BROWN CENTER on
Education Policy
at BROOKINGS

TO: President-elect Trump

FROM: Thomas Hehir (Harvard University)

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RE: Special education

THE SITUATION

After forty years of strong federal laws and substantial support at the state, local, and federal levels, educational attainment levels for students with disabilities have improved considerably. Consider the following: the practice of institutionalizing students with mental retardation and severe physical disabilities has been largely eliminated, record numbers of students with disabilities are enrolling in postsecondary institutions, employment rates of people with disabilities leaving high school approach those of their non-disabled peers, and more students with significant disabilities are being educated in increasingly inclusive settings. However, while progress has been made over time, most of the progress has been experienced by students from more affluent homes. Students from low-income backgrounds, and particularly students from racial minority groups, continue to experience markedly poorer and more stagnant outcomes.

Analysis of student-level data from several states reveals different educational practices and implementation patterns between more and less affluent districts. For instance, in Massachusetts, students in older core cities like Springfield, Boston, and Worcester are much more apt to be segregated in special education classes than their peers in suburban and rural districts. Further, segregated students have much poorer outcomes than similar students who are educated primarily in integrated classrooms. In Massachusetts, students with learning disabilities who were primarily integrated had an 83.3 percent four-year graduation rate, compared with a 43.4 percent graduation rate for those who were segregated. In addition, eighth graders who were integrated had much higher state test scores than similar students who were segregated, and this effect was experienced by low-income students as well as non-low-income students. Similar findings are emerging from analyses of student-level data from three other states. These are observational studies—that, in many cases, control for confounding variables—but they are the best evidence we have, in part because of the many ethical and practical obstacles to performing experimental research in this area. However, as states have collected more data on students, quasi-experimental studies may be possible and such evaluations are likely to provide further insights into more efficacious practices.

These state-level studies also reveal that implementation patterns vary considerably between districts, with some similar districts segregating many students while others segregate few. This supports a theory that district practices, rather than differences in student populations, might account for the differences in outcomes. The studies observe the deleterious impacts of segregation for affluent segregated students as well as low-income students. Qualitative research on segregated special education classes may reveal why these placements are associated with much poorer outcomes. For example, these classes often have relatively low curriculum standards and rely on teachers to cover curriculum they are not prepared to teach. Further, many students do not experience successful role modeling from peers.

Though research has consistently found that more time in general education is associated with better results for students with disabilities, research does not support the view that all children with disabilities should be educated in general education classes all the time (full inclusion). Some students may need intensive interventions outside the classroom. For instance, a dyslexic student who has not learned word attack skills may be self-conscious about being singled out to his peers. Research indicates that some students with intellectual disabilities should receive community-based instruction, particularly as they approach the transition from school to adulthood due to their inability to generalize well. Also, when inclusion is done poorly, particularly for students with behavioral issues, other children in the class may experience negative impacts.

In addition to concerns about low-income students, there is widespread concern about the requirements and the utility of existing IEPs and their ability to leverage quality education for many students with disabilities. Too many parents still struggle with getting their children included in general education classes, and many general education teachers struggle with getting meaningful information on how to include students.

Some of these problems and frustrations with the IEP process may be associated with the currently vague IEP regulations and the fact that IEPs focus inordinately on measurable goals and objectives as opposed to creating inclusive environments in which children can thrive. Further, IEPs do not sufficiently focus on providing children with the specialized interventions they may need to be successful.

Research over the past three decades has converged on several other principles in addition to integration that are associated with better educational outcomes for students with disabilities. These include:

- Providing students who are experiencing reading and behavior issues with early interventions. This should first happen within general education.
- Providing students with specialized interventions that address their specific disabilities.

- Providing students with effective accommodations so they can access the general education curriculum through principles of Universal Design for Learning (UDL).
- Providing effective transition planning to enable students to transition to higher education and employment.

Though we have developed effective practices that should provide greater opportunities for students with disabilities, the implementation of these practices has been inconsistent and low-income children are disproportionately subjected to ineffective practices. Further, many parents have difficulty securing effective inclusive education for their children.

THE FEDERAL ROLE

The federal role in special education has been multifaceted and dates back to the Kennedy administration, when the first voluntary grant programs were initiated to expand educational opportunity to students with disabilities (and particularly those with intellectual disabilities). The federal role was vastly expanded in the 1970s with the passage of Section 504 of the Rehabilitation Act, which prohibited discrimination against people with disabilities by federal grantees, and the Individual with Disabilities Education Act (IDEA), which required states to provide all disabled students with a "free appropriate public education." The current federal role under IDEA has two primary foci: enforcing legal requirements and supporting research and technical assistance.

The enforcement role is conducted by the Office of Special Education Programs (OSEP) and primarily focuses on the degree to which states are implementing the legal requirements of IDEA. First, states must have policies and laws in place that implement the primary requirements of the Act. This activity has been effective in that all states have in place systems for identifying children with disabilities, generating individualized education plans (IEPs), and providing parents with mechanisms to challenge their districts' placement proposals. These aspects of the law were enacted early in the Act's implementation history. Though Congress has always given the secretary authority to withhold funds, the U.S. Department of Education (ED) has been criticized by many advocates for a lack of enforcement of IDEA. Indeed, ED has rarely withheld funds, and when it has, there has been pushback from states and Congress. In the last reauthorization in 2004, Congress sought to have states focus more intently on improving results for children with disabilities. Heavily influenced by NCLB, the reauthorized law required states to develop performance plans based on over twenty indicators. Further, Congress required the secretary to more aggressively monitor and enforce the Act.

I have reviewed many of these plans as well as the interactions between OSEP and the states. From my perspective, the expectation that OSEP can measurably impact results for students with disabilities through this mechanism and current staffing levels (about 40 people in OSEP in Washington DC) is naïve. Change in results for these students requires change in practice at the local level. Such change involves improving instructional practice, and we know this is a slow process. Monitoring and enforcement mechanisms also have roles to play, but, at best, these provide signals that change needs to occur.

The current system treats states as if they are single entities and fails to surface the very real disparities experienced by low-income students, particularly those served in districts with concentrated poverty. I recently reviewed a large state in which low-income children with disabilities, especially in large cities and depressed small towns, were doing very poorly. These districts generally placed many students in segregated special classes. Poor test scores and low graduation rates were the norm for these children. Yet this state received a clean bill of health from OSEP.

The federal government broadly makes many regulatory demands on school districts. Central to this role is the requirement that each child have an IEP, based on comprehensive assessment and subject to challenge by parents through due process mechanisms. This is a highly decentralized policy mechanism that relies on the good will and competency of districts and places significant burden on parents advocating for their children. Congress purposefully incorporated the mechanism into the law in reaction to the widespread exclusion and segregation of students with disabilities in the 1970s. On many levels this has been highly effective in addressing the exclusion of students with disabilities and promoting more inclusive practice. However, this mechanism seems too weak to address the problems experienced by many parents who cannot challenge their child's district effectively. Further, in many districts, the regulatory requirements of IDEA are unfortunately viewed as "paperwork" with little connection to accessing effective education. I recently reviewed 120 IEPs of students in a district that served mostly low-income students. All of these students had emotional disabilities, all were segregated, and 119 had identical IEPs concerning their justification for removal from general education. Thus, the picture that is emerging concerning the large disparities between IDEA implementation for the poor and the affluent may be partially explained by the failure of the due process mechanisms in IDEA to influence the behavior of states and local districts.

As to the role OSEP has in knowledge development and technical assistance, many important innovations in the field have been developed and nurtured that offer hope. Captioning for the deaf, text-to-speech technology (originally for the blind but now broadly used), intensive rules-based interventions for dyslexics, and comprehensive school-wide behavior approaches are some of many research-based innovations supported under IDEA's discretionary programs. Indeed, the program has been praised by the Government Accountability Office (GAO) and reauthorized repeatedly by Congress. However, appropriations for these innovations under IDEA have remained roughly what they were when President Clinton left office ($250 million). Given the challenges districts face in improving educational practice, a much more vigorous program of research and technical assistance will be needed to help spur progress.

POLICY OPTIONS

1. Focus OSEP monitoring and enforcement

The monitoring process should be far more focused on the students from low-income backgrounds and on the most important measures associated with improving educational outcomes detailed earlier in this memo. OSEP needs to send a strong signal to states to focus their interventions and supports to districts serving these students in large numbers. Due to improvements in state data capacity spurred on by Race to the Top, states have the capacity to analyze student-level data to focus its efforts where they are needed most.

2. Provide low-income parents with representation

A practical mechanism exists to accomplish this goal. Protection and Advocacy Centers are already funded in every state under the Developmental Disabilities Act. Grants could be given to these entities to selectively represent low-income parents who are seeking more effective inclusive placements for their children. Given that these centers could collect fees from defendants, a modest federal investment of approximately $6 million might be sufficient.

3. Revise IEP requirements

The Department of Education recently promulgated guidance concerning IEPs that emphasized the importance of integration. Though this is a step forward, policy guidance does not have the force of law. The new administration should move forward with rulemaking proposing the following regulations:

- Require that IEPs address specialized interventions to maximize opportunities to be successful in school.
- Specify the accommodations and supports children will need to be successful in mainstream classes.
- Require goals for specialized interventions with the assumption that goals need not be written for areas covered by the general curriculum unless the curriculum is significantly modified.
- Require that IEPs assume students are, by default, assigned to general education classes and this default assignment should be overturned only when compelling arguments exist against integration in mainstream classes, and schools or districts should not be able to overturn the default for many students without getting flagged.
- Require that IEPs be unambiguously focused on the interventions and accommodations students need to be successful.
- Emphasize that for some children whose interventions have been proven successful, transition out of IDEA eligibility should be considered with many of these students receiving accommodations under Section 504 as opposed to having IEPs.

There is evidence that changing the requirements in IEPs can have significant impact on practice. For instance, the 97 Amendments to IDEA required that teams address how a child will access the curriculum. Major changes in course-taking patterns occurred for high school students, with many more students taking foreign languages and advanced science and math. Though the IEP can be a powerful mechanism for change, current IEP requirements are dated and do not sufficiently promote best practices.

4. **Increase funding for discretionary programs**

Given the longstanding success, bipartisan support, and declining real funding, a doubling of appropriation for Part D of IDEA is overdue and would only cost $250 million. Special education is a huge component of the American education system and deserves a far more robust R&D effort that only the federal government will provide. Among the activities that could be funded out of this would be:

- Evaluation studies using quasi-experimental methods to identify effective practices through the use of state-level data
- Technical assistance centers to assist school districts in training teachers on methods, such as UDL, that enable students with disabilities to be successful in the mainstream
- Research efforts to identify the most efficacious interventions that minimize the negative impact of disabilities
- A robust research program to identify effective practices for educating the growing numbers of students on the autism spectrum

RECOMMENDATIONS

Ideally, I would recommend a new administration pursue all four policy options. Changing the monitoring system can be done most easily as the secretary has the discretion to do this under current law. Providing representation to parents will require an amendment to the Developmental Disability Act (administered through HHS) and a subsequent appropriation. This program will take time and softening of the political ground but would likely receive strong bipartisan support from disability advocates. Changing the IEP will require rule-making, a relatively involved process specified in federal rules that can take over a year. Parent groups are likely to oppose any changes to IDEA if they fear a loss of protection. However, packaged properly with strong adherence to the foundational civil rights protections implicit in the Act, parents are likely to support changes. School districts might also support these changes, as they are likely to eliminate excessive paperwork. Expanding the IDEA discretionary programs will require a strong push first with the president's budget and ultimately with appropriation committees. However, the funding would be small in comparison to the overall preK-12 federal budget and is likely to enjoy strong support from advocacy groups as well as support from education groups. Finally, if the new administration implements the first, second, and fourth policy options, the disability lobby, a powerful bipartisan lobby, will be more receptive to regulatory changes to IDEA.

In summary, the multipronged approach advocated here would focus federal efforts much more intensively on the greatest area of need in IDEA implementation: children from low-income backgrounds. The changes in the federal monitoring system would focus much more intently on the need to change practices for these children. Giving low-income parents representation will also intensify attention to the needs of these children. All children will benefit from a revised IEP that focuses more on creating inclusive environments in which children can thrive. Districts and states seeking to promote better practices will be assisted by a much more robust research and development program.

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