

MEMORANDUM FOR THE STAFF DIRECTOR

THROUGH: DAVID MUSSATT, RPCU CHIEF

FROM: ARKANSAS ADVISORY COMMITTEE

SUBJECT: ARKANSAS ADVISORY COMMITTEE PROJECT PROPOSAL

Attached for your review and approval is a proposal of the Arkansas Advisory Committee project on *IDEA Compliance and Implementation in Arkansas Schools*. The Arkansas Advisory Committee approved this proposal at a meeting of the Committee on May 7, 2021 by a vote of 10 yes and 0 no, 0 abstentions.

Attachments: Project Proposal

This project proposal is:

_____ Approved

_____ Not approved

_____ Returned for revisions according to comments.

Staff Director

Date

A Project Proposal of the Arkansas Advisory Committee to the United States Commission on Civil Rights

IDEA Compliance and Implementation in Arkansas Schools

May 2021

Jurisdiction

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory committees in each of the 50 states and the District of Columbia. These Advisory Committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction.

The Arkansas Advisory Committee (Committee) seeks to examine the extent to which students with disabilities are receiving the services to which they are entitled under relevant law and how the achievement of students with disabilities compares to the achievement of their non-disabled peers. In addition, the Committee will study whether and the extent to which the provision of services to students with disabilities in Arkansas has resulted in disparities in both access and effectiveness based on race, color, sex, national origin, or religion. A number of federal laws prohibit such discrimination in educational institutions, including:

- Section 1 of the 14th Amendment to the U.S. Constitution prohibits any state from denying “to any person within its jurisdiction the equal protection of the laws.”¹
- Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, sex, religion, or national origin, including in institutions of public education.²
- Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in any federally funded education program or activity.³
- The Equal Educational Opportunity Act of 1974 prohibits deliberate segregation in schools on the basis of race, color, and national origin.⁴

¹ Cornell University Law Institute, 14th Amendment. Available at:

<https://www.law.cornell.edu/constitution/amendmentxiv> (last accessed April 10, 2021).

² 42 U.S.C. § 2000d *et seq.*; *see also* Department of Justice, Types of Educational Opportunities Discrimination. Civil Rights Division, Educational Opportunities Section. Available at:

<http://www.justice.gov/crt/about/edu/types.php> (last accessed April 10, 2021).

³ 20 U.S.C. § 1681 *et seq.*; *see also* U.S. Department of Justice, Civil Rights Division: Overview of Title IX of the Education Amendments of 1972. Available at: <https://www.justice.gov/crt/overview-title-ix-education-amendments-1972-20-usc-1681-et-seq> (last accessed April 10, 2021).

⁴ U.S. Department of Justice, Types of Educational Opportunities Discrimination: Civil Rights Division, Educational Opportunities Section, available at: <http://www.justice.gov/crt/about/edu/types.php> (last accessed April 10, 2021).

- Section 504 of the Rehabilitation Act of 1973 prohibits the exclusion, the denial of benefits, and discrimination by reason of disability in programs or activities receiving federal funds.⁵
- The Individuals with Disabilities Education Act (IDEA) requires state and local education agencies to “provide a free and appropriate public education to children with disabilities.”⁶
- The Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities in any places of public accommodations, including public and private schools and daycare centers.⁷

The Committee will study the extent to which these protections, as currently applied in practice, are sufficient to provide all students with disabilities in Arkansas, regardless of their race, color, sex, religion, or national origin, equal access to a “suitable and efficient” public education, which is guaranteed by the Arkansas Constitution.⁸

Background

To a considerable degree a legal, rights-based approach has dominated the policymaking guiding provision of special services required by IDEA. While such approaches have strengths in assuring due process rights, they also have significant weaknesses, particularly as regard inequities, as have been recorded as far back as 2001, when the Progressive Policy Institute issued *Rethinking Special Education for a New Century*.⁹

Certain inequities are inherent to any law and rule-based processes. These include:

- The knowledge to read and understand legal cases applying to matters like appropriate discipline for students with special education or 504 designations is not uniformly distributed across the population, but rather concentrated among those with advanced degrees and law degrees. Parents with less formal education may not fully understand their legal rights and thus are often reluctant to ask questions during mandatory Individualized Education Plan (IEP) meetings; at times they may be intimidated by school staff. Legal guidelines regarding special education process timetables are less apt to be followed for parents who lack influence or legal resources.¹⁰

⁵ U.S. Department of Education, Protecting Students with Disabilities, available at <https://www2.ed.gov/about/offices/list/ocr/504faq.html> (last accessed April 12, 2021).

⁶ 20 U.S.C. § 1400, *et. seq.*

⁷ 42 U.S.C. § 12101, *et. seq.*

⁸ AR Const. Art. 14, § 1; Ark. Code Ann. § 6-10-120 (2014).

⁹ Finn, C.E., A.J. Rotherham & C. Hokanson, editors. (2001). *Rethinking Special Education for a New Century*. Washington: Progressive Policy Institute (hereinafter *Rethinking Special Education for a New Century*).

¹⁰ Valle, J.W. (2009). *What mothers say about special education*. New York: Palgrave Macmillan.

- There exist a wide range of special education categories, with varying and sometimes contested definitions and diagnoses. This has led to multiple inequities. For example, as detailed in *Rethinking Special Education for a New Century*, “Districts with more white teachers have a greater rate of minority enrollment in special education, especially among African American students.”¹¹ These disparate diagnoses may well reflect racism.
- Some special education diagnoses, like Oppositional Defiance Disorder (ODD), which has more than 200,000 new diagnoses annually, are considered undesirable, often leading to reduced efforts at education, more assignment to self-contained (isolated) classrooms rather than inclusion, and even later life higher insurance costs. Others, like ADD, ADHD, and the sometimes amorphous and large LD (learning disability) categories, are also quite common, but are often considered desirable since they allow students greater time on tests with no corresponding stigma or negative impacts on services. Not surprisingly, research indicates that parental resources influence diagnoses, with wealthy parents engaging lawyers and psychologists to avoid undesirable diagnoses and gain access to desirable diagnoses.¹²
- The *Rethinking Special Education* report goes so far as to suggest that many school districts have not one, but two distinct special education programs “separate and unequal...keyed to parents’ differing levels of savvy and persistence.”¹³ This even impacted the recent college admissions scandals, with consultants finding special education diagnoses to assure clients more time on standardized tests or special testing environments facilitating cheating.¹⁴
- Perhaps due in part to the unequal provision of special education services, systematic research yields mixed findings as to whether service provision leads to stronger post-education outcomes,¹⁵ despite typically costing over twice the usual per pupil expenditures.¹⁶

Accordingly, we propose to study the incidence of different special education diagnoses across different demographic and income groups. Secondly, we propose to study variations in the use of self-contained classrooms across different income and demographic groups in Arkansas schools.

Scope

The scope of this project is limited to an examination of *IDEA Compliance and Implementation in Arkansas Schools*. The Committee will examine the extent to which students with disabilities

¹¹ *Rethinking Special Education for a New Century*, p. 101.

¹² Ong-Dean, C. (2009). *Distinguishing Disability: Parents, privilege, and special education*. Chicago: University of Chicago Press.

¹³ *Rethinking Special Education for a New Century*, p. xix.

¹⁴ Lombardo, C. (2019). Why the College Admissions Scandal Hurts Students with Disabilities. March 14, KUAF “All things considered” at <https://www.npr.org/2019/03/14/703006521/why-the-college-admissions-scandal-hurts-students-with-disabilities>.

¹⁵ Kanaya, T., J. Wai & B. Miranda. (June 2019). Exploring the Links Between Receiving Special Education Services and Adulthood Outcomes. *Frontiers in Education*, at <https://doi.org/10.3389/feduc.2019.00056>.

¹⁶ *Rethinking Special Education for a New Century*.

are receiving the services to which they are entitled under relevant law and how the achievement of students with disabilities compares to the achievement of their non-disabled peers. In addition, the Committee will study whether and the extent to which the provision of services to students with disabilities in Arkansas has resulted in disparities in both access and effectiveness based on race, color, sex, national origin, or religion. The Committee will work to identify policy recommendations to address any related areas of civil rights concern.

Methodology

This project will include a gathering of data, documents, testimony, and opinions to enable the Arkansas Advisory Committee to reach factual determinations. In this project, the Committee will gather direct testimonial evidence from parents, students, school and government officials, advocates, and academic experts as well as documentary evidence from such individuals. The Committee proposes to hold one or more web-based hearings during which the Committee will solicit such testimony and comments. The Committee will solicit testimony via live web-conference, and in writing. Testimony will focus on the extent to which students with disabilities are receiving the services to which they are entitled under relevant law and how the achievement of students with disabilities compares to the achievement of their non-disabled peers. In addition, testimony may address the extent to which the provision of services to students with disabilities in Arkansas has resulted in disparities in both access and effectiveness based on race, color, sex, national origin, or religion, and the civil rights implications thereof.

The exact date and time of these meetings is to be determined by the Committee. The public meeting[s] will be advertised, recorded, and transcribed for the public record. The meeting[s] will include time for public comment in which any Arkansas resident who wishes to share may do so. The Committee will also accept written statements submitted by residents who are unable to attend the public meeting[s] in real time.

To ensure balance, the bipartisan Committee, in consultation with USCCR staff, will draft the agenda for the public meeting[s] and select the individuals invited to testify and/or provide documentary evidence as part of this inquiry. The Committee will hear testimony including diverse perspectives from residents, scholars, and other experts.

Anticipated Outcomes

An anticipated outcome of the project is to ensure that the U.S. Commission on Civil Rights is advised of the civil rights impact of special education services in Arkansas, and its effect on equal protection and equal access to education, regardless of race, color, sex, religion, national origin, and/or disability status. The Committee hopes that such information will lead to a better understanding of educational access for students with disabilities, as well as to specific recommendations for addressing any identified, related civil rights concerns. The Committee proposes to advise the Commission by issuing a report with its findings and recommendations at

the conclusion of this project. The report may include recommendations to the Commission for federal policy and statutory changes.

Time Frames

The Committee will discuss and approve timeframes for the project's completion according to the project's development and progress. Project tasks/markers for consideration include:

1. Committee and OSD approval of proposal
2. Advertising
3. Public Meeting(s) in Arkansas [to be held via web conference due to the COVID-19 pandemic]
4. Completion of research and closing of the official record
5. Draft report submitted by legal review and editing
6. Approval of report by full committee and public release