

IDEA Compliance and Implementation in Arkansas Schools



A Report of the
Arkansas Advisory Committee to the
U.S. Commission on Civil Rights

January 2023

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. They are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

Acknowledgments

The Arkansas Advisory Committee (Committee) would like to acknowledge the speakers who presented during the Committee's series of public meetings taking place between June of 2021 and March 2022, as the Committee worked to understand broad and diverse perspectives on the civil rights impact of IDEA compliance and implementation in Arkansas schools. The Committee is also grateful to those who contributed to this work during public comment and via written testimony.

Arkansas Advisory Committee to the U.S. Commission on Civil Rights

The Arkansas Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding IDEA Compliance and Implementation in Arkansas Schools. The Committee submits this report as part of its responsibility to study and report on civil rights issues in the state of Arkansas. The contents of this report are primarily based on testimony the Committee heard during public meetings held via videoconference on June 4, 2021, August 6, 2021, November 5, 2021, December 10, 2021, and March 4, 2022. The Committee also includes related testimony submitted in writing during the relevant period of public comment. This report reflects the varied input of the committee members. While the general views are discussed and debated, as a group project, not every statement reflects every individual member's views. We hope that the report stimulates additional discussion and attention to the important issues raised herein.

This report begins with a brief background of the issues to be considered by the Committee. It then presents primary findings as they emerged from this testimony, as well as recommendations for addressing areas of civil rights concerns. This report is intended to focus on civil rights concerns regarding IDEA Compliance and Implementation in Arkansas Schools. Specifically, the Committee sought to examine 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. While additional important topics may have surfaced throughout the Committee's inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion.

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Overview

In May 2021, the Arkansas Advisory Committee (Committee) to the U.S. Commission on Civil Rights (Commission) adopted a proposal to study Compliance with the Individuals with Disabilities Education Act (IDEA) and its Implementation in Arkansas Schools. The focus of the Committee's inquiry was 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. From a civil rights perspective, the Committee sought to consider whether and the extent to which the provision of services to students with disabilities in Arkansas had resulted in disparities in both access and effectiveness.

As part of this inquiry the Committee heard testimony via videoconferences held on June 6th, 2021, August 6th, 2021, November 5th, 2021, December 10th, 2021, and March 4th, 2022.¹ The following report results from a review of testimony provided at these meetings, combined with written testimony submitted during the related timeframe. It begins with a brief background of the issues to be considered by the Committee. It then identifies primary findings as they emerged from this testimony. Finally, it makes recommendations for addressing related civil rights concerns. This report focuses on IDEA Compliance and Implementation in Arkansas Schools. While other important topics may have surfaced throughout the Committee's inquiry, matters that are outside the scope of this specific civil rights mandate are left for another discussion. This report and the recommendations included within it were adopted by the Committee on January 9, 2023.

Background

According to a 2019 USCCR briefing report on school discipline practices and policies impacting special education, disparities in fair treatment and accommodation provisions exist for students with disabilities, particularly students of color.² The report provides context regarding issues with compliance to the *Individuals with Disabilities Education Act*,³ a federal law

¹ Meeting records and transcripts are available in Appendix.

Briefing before the Arkansas Advisory Committee to the U.S. Commission on Civil Rights, DATE, (web-based), Transcript (hereinafter cited as "Transcript I").

Briefing before the Arkansas Advisory Committee to the U.S. Commission on Civil Rights, DATE, (web-based), Transcript (hereinafter cited as "Transcript II").

Briefing before the Arkansas Advisory Committee to the U.S. Commission on Civil Rights, DATE, (location), Transcript (hereinafter cited as "Transcript III").

Briefing before the Arkansas Advisory Committee to the U.S. Commission on Civil Rights, DATE, (location), Transcript (hereinafter cited as "Transcript IV").

² Brady Testimony, Transcript I, p. 1 lines 12-19, see: U.S. Commission on Civil Rights. (2019). *Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities*. <https://www.usccr.gov/pubs/2019/07-23-Beyond-Suspensions.pdf> (hereinafter *Beyond Suspensions (2019)*)

³ Individuals With Disabilities Education Act, 20 U.S.C. § 1400 (2004).

committed to the expansion of educational opportunities and improvement of early intervention, educational results, and functional outcomes for children with disabilities.⁴ *IDEA* is a rule-based process and legal compliance instrument⁵ with the goal of free and appropriate education (FAPE) for children in the least restrictive environment (LRE),⁶ to the maximum extent feasible.⁷ *IDEA* helps to assist states and localities in a) the provision of education to children with disabilities and b) assessment of efforts made to educate children with disabilities.⁸

To a considerable degree, a legal, rights-based and compliance-based approach has dominated the policymaking guiding provision of special education services required by *IDEA*. While such approaches have strengths in assuring due process rights, they also have significant weaknesses, particularly with regard to inequities.⁹ Examples of such inequities include:

- The knowledge to read and understand legal cases applying to matters like appropriate discipline for students with special education or designations under Section 504 of the Rehabilitation Act of 1973¹⁰ (Section 504) 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.¹¹ Legal guidelines regarding special education process timetables are less apt to be followed for parents who lack influence or legal resources.¹²
- 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.”¹³ These disparate diagnoses could possibly reflect racial bias.

⁴ U.S. Department of Education, Office of Special Education and Rehabilitative Services. (2016). *38th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act*. <https://files.eric.ed.gov/fulltext/ED572027.pdf>

⁵ Brady Testimony, Transcript 1, p. 2 lines 21-22. Beyond Suspensions (2019)

⁶ Brady Testimony, Transcript 1, p. 4 lines 1-10; 20 U.S.C. § 1400 (2004).

⁷ Brady Testimony, Transcript 1, p. 4 lines 5-17; 20 U.S.C. § 1400 (2004).

⁸ U.S. Department of Education, Office of Special Education and Rehabilitative Services. (2016). *38th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act*.

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 29 U. S. C. § 794

¹¹ Hager Testimony, Transcript 3 p. 4 lines 10-25.

¹² Valle, J.W. (2009). *What mothers say about special education*. New York: Palgrave Macmillan.

¹³ *Rethinking Special Education for a New Century*, p. 101.

- 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 may allow students greater time on tests without the same 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.¹⁴
- 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.”¹⁵ 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.¹⁶
- 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,¹⁷ despite typically costing over twice the usual per pupil expenditures.¹⁸

Methodology

As a matter of historical precedent, and in order to achieve transparency, Committee studies involve a collection of public, testimonial evidence and written comments from individuals directly impacted by the civil rights topic at hand; researchers and experts that have rigorously studied and reported on the topic; community organizations and advocates representing a broad range of backgrounds and perspectives related to the topic; and government officials tasked with related policy decisions and the administration of those policies.

¹⁴ Ong-Dean, C. (2009). *Distinguishing Disability: Parents, privilege, and special education*. Chicago: University of Chicago Press.

¹⁵ *Rethinking Special Education for a New Century*, p. xix.

¹⁶ 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>.

¹⁷ 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>.

¹⁸ *Rethinking Special Education for a New Century*.

Committee studies require Committee members to utilize their expertise in selecting a sample of panelists that is the most useful to the purposes of the study and will result in a broad and diverse understanding of the issue. This method of (non-probability) judgment sampling requires Committee members to draw from their own experiences, knowledge, opinions, and views to gain understanding of the issue and possible policy solutions. Committees are composed of volunteer professionals that are familiar with civil rights issues in their state or territory. Members represent a variety of political viewpoints, occupations, races, ages, and gender identities, as well as a variety of background, skills, and experiences. The intentional diversity of each Committee promotes vigorous debate and full exploration of the issues. It also serves to assist in offsetting biases that can result in oversight of nuances in the testimony.

In fulfillment of Committees' responsibility to advise the Commission of civil rights matters in their locales, Committees conduct an in-depth review and thematic analysis of the testimony received and other data gathered throughout the course of their inquiry. Committee members use this publicly collected information, often from those directly impacted by the civil rights topic of study, or others with direct expert knowledge of such matters, to identify findings and recommendations to report to the Commission. Drafts of the Committee's report are publicly available and shared with panelists and other contributors to ensure that their testimony was accurately captured. Reports are also shared with affected agencies to request for clarification regarding allegations noted in testimony.

For the purposes of this study, **Findings** are defined as what the testimony and other data *suggested, revealed, or indicated* based upon the data collected by the Committee. Findings refer to a synthesis of observations confirmed by majority vote of members, rather than conclusions drawn by any one member. **Recommendations** are specific actions or proposed policy interventions intended to address or alleviate the civil rights concerns raised in the related finding(s). Where findings indicate a lack of sufficient knowledge or available data to fully understand the civil rights issues at hand, recommendations may also target specific directed areas in need of further, more rigorous study. Recommendations are directed to the Commission; they request that the Commission itself take a specific action, or that the Commission forward recommendations to other federal or state agencies, policy makers, or stakeholders.

Findings

In keeping with their duty to inform the Commission of (1) matters related to discrimination or a denial of equal protection of the laws; and (2) matters of mutual concern in the preparation of reports of the Commission to the President and the Congress,¹⁹ the Arkansas Advisory Committee submits the following findings to the Commission regarding IDEA Compliance and Implementation in Arkansas Schools. This report seeks to highlight the most salient civil rights themes as they emerged from the Committee's inquiry. The Committee heard relevant testimony from several individuals as it pertains to the issues of accountability and disparities in academic and disciplinary practices, where the issues themselves may be local in nature. Accordingly, the Committee sought to study the incidence of different special education diagnoses across different

¹⁹ 45 C.F.R. § 703.2 (2018).

demographic and income groups. The Committee also considered variations in the use of self-contained classrooms across different income and demographic groups in Arkansas schools.

The complete meeting transcripts and written testimony received are included in the appendix of this report for further reference.

Finding I: Administrators and school districts may inadequately identify students through Child Find, or fail to follow through with appropriate supports for qualifying students.²⁰

Though states have considerable discretion regarding how to implement these requirements,²¹ a provision of IDEA known as “Child Find” obligates schools to proactively seek out, identify, and provide free evaluations to students who may qualify for special education services.²² Testimony demonstrated the efforts of some districts in Arkansas to comply with these requirements. Dr. Brigid Bright shared that Harrison School District invests in print and radio ads to promote child find efforts, provides materials to Department of Health Services and local doctors’ offices, and holds an annual public meeting with community stakeholders, where parents, day care directors, and private providers help the district develop their Child Find Plan.²³ Matt Sewell from the Arkansas Department of Education (ADE) testified that the Office of Special Education programs has systems in place to ensure all Local Education Agencies (LEAs) in the state follow *IDEA* requirements.²⁴ Schools that are unable to meet requirements are placed on a Compliance Action Plan (CAP), and the school district has one year from the date of the finding to make the necessary corrections.²⁵ According to Sewell, there are currently just seven districts (of the 259 in Arkansas) working on CAPs.²⁶

Panelist James Hunter Joyce, current student at the University of Arkansas who has spastic cerebral palsy affecting his motor skills, described a very successful k-12 experience in Fairfield public schools. With the support of 1:1 paraprofessionals, Mr. Joyce remained in a general education setting throughout his school years, and graduated at the top of his class with AP scholar honors.²⁷ He described the extensive support he received from his parents and schools in order to ensure his success: from kindergarten on, he had individual support from a paraprofessional in all of his classes.²⁸ He had at least two backup paraprofessionals trained at all

²⁰ Huggins Testimony, Transcript 2, p. 13 lines 37-38. Lafont Testimony, Transcript 2, p. 15 lines 9-12. Nichols Testimony, Transcript 4, p. 6 lines 4-9, 34-35; p. 8 lines 3-4, 8-11, 21-22.

²¹ Brady Testimony, Transcript 1, p. 1 lines 29-32.

²² 34C.F.R. § 300.111; see also U.S. Department of Education, Child Find: <https://sites.ed.gov/idea/regs/b/b/300.111>.

²³ Bright Testimony, Transcript 5, p. 14-27.

²⁴ Sewell Testimony, Transcript 5, p. 12 lines 38-41, p. 13 lines 13, 15-16.

²⁵ Sewell Testimony, Transcript 5 p. 13 line 38 – p. 14 line 3.

²⁶ Sewell Testimony, Transcript 5, p. 14 line 2-3; Number of districts in the state: <https://adedata.arkansas.gov/Ark12>

²⁷ Joyce Testimony, Transcript 5, p. 2, line 41 – p. 4 line 19.

²⁸ Joyce Testimony, Transcript 5, p. 3, lines 34-37.

times in case his paraprofessional was absent.²⁹ From middle school on, he had it written into his IEP that he would have individual meetings with his teachers before the start of school to review his IEP, accommodations, and to share expectations.³⁰ He received copies of notes, oral dictation of assignments and tests, digital/audio versions of all books and texts, no time on assignments, and additional testing time.³¹ He also had parents who were strong advocates for him from an early age.³²

While success stories like that of Mr. Joyce demonstrate the importance and lifelong impact of providing full accommodations and supports to students with disabilities, the Committee heard repeated testimony that many students qualifying for services under IDEA may not be identified or receive appropriate services.³³ Parents and advocacy groups testified that schools do not adequately review behaviors and fairly interpret Child Find to distinguish between behavioral health, developmental needs, and behavioral problems.³⁴

- Attorney Amelia Lafont described the case of a 12-year-old student who was deprived of oxygen at birth had suffered cognitive and developmental disabilities as a result.³⁵ The student had both identified and unidentified learning disabilities, and was only later diagnosed with dyslexia through the help of a private volunteer.³⁶ Ms. Lafont presented the Committee with the student's dyslexia report, where the evaluator noted the student had never received specialized services through his school despite being held back twice in kindergarten and again in fifth grade.³⁷ The student was described as an "acutely at risk" youth who was sent to therapeutic day treatment instead of receiving dyslexia intervention, occupational therapy, and thorough educational evaluations throughout his life.³⁸ Lafont also shared several annual day treatment center records stating the student did not require referral for special education services despite the student's clear need.³⁹
- Lizbeth Huggins, mother of another child with dyslexia, described her decade-long struggle trying to get her son's disability recognized. Despite her regular requests for support and intervention starting when he was just three years old, his district did not recognize his disability and put in appropriate interventions until he reached high

²⁹ Joyce Testimony, Transcript 5, p. 3, lines 38-40.

³⁰ Joyce Testimony, Transcript 5, p. 4, lines 3-5.

³¹ Joyce Testimony, Transcript 5, p. 4, lines 5-19.

³² Joyce Testimony, Transcript 5, p. 3, lines 28-29.

³³ Brady Testimony, Transcript 1, p. 6, lines 16-17. Huggins Testimony, Transcript 1, p. 13 lines 37-39. Lafont Testimony, Transcript 1, p. 15, lines 10-12. Nichols Testimony, Transcript 4, p. 6 lines 4-9, 34-35. p. 8, lines 8-11, 21-22. Sewell Testimony, Transcript 5, p. 15 lines 1-4.

³⁴ Nichols Testimony, Transcript 4, p. 8 lines 8-11. Huggins Testimony, Transcript 2, p. 13 lines 37-39.

³⁵ Lafont Testimony, Transcript 2, p. 7 lines 11-12.

³⁶ Lafont Testimony, Transcript 2, p. 7 line 13.

³⁷ Lafont Testimony, Transcript 2, p. 7 lines 12-15.

³⁸ Lafont Testimony, Transcript 2, p. 7 lines 27-34; p. 8 lines 21-27.

³⁹ Lafont Testimony, Transcript 2, p. 8 lines 7-11.

school.⁴⁰ Ms. Huggins later joined a state Dyslexia Support Group, and now helps other parents navigate this process.⁴¹ She described her struggle trying to get appropriate interventions for her son as “typical,” including in some of the highest-ranking schools.⁴²

- Panelist Syard Evans, CEO of the Arkansas Support Network, emphasized that children who do not have strong family advocates, particularly those in state custody, are often overlooked for services.⁴³

Dr. Kevin Brady of the University of Arkansas noted that having a disability alone does not guarantee eligibility for services under IDEA; the disability itself must fall into one of 13 disability eligibility categories under IDEA.⁴⁴ Additionally, there must be evidence that the disability has adversely impacted “both academic based as well as functional based learning.”⁴⁵ Thomas Nichols of Disability Rights Arkansas reported that students are often misidentified by the schools in order for the school to avoid requirements to provide more comprehensive services.⁴⁶ Nichols explained that schools often miscategorize students’ disabilities in order to avoid addressing students’ specific needs, or to defend decisions with regard to manifestations of a student’s disability.⁴⁷ Professor Tom Smith from University of Arkansas asserted that the Division of Elementary and Secondary Education (DESE) is more focused on administrative requirements such as properly signed paperwork instead of classroom observation to ensure students are receiving appropriate educational programs, again indicating the shortcomings of compliance based approaches.⁴⁸ Smith further noted that children with diagnoses not defined within the limited and specific scope of *IDEA* are often left out of services altogether, despite clear need.⁴⁹ Dr. Brady emphasized that while parents are to be partners with the schools in the process, it is ultimately the legal responsibility of the school to seek out, identify, and evaluate students’ eligibility for services, and to bear the cost of those assessments.⁵⁰

⁴⁰ Huggins Testimony, Transcript 2, p. 10 line 34 – p. 14 line 12.

⁴¹ Huggins Testimony, Transcript 2, p. 13 lines 31-36.

⁴² Huggins Testimony, Transcript 2, p. 13 line 31 – p. 14 line 12.

⁴³ Evans Testimony, Transcript 5, p. 11 lines 13-25.

⁴⁴ Brady Testimony, Transcript 1, p. 4 line 21 – p.5 line 2; see also: <https://sites.ed.gov/idea/regs/b/a/300.8>

⁴⁵ Brady Testimony, Transcript 1, p. 4 line 21 – p.5 line 2.

⁴⁶ Nichols Testimony, Transcript 4, p. 6 lines 8-12.

⁴⁷ *For example, identifying a student as “ADHD” when “Autism” or “multiple diagnoses” might be a better fit.* Nichols Testimony, Transcript 4, p. 6 lines 13-18.

⁴⁸ Smith Testimony, Transcript 3, p. 11 lines 18-24.

⁴⁹ Smith Testimony, Transcript 3, p. 11 lines 24-28.

⁵⁰ Brady Testimony, Transcript 1, p. 11 lines 24-40.

Finding II: Services offered to identified students with disabilities are often based on available resources, rather than student need. Schools may lack funding and structural resources to provide adequate supports.

Structural Resource Limitations

Once identified, a central legal principle of IDEA is that students have a right to a free, appropriate public education in the least restrictive environment.⁵¹ However, several panelists asserted that schools often base special education services on available resources and existing teacher qualifications, rather than uniquely tailoring education to each student's needs, as IDEA mandates.⁵² Ron Hager of the National Disability Rights Network noted that the "full and individualized" evaluations required under IDEA for each student in need of services often consume more school resources and classroom time than are available.⁵³ Dr. Brady noted that in his two decades of experience, wealthier districts are much more likely to inform parents of their right to have their children evaluated, at the district's expense, if they believe their child may have a disability and need individualized services.⁵⁴

Additionally, Mr. Hager testified that both general and special education teachers often lack the tools and information required to adequately perform their job and meet the needs of their students.⁵⁵ As a result, students end up not receiving appropriate academic interventions because teachers lack access to research-based methodologies for learning disabilities.⁵⁶ Professor Tom Smith from the University of Arkansas also noted that many university teacher and leader preparation programs fail to adequately educate teachers about *IDEA*.⁵⁷ The lack of teacher understanding of disability rights protected under laws such as Section 504,⁵⁸ compounded with the issues of insufficient school resources, may lead to unintended or unaddressed gaps in compliance with *IDEA* and ADA requirements in schools.⁵⁹

Funding and Provision of Services to Students

According to Special Education Supervisor of Mountain Pine School District Shelley Applegate, funding issues and inflexibilities limit schools' ability to help students with provision of adequate services to support their academic success.⁶⁰ Lack of funding resources for Section 504 students⁶¹ for example, can severely constrain budgets, requiring schools to draw on other

⁵¹ Brady Testimony, Transcript 1, p. 2 line 34 – p. 3 line 22.

⁵² Hager Testimony, Transcript 3, p. 4 lines 39-42. Barnes Testimony, Transcript 4, p. 16 lines 31-32, 36-39, p. 17 lines 15-27. Evans Testimony, Transcript 5, p. 11 lines 35-36.

⁵³ Hager Testimony, Transcript 3, p. 4 lines 37-42.

⁵⁴ Brady Testimony, Transcript 1, p. 5 lines 3-19.

⁵⁵ Hager Testimony, Transcript 3, p. 4 lines 43-p.5 line 2.

⁵⁶ Hager Testimony, Transcript 3, p. 4 lines 2-7.

⁵⁷ Smith Testimony, Transcript 3, p. 12 lines 24-27.

⁵⁸ Smith Testimony, Transcript 3, p. 12 lines 23-24.

⁵⁹ Smith Testimony, Transcript 3, p. 12 lines 27-29.

⁶⁰ Applegate Testimony, Transcript 4, p. 10 lines 29-32, 40-42.

⁶¹ See: <https://www2.ed.gov/about/offices/list/ocr/504faq.html>

resources in order to provide special education support services.⁶² According to Ms. Applegate, Mountain Pine’s special education budget was \$144,555 in 2020.⁶³ In order to provide special education students with necessary supports, she testified that an additional \$723,000 was reallocated from the maintenance and operating budget to supplement the special education budgetary deficiency.⁶⁴ Such reallocation of already limited funds creates additional hardships, as school staff and administrators often must prioritize fulfilling basic needs such as feeding and clothing a student before being able to even provide instruction.⁶⁵ The Committee also heard testimony regarding Private School Proportionate Share under IDEA regulations, which requires certain federal funds for special education services to be allocated towards parentally placed private school children with disabilities and not for public schools.⁶⁶

Dr. Mike Hernandez provided FY 2021 expenditure reporting taken from the Arkansas Bureau of Legislative Research (BLR) Report January 2020⁶⁷, to demonstrate that between 2012 and 2019, despite an increase in overall district and charter school special education expenditures, average *per-student* special education expenditures has decreased during this time—because the number of students with disabilities has continuously increased faster than additional funding allocations.⁶⁸

Expenditure in Arkansas FY 21

Table 11: Special Education Expenditures – 2012-13 through 2018-19

School Year	District and Charter SPED Expenditures	Number of Students with Disabilities	District and Charter Average Per-Student SPED Expenditures
2012-13	\$412,907,622	54,073	\$7,636
2013-14	\$419,033,025	54,738	\$7,655
2014-15	\$427,901,182	55,761	\$7,658
2015-16	\$434,371,075	57,256	\$7,586
2016-17	\$442,602,797	59,672	\$7,417
2017-18	\$453,599,836	61,553	\$7,369
2018-19	\$467,245,075	63,935	\$7,308
Total Change	13.2%	18.2%	-4.3%

Source: Arkansas BLR Report January 2020

Source: Handout F2 Special Education Funding and Expenditures Research Report, Bureau of Legislative Research, January 7, 2020

⁶² Applegate Testimony, Transcript 4, p. 10 lines 42 – p. 11 line 1

⁶³ Applegate Testimony, Transcript 4, p. 11 lines 4-5.

⁶⁴ Applegate Testimony, Transcript 4, p. 11 lines 5-6

⁶⁵ Applegate Testimony, Transcript 4, p. 9 lines 3-32.

⁶⁶ Bright Testimony, Transcript 5, p. 17 lines 29-31. 20 U.S.C. § 612(a)(10)(A); 34 C.F.R. §§300.130 - 300.144.

⁶⁷ Bureau of Legislative Research, “Arkansas School Finance Manual 2020-2021.” Publication and Reports. Arkansas Department of Education, Division of Elementary & Secondary Education, January 2020. https://dese.ade.arkansas.gov/Files/20201126133815_Arkansas_School_Finance_Manual_2020-2021.pdf.

⁶⁸ Hernandez Testimony, Transcript 5, p. 6 lines 33–40.

Dr. Hernandez also discussed concern regarding students in need of services with a “high-cost occurrence,” and the “additional loss associated with trying to provide services.”⁶⁹ According to the Arkansas’ Division of Elementary and Secondary Education – Office of Special Education (DESE-OSE), high-cost occurrences are “individual cases where costs associated with special education and related services required by an IEP are unduly expensive, extraordinary, and beyond the normal and routine special education...services.”⁷⁰ Hernandez noted that a recent change in the procedure for securing funding requires districts to be responsible for the first \$15,000 of per student costs.⁷¹ Districts can then file claim for reimbursement for any additional costs for services in excess of the first \$15,000, dependent on how much funding is available.⁷² Although the number of eligible claims being funded has increased in recent years, the amount of unfunded claims continues to simultaneously increase as well.⁷³ Dr. Hernandez acknowledged this limitation and noted that the AAEEA is focused on discussing and reviewing “the best path forward” for improving funding policy.⁷⁴

High Cost Occurrences

2021 / 2022 /2023 Total Amount
\$13.02 million / \$13.5 million / \$14.99 million

Reimbursement Calculation - Current
<ul style="list-style-type: none"> • District responsible for 100% of first \$15,000/student • Reimbursed 100% of \$15,000 and \$65,000/student • Reimbursed 80% of \$65,000 and \$100,000/student • Dependent on funding available

	Total Eligible Claims	Max Reimbursement of Claims	Total Funding Provided	% of Calculated Funds Received	Unfunded Amount of Claims
2017	\$32.5 M	\$29.9 M	\$11 M	36.8%	\$21.5 M
2021	\$38.8 M	\$15.6 M	\$13.02 M	83.7%	\$25.7 M

Source: Handout C8 Special Education 2022 Adequacy Study, May 3, 2022

⁶⁹ Hernandez Testimony, Transcript 5, p. 6 lines 40-43.

⁷⁰ “High-Cost Occurrences Funding Guide 2021-2022.” Funding & Finance. Arkansas Department of Education, Division of Elementary & Secondary Education, November 30, 2021. [Found here](#).

⁷¹ Hernandez Testimony, Transcript 5, p. 7 lines 3-5.

⁷² Hernandez Testimony, Transcript 5, p. 7 lines 5-7.

⁷³ Hernandez Testimony, Transcript 5, p. 7 lines 17-20.

⁷⁴ Hernandez Testimony, Transcript 5, p. 7 lines 20-22.

Funding Deficiencies Limit the Availability and Training of Teachers and Other Special Education Support Staff

Multiple panelists described the lack of properly trained teachers⁷⁵ and limited teacher training opportunities for special education programs in schools as a direct consequence of school funding deficiencies.⁷⁶ Panelist Don Ernst noted that teacher turnover is highest in high poverty school districts, “and unfortunately, kids of color and kids with special needs are the ones who are getting hammered the most in those contexts.”⁷⁷ Supervisor Shelley Applegate testified that teachers are chronically underpaid, yet required to continually supplement their own training, thereby increasing student loan debt.⁷⁸ She noted that many teachers require secondary employment to supplement their income,⁷⁹ yet are required to pay for student-related needs from their personal income.⁸⁰ She asserted that many teachers are leaving the profession due to these financial strains.⁸¹ Dr. Hernandez noted that administrators face increasing struggle with the growing shortage of teachers available to fill critical positions within districts.⁸² In the context of his previous testimony regarding the growing population of students with special needs across the state, Dr. Hernandez noted concern regarding the small number of new special education teachers coming out of educator prep programs each year to fill this need.⁸³ Don Ernst from the Clinton School of Public Service raised similar concerns regarding the availability of certified special education teachers, and the high teacher turnover rate compounding this concern.⁸⁴

Funding Affects Availability of Rehabilitation (Rehab) Services

Shelley Applegate from Mountain Pine School District expressed frustration with the difficulty school districts face in obtaining rehabilitation funding⁸⁵ for eligible students.⁸⁶ She attributed this difficulty to staffing and funding limitations, noting that the state rehab office was understaffed and overwhelmed.⁸⁷ She relayed her experience during her first year at the district, where she was tasked with applying for rehab funding for eligible students in the pathways to employment program. Ms. Applegate reported continually being “put off” and unable to get answers from the overwhelmed staff at the office until she went to the office in person and refused to leave until someone was available to see her.”⁸⁸ Thomas Nichols from Disability

⁷⁵ Levenson Testimony, Transcript 3, p. 27 lines 31-32. Ernst Testimony, Transcript 3, p. 17 lines 3-4.

⁷⁶ Applegate Testimony, Transcript 4, p. 11 lines 31-34, p. 12 lines 21-23. Ernst Testimony, Transcript 3, p. 27 lines 7-10.

⁷⁷ Ernst Testimony, Transcript 3, p. 27 lines 10-15.

⁷⁸ Applegate Testimony, Transcript 4, p. 11 line 27, lines 29-32; p. 12 lines 2-5.

⁷⁹ Applegate Testimony, Transcript 4, p. 11 lines 35-37.

⁸⁰ Applegate Testimony, Transcript 4, p. 11 lines 37-39.

⁸¹ Applegate Testimony, Transcript 4 p. 11 lines 32-37.

⁸² Hernandez Testimony, Transcript 5, p. 7 lines 23-26.

⁸³ Hernandez Testimony, Transcript 5, p. 7 lines 28-39.

⁸⁴ Ernst Testimony, Transcript 5, p. 17, lines 4-7.

⁸⁵ More information available at: <https://dws.arkansas.gov/ar-rehabilitation-services/>

⁸⁶ Applegate Testimony, Transcript 4, p. 28 line 34 – p. 29 line 8.

⁸⁷ Applegate Testimony, Transcript 4, p. 29 lines 2-8.

⁸⁸ Applegate Testimony, Transcript 4, p. 28 lines 34-37.

Rights Arkansas echoed Applegate’s concern regarding funding limitations for rehab services.⁸⁹ Mr. Nichols further added that the federal rehab administration has refused to acknowledge this limitation, specifically in order to avoid having to set up their own tiered system of who will be served first.⁹⁰ Mr. Nichols explained that agencies prefer to serve younger students first, with the hope that they may need fewer supports as they age.⁹¹ However, he stated that if they were under a tiered order of selection, they may be required to serve students on a different priority scale, such as those with the most significant disabilities first.⁹² Holland Hayden, mother of a first grade student with an Autism diagnosis, described the wide array of services necessary to successfully support her child in school: his care team includes his “general education teacher, his special education teacher, speech therapist, occupational therapist, social workers, vision therapists and school based counselors.”⁹³ While Ms. Hayden expressed overall satisfaction with her child’s care, she also noted that over the current school year services had been reduced, in part due to staffing limitations, to the point where her child began hating school because he would get overwhelmed, and there would be no one available, for example, to take him to the sensory room for a break when he needed.⁹⁴

Maximizing Resources

Despite these challenges, the Committee heard testimony that some rehabilitation services are working and available. Matt Sewell of the Arkansas Department of Education highlighted that the DESE provides funding throughout the state to provide behavioral supports, and partners with service providers such as Arkansas Behavior Support Specialists to promote statewide professional learning opportunities through district team building and virtual training modules.⁹⁵

Dr. Mike Hernandez of the Arkansas Association of Education Administrators (AAEA) shared that his organization works with DESE to focus on programs at the administrative level with training for principals and superintendents on inclusive practices.⁹⁶ Dr. Hernandez stated that DESE’s Special Education Resource Teacher Academy is accessible to currently licensed Arkansas public school educators so they may earn additional Special Education Resource endorsement and have job-embedded professional development while obtaining school credit hours.⁹⁷

Dr. Bright from Harrison School District discussed DESE’s online database of consultancy groups (CIRCUIT), designed to support districts with additional resources where funding may

⁸⁹ Nichols Testimony, Transcript 4, p. 30 lines 8-15.

⁹⁰ Nichols Testimony, Transcript 4, p. 30 lines 15-32.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Hayden Testimony, Transcript 4, p. 23 line 42 – p. 24 line 9.

⁹⁴ Hayden Testimony, Transcript 4, p. 25 lines 10-31.

⁹⁵ Sewell Testimony, Transcript 5, p. 15 lines 6-12, 14-20.

⁹⁶ Hernandez Testimony, Transcript 5, p. 8 lines 13-18.

⁹⁷ “2022–2023 Special Education Resource Teacher Academy Announcement and Registration Information.” Arkansas Department of Education Commissioner’s Memo. Arkansas Department of Education, March 30, 2022. [Found here.](#)

not be sufficient.⁹⁸ CIRCUIT directs any person in need of special education services to resources specializing in transition, rehabilitation, college readiness, and mental health services.⁹⁹ Dr. Bright also shared that Arkansas Rehabilitation Services¹⁰⁰ provides funding to pay special education students for community job placements, encouraging a free source of labor for local employers, paired with paid work experience for students.¹⁰¹ She noted that Arkansas Rehabilitation Services actively goes into Harrison School District high schools and recruits juniors and seniors for paid work experience.¹⁰² In addition to job placement assistance, Bright noted that students in the district also have case workers to facilitate transition services in either the workforce or college.¹⁰³

Panelists also observed there are resources available that are perhaps not adequately advertised to parents as they navigate the process of obtaining special needs accommodations. For example, Thomas Nichols of Disability Rights Arkansas testified that Medicaid services such as early screening, diagnosis, and treatment are often underutilized as a means to provide services to children with disabilities.¹⁰⁴ Mr. Nichols noted that although school social workers are charged with the responsibility of proactively acquiring Medicaid resources for disability services, there is an insufficient supply of those appropriately trained to aid in connecting students with special needs.¹⁰⁵ Nevertheless, Medicaid can fund a broad range of essential services and student needs ranging from mental health treatment to BCBA services and transportation.¹⁰⁶

Finding III: State licensure trains teachers with a “generalist K-12 disabilities” approach and does not focus on skillsets that can target students with specific disabilities or learning needs.¹⁰⁷

A 2006 report¹⁰⁸ cites research showing that teacher effectiveness is a significant driver of student achievement. Accordingly, understanding the resources and training available to improve teacher effectiveness in serving students with disabilities is an important consideration of this study. Arkansas’ unique dyslexia teaching law¹⁰⁹ acknowledges this importance by requiring rigorous and specific training to aid students with dyslexia, including online curriculum for teachers and required screening and intervention.

⁹⁸ Bright Testimony, Transcript 5, p. 17 lines 39-p. 19 line 12. See additional resources [found here](#).

⁹⁹ Bright Testimony, Transcript 5, p.18 lines 1-3.

¹⁰⁰ More information available at: <https://dws.arkansas.gov/ar-rehabilitation-services/>

¹⁰¹ Bright Testimony, Transcript 5, p. 18 lines 30-34.

¹⁰² Bright Testimony, Transcript 5, p. 20 lines 9-14.

¹⁰³ Bright Testimony, Transcript 5, p. 18 lines 25-29.

¹⁰⁴ Nichols Testimony, Transcript 4, p. 7 lines 6-8, 12-13.

¹⁰⁵ Nichols Testimony, Transcript 4, p. 7 lines 39 – p. 8 line 2.

¹⁰⁶ Applegate Testimony, Transcript 4 p. 11 lines 6-7; p. 13 lines 24-25; Barnes Testimony, Transcript 4, p. 16 lines 13-16.

¹⁰⁷ Smith Testimony, Transcript 3, p. 22 lines 25-28, p. 26 lines 3-9. Hager Testimony, Transcript 3, p. 26 lines 24-28.

¹⁰⁸ *Teaching at Risk: Progress and Potholes*, The Teaching Commission, 2006, https://www.nctq.org/nctq/images/ttc_teachingatrisk.pdf, pp. 14-15

¹⁰⁹ <https://dese.ade.arkansas.gov/Offices/learning-services/curriculum-support/dyslexia>

The universe of those covered by IDEA is, however, much more diverse than dyslexia. Arkansas requires “General K-12 all disabilities” teacher training¹¹⁰ intended to equip educators to support students with physical disabilities as well as complex neurological differences (*e.g.*, autism and ADHD), sensory disorders, and more. The number of specific needs teachers must be prepared to meet is nearly infinite, particularly when a student has more than one disability. Successful supports are highly individualized to the student and are frequently the result of the teacher’s personal experience with a specific disability.¹¹¹ The challenge of effectively sharing those successful methods—along with an understanding of each disability or combination of disabilities—is significant.

Ron Hager from National Disability Rights Network raised concern that student teaching and structured in-service time in the classroom provides insufficient experience for teachers working with students with special needs.¹¹² General teacher preparation does not train teachers to understand the available resources students need to truly obtain individualized academic and/or behavioral accommodations.¹¹³ Mr. Hager noted that new teachers tend to follow routines established by previous teachers without question, perpetuating a lack of real ability to individualize students’ educational needs.¹¹⁴ Tom Smith further elaborated on the negative impact of the dual system of education in teacher preparation, stating that the differences between general and special education training exacerbates the issues in disciplinary procedures and disproportionate inclusion of students with disabilities.¹¹⁵

The challenge of meeting the needs of students with disabilities is amplified when teachers are not teaching in their strongest subject matter. Author, former school superintendent, and special education expert Nathan Levenson noted that schools have become increasingly reliant on special education teachers and paraprofessionals to teach core subject matter.¹¹⁶ While acknowledging the important role of such professionals and paraprofessionals in addressing students’ special health and behavioral needs,¹¹⁷ Levenson raised concern about the resulting unintended reduction in those students’ access to teachers who are deeply trained in core subjects such as math and reading.¹¹⁸

Research is so clear that the effectiveness of the teacher is the single largest driver of student achievement beyond socioeconomic status...kids need teachers who are strong in the content. If I

¹¹⁰ Smith Testimony, Transcript 3, p. 26 lines 3-9, Nichols Testimony, Transcript 4, p. 8, lines 12-15. Barnes Testimony, Transcript 4, p. 16 lines 33-34; Special Education Teaching Requirements can be [Found Here](#).

¹¹¹ Smith Testimony, Transcript 3, p. 26 lines 1-9; Hager Testimony, Transcript 3 p. 26 lines 12-23.

¹¹² Hager Testimony, Transcript 3 p. 26 lines 12-33.

¹¹³ *Ibid*.

¹¹⁴ Hager Testimony, Transcript 3, p. 26 lines 30-33.

¹¹⁵ Smith Testimony, Transcript 3 p. 22 lines 21-31.

¹¹⁶ Levenson Testimony, Transcript 3, p. 15 lines 29-33; see also Huggins Testimony, Transcript 3, p. 24 line 28 – p. 25 line 7.

¹¹⁷ Levenson Testimony, Transcript 3, p. 15 lines 29-36.

¹¹⁸ Levenson Testimony, Transcript 3, p. 15 lines 20-28.

struggle to read, I need a teacher who is deeply trained in the science of teaching reading. If I struggle in math, I need a teacher who knows math inside and out.¹¹⁹

Panelist Don Ernst echoed similar concern that in Arkansas, “the least experienced teachers are with the students who need the best teachers.”¹²⁰

The increase in virtual instruction resulting from the COVID-19 pandemic generated additional challenges for students with disabilities.¹²¹ Teachers have struggled to adjust to limited and inadequate instruction time.¹²² Dr. Sheila Barnes testified that two students she has been working with who were referred for virtual school have received “very little instruction,” frequently amounting to less than one hour per day.¹²³ Unless parents are able and technologically equipped to assist with virtual schooling, students inevitably do not receive an appropriate and individualized education in a virtual setting.¹²⁴

Finding IV: Inappropriately designed Individualized Education Plans (IEPs) frequently reduce much needed time for core instruction, may widen achievement gaps, and may fail to address functional skill development needs.

IEPs are central to providing services for students with disabilities. Yet, panelists cautioned that such plans must be appropriately designed, regularly updated, and include specific, measurable goals in order to serve their effective purpose. Dr. Kevin Brady of the University of Arkansas noted that in 2017, the U.S. Supreme Court unanimously ruled¹²⁵ that schools must offer an IEP that provides “more than the minimum level of educational benefit.”¹²⁶ Instead, under IDEA, the Court ruled that schools must offer an IEP “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”¹²⁷ In the case of IEP management, Dr. Sheila Barnes raised concern some students’ IEP goals are created during elementary school and are not changed even through high school.¹²⁸ Barnes shared that she had worked with 17- or 18-year-old students whose IEPs had remained unchanged since kindergarten.¹²⁹ Barnes also noted that when IEP goals are not specific and measurable, students’ daily progress can go unrecorded, causing gaps in important performance measurements used to ensure students’ goals are being met.¹³⁰ Brady noted that IDEA is distinguished from other federal disability rights laws in its individualization, as well as its requirements that schools do “routine and fairly rigorous

¹¹⁹ Levenson Testimony, Transcript 3 p. 15 lines 3-9.

¹²⁰ Ernst Testimony, Transcript 3, p. 26, lines 38-39.

¹²¹ Hayden Testimony, Transcript 4, p. 24 lines 31-32; p. 25 lines 29-33; p. 26 lines 24-29..

¹²² Applegate Testimony, Transcript 4, p. 13 lines 18-23.

¹²³ Barnes Testimony, Transcript 3, p. p. 17 lines 1-19.

¹²⁴ Barnes Testimony, Transcript 4, p. 17 lines 17-19.

¹²⁵ *Endrew F. v. Douglas County School District Re-1*, 580 U.S. 386 (2017).

¹²⁶ Brady Testimony, Transcript 1, p. 5 line 38 – p. 6 line 8.

¹²⁷ Brady Testimony, Transcript 1, p. 5 line 38 – p. 6 line 8; p. 6 line 37 – p. 7 line 2; p. 12 lines 13-22.

¹²⁸ Barnes Testimony, Transcript 4, p. 19 lines 15-17.

¹²⁹ Barnes Testimony, Transcript 4, p. 19 lines 13-17.

¹³⁰ Barnes Testimony, Transcript 4, p. 20 lines 12-18.

data monitoring, not only in terms of the child’s academic performance, but in terms of his or her functional performance.”¹³¹

Core Instruction

Among the most common problems panelists noted with student IEPs was that support services are often delivered during core instruction time, reducing the amount of math and reading instruction afforded to affected students.¹³² Author Nathan Levenson shared findings from a study he conducted of the schedules of 50,000 special education students throughout the country, noting that in comparison to students in general education, more than half of students with special needs receive less than 90 minutes of reading and 60 minutes of math on a daily basis.¹³³ Levinson testified that students with disabilities often receive support services such as speech therapy during class time scheduled for reading, thus reducing the overall amount of instruction for essential academic subjects.¹³⁴ Levenson pointed out that students “who don’t struggle” need 90 minutes to learn reading and 60 minutes to learn math; children with disabilities need more than that, “...and yet, so often, the services that are being written into IEPs do just the opposite.”¹³⁵ Levenson concluded that districts need to put in place policies that identify time for core instruction as a student’s right, and specify that support services should not be provided at the cost of general education class time.¹³⁶ The Committee notes that to the degree such instruction can raise reading and mathematics achievement and thus enable students to better follow real class time instruction rather than being confused or bored, this could also reduce behavioral issues.

Illustrating these concerns, Dr. Barnes shared several examples of students who had been either removed from the general classroom for self-contained instruction,¹³⁷ or even removed from the school entirely and recommended for virtual instruction.¹³⁸ Barnes noted that evidence-based interventions such as RTI (response to intervention)¹³⁹ or other supplemental aids and services can and do allow students with disabilities to successfully participate in general education, yet they are often overlooked.¹⁴⁰ In one example during an IEP meeting, a school spent several hours trying to convince the mother of a five-year-old autistic student that the child be placed in special

¹³¹ Brady Testimony, Transcript 1, p. 6 lines 9-13; p. 7 lines 3-12.

¹³² Levenson Testimony, Transcript 3, p.14 lines 20-40; Huggins Testimony, Transcript 3, lines 28-31.

¹³³ Levenson Testimony, Transcript 3, p. 14, lines 15-19.

¹³⁴ Levenson Testimony, Transcript 3, p. 14 lines 20-26.

¹³⁵ Levenson Testimony, Transcript 3, p. 14 lines 30-43.

¹³⁶ Levenson Testimony, Transcript 3, p. 14 lines 25-29.

¹³⁷ Barnes Testimony, Transcript 4 p. 17 lines 36-43.

¹³⁸ Barnes Testimony, Transcript 4 lines 4-27.

¹³⁹ Hughes, Charles, and Douglas D. Dexter. “Response to Intervention: A Research Review.” RTI Research Review . RTI Action Network. Accessed July 11, 2022. [Found here](#); “The Rationale for RTI: Early Intervening and Identification of Learning Disabilities.” IRIS Center. Vanderbilt University. Accessed July 11, 2022. [Found here](#).

¹⁴⁰ Barnes Testimony, Transcript 4, p. 17 line 36 – p. 18 line 13.

education without consideration for RTI as a supplemental support.¹⁴¹ Once the school agreed to provide supplemental services in addition to general education, the student achieved a student of the month award within the first month and received straight A's.¹⁴² Barnes reported having several students with similar histories where parents are currently disputing the schools due to their insistence on removal from a general education setting.¹⁴³

The Committee notes that 2018 legislation from Vermont,¹⁴⁴ as well as 2021 “best practice” policy guidance from Louisiana¹⁴⁵ provides sample language for student IEPs that, among other things, guarantees that students are not removed from core instruction in order to receive supplemental services.

Functional Skill Development

Dr. Barnes also testified that policy shifts¹⁴⁶ over the past few decades have caused the state to revert to a “developmental approach” which encourages teaching disabled students skills to match those of students in general education.¹⁴⁷ For example, IEPs often assign goals for a disabled student to match similar levels of their non-disabled peers, even when such goals may not be appropriate.¹⁴⁸ Barnes emphasized the need to focus on functional skill development, especially for older students with severe profound disabilities.¹⁴⁹ Barnes argued that functional skills such as preparing food, tying shoes, or making the bed, are at times more appropriate and are important to help older students become as independent as possible.¹⁵⁰

Standardized Testing

Panelists also raised concern with the application of state and national testing mandates for students with disabilities. Special education supervisor Shelley Applegate noted that for some students with disabilities, test prompts are more extensive than the academics taught during class instruction time, leaving exasperated students crying in frustration over their exams rather than learning at an appropriate level.¹⁵¹ Applegate referred to a case from Mountain Pine School District where a student with a Specific Learning Disability (SLD) was required to sit for an

¹⁴¹ Barnes Testimony, Transcript 4, p. 18 lines 16-30.

¹⁴² Barnes Testimony, Transcript 4, p. 18 lines 31-33.

¹⁴³ Barnes Testimony, Transcript 4, p. 18 lines 34-38.

¹⁴⁴ VT H.897 (Act No. 173) (2018);

<https://legislature.vermont.gov/Documents/2018/Docs/ACTS/ACT173/ACT173%20As%20Enacted.pdf>;

Summary available at:

<https://legislature.vermont.gov/Documents/2018/Docs/ACTS/ACT173/ACT173%20Act%20Summary.pdf>

¹⁴⁵ found at: <https://www.louisianabelieves.com/docs/default-source/academics/staffing-and-scheduling-guidance.pdf>

¹⁴⁶ No Child Left Behind Act of 2001, H.R. 1, 107th Cong. (2001-2002); 20 U.S.C. § 6319 (2002).

¹⁴⁷ Barnes Testimony, Transcript 4, p. 19 lines 5-8.

¹⁴⁸ Barnes Testimony, Transcript 4, p. 19 lines 3-4, 7-8.

¹⁴⁹ Barnes Testimony, Transcript 4, p. 19 lines 18-21.

¹⁵⁰ Barnes Testimony, Transcript 4, p. 19 lines 24-26, 28.

¹⁵¹ Applegate Testimony, Transcript 4, p. 14 lines 2-7.

exam that evaluated “three grades...above their grade level.” In some instances, only certain portions of tests were read to students with disabilities although they were tested on the exams in entirety.¹⁵² Panelists noted pressure placed on schools to ensure their students perform on standardized tests influences a continued push towards excessive testing despite negatively impacting students with special needs.¹⁵³ Panelist Don Ernst of the University of Arkansas raised concern that in Pulaski, special education students are being tested three times per week, perpetuating “a pedagogy of boredom, apathy, of dispariness [sic], of disconnection, of unengagement [sic].”¹⁵⁴ A 2017 study from the National Center for Fair and Open Testing suggests the overreliance on standardized test scores to determine grade advancement negatively affects students with disabilities, especially as it relates to needs assessment and student placement.¹⁵⁵

Finding V: Available resources are often focused on specific learning needs and do not sufficiently address behavioral needs. Schools may not be fully utilizing available resources for students with behavioral support needs.

Shortage of specialized therapists for behavioral needs

The Committee heard concern regarding a shortage of counselors and therapists, particularly Board Certified Behavior Analysts (BCBAs)¹⁵⁶ who generally serve children with difficult behaviors and skill deficits such as those with autism.¹⁵⁷ Shelley Applegate from Mountain Pine School District testified that trained therapists equipped to deal with students with behavioral needs are “few and far between.”¹⁵⁸ Applegate asserted that the state lacks available resources to support students with behavioral development and modification interventions.¹⁵⁹ Certified Behavioral Analyst Sheila Barnes noted that one of the reasons for such a BCBA shortage is the intense rigor of the certification exams.¹⁶⁰ BCBA certification entails high qualifications standards, and pass rates are currently only 60%, with an expected drop to 35% - 40% once increased training requirements are implemented in the future.¹⁶¹

In addition to the shortage of BCBAs, Dr. Barnes reported that available intervention services often do not meet student needs, especially for those students with moderate, severe, and profound disabilities.¹⁶² Thomas Nichols of Disability Rights Arkansas noted that districts determine whether or not outside specialized professionals are allowed to provide behavior

¹⁵² Applegate Testimony, Transcript 4, p. 13 lines 34-35.

¹⁵³ Ernst Testimony, Transcript 3, p. 17 lines 37-40; Applegate Testimony, Transcript 4, p. 13 lines 39-42.

¹⁵⁴ Ernst Testimony, Transcript 3, p. 17 lines 22-27; p. 18 lines 1-5.

¹⁵⁵ “Standardized Testing and Students with Disabilities.” FairTest. The National Center for Fair and Open Testing, March 30, 2017. [Found here](#). See also: Applegate Testimony, Transcript 4, p. 13 lines 38-42.

¹⁵⁶ Applegate Testimony, Transcript 4 p. 13 lines 1-5. Nichols Testimony, Transcript 4, p. 7 lines 14-20.

¹⁵⁷ Barnes Testimony, Transcript 4, p. 15 lines 15-16.

¹⁵⁸ Applegate Testimony, Transcript 4 p. 12 line 34 – p. 13 line 5.

¹⁵⁹ Applegate Testimony, Transcript 4 p. 12 lines 1-5. Nichols Testimony, Transcript 4, p. 7 lines 33-34.

¹⁶⁰ Barnes Testimony, Transcript 4, p. 22 lines 6-21.

¹⁶¹ Barnes Testimony, Transcript 4, p. 22 lines 10-11, 13-14.

¹⁶² Barnes Testimony, Transcript 4, p. 16 lines 28-30, p. 17 lines 1-2.

modification therapy to students in their schools, and many are hesitant to allow them.¹⁶³ Nichols explained that many districts prefer use of their own counselors due to preexisting relationships, regardless of expertise in dealing with severe behavioral or developmental issues.¹⁶⁴ Dr. Barnes argued that that Registered Behavioral Technicians (RBTs) are often more knowledgeable on behavior than special education teachers with masters and doctorate degrees.¹⁶⁵ In addition, Barnes noted that most Applied Behavior Analysis (ABA)¹⁶⁶ clinics will provide RBT training to teachers at no cost.¹⁶⁷ However, BCBAs are required to monitor RBTs on a weekly basis, which limits the number of schools that can effectively implement supplemental intervention for students since not all schools have BCBAs on site,¹⁶⁸ despite BCBA services being free to the district.¹⁶⁹

Matt Sewell stated in his testimony that during the COVID-19 pandemic, DESE-OSE online RBT training modules were strongly encouraged to assist paraprofessionals who deliver BCBA-developed behavior analytic services and improve behavior management strategies and functional behavior assessments.¹⁷⁰ Sewell also commented on a DESE-OSE initiative led by BX3,¹⁷¹ a group focused on building teams within districts that encourages equitable and differentiated positive behavior supports for all students.¹⁷²

Prevention of Negative Behaviors

Panelists emphasized the importance of fully utilizing behavioral support interventions to prevent negative behaviors from actually occurring before students receive disciplinary actions.¹⁷³ Dr. Brady noted that schools often have a disproportionate focus on academic performance, and overlook functional performance, which includes behavioral and disciplinary concerns that may be related to their disability.¹⁷⁴ Thomas Nichols reported that Disability Rights Arkansas commonly represents cases in which schools fail to identify children in need of disability support services; these children then lack appropriate supports to address behaviors associated with their disability.¹⁷⁵ The advocacy group often receives cases involving students who have received “multiple suspensions or multiple expulsions for behavior that is clearly...associated with a disability.”¹⁷⁶ Such a failure to proactively address behaviors and identify those students who may have behavioral disabilities leads to an increase in restraint,

¹⁶³ Nichols Testimony, Transcript 4, p. 7 line 24-26.

¹⁶⁴ Nichols Testimony, Transcript 4, p. 7 lines 27-28, 31-32. Barnes Testimony, Transcript 4, p. 16, lines

¹⁶⁵ Barnes Testimony, Transcript 4, p. 22 lines 23-24.

¹⁶⁶ Applied Behavior Analysis Therapy, commonly used to help children with Autism Spectrum Disorder develop social and emotional skills: <https://www.webmd.com/mental-health/what-is-applied-behavior-analysis>.

¹⁶⁷ Barnes Testimony, Transcript 4, p. 28 lines 4-14.

¹⁶⁸ Barnes Testimony, Transcript 4, p. 28 lines 4-6, 11-14.

¹⁶⁹ Barnes Testimony, Transcript 4, p. 16 lines 24-28; p. 28 lines 21-22.

¹⁷⁰ Sewell Testimony, Transcript 5, p. 15 lines 22-27.

¹⁷¹ Arkansas Behavior Support Specialists, more at: <https://arbss.org/bx3-2/>

¹⁷² Sewell Testimony, Transcript 5, p. 15 lines 14-16.

¹⁷³ Hager Testimony, Transcript 3, p. 5 lines 10-12. Nichols Testimony, Transcript 5, p. 1-2.

¹⁷⁴ Brady Testimony, Transcript 1, p. 6 lines 14-24.

¹⁷⁵ Nichols Testimony, Transcript 4, p. 8 lines 34-40.

¹⁷⁶ Nichols Testimony, Transcript 4, p. 8 lines 40-41.

seclusion, and judicial or police involvement for those students.¹⁷⁷ These oversights in turn exacerbate inequities in access to appropriate interventions for students with behavioral issues associated with their disabilities.¹⁷⁸ In the case of students who are under state custody and experiencing high levels of trauma, Syard Evans, CEO of Arkansas Support Network, testified that when school personnel lack training and resources necessary to support students, students can be potentially triggered in their trauma which can affect their education experience and interfere with their placement setting outside of school.¹⁷⁹ This may be particularly true for children who are moved to new school districts when coming into state custody.¹⁸⁰

Judicial Intervention

Nichols noted that failure to identify children with behavioral disabilities can result in judicial or police involvement due to lack of intervention that prevents negative behaviors from happening in the first place.¹⁸¹ Illustrating these concerns, public education attorney Amelia Lafont discussed a case involving a fourth-grade girl with severe dyslexia who received almost no educational interventions.¹⁸² In lieu of appropriate identification of educational needs, the student received continuous mental health placements and behavior related exclusionary discipline, and has been referred for prosecution since the age of six years old.¹⁸³ Nichols urged recognition for the need to increase therapeutic and social service professionals in schools, and less reliance on law enforcement and judiciary to attend to children with disabilities in place of special education services.¹⁸⁴

Finding VI: Accountability issues may place the burden of advocacy on parents of students with disabilities, or the students themselves.

Throughout the Committee's hearings, several speakers raised concern regarding accountability in the dispute resolution process, noting that parents are often left with the burden of advocating alone for their children when districts fail to identify children with special needs and to provide adequate supports.¹⁸⁵ Dr. Kevin Brady of the University of Arkansas noted that IDEA requires schools to include parents as an integral part of the IEP team; schools may not make "any noticeable changes in a student's IEP without notifying the parents...yet it happens with alarming regularity."¹⁸⁶ Dr. Brady emphasized that schools are legally responsible for explaining

¹⁷⁷ Nichols Testimony, Transcript 4, p. 6 line 34 – p. 7 line 5.

¹⁷⁸ Hager Testimony, Transcript 3, p. 5 lines 12-13. Nichols Testimony, Transcript 4, p. 9 lines 1-5.

¹⁷⁹ Evans Testimony, Transcript 5, p. 11 line 24 – p. 12 line 2.

¹⁸⁰ Evans Testimony, Transcript 5, p. 11 lines 37-40; p. 12 lines 3-13.

¹⁸¹ Nichols Testimony, Transcript 4, p. 6 lines 1-5, p. 7 lines 1-5.

¹⁸² Lafont Testimony, Transcript 2, p. 10 lines 9-15.

¹⁸³ Ibid.

¹⁸⁴ Nichols Testimony, Transcript 4, p. 7 lines 36 – p. 8 line 4.

¹⁸⁵ Lafont Testimony, Transcript 2, p. 4, lines 33-39; p. 8 lines 1-6; Hager Testimony, Transcript 3 p. 4 lines 10-25; Huggins Testimony, Transcript 2, p. 10 line 34 – p. 14 line 12.

¹⁸⁶ Brady Testimony, Transcript 1, p. 4 lines 5-16.

any aspects that parents are unaware of or need clarity on so that parents are able to fully participate in the decision making process.¹⁸⁷

Ron Hager of the National Disability Rights Network pointed out that parents provide critical information about their children's needs that is necessary for schools to develop an adequate support plan—information which is left out when these voices are stifled in the IEP process.¹⁸⁸ Despite this importance, Hager observed that schools may use jargon, outnumber parents in meetings, and use other tactics to shut down parent concerns in meetings.¹⁸⁹ Mr. Hager testified that these hostilities have a much greater impact on “low-resource” parents, though “...even parents of means struggle with getting their position heard at IEP meetings. I have represented lawyers, doctors, teachers, principals, and even a superintendent of schools who could not get the services that his family needed for their child.”¹⁹⁰ Panelist Syard Evans, CEO of the Arkansas Support Network testified that this issue may disproportionately impact black parents and students. Her agency has specifically worked with a significant number of “black families with children in predominantly white school settings that experience a substantial amount of difficulty navigating conflict resolution.”¹⁹¹ In addition to the role of parents, panelists similarly pointed to the importance of including regular and special education teachers in the IEP process, though noted that teachers are often unable to support parents in advocating for their children because their views are also stifled.¹⁹² Attorney Amelia Lafont testified that teachers often fear retaliation and discipline for advocating on behalf of their students' needs.¹⁹³ According to Lafont, “teachers may experience things such as verbal admonishments, dubious discipline, ostracism, and denial of textbooks for their classroom” as a result of challenging practices that are harmful to their students with disabilities.¹⁹⁴ Mr. Hager testified that in such situations teachers may privately call parents in advance of IEP meetings and ask the parent to advocate on the teacher's behalf, “because if the teacher said it, they would get in trouble.”¹⁹⁵

Even in more supportive, or at least non-adversarial environments, parents and students can be left feeling overwhelmed by the IEP process and the jargon or acronyms commonly used in meetings. Holland Hayden, mother of a child with an Autism diagnosis, related feeling overwhelmed with her son's 24-page IEP, despite being overall satisfied with the school's support.¹⁹⁶ “[T]his is literally a screenshot or snippet of his IEP that I don't know what this means. There's no explanation in it. We spoke about it, but if I'm not making copious notes during these 10-15 minutes meetings that I have, I'm not going to understand everything.”¹⁹⁷ Panelist James Hunter Joyce described a very supportive and successful k-12 experience in

¹⁸⁷ Brady Testimony, Transcript 1, p. 7 lines 17-28.

¹⁸⁸ Hager Testimony, Transcript 3, p. 15-17.

¹⁸⁹ Hager Testimony, Transcript 3, p. 4 lines 10-25.

¹⁹⁰ Hager Testimony, Transcript 3, p. 4 lines 18-25; Brady Testimony, Transcript 1, p. 4 lines 5-16.

¹⁹¹ Evans Testimony, Transcript 5, p. 10 lines 9-24.

¹⁹² Hager Testimony, Transcript 3 p. 4 lines 26-35; Lafont Testimony, Transcript 2, lines 6-14.

¹⁹³ Lafont Testimony, Transcript 2, p. 5 lines 10-13.

¹⁹⁴ Lafont Testimony, Transcript 2, p. 5 lines 13-14.

¹⁹⁵ Hager Testimony, Transcript 3, p. 4 lines 26-35.

¹⁹⁶ Hayden Testimony, Transcript 4, p. 25 line 34 – p. 26 line 9.

¹⁹⁷ Hayden Testimony, Transcript 4, p. 25 line 34 – p. 26 line 9.

Fairfield Public Schools.¹⁹⁸ Yet, Joyce described a continued need for self-advocacy throughout his school years. He had strong parent advocates, began sitting in on his own IEP meetings while he was still in elementary school, and “felt even sometimes that I had to prove myself competent and capable before supports were implemented. So advocacy played a large role in my success.”¹⁹⁹

When complaints are elevated to the district or state levels, Lafont raised specific concerns within the ADE regarding nepotism and minimal turnover of senior administrators, lack of course correction from repeatedly problematic districts, and a lack of investigation into ethics complaints.²⁰⁰ Thomas Nichols of Disability Rights Arkansas testified that his agency is often contacted to help advocate for families dealing with districts who fail to provide services and recognize prior knowledge of students’ disabilities, despite the students having previous histories of intensive services such as acute or residential psychiatric treatment.²⁰¹

State Monitoring of IDEA Compliance in Schools

Dr. Jody Fields, Director of IDEA Data & Research at the University of Arkansas Little Rock, noted that the IDEA requires schools to conduct an annual survey of families as part of its Special Education Annual Performance Report.²⁰² While the state collects much more comprehensive data as part of its annual survey,²⁰³ it is only required to report on a single indicator: “*Percent of parents with a child receiving special education services who report that schools facilitated parent involvement as a means of improving services and results for children with disabilities.*”²⁰⁴ Responses to the surveys²⁰⁵ are averaged on a scale of either 1-6 (for school age surveys) or 1-7 (for early childhood surveys). In the table below, surveys with an overall average rating of four or above are counted as a positive response to this indicator. Using this aggregate measure, 2021 data show that 90-96% of parents responding to the survey indicated that schools facilitated their involvement as a means of improving services, with approximately 25% of families responding.²⁰⁶ The Committee notes that while related questions are included, the exact indicator reported does not appear on the parent surveys;²⁰⁷ as such it is unclear that the aggregate measures the state is using to calculate this response accurately reflect the intended indicator.

¹⁹⁸ Joyce Testimony, Transcript 5, p. 2 line 41 – p. 4 line 19.

¹⁹⁹ Joyce Testimony, Transcript 5, p. 3 lines 29-30; p. 4 lines 14-19.

²⁰⁰ Lafont Testimony, Transcript 2, p. 4 lines 26 – p. 5 line 5.

²⁰¹ Nichols Testimony, Transcript 4, p. 8 lines 22-28.

²⁰² Fields Written Testimony, pp. 6-25, Appendix B; see also IDEA Data & Research Newsletter, February 2022, Vol 16, Issue 1, Appendix B (Included in Fields’ written testimony)

²⁰³ Family Involvement Survey, Appendix B (included in Fields’ written testimony)

²⁰⁴ Ibid.

²⁰⁵ See Family Involvement Survey, Appendix B (included in Fields’ written testimony)

²⁰⁶ IDEA Data & Research Newsletter, February 2022, Vol 16, Issue 1, p.2, available at Appendix B (included in Fields’ written testimony)

²⁰⁸ Fields Written Testimony, p. 6, Appendix B

Group	FFY 2018 Rate	FFY 2019 Rate	FFY 2020 Rate
Preschool	93.83%	91.12%	90.55%
School age	95.82%	96.52%	96.23%

Dr. Fields indicated that while data from the rest of the parent surveys is not public, her office does produce reports for the LEAs who then discuss the results and steps that can be taken toward improvement.²⁰⁸

In addressing accountability concerns, Dr. Brady emphasized that IDEA includes a series of alternative dispute resolution options designed to encourage schools and parents to work tighter toward mutually acceptable agreements, recognizing that it is often not in the best interest of the students to go to litigation.²⁰⁹ Matt Sewell of the ADE described the state’s role in monitoring compliance with IDEA, mediating dispute resolution between school districts and parents, and managing the grants issued to non-profit entities to help provide services in these areas.²¹⁰ According to the Arkansas Department of Education, there are 261 non-charter school districts, 1,042 K-12 public schools,²¹¹ and 24 district charter schools in the state.²¹² Sewell reported that over the past five years, of the more than 66,000 students with disabilities in Arkansas classrooms, the ADE has only received an average of 22 written complaints and conducted 33 due process hearings per year.²¹³

Complaints, Mediations, and Facilitated IEPs Reported 2017-2022 ²¹⁴				
	Due Process	State Complaints	Mediations	Facilitated IEPs
2017	29	16	31	47
2018	32	28	20	64
2019	31	27	16	26
2020	37	18	16	26
2021	39	25	15	23
2022	53	38	19	19

²⁰⁸ Fields Written Testimony, p. 6, Appendix B

²⁰⁹ Brady Testimony, Transcript 1, p. 8 line 20 – p. 9 line 4.

²¹⁰ Sewell Testimony, Transcript 5, p. 12 lines 38-41; p. 13 lines 13, 15-16; p. 14 line 1-3.

²¹¹ Arkansas Department of Education. “Arkansas K-12 Profile: 2021 - 2022.” ADE Data Center - Arkansas K-12 Profile: 2021-2022, November 1, 2021. [Found here](#).

²¹² “Arkansas Charter Schools: NCSRC.” National Charter School Resource Center. U.S. Department of Education. Accessed July 20, 2022. [Found here](#).

²¹³ Sewell Testimony, Transcript 5, p. 14 lines 33-34; Fields Testimony, Transcript 3, p. 6 lines 12-20. *Note: Fields reported 66,544 students with disabilities, representing 15.22% of the children in Arkansas public schools, pk-12.*

²¹⁴ Source: Written testimony submitted by FOIA request, Matt Sewell, September 7, 2022. See Appendix B for additional information. The Committee notes that current testimony did not include information about how parents are informed that they have the right to make complaints.

Sewell noted that state policy requires response to any noncompliance findings against a district with corrective actions to address current issues and future provisions of special education.²¹⁵ Trends in complaints and hearings are annually reviewed, and technical assistance and professional learning opportunities are offered across the state in areas where issues are reported.²¹⁶ Sewell noted that complaints received by DESE-OSE are currently trending toward meeting students' behavioral needs, and addressing IEP implementation issues.²¹⁷ Trends in dispute resolution hearings are centered on behavioral issues, speech/dyslexia concerns, and evaluation issues.²¹⁸

Sewell also shared information regarding grants provided to the 15 co-ops throughout the state, funding school behavioral supports in response to the reoccurrence of behavior-related complaints and hearings.²¹⁹ Several resources on more recent state initiatives were also provided from Sewell and his colleagues during the hearing, such as Arkansas Behavior Support Specialists and Autism Partnership Foundations.²²⁰

The Committee recognizes that the small number of districts facing corrective action plans may not be representative of the broader education system across the state, and that due to the local nature of issues heard during testimony, there may be a limited scope in understanding the full picture of occurrences within the school districts. Panelist Syard Evans of the Arkansas Support Network testified that in FY 2021 her agency's educational advocates participated 313 meetings related to some sort of IEP advocacy and support.²²¹ The Committee also recognizes that although the testimony does not allow for the ability to generalize issues on a statewide level, through a civil rights lens, it is problematic for even a limited number of students to be denied services to which they are entitled on the basis of their disability. Regardless of the how small the number, it is the Committee's intent to identify and understand the barriers students with disabilities and their families face in accessing free and appropriate public education, or being overlooked for an evaluation.

Finding VII: There are limited protections against disparities in academic and disciplinary practices for students with disabilities; students of color who have disabilities may be at particularly high risk.

One of the most controversial elements of the IDEA statute involves disciplining students with disabilities, especially when there is removal to outside the school environment, potentially violating FAPE.²²² Testimony for this study indicated that IDEA offers limited protections against disparities in academic and disciplinary practices, despite physical removal from the

²¹⁵ Sewell Testimony, Transcript 5, p. 14 lines 35-37.

²¹⁶ Sewell Testimony, Transcript 5, p. 14 lines 40-42.

²¹⁷ Sewell Testimony, Transcript 5, p. 15 lines 1-5; PPT side 52.

²¹⁸ Sewell Testimony, Transcript 5, p. 15 lines 1-5; PPT slide 52.

²¹⁹ Sewell Testimony, Transcript 5, p. 15 lines 7-10.

²²⁰ Sewell Testimony, Transcript 5, p. 15 lines 16-20. For more information on behavioral supports see Findings II and IV.

²²¹ Evans Testimony, Transcript 5, p. 10 lines 3-8.

²²² Brady Testimony, Transcript 1, p. 9 lines 19-29.

classroom being a possible violation of FAPE.²²³ Dr. Jodi Fields, Director of the IDEA Data and Research Office at UA Little Rock noted that in 2018, the state legislature passed a law²²⁴ that prohibits expulsion or out of school suspension of k-5 students unless due to an extraordinary occurrence.²²⁵ However, outside of the k-5 exclusion, there are no limits on the number of in school or out of school suspensions a student can receive.²²⁶

Panelists noted that failure to identify children with special needs, especially the failure to address associated behavioral support needs, often results in excessive suspensions or expulsions,²²⁷ seclusions, restraints,²²⁸ or even the use of judicial or police involvement to address problem behaviors.²²⁹ Students can be penalized for their disabilities, particularly in instances where school staff and administrators avoid or altogether ignore the need for accommodations.²³⁰ Panelists noted that resulting disciplinary actions against students with disabilities often funnel children into inadequate juvenile detention centers and the criminal justice system.²³¹ Thomas Nichols of Disability Rights Arkansas emphasized the importance of providing adequate services upfront, to address behaviors *prior* to a student getting into trouble.²³²

Intersection with Race and Disability.

Throughout the Committee's hearings, panelists presented particular concern that students of color²³³ and/or students of low socioeconomic status with disabilities are at especially high risk for experiencing excessive academic discipline or use of judicial or police involvement in place of receiving interventions to support behavioral health needs.²³⁴ While Dr. Fields reported that special education enrollment by race in Arkansas is "fairly balanced,"²³⁵ every district identified for significant disproportionality in student discipline has been for the racial category of Black.²³⁶ Ron Hager of the National Disability Rights Network noted that students of color with disabilities face disproportionate challenges and stereotypes as it relates to disciplinary actions, particularly in the cases of emotional disturbance and specific learning disabilities.²³⁷ Similarly,

²²³ *Free and Appropriate Education*. See: Smith Testimony, p. 22 lines 15-22, 25-31; Nichols Testimony, p. 8 lines 3-4; Brady Testimony, Transcript 1, p. 10 lines 33-38. See also: *Beyond Suspensions (2019)*.

²²⁴ AR Code § 6-18-507 (2017); <https://law.justia.com/codes/arkansas/2017/title-6/subtitle-2/chapter-18/subchapter-5/section-6-18-507/>

²²⁵ Fields Testimony, Transcript 3, p. 24 lines 2-9.

²²⁶ *Ibid*.

²²⁷ Nichols Testimony, Transcript 4, p. 6 lines 19-26; p. 7 lines 1-2; p.8 lines 3-11; Lafont Testimony, Transcript 2, p. 8 lines 3-6.

²²⁸ Hager Testimony, Transcript 3, p. 5 lines 9-13.

²²⁹ Nichols Testimony, Transcript 4, p. 7 lines 1-5; p. 8 lines 3-4; Hager Testimony, Transcript 3, p. 5 lines 9-13.

²³⁰ Lafont Testimony, Transcript 2, p. 8 lines 3-6.

²³¹ Hager Testimony, Transcript 3, p. 5 lines 9-13. Nichols Testimony, Transcript 4, p. 6 lines 28-29.

²³² Nichols Testimony, Transcript 4, p. 7 lines 1-2.

²³³ Brady Testimony, Transcript 1, p. 9 line 39 – p. 10 line 2.

²³⁴ Smith Testimony, p. 22 lines 15-22, 25-31, Nichols Testimony, p. 8 lines 3-4; Lafont Testimony, Transcript 2, p. 8 lines 1-6. See also: *Beyond Suspensions (2019)*.

²³⁵ Fields Testimony, Transcript 3, p. 6 lines 21-28; See Fields Presentation, PPT3, slide 19.

²³⁶ Fields written testimony, p.1, Appendix B.

²³⁷ Hager Testimony, Transcript 3 p. 3 lines 37 – p. 4 line 2.

special education attorney Amelia Lafont described “a systemic predisposition toward treating every issue as a mental health and behavior problem, to the point of prosecuting disabled children for non-compliance.”²³⁸ Lafont testified that this concern was “especially” prominent (though not limited to) minority students with disabilities.²³⁹

Lafont detailed one case in which a client was charged with second degree battery and incarcerated for allegedly attacking a teacher coach. The child was taking Adderall and had an IEP plan for ADHD.²⁴⁰ On the day in question, video footage from the school shows the coach being antagonistic toward the child in class.²⁴¹ The coach asked the student to leave the classroom, and while the student was reluctantly collecting his things, the coach used bodily force to push the student out the door and eventually held the student to the floor in a choke hold.²⁴² Lafont described the prosecution in this case as “aggressive” and “highly adversarial,” objecting to any introduction of evidence of the student’s disabilities, accommodations, or medications as proof that the coach knew the student had accommodations in place and did not follow the student’s IEP plan.²⁴³ After Lafont filed a motion for an open trial, on request of the family and some local journalists, the judge abruptly recused himself and the prosecutors office dropped all charges, closing the case.²⁴⁴

Lafont relayed the story of another student she worked with who was handed worksheets in class, “responded essentially as ‘F this, it’s hopeless,’ and left the classroom. For this he was prosecuted for incorrigibility.”²⁴⁵ Lafont emphasized that the school “never investigated the possible relationship between schoolwork and student behavior” before going to prosecution.²⁴⁶ The district eventually removed the student from campus and referred him to mental health treatment at a “materially sub-standard” day treatment center, without ever identifying or addressing his learning disabilities,²⁴⁷ despite recognizing that “the day treatment center would never identify or address his learning disabilities.”²⁴⁸ Staff at the treatment center described the child as having “undiagnosed learning disabilities and not mental health problems, but he was apparently not receiving appropriate educational evaluations or an accessible curriculum [at school].”²⁴⁹ The child was ultimately assigned to homebound services.²⁵⁰ Lafont noted that this student “should have received dyslexia intervention, occupational therapy, and thorough

²³⁸ Lafont Testimony, Transcript 2, pp. 8-10. *Note:* Commission Staff reached out to Miller County School District on 4/11/22 and 4/18/22 for comment and did not receive a response. Commission Staff reached out Texarkana Arkansas School District on 4/11/22 and was advised on 4/13/22 that opportunity for comment was forwarded to the Office of the Superintendent. No further response was received.

²³⁹ Lafont Testimony, Transcript 2, p. 8 lines 1-6.

²⁴⁰ Lafont Testimony, Transcript 2, p. 5 lines 39 – p. 6 line 1.

²⁴¹ Lafont Testimony, Transcript 2, p. 6 lines 7-22.

²⁴² Lafont Testimony, Transcript 2, p. 6 lines 12-22.

²⁴³ Lafont Testimony, Transcript 2, p. 6 lines 23-31.

²⁴⁴ Lafont Testimony, Transcript 2, p. 6 line 31 – p. 7 line 5.

²⁴⁵ Lafont Testimony, Transcript 2 p. 8 lines 12-20.

²⁴⁶ Lafont Testimony, Transcript 2, p. 8 lines 12-20.

²⁴⁷ Lafont Testimony, Transcript 2, p. 8 lines 19-20.

²⁴⁸ Lafont Testimony, Transcript 2, p. 8 lines 28-34.

²⁴⁹ Lafont Testimony, Transcript 2, lines 24-31.

²⁵⁰ Lafont Testimony, Transcript 2, p. 8 lines 24-40.

educational evaluations throughout his life. Instead, he and his extended family are left to cope alone with this situation every day in persistent poverty and isolation.”²⁵¹ Lafont lamented that in her representation of the student, she was successfully able to keep him out of the state’s detention system, but the student has still “not gotten access to education of any kind.”²⁵² Lafont concluded that substantial concerns remain regarding the human care and treatment of student with mental health and learning disabilities in Arkansas schools and juvenile detention facilities.²⁵³

Recommendations

Among their duties, advisory committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws, and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.²⁵⁴ In keeping with these responsibilities, and given the testimony heard on this topic, the Committee submits the following recommendations to the Commission:

1. The U.S. Commission on Civil Rights should:
 - a. Distribute copies of this report and the recommendations contained herein to:
 - i. The Arkansas Department of Education, with a request that the Department forward the report to all Arkansas school districts, particularly those specifically named in this report.
 - ii. Disability Rights Arkansas
 - iii. The Arkansas Association of Educational Administrators
2. The U.S. Commission on Civil Rights should issue the following recommendations to the Governor of the State of Arkansas and the Arkansas General Assembly:
 - a. Given that students with IEPs typically get far less instructional time in core subjects than their peers, The Commission requests that the Arkansas General Assembly consider legislation modeled on Vermont Act H.897 (2018),²⁵⁵ which included the following provisions regarding students with IEP, through their annual IEPs and through the scheduling of special and general education teachers:

²⁵¹ Lafont Testimony, Transcript 2, p. 7 lines 27-32.

²⁵² Lafont Testimony, Transcript 2, p. 7 lines 25-27.

²⁵³ Lafont Testimony, Transcript 2, p. 7 lines 2-5; p. 9 line 18 – p. 10 line 19.

²⁵⁴ 45 C.F.R. § 703.2 (2018).

²⁵⁵ VT H.897 (Act No. 173) (2018);

<https://legislature.vermont.gov/Documents/2018/Docs/ACTS/ACT173/ACT173%20As%20Enacted.pdf>

- i. Ensuring all students receive 100% of core instruction in English Language Arts and math and are never pulled out during this critical instructional time
 - ii. Providing extra time during the day, every day, for intervention and remediation
 - iii. Having only highly skilled and trained staff provide academic support to struggling students as opposed to having paraprofessionals provide academic support
 - iv. Expecting general education teachers to take the lead in teaching all students
 - v. Allowing special educators to play to their strengths, rather than attempt to be jacks-of-all-trades
 - vi. Expanding social, emotional, and behavioral supports by focusing on prevention, adding more expertise in schools, and partnering with outside agencies
3. The U.S. Commission on Civil Rights should issue the following recommendations to the Arkansas Division of Elementary and Secondary Education:
- a. Given that there is uncertainty and even controversy regarding the degree to which parents feel that current special education systems empowers them, and that the Office of Education Policy at the University of Arkansas/Fayetteville routinely surveys parents at little or no cost for policymakers, the Commission requests that the Division consider work with the Office for Education Policy at the University of Arkansas/Fayetteville to survey parents of students with IEPs to measure their evaluation of special education services in Arkansas. This could identify system strengths, as well as areas needing improvement.
 - b. Assuming legislation is not feasible in the short term, the Arkansas Division of Elementary and Secondary Education should consider instead modifying and implementing the administrative reforms detailed in the Louisiana “Staffing and Scheduling Best Practices Guidance”²⁵⁶ This report suggests the following administrative language to accomplish the same goals as Vermont Act 897:
 - i. Sample language that may be added to the comment section of the IEP to ensure services don’t reduce access to core reading and math:

²⁵⁶ found at: <https://www.louisianabelieves.com/docs/default-source/academics/staffing-and-scheduling-guidance.pdf>

1. Student receives 100% of core reading and math instruction each day. Services will be scheduled at other times during the school day.
 2. Student receives services during regularly scheduled acceleration period.
 3. Student receives services during regularly scheduled reading intervention/RTI/MTSS period.
 4. Student receives services during _____ (state what courses or other time will be missed).
- ii. Sample language to ensure services are provided by content strong teachers:
1. Services to be provided by certified reading teacher classroom teacher.
 2. Services to be provided by certified math teacher.
 3. Services to be provided by reading specialist, interventionist or individual strong in the content area.
- iii. Sample language to ensure students participate in high quality general education acceleration at the secondary level:
1. Many schools have created graded and/or credit bearing extra time acceleration classes taught by general education content strong staff. These are often called math lab, English acceleration or similar. These courses can and should serve students with and without disabilities.
 2. Scheduler: Given how important scheduling is to implementing the best practice guidance, it follows that the skill of the scheduler is also important. Scheduling can be split into two separate tasks, each with distinct required skills: 1) the strategic “what to schedule” and 2) the tactical “building schedule”. of the Before starting to build a schedule, it is critical to have a clear plan based on the best practice guidance for what should be scheduled. Developing this plan requires expertise in teaching and learning and a deep understanding of the best practice guidance. It does not require actually being a skilled scheduler.
4. The U.S. Commission on Civil Rights should issue the following collaborative recommendations to the Arkansas Department of Education and Disability Rights Arkansas:
- a. The agencies should collaborate to better track relevant data to gauge the landscape of contested proceedings in the state and avoid confusion.

- b. The agencies should collaborate to prepare an online class (at least annually before the school year begins) for parents and students to learn the provisions of IDEA and to have school districts make their facilities available for those classes.

Appendix

Materials referenced in this report are available online²⁵⁷

A. Hearing Materials

- a. Transcript
- b. Agenda
- c. Minutes
- d. Panelist Presentations (PPT)
- e. Other Records

B. Written Testimony

- a. Thomas Nichols, Disability Rights Arkansas
- b. Jody Fields, Director, IDEA Data & Research, University of Arkansas at Little Rock

²⁵⁷ Cited documents and meeting records are available at:

https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L0FSL0IERUEgYW5kIEVkdWNhdGlvbg%3D%3D.

**Arkansas Advisory Committee to the
United States Commission on Civil Rights**



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