

# An Unfunded IDEA

After 50 years, federal special education legislation continues its financial and legal impact on school districts



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It wasn't supposed to be this way. In 1975, Congress enacted the Individuals with Disabilities Education Act (IDEA), a comprehensive framework of special education laws designed to support academic achievement for students with disabilities. Congress intended to cover 40% of the average per-pupil cost for special education services. Today, school districts receive just 13% of per-pupil funding for special education services from federal sources. In

2024, Congress appropriated \$14 billion for special education services for the entire country, far short of the intended \$40 billion annually.

Under IDEA, school districts are required to provide a free appropriate public education (FAPE) to students with disabilities designed to enable them to make appropriate progress. Districts are required to provide FAPE regardless of funding levels from local, state, and federal governments. As a result, districts are compelled

to address any shortfalls in funding through their annual general budget. This creates challenges in states like New York where budget increases are restricted by a 2% tax cap.

The expansion of universal pre-kindergarten has led to an increase in preschoolers classified with disabilities. In New York, the number of preschoolers with disabilities rose by almost 17% over a five-year span from 41,759 children in October 2019 to 48,505 children in October 2024. Although counties and local governments may absorb substantial portions of these costs, districts remain financially responsible if there are insufficient contract providers or available pre-K placements to fulfill FAPE requirements.

IDEA was introduced, in part, to balance perceived disparities in power between school districts and parents of children with special needs. For example, IDEA makes it easy for parents to obtain a private evaluation at the school district's expense, called an Independent Educational Evaluation (IEE). These private evaluations can cost districts up to \$7,500 or more per child for each evaluation. To obtain one, parents need only to disagree with a current district's evaluation. Guidance from the U.S. Department of Education's Office of Special Education Programs (OSEP) indicates that parents don't need to give a reason why they disagree with the district's evaluation to obtain an IEE (OSEP, *Letter to Anonymous*, 2010). The district's only options are to pay for the IEE or file for due process to defend its own evaluation in an impartial hearing. This process invariably costs districts significantly more than the cost of the IEE. As such, these hearing are rare.

Parents who disagree with the program and placement recommendations of the district's Individualized Education Program (IEP) team or Committee on Special Education (CSE) may file for due process against the district seeking tuition reimbursement for their chosen private school. If the district wants to defend its recommendations, an impartial hearing often costs more than the parents' private school tuition. Defending these recommendations requires districts to pay for the hearing officer's hourly rate, a court reporter and transcript fees, and their own attorney's fees. They also must allocate significant staffing to prepare witnesses to testify, including substitute teacher costs during the hearing. None of these costs are eligible for state aid. If the district loses the hearing, IDEA's fee-shifting provision requires districts to pay for the parent's legal fees, which typically exceed the rates charged by school board attorneys.

State education departments have been reluctant to approve more private schools for placement of children with special needs due to the high cost of tuition. Non-approved private schools, geared towards classified children, are able to charge higher tuition rates than state approved schools. The reticence of state education departments to add to their state-approved lists encourages more parents to unilaterally place their children in non-approved private schools and to file for due process seeking tuition reimbursement.

Previously, many state laws only required districts to provide FAPE until the end of the school year when a student turned 21. However, recent state and federal court decisions have extended eligibility for FAPE to

students up to their 22nd birthday [see *A.R. v. Connecticut State Bd. of Educ.*, No. 20-2255 (2d Cir 2021)]. As such, districts in many states are now required to educate classified children until 22, or receipt of a high school diploma, whichever comes first. In states such as New York, the increase in eligibility to provide FAPE came without corresponding increases in state aid for the additional year of instruction. The New York State Education Department went one step further, encouraging, but not requiring, that school districts provide FAPE until the end of the school year in which the child turned 22 (NYSED Op. of Counsel #242).

## ONGOING CHALLENGES FOR SCHOOL DISTRICTS

IDEA has taken a profound legal and financial toll on school districts over the past 50 years. Regardless of the U.S. Department of Education's future, school boards need a larger, consistent revenue stream from state and federal legislators to keep up with the costs of special education.

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