (1) The State must have in effect policies and procedures to ensure that—(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and (ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

<sup>60</sup> Participant. Regional Focus Group or National Forum, 2016.

<sup>61</sup> Telephone interview, 2016.

<sup>62</sup> Telephone interview, 2016.

<sup>63</sup> Telephone interview, 2016.

<sup>64</sup> Participant, Regional Focus Group or National Forum 2016.

<sup>65</sup> Telephone interview, 2016.

<sup>66</sup> Telephone interview, 2016.

<sup>67</sup> Telephone interview, 2016.

<sup>68</sup> U.S. Department of Education Office for Civil Rights. *Civil Rights Data Collection: Data Snapshot (School Discipline)*, 2014, accessed October 18, 2017, <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>.

<sup>69</sup> Telephone interview, 2016.

<sup>70</sup> Telephone interview, 2016.