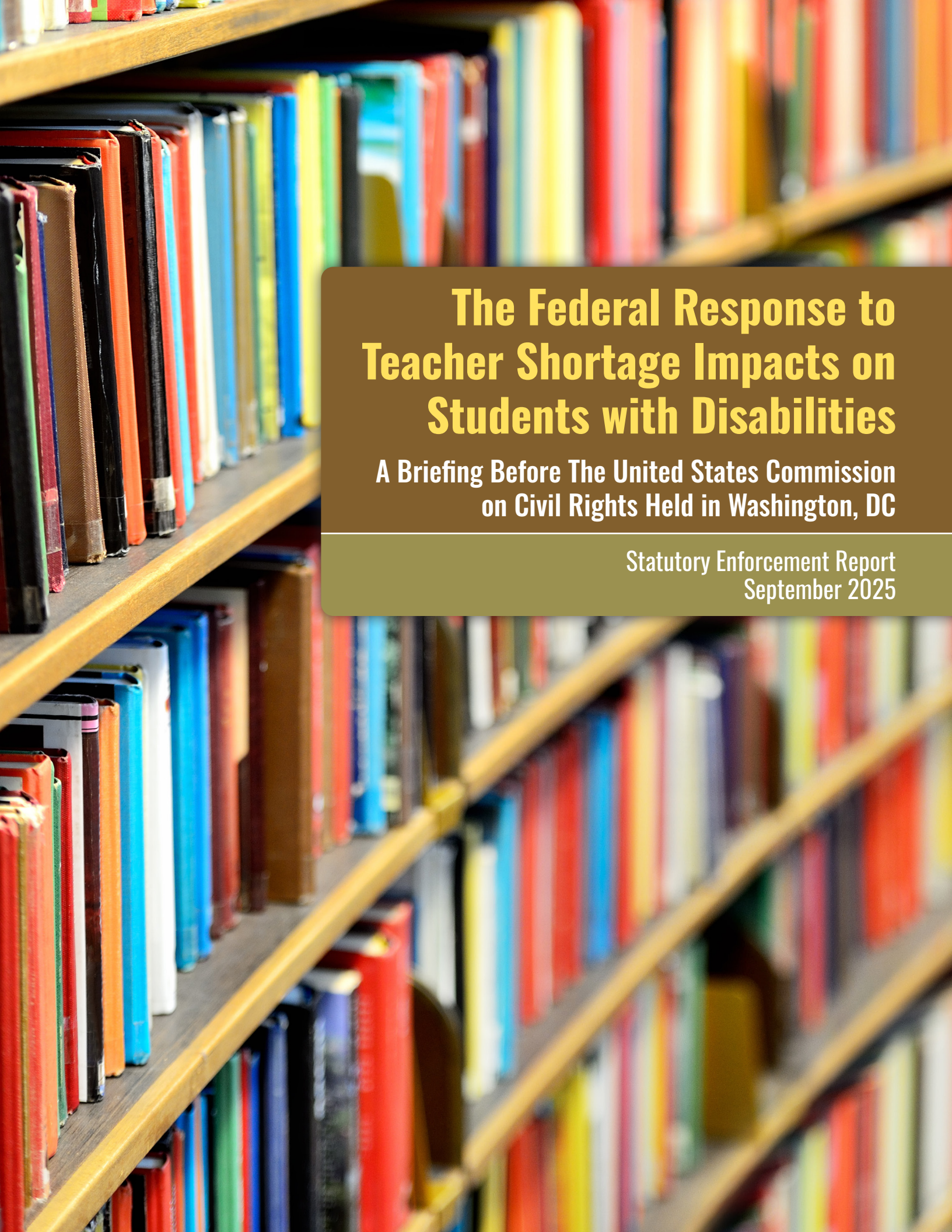

# The Federal Response to Teacher Shortage Impacts on Students with Disabilities

## A Briefing Before The United States Commission on Civil Rights Held in Washington, DC

Statutory Enforcement Report
September 2025

## U.S. Commission on Civil Rights

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# The Federal Response to Teacher Shortage Impacts on Students with Disabilities

United States Commission on Civil Rights
2025 Statutory Enforcement Report

**UNITED STATES COMMISSION ON CIVIL RIGHTS**

1331 Pennsylvania Ave., NW • Suite 1150 • Washington, DC 20425 www.usccr.gov

**Letter of Transmittal**

September 30, 2025

President Donald J. Trump
Vice President J.D. Vance
Speaker of the House Mike Johnson
President Pro Tempore of the Senate Chuck Grassley

Dear President Trump, Vice President Vance, Speaker Johnson, and President Pro Tempore Grassley:

On behalf of the United States Commission on Civil Rights (the "Commission"), I am pleased to transmit our report, *Teacher Shortages: Impacts on the Civil Rights of Students.* The report is also available in full on the Commission's website at www.usccr.gov.

In March 2025, this Administration issued an Executive Order, *Improving Education Outcomes by Empowering Parents, States, and Communities,* which calls for dismantling the U.S. Department of Education. In the midst of this action, the Commission voted unanimously to undertake an investigation led by Commissioner Gilchrist, a Trump appointee, to elevate concerns arising from the Nevada Advisory Committee's report highlighting teacher and staff shortages and their impact on equity.

This report builds on the work of the Commission's Advisory Committees, which operate in every state, Washington, D.C., and the U.S. territories. In January 2023, the Arkansas Advisory Committee examined the state's compliance with the Individuals with Disabilities Education Act (IDEA). In January 2024, the Nevada Advisory Committee highlighted unfair learning conditions caused by teacher and staff shortages. In December 2024, the D.C. Advisory Committee released a report on barriers to special education and transportation services for students with disabilities.

As part of this national examination, the Commission held a public briefing in November 2024 in Washington, D.C., where educators, advocates, and families shared their stories and recommendations. The Commission also hosted a virtual listening session in December 2024 so parents, students, and teachers across the country could describe how shortages have affected them directly.

The Commission examined the growing nationwide shortage of qualified teachers and its particularly harsh effects on students with disabilities and other underserved groups. The 2020 COVID-19 pandemic magnified the crisis. School closures, shifts to virtual and hybrid learning, and disruptions to routines disproportionately harmed students with disabilities. Many schools

lacked the resources to provide necessary accommodations, administer Individualized Education Programs (IEPs), or supply technology and internet access for equitable participation. These disparities were most acute in low-income, high-poverty, and high-minority districts.

The pandemic also accelerated teacher attrition and exposed the chronic shortage of qualified educators, particularly in special education. Nearly half of public schools reported special education vacancies in 2022–24, with many positions filled by long-term substitutes or underqualified teachers. Estimates suggest as many as 400,000 underqualified teachers now make up more than 10 percent of the U.S. workforce, undermining the quality of education. Excessive workloads, administrative burdens, and stagnant pay were cited as primary reasons for burnout, especially among special education teachers.

The lack of comprehensive national data compounds the problem. There is no unified federal database to track teacher vacancies, certification, or staffing needs, making it difficult to assess the true scope of shortages. This gap in data prevents policymakers from fully understanding and addressing how shortages undermine students' civil rights.

To capture both the scope of the problem and the federal government's response, the Commission organized this report into three chapters. Chapter 1 explains the legal protections that safeguard students with disabilities and outlines the federal government's responsibility to enforce those rights. Chapter 2 examines the nationwide teacher shortage, how the COVID-19 pandemic made the problem worse, and the particular impact of special education teacher shortages. This chapter also includes case studies from six states — Kansas, Maine, Mississippi, Nevada, North Dakota, and West Virginia — to show how shortages play out on the ground. Chapter 3 reviews how Congress and the U.S. Department of Education have responded to these challenges and where gaps remain.

Although the Commissioners did not reach consensus on a unified set of findings and recommendations, the Commission heard from a wide array of experts on steps the federal government should take. Our report highlights the following expert recommendations as the most optimal path forward to tackle the crisis facing our students:

1. **Fully fund the Individuals with Disabilities Education Act (IDEA).** Congress should meet the original commitment of covering up to 40% of average per-pupil spending nationwide; federal funding currently falls far below this target.

2. **Recruit and retain qualified teachers through robust pipelines.** Congress should appropriate funds for Grow Your Own (GYO) programs, with a specific focus on underserved areas and special education. States and localities should expand GYO initiatives that recruit paraprofessionals, parents, and community members into teaching.

3. **Promote a representative educator workforce.** States and districts should prioritize recruiting educators who reflect the demographics of the student population, which is particularly critical for students receiving special education services.

4. **Increase teacher pay.** Congress should enact legislation providing tax credits for educators and grants that incentivize school districts to raise salaries.

5. **Collect and publish comprehensive data.** Congress should require the Department of Education to develop a centralized, disaggregated database on teacher shortages, certification status, and demographics, broken down by role (e.g., special education, bilingual education), region, and student population served, including AANHPI subgroups.

6. **Strengthen state–federal collaboration.** The federal government should assist states in developing strategies to recruit, retain, and retrain educators, particularly in underserved areas, while requiring states to submit staffing data to federal agencies.

7. **Protect parental rights under IDEA.** Congress should require school districts to notify parents of changes in rights and protections when students move from public to private schools.

8. **Ensure ethical and transparent hiring.** There must be stronger oversight to safeguard the rights of overseas educators, who are increasingly relied upon to fill shortages, ensuring they are not subject to exploitative practices.

The Commission submits this report to provide Congress, the President, and the American people with a clear record of how teacher shortages, exacerbated by the pandemic and persistent inequities, directly affect the civil rights of students. At a time when educational attainment is tied to the strength of our democracy, economy, and national security, addressing this crisis is not optional; it is essential.

For The Commission,

Rochelle M. Garza
Chair, U.S. Commission on Civil Rights

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# Acknowledgements

This report was produced under the direction of and with the contribution of Dr. Marik Xavier-Brier, Director of the Commission's Office of Civil Rights Evaluation (OCRE). OCRE Social Scientist Dr. Julie Grieco performed principal research and writing. OCRE thanks interns Shayna Kieley (B.A. Candidate 2025, University of Maryland), Katelin Wong (B.S. Student in Public Policy, Cornell University, 2027), and Lavleen Madahar (B.A. Candidate 2026, Brown University) for their valuable research assistance.

The lead Commissioner for this report was Commissioner Stephen Gilchrist, and his special assistant Thomas Simuel assisted in the planning and execution of the research plan. Commissioners' Special Assistants Nathalie Demirdjian-Rivest, Alexis Fragosa, John Mashburn, Carissa Mulder, Irena Vidulovic, Stephanie Wong, and Yvesner Zamar assisted their commissioners in reviewing the report.

The Commission's General Counsel David Ganz and Attorney-Advisors Sheryl Cozart and Pilar Velasquez McLaughlin reviewed and approved the report for legal sufficiency.

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# EXECUTIVE SUMMARY

The 2020 COVID-19 pandemic undeniably had widespread effects on all facets of society. Across the U.S., state education agencies and school districts faced daunting challenges and difficult decisions to determine how to best serve students during the pandemic. In the spring of 2020, pursuant to state-mandated stay-at-home orders, many U.S. public schools physically closed their buildings and transitioned to online teaching and/or utilized hybrid models of teaching. Despite the necessity of employing virtual and hybrid instruction, this change posed a myriad of challenges for teachers and students, in particular for students with disabilities.

The use of virtual and hybrid instruction intensified some longstanding educational disparities between school districts across the country, such as in the share of qualified teachers and access to technology. Many students in school districts with low-income residents struggled to obtain basic educational resources like parental help with at-home assignments and a quiet dedicated work environment.[1] These students were further impacted by the shift to virtual classrooms because they lacked updated technology, like web cameras—a necessary tool for virtual instruction and class participation—and stable high-speed internet at home.[2] Students with disabilities in majority low-income school districts faced additional challenges because there was also a dearth of resources for accommodating their educational needs.[3]

Another issue in this era is that there were too few qualified teachers.[4] Investigating the impact of teacher shortages is difficult, however, because there is no unified database on teacher shortages and no direct method to determine its magnitude, resulting in a lack of comprehensive national data. Most of what is known about teacher shortages comes from national panel surveys of schools, or from state or local education agencies themselves. The Department of Education (ED) is not required to report data on teacher shortages, so the full extent of teacher vacancies is difficult to determine. Other ways that researchers attempt to measure teacher shortages include enrollment statistics in teacher preparation programs and testimonials from educators and school officials. Education staffing largely depends on supply and demand, with teacher demand being the number of teachers needed for a given number of students with specific needs.[5] The supply of teachers is

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[1] Benjamin Herold, "The Disparities in Remote Learning under Coronavirus (in Charts)," Education Week, Apr. 10, 2020, https://www.edweek.org/technology/the-disparities-in-remote-learning-under-coronavirus-in-charts/2020/04; Crystal Grant, "COVID-19's Impact on Students with Disabilities in Under-Resourced School Districts," *Fordham Urb. L.J.,* 2021, vol. 48, no. 127, https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2825&context=ulj.

[2] Herold, "The Disparities in Remote Learning under Coronavirus (in Charts)."

[3] Linda Darling-Hammond, Abby Schachner, and Adam K. Edgerton, "Restarting and Reinventing School: Learning in the Time of COVID and Beyond," Learning Policy Institute, Aug. 2020, https://restart-reinvent.learningpolicyinstitute.org/sites/default/files/product-files/Restart_Reinvent_Schools_COVID_REPORT.pdf.

[4] Tuan D Nguyen, Chanh B. Lam, and Paul Bruno, "What Do We Know About the Extent of Teacher Shortages Nationwide? A Systematic Examination of Reports of US Teacher Shortages," *Aera Open*, 2024, vol 10, https://journals.sagepub.com/doi/pdf/10.1177/23328584241276512.

[5] Emma García and Elaine Weiss, "U.S. Schools Struggle to Hire and Retain Teachers," Economic Policy Institute, Apr. 16, 2019, https://www.epi.org/publication/u-s-schools-struggle-to-hire-and-retain-teachers-the-second-report-in-the-perfect-storm-in-the-teacher-labor-market-series/.

driven by factors such as the number of people interested in and training to be teachers, as well as their commitment to the profession.[6]

Over the past several decades in the U.S. there has been a drop in the number of education degrees awarded and in the number of people completing teacher preparation programs.[7] A national survey assessing the impact of the COVID-19 pandemic on schools reported that 62% of public schools were concerned about filling vacant staff positions for the 2021-22 school year; schools expected to have an average of three teaching vacancies for the following school year.[8] The staff shortage in the fall of 2021 was most acute for substitute teachers, followed by bus drivers, special education teachers, and paraprofessionals.[9] These vacancies were most prevalent in high-minority schools and high-poverty schools.[10] In addition to vacancies, teacher shortages include teaching positions that are held by teachers who are underqualified because they have non-standard certifications or are not certified in the subject area they teach.[11] The Commission received testimony that recent data suggest there may be as many as 400,000 underqualified teachers in the U.S., making up more than 10% of the existing teacher workforce.[12]

The shortage of special education teachers is a persistent issue.[13] For the 2021-22 school year, the Institute of Education Sciences found that 43% of public schools reported vacant teaching positions for special education. For schools that reported any teaching vacancies (44%), the rate of special education vacancies was about twice the rate of most other teaching position vacancies.[14] In June 2022, 47% of public schools anticipated needing to fill special education positions before the start of the following school year, and by March 2024 that number increased to 52% of public schools.[15] The Commission received testimony from multiple panelists describing the demanding workload and administrative burdens of special education teachers as a main source of stress[16] or

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[6] Ibid.
[7] Ibid.
[8] Institute of Education Sciences, "School Pulse Panel," https://ies.ed.gov/schoolsurvey/spp/.
[9] Ibid.
[10] Ibid.
[11] Nguyen, Lam, and Bruno, "What Do We Know About the Extent of Teacher Shortages Nationwide?"
[12] Tuan Nguyen, Written Statement for the *Federal Response to Teacher Shortage Impacts on Students with Disabilities* briefing, at 1 (hereinafter Nguyen Statement).
[13] Kaitlin Pennington McVey and Justin Trinidad, "Nuance in the Noise: The Complex Reality of Teacher Shortages," Bellwether Education Partners, 2019, https://bellwether.org/wp-content/uploads/2019/01/Nuance-In-The-Noise_Bellwether.pdf.
[14] Institute of Education Sciences, "School Staffing Shortages: Results from the January School Pulse Panel, 2022," https://nces.ed.gov/surveys/spp/docs/release/2022_SPP_Staffing.pdf.
[15] Institute of Education Sciences, "School Pulse Panel."
[16] Sepi Seyedin-Elahian, Written Statement for the *Federal Response to Teacher Shortage Impacts on Students with Disabilities* briefing, at 3 (hereinafter Seyedin-Elahian Statement); Alison Lauber, Written Statement for the *Federal Response to Teacher Shortage Impacts on Students with Disabilities* briefing, at 4 (hereinafter Lauber Statement); Jessica Tang, Written Statement for the *Federal Response to Teacher Shortage Impacts on Students with Disabilities* briefing, at 2 (hereinafter Tang Statement).

a reason they leave the profession.[17] The seemingly untenable workload also compromised the quality of education provided to students with disabilities.[18]

Special education teacher shortages during the pandemic affected students with disabilities in multiple ways. Children with disabilities were less likely to be officially diagnosed in this era, delaying their eligibility for services.[19] Some students found the shift to remote or hybrid schooling particularly difficult, as normal routines were disrupted.[20] School closures led to students losing access to required specialized equipment.[21] Additionally, the Commission received testimony from a special education coordinator about the increasing difficulty of administering accommodations, meaning that schools were not able to properly implement Individualized Education Plans (IEPs).[22] While this testimony illuminates the lived experience of some educators, students, and parents, the lack of national data on teacher shortages curtails a broader understanding of how these shortages impact students with disabilities.

The Commission voted to investigate the impact of teacher shortages on the education of students with disabilities, as well as how the federal government, particularly ED, has responded. In addition to the work of the Headquarters report, the Commission has State Advisory Committees in all 50 states, Washington D.C., and the territories. In January 2023, the Arkansas Advisory Committee to the Commission published a report examining the state's compliance with the Individuals with Disabilities Education Act (IDEA) in schools,[23] and in January 2024, the Nevada Advisory Committee published a report examining educational inequities stemming from the state's teacher and professional staff shortages.[24] In November 2024, the Commission hosted a briefing: *The Federal Response to Teacher Shortage Impacts on Students with Disabilities.*[25] The briefing featured education experts and advocates, educators, and impacted persons who testified to the effects of teacher shortages. To broaden its understanding and incorporate diverse perspectives, the Commission also held a virtual public listening session on December 13, 2024,

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[17] Terita Gusby, Written Statement for the *Federal Response to Teacher Shortage Impacts on Students with Disabilities* briefing, at 1 (hereinafter Gusby Statement); Jessica Levin, Written Statement for the *Federal Response to Teacher Shortage Impacts on Students with Disabilities* briefing, at 6 (hereinafter cited as Levin Statement).
[18] Brittany Patrick, Written Statement for the *Federal Response to Teacher Shortage Impacts on Students with Disabilities* briefing, at 4 (hereinafter Patrick Statement).
[19] Amanda Levin Mazin, Written Statement for the *Federal Response to Teacher Shortage Impacts on Students with Disabilities* briefing, at 7 (hereinafter Mazin Statement).
[20] Alysha Legge, Written Statement for the *Federal Response to Teacher Shortage Impacts on Students with Disabilities* briefing, at 1 (hereinafter Legge Statement).
[21] Lauber Statement, at 2.
[22] Ibid., at 3.
[23] Arkansas Advisory Committee to the U.S. Commission on Civil Rights, "IDEA Compliance and Implementation in Arkansas Schools," Jan. 2023, https://www.usccr.gov/files/2023-01/2023_idea-compliance-and-implementation-in-ar.pdf.
[24] Nevada Advisory Committee to the U.S. Commission on Civil Rights, "Teacher and Professional Staff Shortages and Equity in Education in Nevada," Jan. 2024, https://www.usccr.gov/reports/2024/teacher-and-professional-staff-shortages-and-equity-education-nevada.
[25] U.S. Commission on Civil Rights, "Federal Response to Teacher Shortage Impacts on Students with Disabilities Briefing Transcript," https://www.usccr.gov/meetings/2024/11-15-federal-response-teacher-shortage-impacts-students-disabilities.

to provide an opportunity for educators, parents, students, and community members to share firsthand experiences and perspectives on how teacher shortages are impacting students with disabilities.[26]

This report is divided into three chapters. Chapter 1 provides an overview of the topic, including legal protections for students with disabilities and the role of the federal government in overseeing these rights. Chapter 2 describes the ongoing educator shortage and how the COVID-19 pandemic exacerbated the issue. The second chapter also investigates the impact of special education teacher shortages on students with disabilities, with an in-depth exploration of six selected states: Kansas, Maine, Mississippi, Nevada, North Dakota, and West Virginia. Finally, Chapter 3 outlines the federal response, including by Congress and ED.

The teacher shortage has serious and far-reaching consequences for students with disabilities. These consequences include inadequate educational experiences for students, reduced student achievement, and lower educational attainment levels that negatively impact future employment prospects. Regardless of the approach taken to instruction or the medium through which it takes place—online, in person, or hybrid—school districts and the federal government have a responsibility to ensure that all children, regardless of disability status, have access to a free and appropriate public education.

[26] U.S. Commission on Civil Rights, "U.S. Commission on Civil Rights Hosts Public Listening Session on Teacher Shortages," Dec. 13, 2024, https://www.usccr.gov/news/2024/us-commission-civil-rights-hosts-public-listening-session-teacher-shortages.

# CHAPTER 1: Introduction and Overview

While public schools have faced teacher shortages to varying degrees over decades,[27] staffing classrooms became especially difficult beginning in the spring of 2020 after the onset of the COVID-19 pandemic that led to state lockdown measures including school closures and remote instruction.[28] Difficulties in providing education during the pandemic, combined with the ongoing teacher shortage, had the greatest impact on disadvantaged students (e.g., low-income students, students of color, and students with disabilities).[29] Substantial evidence shows that school closures negatively affected students with disabilities since therapeutic interventions are usually administered in person on campus.[30] In addition, reductions in critical learning opportunities, diminished support systems, and limited access to services outside of school not only altered how students with disabilities experienced school, but also resulted in disproportionate learning loss.[31]

The Commission voted on September 20, 2024, to investigate the impact of teacher shortages on the education of students with disabilities, as well as the federal government's response. Commission staff researched the role of the federal government in overseeing the rights of students with disabilities as well as federal funding intended to support these students. In November 2024, the Commission hosted a briefing titled *The Federal Response to Teacher Shortage Impacts on Students with Disabilities.*[32] The briefing included education experts, education advocates, educators, and impacted persons who testified about teacher shortages. Additionally, because federal funding for education is provided to and distributed by the states, the Commission developed a sample of six states for an in-depth examination of the impact of special educator shortages (see Chapter 2 for selection and findings).

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[27] *See infra* notes 122-126 (history of teacher shortages).
[28] *See infra* notes 146-164 (COVID and teacher shortages).
[29] *See e.g.,* Melissa R. Dvorsky, Delshad Shroff, W. Bianca Larkin Bonds, Amanda Steinberg, Rosanna Breaux, and Stephen P. Becker, "Impacts of COVID-19 on the School Experience of Children and Adolescents with Special Education Needs and Disabilities," *Current Opinion in Psychology*, 2023, vol. 52, https://pmc.ncbi.nlm.nih.gov/articles/PMC10275652/pdf/main.pdf; Bruce A. Easop, "Education Equity During COVID-19: Analyzing In-Person Priority Policies for Students with Disabilities," *Stan.L.R*, 2022, vol. 74, no. 223, https://review.law.stanford.edu/wp-content/uploads/sites/3/2022/01/Easop-74-Stan.-L.-Rev.-223.pdf; Loretta Mason-Williams, Elizabeth Bettini, and Paul T. Sindelar, "Rethinking Shortages in Special Education: Making Good on the Promise of an Equal Opportunity for Students with Disabilities," *Teacher Education and Special Education: The Journal of the Teacher Education Division of the Council for Exceptional Children*, 2019, vol. 43, no. 1, https://journals.sagepub.com/doi/10.1177/0888406419880352.
[30] Danielle G. Dooley, Joelle N. Simpson, and Nathaniel S. Beers, "Returning to School in the Era of COVID-19," *JAMA Pediatrics*, 2020, vol. 174, no. 11, https://jamanetwork.com/journals/jamapediatrics/fullarticle/2769633.
[31] Centers for Disease Control and Prevention, "Operational Strategy for K-12 Schools through Phased Prevention," May 2021, https://protectpublicstrust.org/wp-content/uploads/2024/06/HQ-REF-24-00016-REFERRAL-DOCS.pdf; Olivia J. Lindly, Brianna K. Sinche, and Katharine E. Zuckerman, "Variation in Educational Services Receipt Among U.S. Children with Developmental Conditions," *Academic Pediatrics*, 2015, vol. 15, no. 5, https://pmc.ncbi.nlm.nih.gov/articles/PMC4572727/pdf/nihms721780.pdf.
[32] U.S. Commission on Civil Rights, "Federal Response to Teacher Shortage Impacts on Students with Disabilities Briefing Transcript," https://www.usccr.gov/meetings/2024/11-15-federal-response-teacher-shortage-impacts-students-disabilities.

## Legal Protections for Students with Disabilities

There are three main laws protecting the rights of students with disabilities: Title II of the Americans with Disabilities Act (ADA), passed in 1990; Section 504 of the Rehabilitation Act (Section 504), first passed in 1973; and the Individuals with Disabilities Education Act (IDEA), passed in 1975. Each of these laws, discussed below, addresses different parts of the educational landscape for students with disabilities.

### *Title II of the Americans with Disabilities Act of 1990*

Title II of the ADA requires that state and local governments give people with disabilities an equal opportunity to benefit from all their programs, services, and activities.[33] Title II defines disability as a "physical or mental impairment that substantially limits one or more of the major life activities of such individual," having a record of such an impairment, or being regarded as having such an impairment.[34] It further states that the definition of disability "shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA."[35]

In the context of schools, the ADA requires that public schools provide students with disabilities equal access to education, which includes ensuring physical access to school buildings and other services (e.g., auxiliary aids, communication support). For instance, if a student who uses a wheelchair attends a two-story school that was built before the ADA and has not been renovated with an elevator since, then the school must locate the student's classroom on the first floor.[36]

### *Section 504 of the Rehabilitation Act*

Section 504 of the Rehabilitation Act of 1973 is designed to protect the rights of individuals with disabilities in programs and activities receiving federal financial assistance.[37] Each federal agency has its own Section 504 regulations applying to its own programs. Requirements common to these regulations include reasonable accommodations for employees with disabilities; program accessibility; effective communication with people who have hearing or vision disabilities; and accessible new construction and alterations.[38] Section 504 may also be enforced through private lawsuits, and it is not necessary to file a complaint with an agency or receive a "right-to-sue" letter before going to court.[39]

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[33] 42 U.S.C. Chapter 126; 28 CFR Part 35.
[34] 28 C.F.R. § 35.108.
[35] 28 C.F.R. § 35.108(a)(2)(i).
[36] *See* U.S. Dep't of Justice Civil Rights Division, "State and Local Governments" https://www.ada.gov/topics/title-ii/#:~:text=other%20government%20business-,General%20Requirement,programs%2C%20services%2C%20and%20activities (accessed on May 2, 2025).
[37] 29 U.S.C. § 794 (Section 504).
[38] U.S. Dep't of Justice Civil Rights Division, "Guide to Disability Rights Laws," https://www.ada.gov/resources/disability-rights-guide/ (accessed Nov. 20, 2024).
[39] Ibid.

Within the Department of Education (ED), Section 504 covers qualified students with disabilities who attend schools receiving federal financial assistance. To be protected under Section 504, a student must be determined to: (1) have a physical or mental impairment that substantially limits one or more major life activities; (2) have a record of such an impairment; or (3) be regarded as having such an impairment.[40] Section 504 requires that school districts provide a Free Appropriate Public Education (FAPE) to qualified students in their jurisdictions who have a physical or mental impairment that substantially limits one or more major life activities.[41] A FAPE consists of the provision of regular or special education and related aids and services designed to meet the student's individual educational needs as adequately as the needs of nondisabled students are met.[42]

School districts receiving federal funds must establish standards and procedures for initial evaluations and periodic re-evaluations of students who need or are believed to need special education and/or related services due to a disability.[43] Within ED, the Section 504 regulatory provision[44] requires school districts to individually evaluate a student before classifying the student as having a disability or providing the student with special education.[45]

In September 2024, 17 states filed a lawsuit seeking to invalidate Section 504 of the Rehabilitation Act.[46] The plaintiffs wrote that "[b]ecause Section 504 is coercive, untethered to the federal interest in disability, and unfairly retroactive, the Rehabilitation Act is not constitutional under the spending clause."[47] In February 2025, both parties filed a Joint Status Report confirming that the case is paused and that no states have withdrawn.[48] Plaintiffs clarified that they do not plan to move the Court to declare or enjoin Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, as unconstitutional on its face.[49] The lawsuit remains active but is currently on hold.[50]

*Individuals with Disabilities Education Act (IDEA)*

Enacted in 1975, IDEA mandates the provision of a FAPE for eligible students ages 3-21.[51] Eligible students are those identified by a team of professionals as having a disability that adversely

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[40] U.S. Dep't of Education, "Protecting Students with Disabilities," https://www.ed.gov/laws-and-policy/individuals-disabilities/protecting-students-with-disabilities (accessed Nov. 20, 2024).
[41] Ibid; 34 C.F.R. § 104.33(a).
[42] 34 C.F.R. § 300.17.
[43] U.S. Dep't of Education, "Protecting Students with Disabilities."
[44] 34 C.F.R. 104.35(b).
[45] *Id.*; U.S. Dep't of Education, "Protecting Students with Disabilities."
[46] Complaint, *State of Texas v. Becerra*, 739 F.Supp.3d 522 (E.D. Tex.)(No.5:24-CV-00225) https://www.texasattorneygeneral.gov/sites/default/files/images/press/HHS%20Rehabilitation%20Act%20Complaint%20Filestamped.pdf.
[47] *Id*, at 239.
[48] Order Setting Deadline/Hearing (April 21, 2025), *State of Texas v. Becerra*, 739 F.Supp.3d 522 (E.D. Tex.)(No.5:24-CV-00225-H), https://storage.courtlistener.com/recap/gov.uscourts.txnd.395028/gov.uscourts.txnd.395028.60.0.pdf.
[49] *Id*.
[50] *Id*.
[51] 20 U.S.C. §1400 et seq.

affects academic performance and needs special education and/or related services.[52] ED began collecting data from state education agencies (SEAs) to monitor school districts' compliance with IDEA in 1976.[53]

The IDEA statute includes four parts:

- Part A: General Provisions[54]
- Part B: Assistance for All Children with Disabilities[55]
- Part C: Infants and Toddlers with Disabilities[56]
- Part D: National Activities to Improve Education of Children with Disabilities.[57]

Part B includes provisions related to formula grants assisting states in providing a FAPE in the least restrictive environment for children with disabilities ages 3-21.[58] Not all students with a disability are served by IDEA, however. The Act generally defines a "child with a disability" as a child with a statutorily defined disability or developmental delay "who, by reason thereof, needs special education and related services."[59]

The cornerstone of IDEA—that each eligible disabled child is entitled to a FAPE, to include special education and related services—is implemented through Individualized Education Plans (IEPs), which are developed by educational professionals, school staff, and the child's parents based on the individual needs of the child.[60] According to ED's website:

> An IEP must take into account a child's present levels of academic achievement and functional performance, and the impact of that child's disability on their involvement and progress in the general education curriculum.
>
> IEP goals must be aligned with grade-level content standards for all children with disabilities.
>
> The child's IEP must be developed, reviewed, and revised in accordance with the requirements outlined in the IDEA regulations 34 CFR §300.320 through §300.324.[61]

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[52] 34 C.F.R. § 300.17.
[53] National Center for Education Statistics, "Fast Facts: Students with Disabilities," https://nces.ed.gov/FastFacts/display.asp?id=64 (accessed Oct. 2, 2024).
[54] 20 U.S.C. §§ 1400 -1409.
[55] 20 U.S.C. §§ 1411-1419.
[56] 20 U.S.C §§ 1431-1444.
[57] 20 U.S.C § § 1450-1482; U.S. Dep't of Education, IDEA, "Statute and Regulations," https://sites.ed.gov/idea/statuteregulations/#statute (accessed Nov. 21, 2024).
[58] Ibid.
[59] 20 U.S.C. § 1401 (3)(A)-(B).
[60] 34 CFR 300.22; U.S. Dep't of Education, "Topic Areas: IEP," https://sites.ed.gov/idea/topic-areas/#IEP (accessed Dec. 18, 2024).
[61] U.S. Dep't of Education, "Topic Areas: IEP," https://sites.ed.gov/idea/topic-areas/#IEP (accessed Dec. 18, 2024).

*Interplay of Laws*

These definitions are important because under IDEA, a child must have a specific disability *and* must need specially designed instruction and related services.[62] For example, a student using a wheelchair requiring accessibility who is performing at grade level would be covered under Title II and Section 504, but not IDEA, as the disability is not affecting learning.[63] The Civil Rights Project at the University of California, Los Angeles (UCLA), reports that:

> When most people think about students with disabilities they think of the roughly 7 million students that are deemed eligible for special education, as required by the Individuals with Disabilities Education Act (IDEA). But there is another large and growing group of nearly 1.4 million students with disabilities that districts are supposed to identify and support, even though they do not necessarily require specialized instruction.[64]

Section 504 requires public schools receiving federal funds to provide a wide range of supports and services to these students known as "504-only" students.[65] UCLA's Civil Rights Project reports strong evidence suggesting that hundreds of large districts could be failing to identify 504-only students:

> Our findings show that in 3,298 districts, serving nearly 1.8 million students (1,781,962), not one 504-only student is identified. When all the districts with at least 1,000 enrolled students are examined, one can see that in 306 districts serving nearly one million students not one 504-only student is identified.[66]

*Over- and Under-Identification of Students with Disabilities*

The Commission's 2019 report, *Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities*, found that students can be either over- or under-identified as having a disability, particularly students of color.[67] In 2016, ED issued guidance regarding racial discrimination in special education, in which it stated:

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[62] ADA National Network, "Disability Rights Law in Public Primary and Secondary Education: How Do They Relate?" https://adata.org/factsheet/disability-rights-laws-public-primary-and-secondary-education-how-do-they-relate (accessed Nov. 20, 2024).
[63] Ibid.
[64] Daniel J. Losen, Paul Martinez, and Grace Hae Rim Shin, "Disabling Inequity: The Urgent Need for Race-Conscious Resource Remedies," The Center for Civil Rights Remedies at The Civil Rights Project, Mar. 22, 2021, https://www.civilrightsproject.ucla.edu/research/k-12-education/special-education/disabling-inequity-the-urgent-need-for-race-conscious-resource-remedies/final-Report-03-22-21-v5-corrected.pdf.
[65] Ibid.
[66] Ibid.
[67] U.S. Commission on Civil Rights, "Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities," Jul. 2019, https://www.usccr.gov/files/pubs/2019/07-23-Beyond-Suspensions.pdf, pp. 99-121.

> [O]ur enforcement experience continues to confirm: (1) over-identification of students of color as having disabilities; (2) under-identification of students of color who do have disabilities; and (3) unlawful delays in evaluating students of color for disability and their need for special education services… Over-identification, under-identification, and belated evaluation of students of color to determine whether they have disabilities and need special education services can violate Title VI and Section 504, and in so doing harm students' civil rights to equal educational opportunity.[68]

In their written testimony to the Commission, Ariel Simms, President and CEO of Disability Belongs, explained that:

> Students with disabilities continue to be both under-identified as disabled, and over-identified and labeled with behavioral disabilities. Students, particularly those of color and other marginalized identities, are disproportionately identified as having emotional disturbance and other disabilities typified with a higher emphasis on behavioral concerns. At the same time, learners with less apparent disabilities are less likely to be identified altogether, and therefore, do not get access to services and supports needed to ensure their educational success. These systemic challenges are heightened with the shortage of teachers and other education professionals who lack the proper training to counter biases embedded in traditional medical frameworks and conceptions of disability.[69]

In 2021, ED's Office of Special Education Programs (OSEP) released data focused on the race and ethnicity of children with disabilities serviced under IDEA Part B, finding that:

- Asian students with disabilities are more likely to be identified with autism or hearing impairment than all students with disabilities, and are less likely to drop out and more likely to graduate with a regular high school diploma than all students with disabilities.
- Black or African American students with disabilities are more likely to be identified with intellectual disability or emotional disturbance than all students with disabilities and more likely to receive a disciplinary removal than all students with disabilities.
- Hispanic students with disabilities are more likely to be identified with hearing impairment or a specific learning disability than all students with disabilities.
- American Indian or Alaska Native students with disabilities are more likely to drop out than all students with disabilities.

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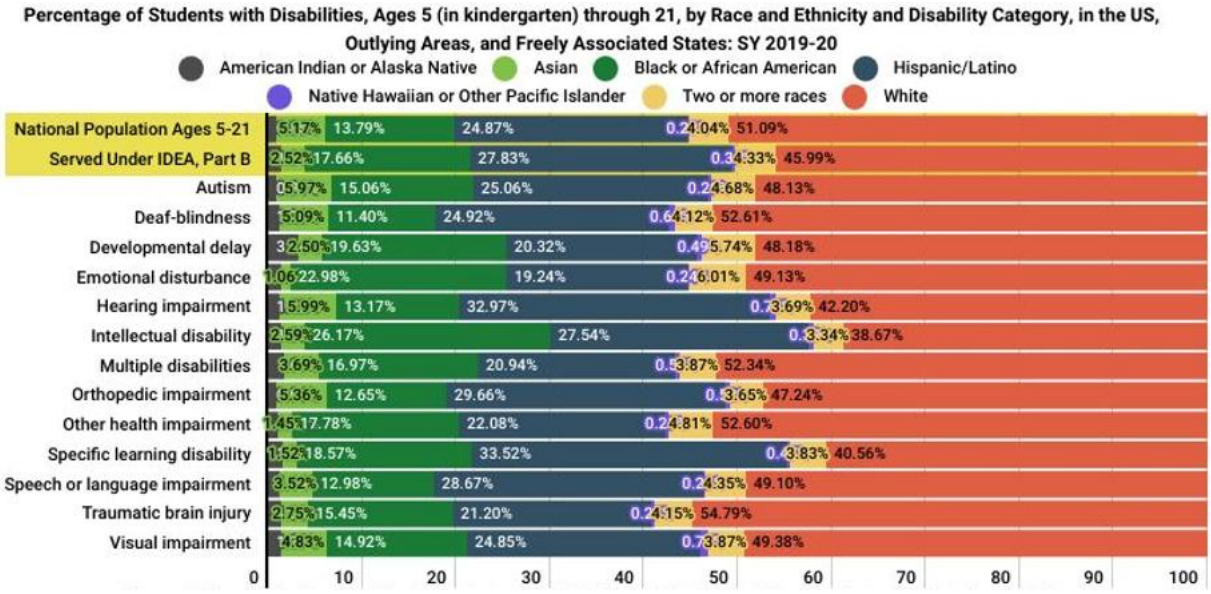
[68] U.S. Dep't of Education, Office for Civil Rights, "Dear Colleague: Preventing Racial Discrimination in Special Education," Dec. 12, 2016, https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/colleague-201612-racediscspecial-education.pdf (accessed Nov. 20, 2024).

[69] Ariel Simms, Written Statement for the *Federal Response to Teacher Shortage Impacts on Students with Disabilities* briefing, at 2 (hereinafter Simms Statement).

- White students with disabilities are more likely to be served inside a regular class 80% or more of the day than all students with disabilities and less likely to be identified with specific learning disability or intellectual disability than all students with disabilities.[70]

Figure 1.1 below provides a breakdown of students with disabilities served under IDEA Part B compared to the national population of students.

**Figure 1.1: Race and Ethnicity of Children with Disabilities Served under IDEA Part B**




Source: U.S. Dep't of Education, Office of Special Education Programs, https://sites.ed.gov/idea/osep-fast-facts-race-and-ethnicity-of-children-with-disabilities-served-under-idea-part-b/ (accessed Dec. 2, 2024).

## Educational Landscape

In the 2012-13 school year, the number of students ages 3-21 who received special education and/or related services under the Individuals with Disabilities Education Act (IDEA)[71] was 6.4 million.[72] This number increased to 7.5 million students in the 2022-23 school year, which represented 15.2% of all public school students.[73] Figure 1.2 illustrates the students ages 3-21 served under IDEA as a percentage of public school enrollment for 2022-23, by state.

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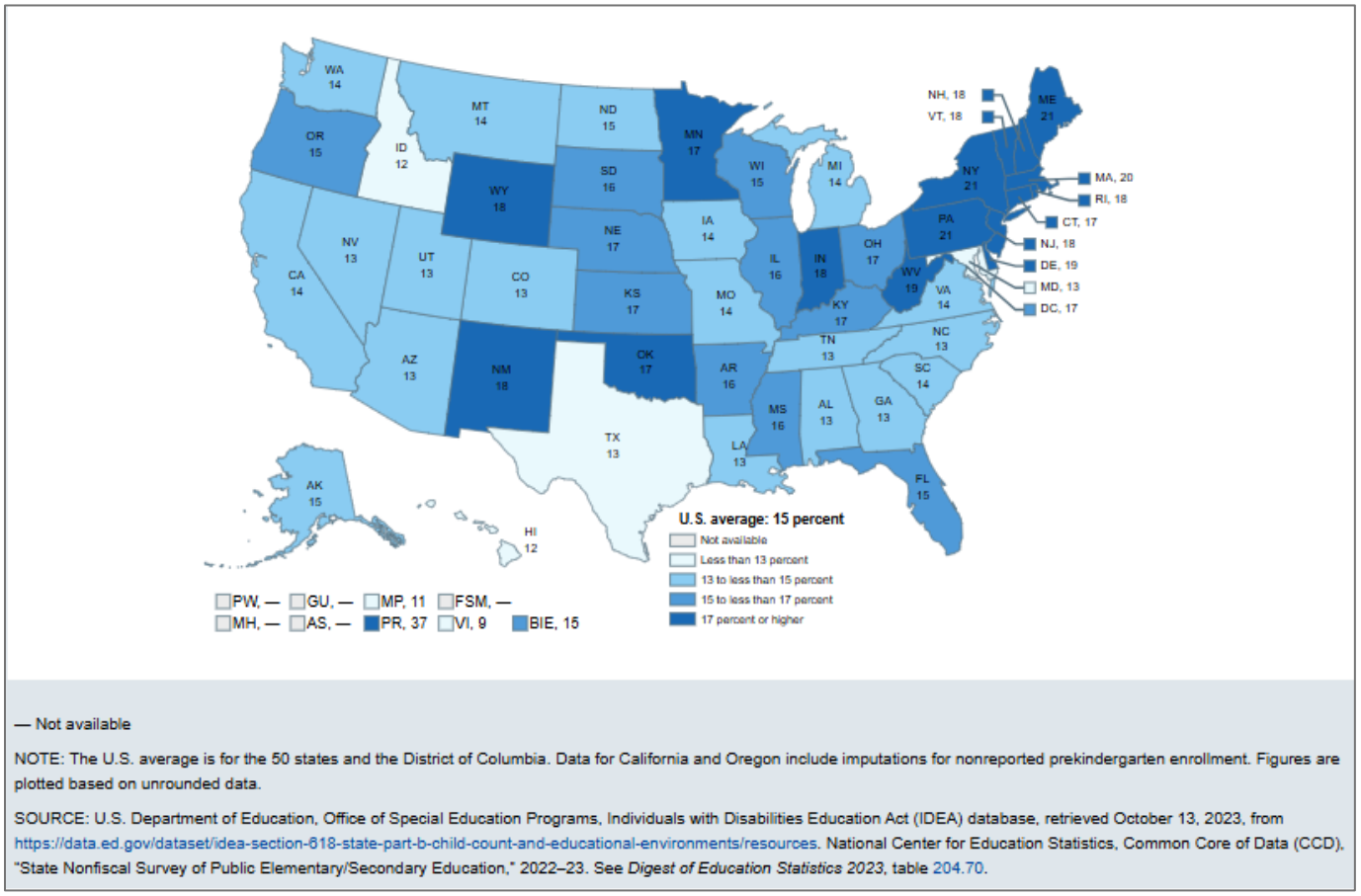
[70] U.S. Dep't of Education, "OSEP Fast Facts Looks at Race and Ethnicity of Children with Disabilities Served under IDEA," Aug. 13, 2021, https://sites.ed.gov/idea/osep-fast-facts-looks-at-race-and-ethnicity-of-children-with-disabilities-served-under-idea/.

[71] *See supra* notes 51-61 (IDEA section).

[72] National Center for Education Statistics, "Fast Facts: Students with Disabilities."

[73] National Center for Education Statistics, "Table 204.70: Number and Percentage of Children Served Under Individuals with Disabilities Education Act (IDEA), Part B, by Age Group and State or Jurisdiction: Selected School Years, 1990-1991 through 2022-2023," https://nces.ed.gov/programs/digest/d23/tables/dt23_204.70.asp?current=yes (accessed Dec. 11, 2024).

**Figure 1.2: Percentage of Public School Students (Ages 3-21) Served under IDEA, 2022-23**




— Not available

NOTE: The U.S. average is for the 50 states and the District of Columbia. Data for California and Oregon include imputations for nonreported prekindergarten enrollment. Figures are plotted based on unrounded data.

SOURCE: U.S. Department of Education, Office of Special Education Programs, Individuals with Disabilities Education Act (IDEA) database, retrieved October 13, 2023, from https://data.ed.gov/dataset/idea-section-618-state-part-b-child-count-and-educational-environments/resources. National Center for Education Statistics, Common Core of Data (CCD), "State Nonfiscal Survey of Public Elementary/Secondary Education," 2022–23. See *Digest of Education Statistics 2023*, table 204.70.

Source: National Center for Education Statistics, "Fast Facts: Students with Disabilities," https://nces.ed.gov/FastFacts/display.asp?id=64 (accessed Oct. 2, 2024).

In school year 2022-23, across the 50 states and the District of Columbia, the percentage of public school students served under IDEA ranged from 12% to 21%.[74] Table 1.1 below shows disability types for students served under IDEA from 2017-18 through 2022-23.

**Table 1.1: Percentage of Children (Ages 3-21) by Disability Type Served under IDEA Part B**

| | 2017-18 | 2018-19 | 2019-20 | 2020-21 | 2021-22 | 2022-23 |
|---|---|---|---|---|---|---|
| *Autism* | 10.2 | 10.7 | 11.0 | 11.5 | 12.2 | 13.0 |
| *Developmental Delay* | 6.6 | 6.7 | 6.9 | 6.8 | 6.7 | 6.9 |
| *Emotional Disturbance* | 5.1 | 5.0 | 5.0 | 4.9 | 4.6 | 4.3 |
| *Hearing Impairment* | 1.1 | 1.0 | 1.0 | 1.0 | 1.0 | 0.9 |
| *Intellectual Disability* | 6.3 | 6.2 | 6.1 | 6.0 | 5.9 | 5.8 |

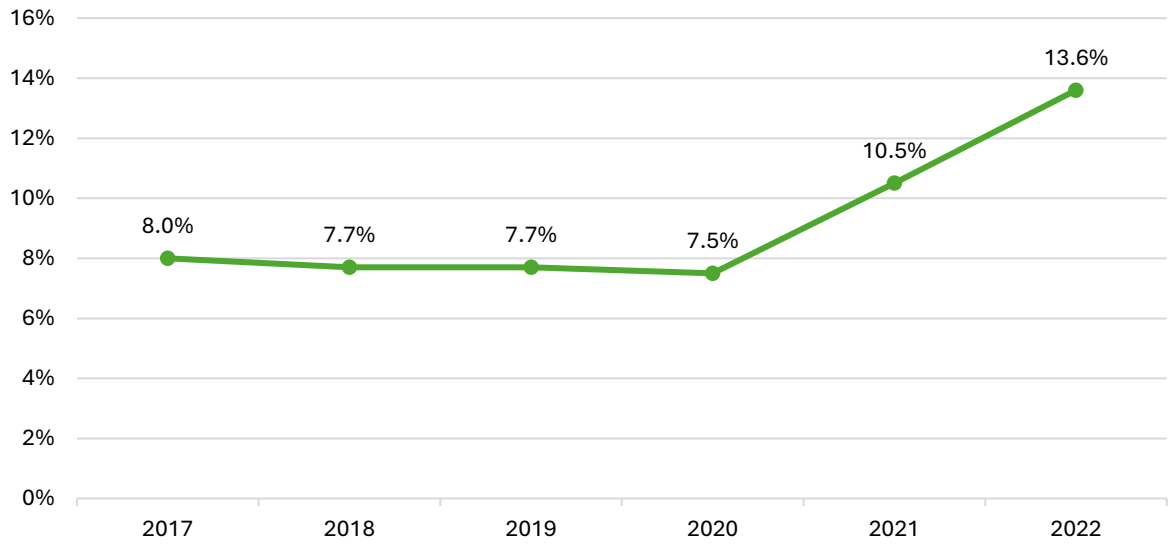
[74] National Center for Education Statistics, "Students with Disabilities."

| | | | | | | |
|---|---|---|---|---|---|---|
| *Multiple Disabilities* | 1.9 | 1.9 | 1.8 | 1.8 | 1.7 | 1.7 |
| *Orthopedic Impairment* | 0.6 | 0.5 | 0.5 | 0.5 | 0.5 | 0.4 |
| *Other Health Impairment* | 14.4 | 14.7 | 15.0 | 15.3 | 15.4 | 15.3 |
| *Specific Learning Disability* | 33.6 | 33.2 | 33.0 | 32.7 | 32.4 | 32.0 |
| *Speech or Language Impairment* | 19.5 | 19.3 | 18.9 | 18.9 | 19.0 | 19.0 |
| *Traumatic Brain Injury* | 0.4 | 0.4 | 0.4 | 0.4 | 0.3 | 0.3 |
| *Visual Impairment* | 0.4 | 0.4 | 0.4 | 0.4 | 0.3 | 0.3 |

Source: National Center for Education Statistics, "Table 204.30: Children 3 to 21 Years Old Served Under Individuals with Disabilities Education Act (IDEA), Part B, by Type of Disability: Selected School Years, 1976-77 through 2022-23," https://nces.ed.gov/programs/digest/d23/tables/dt23_204.30.asp (accessed Dec. 11, 2024).

The U.S. Census provides Public Elementary-Secondary Education Finance Data, including the distribution of school system revenues by source (i.e., federal, state, and local).[75] The majority of funding for public schools comes from state and local sources, with a smaller percentage of funding from federal sources. Figure 1.3 depicts the percentage of funding for public schools from 2017-2022 (the most recent data available) that comes from federal sources.

**Figure 1.3: Percentage of Public School Funding from Federal Sources by Year**




Source: U.S. Census Bureau, "Public Elementary-Secondary Education Finance Data," 2017-2022.

[75] *See* U.S. Census Bureau, "2023 Public Elementary-Secondary Education Finance Data," https://www.census.gov/data/tables/2023/econ/school-finances/secondary-education-finance.html (accessed Dec. 16, 2024).

The graph above shows that federal funding for schools hovered around 8% leading up to and including 2020. The post-2020 funding increases were largely due to several relief packages passed by Congress as emergency relief funds to address the impacts of COVID-19 on schools.[76]

IDEA has never been fully funded since it was passed in 1975,[77] which limits the extent to which relief funds could assist. Nationwide, the law authorized federal funding for 40% of average per-pupil spending to pay for special education services.[78] The closest the federal government has been in reaching the 40% funding commitment was in 2004-2006, when IDEA funding reached 18%.[79] In the 2021-22 school year, the IDEA shortfall was $23.92 billion.[80] Despite the increasing number of students with disabilities, current IDEA funding levels stand at less than 13%.[81] See Chapter 3 for a detailed discussion on relief funds as well as information regarding IDEA funding issues.

**Federal Government Role in Overseeing the Rights of Students with Disabilities**

*U.S. Department of Education*

ED's Office for Civil Rights (OCR) enforces Section 504 of the Rehabilitation Act[82] as well as Title II of the ADA.[83] OCR receives complaints from parents, students, and advocates; conducts agency-initiated compliance reviews; and provides technical assistance to school districts, parents, and advocates.[84] According to ED's website:

> OCR does not review the result of individual placement or other educational decisions so long as the school district complies with the procedural requirements of Section 504 relating to identification and location of students with disabilities, evaluation of such students, and due process. Accordingly, OCR generally will not evaluate the content of a Section 504 plan or of an individualized education program (IEP); rather, any disagreement

[76] U.S. Dep't of Education, "Elementary and Secondary School Emergency Relief Fund," https://www.ed.gov/grants-and-programs/formula-grants/response-formula-grants/covid-19-emergency-relief-grants/elementary-and-secondary-school-emergency-relief-fund (accessed Dec. 6, 2024).
[77] *See infra* notes 361-375.
[78] "In 1975, when the act was originally enacted, Congress established the goal of providing up to 40% of the national average per pupil expenditure to assist states and local educational agencies with the excess costs of educating students with disabilities"; H.Rept. 108-77, p. 93. *See* Congressional Research Service, "The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions," Aug. 20, 2024, https://crsreports.congress.gov/product/pdf/R/R41833.
[79] Katie Graves, "Funding Fall Short for Students with Disabilities," National Association of Elementary School Principals, Nov. 20, 2023, https://www.naesp.org/blog/funding-falls-short-for-students-with-disabilities/.
[80] Chris Van Hollen, U.S. Senator, Maryland, "Van Hollen, Huffman Introduce Bill to Fully Fund Special Education," Jul. 10, 2023, https://www.vanhollen.senate.gov/news/press-releases/van-hollen-huffman-introduce-bill-to-fully-fund-special-education.
[81] Congressional Research Service, "The Individuals with Disabilities Education Act (IDEA) Funding: A Primer," Aug. 29, 2019, https://crsreports.congress.gov/product/pdf/r/r44624; *see also* Patrick Statement, at 7.
[82] 34 C.F.R. Part 104 Subpart A.
[83] 28 CFR § 35.190(b)(2); U.S. Dep't of Education, "Protecting Students with Disabilities."
[84] U.S. Dep't of Education, "Protecting Students with Disabilities."

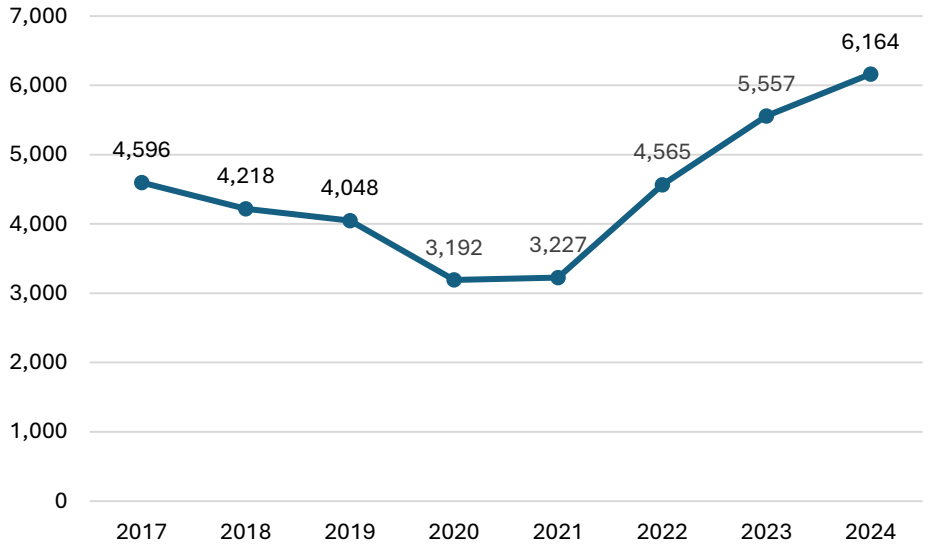
> can be resolved through a due process hearing. The hearing would be conducted under Section 504 or the IDEA, whichever is applicable.
>
> OCR will examine procedures by which school districts identify and evaluate students with disabilities and the procedural safeguards which those school districts provide students. OCR will also examine incidents in which students with disabilities are allegedly subjected to treatment which is different from the treatment to which similarly situated students without disabilities are subjected. Such incidents may involve the unwarranted exclusion of disabled students from educational programs and services.[85]

If a school district violates any provision of the Section 504 statute or regulations, it is considered out of compliance and OCR will attempt to bring the district into voluntary compliance through negotiation of a corrective action agreement.[86] If OCR is unable to obtain voluntary compliance, it initiates enforcement action, which includes administrative proceedings to terminate ED financial assistance or referring the case to the Department of Justice (DOJ) for judicial proceedings.[87] ED provided written testimony to the Commission that OCR receives over 20,000 complaints each fiscal year, including complaints relating to Section 504.[88] Figure 1.4 (below) provides the number of disability complaints received by OCR for fiscal years 2017-2024. OCR does not enforce IDEA and, therefore, does not track complaints referencing IDEA.[89] Additionally,

[85] Ibid.
[86] Ibid.
[87] Ibid.
[88] U.S. Dep't of Education, Written Statement for the *Federal Response to Teacher Shortage Impacts on Students with Disabilities* briefing, at 2 (hereinafter ED Statement).
[89] U.S. Dep't of Education, Responses to U.S. Commission on Civil Rights Interrogatories, at 2 (hereinafter ED Responses to Interrogatories).

complaints are not tracked based on who submits the complaint, so the number of complaints made by parents, guardians, teachers, and/or staff is unknown.

**Figure 1.1: ED Disability Complaints Received by Year**




Source: U.S. Dep't of Education, Responses to U.S. Commission on Civil Rights Interrogatories, at 2.

The number of complaints received declined in 2020, but complaints have been steadily increasing each year since. Table 1.2 (below) provides the number of complaints resolved for each fiscal year during the period studied for this report. ED notes that some resolutions are for cases filed in previous fiscal years and therefore are "not directly comparable."[90] The majority of resolutions from 2017-2024 were based upon a "dismissal." The basis for dismissal includes: failure to state a violation of a law or regulation being enforced by OCR, OCR's lack of jurisdiction over the purportedly discriminatory entity, and having the duplicate filing of the same allegation with another federal, state, or local civil rights enforcement agency. See Appendix A for a full table of resolution types and descriptions.

**Table 1.2: ED Disability Complaints Received and Resolved**

| | Complaints | Resolved | % Resolved |
|---|---|---|---|
| *2017* | 4,596 | 4,506 | 98.0% |
| *2018* | 4,218 | 4,160 | 98.6% |
| *2019* | 4,048 | 3,977 | 98.2% |
| *2020* | 3,192 | 3,110 | 97.4% |
| *2021* | 3,227 | 3,004 | 93.1% |
| *2022* | 4,565 | 3,864 | 84.6% |

[90] Ibid., at 5.

| | | | |
|---|---|---|---|
| *2023* | 5,557 | 4,554 | 82.0% |
| *2024* | 6,164 | 4,951 | 80.3% |

Source: U.S. Dep't of Education, Responses to U.S. Commission on Civil Rights Interrogatories, at 5-7.

ED provided a response to the Commission's document requests stating that OCR investigations are subject to case-specific planning decisions by regional office staff, and the scope depends on allegations, legal issues, applicable legal standards, and evidence obtained during the investigation.[91] If OCR finds a violation of Section 504, the federal funding recipient (i.e., the school district or local education agency) must take remedial action.[92] Remedial actions vary based on the type of discrimination and its effects. ED states that "[i]n many cases, OCR obtains remedies for individual students (including complainants and other students whom during the course of an investigation OCR also determines have been subjected to discrimination) as well as broader systemic relief to ensure that the discrimination does not recur."[93] ED also indicated that earlier versions of the Case Processing Manual (CPM) offered limited appeal rights if a formal complaint was not resolved favorably for the complainant, but the current CPM does not provide for any appeal rights.[94]

While ED enforces Section 504, it does not investigate complaints under the IDEA. State educational agencies (SEAs), which are primarily responsible for the state supervision of public elementary and secondary schools,[95] are responsible for ensuring that schools and districts are in compliance and that each program meets the SEA's educational standards.[96]

According to ED, the state must monitor IDEA's implementation by LEAs, and ED monitors the implementation of IDEA by states.[97] IDEA does not impose a specific monitoring framework for states.[98] ED mandates that states use an appropriate enforcement mechanism, if applicable, which includes actions such as:

- Providing technical assistance
- Imposing conditions on funding of an LEA (Part B) or early intervention service provider's program (Part C)

[91] Ibid., at 8.
[92] 34 C.F.R. §104.6.
[93] ED Responses to Interrogatories, at 9.
[94] Ibid.
[95] U.S. Dep't of Education, "Sec. 300.41 State Educational Agency," https://sites.ed.gov/idea/regs/b/a/300.41 (accessed Apr. 9, 2025).
[96] ED Responses to Interrogatories, at 9.
[97] Ibid.
[98] National Council on Disability, *IDEA Series: Federal Monitoring and Enforcement of IDEA Compliance,* Feb. 7, 2018, https://www.ncd.gov/assets/uploads/docs/ncd-monitoring-enforcement-accessible.pdf.

- Requiring corrective action or improvement plans when necessary of an LEA (Part B) or early intervention service provider's program (Part C).[99]

If OSEP identifies noncompliance with IDEA requirements, they issue a written notification of noncompliance to the state and require corrective action to ensure the state cures the noncompliance as soon as possible; all actions must be taken within one year after receiving the noncompliance notification.[100] OSEP works with the state to ensure that findings of noncompliance are corrected, providing technical assistance and support.[101] If a state is unable to provide assurance of compliance with specific IDEA requirements, the state must agree that it will operate consistent with IDEA requirements throughout the grant award period, and make the necessary changes to existing policies and procedures to comply as soon as possible, and no later than the end of the grant award period.[102]

In written testimony provided to the Commission, ED stated that during the pandemic there was public pressure to waive IDEA requirements for special education teacher qualifications and filling vacancies. In response,

> OSEP issued a notice to remind states of their obligations related to personnel qualifications in IDEA. In fact, when OSEP received reports from the field that Minnesota had made changes to its teacher certification and licensure procedures that conflicted with the IDEA personnel qualification requirements, OSEP contacted the state and investigated the concern. Soon after, OSEP issued a letter to the state indicating that the state's policies were out of compliance with IDEA requirements and required a corrective action plan, which the state submitted; the state has since corrected the noncompliance by revising its statute to be consistent with IDEA. IDEA personnel qualifications help ensure that the professionals working with students with disabilities are appropriately and adequately prepared and trained, and our students deserve nothing less.[103]

The Office of Special Education and Rehabilitative Services (OSERS) within ED directs, coordinates, and recommends policy for programs that are designed to:

- Meet the needs and develop the full potential of children with disabilities through the provision of special educational programs and services.
- Reduce dependency and enhance the productive capabilities of persons with disabilities through the provision of independent living and vocational rehabilitation services.

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[99] U.S. Dep't of Education, "IDEA," https://sites.ed.gov/idea/topic-areas/#Monitoring-Enforcement (accessed May 12, 2025).
[100] ED Responses to Interrogatories, at 9.
[101] Ibid., at 17.
[102] Ibid., at 18.
[103] ED Statement, at 4.

- Increase knowledge about, foster innovation in, and improve the delivery of services for persons with disabilities through the performance of rehabilitative and special education research and demonstration activities.
- Disseminate information about services, programs, and laws affecting persons with disabilities.[104]

OSERS provides direction and leadership to OSEP as well as the Rehabilitation Services Administration within ED. OSEP administers three formula grant programs authorized by IDEA to states to support early-intervention services to infants and toddlers with disabilities and their families (Part C), preschool children ages 3-5 (Part B), and special education for children and youth with disabilities (Part B).[105]

Additionally, OSEP funds discretionary grant programs through a competitive process, conducting application reviews through a formal peer review.[106] OSEP provides discretionary grants to state educational agencies, institutions of higher education, and other nonprofit organizations to support technical assistance and dissemination, technology and media services, state personnel development grants, personnel preparation, state data collections, and parent-training and information centers.[107] ED also provides TEACH grants, which grants up to $4,000 a year to students completing or planning to complete course work for a career teaching in a "high-need field," which includes special education.[108] For more information regarding formula and discretionary grants to states, see Chapter 3 of this report.

In March 2025, ED announced the initiation of a reduction in force (RIF) of nearly 50% of the Department's workforce.[109] Among more than 1,300 layoffs, approximately 240 were in OCR, and the entire investigative staff of seven of the agency's 12 regional offices were eliminated.[110] It is currently unknown how these changes will impact OCR's ability to investigate civil rights complaints.[111]

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[104] U.S. Dep't of Education, "OSERS Functional Statements – Introduction," https://www.ed.gov/about/ed-organization/functional-statements/osers/osers-functional-statements--introduction (accessed Nov. 27, 2024).
[105] U.S. Dep't of Education, "OSEP: Program Funded Activities," https://www.ed.gov/about/ed-offices/osers/osep/osep-program-funded-activities (accessed Nov. 27, 2024).
[106] Ibid.
[107] Ibid.
[108] ED Statement, at 5.
[109] U.S. Dep't of Education, "U.S. Department of Education Initiates Reduction in Force," Mar. 11, 2025, https://www.ed.gov/about/news/press-release/us-department-of-education-initiates-reduction-force.
[110] Collin Binkley, "Education Department Layoffs Gut Its Civil Rights Office, Leaving Discrimination Cases in Limbo," *AP News,* Mar. 12, 2025, https://apnews.com/article/trump-education-department-layoffs-civil-rights-8cbf463cce765f497c10d688ab4d51e1.
[111] *See* Jodi S. Cohen and Jennifer Smith Richards, "Massive Layoffs at the Department of Education Erode Its Civil Rights Division," *ProPublica,* Mar. 12, 2025, https://www.propublica.org/article/education-department-civil-rights-division-eroded-by-massive-layoffs.

Along with OCR, the top divisions in ED to lose staffers included Federal Student Aid, which manages the federal student loan portfolio, and the Institute of Education Sciences, which oversees assessments of whether the education system is working and research into best teaching practices.[112] President Trump announced that the Department of Health and Human Services (HHS) will handle "special needs," but details regarding how the transfers will work have not been offered yet.[113] It is also unclear what will happen to federally mandated programs, as IDEA maintains that OSEP is to be housed within OSERS to administer programs and activities related to the education of children with disabilities. At the writing of this report, it is unknown how these changes will affect the landscape of the teacher shortage or its impact on students with disabilities.

*U.S. Department of Justice*

The Justice Department's Disability Rights Section (DRS) within its Civil Rights Division (CRT) works to achieve equal opportunity for people with disabilities in the United States by implementing the ADA and coordinating with federal agencies on the consistent implementation of Section 504.[114] DRS enforces the ADA through lawsuits and settlement agreements to achieve greater access, inclusion, and equal opportunity for people with disabilities.[115] DRS is responsible for the day-to-day coordination of Executive agencies' implementation and enforcement of the nondiscrimination provisions of Section 504 as required by Executive Order (E.O.) 12250, "Leadership and Coordination of Nondiscrimination Laws,"[116] which provides for the consistent and effective implementation of laws prohibiting discriminatory practices on the bases of race, color, national origin, sex, disability, or religion in programs and activities receiving federal financial assistance. Similarly, DRS also leads the Division's efforts to provide policy guidance and interpretations to designated agencies to ensure consistent and effective implementation of their administrative compliance activities under Title II of the ADA.[117]

The Assistant Attorney General for Civil Rights is responsible for ensuring consistency in the implementation of Section 504 and Title II across the federal government.[118] In addition, the Assistant Attorney General for Civil Rights must also ensure that any interpretations of Section 504 are consistent with Title II (and vice versa).[119]

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[112] Ibid.
[113] Arthur Jones II, Cheyenne Haslett, and Molly Nagle, "Trump Says Student Loans, Special Needs Programs Will Be Moved to New Departments," *ABC News,* Mar. 21, 2025, https://abcnews.go.com/Politics/trump-student-loans-special-programs-moved-new-departments/story?id=120032077.
[114] 28 C.F.R. § 0.50; U.S. Dep't of Justice, "Disability Rights Section," https://www.justice.gov/crt/disability-rights-section (accessed Nov. 26, 2024).
[115] Ibid.
[116] Exec Order No. 12550, 45 FR 72995 (Nov. 2, 1980).
[117] 28 C.F.R. § 0.50; U.S. Dep't of Justice, "Disability Rights Section."
[118] 28 C.F.R. § 0.51.
[119] U.S. Dep't of Justice, *Coordination of Federal Agencies' Implementation of the Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act,* Memorandum, https://www.justice.gov/crt/file/1466601/dl.

# CHAPTER 2: Nationwide Teacher Shortage and Impacts

The shortage of qualified teachers in the United States is not a new phenomenon. In his written testimony to the Commission, Eric Hanushek of the Hoover Institution at Stanford University explained that "[t]hese shortages are perennial and have existed at least since data were first available. Joseph Kershaw and Roland McKean discussed the problems with math and science teacher vacancies in their book *Teacher Shortages and Salary Schedules* published in 1962."[120] However, understanding the full magnitude of the teacher shortage is difficult since there are no direct mechanisms with which to determine or measure its extent. Education researchers must rely on a variety of indicators that may include subject area vacancies, data from school districts, enrollment statistics in teacher preparation programs, and personal testimonials from educators and school officials. Additionally, it is difficult to measure the number of teachers that are available and needed in a particular state and/or school district.[121]

## Teacher Shortage Trends

From the 2008-09 to 2015-16 school years, there was a 15.4% drop in the number of education degrees awarded and a 27.4% drop in the number of people who completed a teacher preparation program in the U.S.[122] In a 2016 report, the Learning Policy Institute showed that as school districts attempted to start hiring again following years of layoffs due to the Great Recession of 2008, they had "serious difficulty finding qualified teachers for their positions."[123] The report found that districts had challenges in restoring student-to-teacher ratios to pre-crisis levels and meeting projected increases in student populations. The report estimated that barring any major changes, the annual teacher shortage[124] would reach approximately 110,000 by the 2017-18 school year.[125] Though there was an estimated teacher surplus in the 2011-12 school year's labor market, the projected demand for teachers quickly exceeded the estimated supply. The shortage then grew sharply over the next several years–from approximately 20,000 in 2012-13, to 64,000 in 2015-16, to over 110,000 in the 2017-18 school year.[126]

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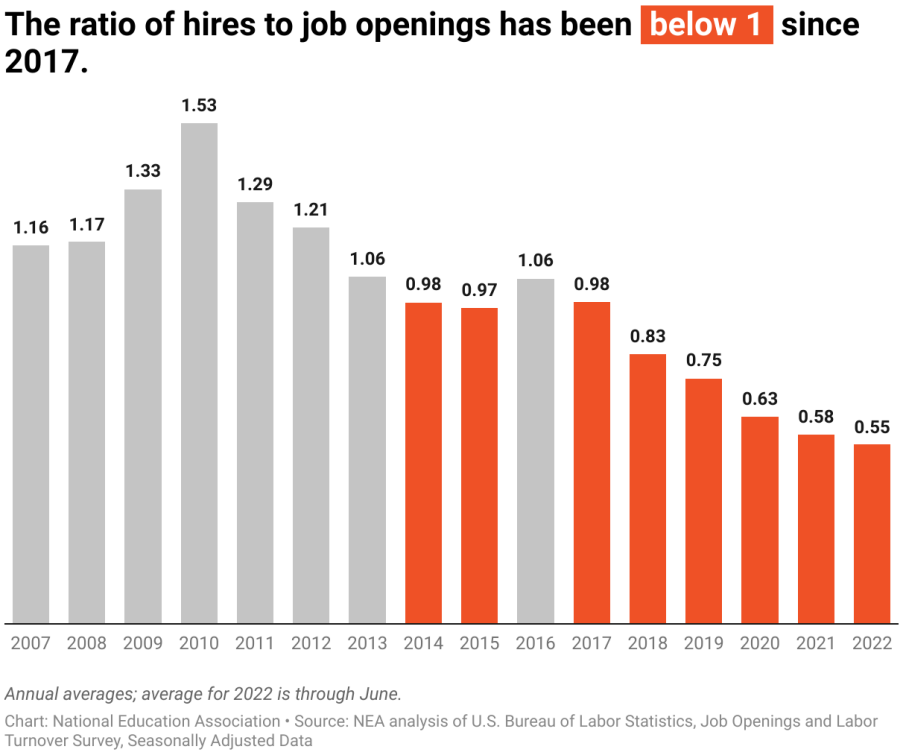
[120] Eric Hanushek, Written Statement for the *Federal Response to Teacher Shortage Impacts on Students with Disabilities* briefing, at 5 (hereinafter Hanushek Statement).
[121] Emma García and Elaine Weiss, "U.S. Schools Struggle to Hire and Retain Teachers," Economic Policy Institute, Apr. 16, 2019, https://www.epi.org/publication/u-s-schools-struggle-to-hire-and-retain-teachers-the-second-report-in-the-perfect-storm-in-the-teacher-labor-market-series/.
[122] Ibid.
[123] Leib Sutcher, Linda Darling-Hammond, and Desiree Carver-Thomas, "A Coming Crisis in Teaching? Teacher Supply, Demand, and Shortages in the U.S.," Learning Policy Institute, Sept. 2016, https://learningpolicyinstitute.org/sites/default/files/product-files/A_Coming_Crisis_in_Teaching_REPORT.pdf.
[124] Shortage is defined as "the inability to staff vacancies at current wages with individuals qualified to teach in the fields needed." *See* Sutcher, Darling-Hammond, and Carver-Thomas, "A Coming Crisis in Teaching?"
[125] Sutcher, Darling-Hammond, and Carver-Thomas, "A Coming Crisis in Teaching?"
[126] Ibid.

More recent data show that these gaps have not declined as the ratio of educator hires to job openings has continued to decrease year-over-year. The ratio has been below one since 2017, meaning there are fewer hires than openings. See Figure 2.1 below.

**Figure 2.1: Ratio of Educator Hires to Openings by Year**




Source: National Education Association, "6 Charts That Explain the Educator Shortage," Sept. 30, 2022, https://www.nea.org/advocating-for-change/new-from-nea/6-charts-explain-educator-shortage.

In 2019, the Economic Policy Institute (EPI) began tracking the magnitude of, and possible factors contributing to, the national teacher shortage in a series called, "The Perfect Storm in the Teacher Labor Market." The researchers argue that a national teacher shortage has serious consequences for students. For instance:

> A lack of sufficient, qualified teachers threatens students' ability to learn. Instability in a school's teacher workforce (i.e., high turnover and/or high attrition) negatively affects student achievement and diminishes teacher effectiveness and quality. And high teacher turnover consumes economic resources (i.e., through costs of recruiting and training new teachers) that could be better deployed elsewhere. Filling a vacancy costs $21,000 on average and Carroll (2007) estimates that the total annual cost of turnover was $7.3 billion per year, a cost that would exceed $8 billion at present. The teacher shortage also makes it

> more difficult to build a solid reputation for teaching and to professionalize it, further perpetuating the shortage.[127]

Additionally, these consequences may be more severe when teacher quality and the unequal distribution of highly qualified teachers are taken into account because they may worsen educational disparities across peer groups.[128] In a 2022 report, EPI described a "long-standing and widespread shortage of teachers," and found that "these trends long predate the COVID-19 pandemic but have grown more acute since 2020."[129]

**COVID-19 Pandemic**

The COVID-19 pandemic first began impacting schools in early 2020; by mid-February of that year, individual schools and some districts had begun to close.[130] By March 11, when the World Health Organization declared COVID-19 a pandemic, more than one million students had been impacted by school closures. By March 25, all public-school buildings were closed.[131] In April 2020, more than half of U.S. public schools announced they would be closed for the rest of the academic year. Remote learning became commonplace. According to the Institute of Education Sciences,[132] 77% of public schools and 73% of private schools reported moving some or all classes to online distance learning formats in early 2020.[133]

As shown in Figure 2.2 below, public school enrollment first fell from 50.8 million students in fall 2019 to 49.4 million students in fall 2020 before rising to 49.6 million students in 2022.[134] Of these students, 34.1 million were enrolled in grades pre-K-8, and the remaining 15.5 million were enrolled in grades 9-12.[135]

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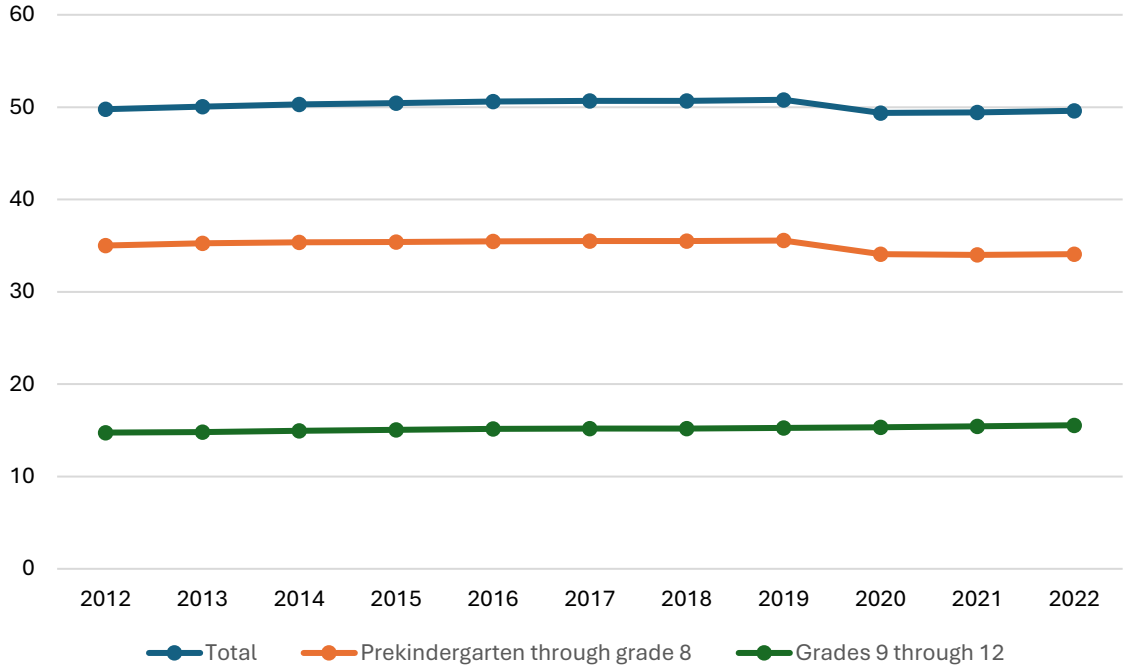
[127] García and Weiss, "U.S. Schools Struggle to Hire and Retain Teachers," [internal citations omitted].
[128] Ibid.
[129] John Schmitt and Katherine deCourcy, "The Pandemic Has Exacerbated a Long-Standing National Shortage of Teachers," Economic Policy Institute, Dec. 6, 2022, https://files.epi.org/uploads/254745.pdf.
[130] Education Week, "Coronavirus Spring: The Historic Closing of U.S. Schools (A Timeline)," Jul. 1, 2020, https://www.edweek.org/leadership/the-coronavirus-spring-the-historic-closing-of-u-s-schools-a-timeline/2020/07.
[131] Ibid.
[132] The Institute of Education Sciences (IES) is the statistics, research, and evaluation arm of the U.S. Department of Education. *See* Institute of Education Sciences, "About IES: Connecting Research, Policy and Practice," https://ies.ed.gov/aboutus/ (accessed Oct. 31, 2024).
[133] National Center for Education Statistics, "U.S. Education in the Time of COVID," https://nces.ed.gov/surveys/annualreports/topical-studies/covid/ (accessed Dec. 23, 2024).
[134] National Center for Education Statistics, "Public School Enrollment," https://nces.ed.gov/programs/coe/indicator/cga (accessed Oct. 2, 2024).
[135] Ibid.

**Figure 2.2: Public School Enrollment in Millions by Year**




Source: National Center for Education Statistics, "Public School Enrollment," https://nces.ed.gov/programs/coe/indicator/cga (accessed Oct. 2, 2024). Data include both traditional public schools and public charter schools.

In August 2020, the Centers for Disease Control and Prevention (CDC) issued guidance on re-opening schools for the new school year,[136] and by fall of 2021 nearly all schools had returned to in-person learning.[137] Following the reopening of schools, the Center on Reinventing Public Education (CRPE) reported that the "return to in-person learning has not been equitable or inclusive for students with disabilities."[138] Families of students with medical conditions or disabilities requiring significant support had to decide between in-person special education services or health and safety:

> Journalists spoke with parents of children with disabilities from across the country with medical conditions and/or who required more significant support. Many wished for their children to continue virtual learning, as they faced a risk of more severe complications from Covid-19. When their schools and districts scaled back virtual programming to put more resources toward in-person learning, some parents were told special education

[136] Centers for Disease Control and Prevention, "Preparing K-12 School Administrators for a Safe Return to School in Fall 2020," Aug. 1, 2020, https://stacks.cdc.gov/view/cdc/91383.
[137] Naaz Modan, "Schools Offering Hybrid Options Drop as In-Person Learning Returns to Nearly 100%" *K-12 Dive,* Dec. 15, 2021, https://www.k12dive.com/news/schools-offering-hybrid-options-drop-as-in-person-learning-returns-to-nearl/611569/; Institute of Education Sciences, "September 2021 School Pulse Panel," https://ies.ed.gov/schoolsurvey/2021SeptemberSPP/ (accessed Jan. 8, 2025).
[138] Center on Reinventing Public Education, *How Has the Pandemic Affected Students with Disabilities? An Update on the Evidence: Fall 2022,* Oct. 2022, https://crpe.org/wp-content/uploads/Special-Education-Impact-Brief_v3.pdf.

> services were no longer available virtually. Parents reported that their children were denied access to their district's virtual programming due to the complexity of their child's needs, or that their child's virtual programming failed to provide the services in their Individualized Education Program (IEP).[139]

CRPE's reporting also highlighted the lack of research available about the pandemic's impact on students with disabilities.[140] This scarcity of data is discussed more thoroughly in Chapter 3.

*Vacancies*

In addition to shifts in school enrollment, an estimated 730,000 local public education jobs were lost from February to May 2020.[141] It is difficult to track the number of lost education jobs because there is not a comprehensive national database capturing teacher vacancies. Most of what is known about these shortages come from national panel surveys of schools, or from state or local education agencies themselves. ED does not require these data to be reported, therefore it is difficult to determine the full extent of teacher vacancies.

The Commission heard testimony from many experts and educators in the field experiencing the teacher shortage firsthand. Julian Vasquez Heilig, Director of the Network for Public Education, testified about the teacher shortage in Michigan being especially acute, with over half of the state's school districts considering staffing shortages their top challenge, and some rural and high-poverty urban districts experiencing a turnover rate exceeding 25% annually.[142] The teacher shortage varies across regions and community types,[143] which Dan Stewart of the National Disability Rights Network described as the "hyper-microlocality" of the shortages.[144] Special educator Karen Lockerman testified that in her experience, the problem was "particularly pronounced in rural areas due to limited corporate presence, resulting in lower tax revenue and, consequently, stagnant teacher salaries."[145]

The School Pulse Panel by the Institute of Education Sciences collected information on the impact of the COVID-19 pandemic from a national sample of elementary, middle, high, and combined-

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[139] Ibid.
[140] Ibid.
[141] U.S. Dep't of Education, "Raise the Bar: Eliminate the Educator Shortage," https://www.ed.gov/about/ed-initiatives/raise-bar/raise-bar-eliminate-educator-shortage (accessed Oct. 4, 2024).
[142] Julian Vasquez Heilig, Written Statement for the *Federal Response to Teacher Shortage Impacts on Students with Disabilities* briefing, at 1 (hereinafter Heilig Statement).
[143] *See* Tuan D Nguyen, Chanh B. Lam, and Paul Bruno, "What Do We Know About the Extent of Teacher Shortages Nationwide? A Systematic Examination of Reports of US Teacher Shortages," *Aera Open*, 2024, vol 10, https://journals.sagepub.com/doi/pdf/10.1177/23328584241276512.
[144] Dan Stewart, Written Statement for the *Federal Response to Teacher Shortage Impacts on Students with Disabilities* briefing, at 6 (hereinafter Stewart Statement).
[145] Karen Lockerman, Written Statement for the *Federal Response to Teacher Shortage Impacts on Students with Disabilities* briefing, at 1 (hereinafter Lockerman Statement).

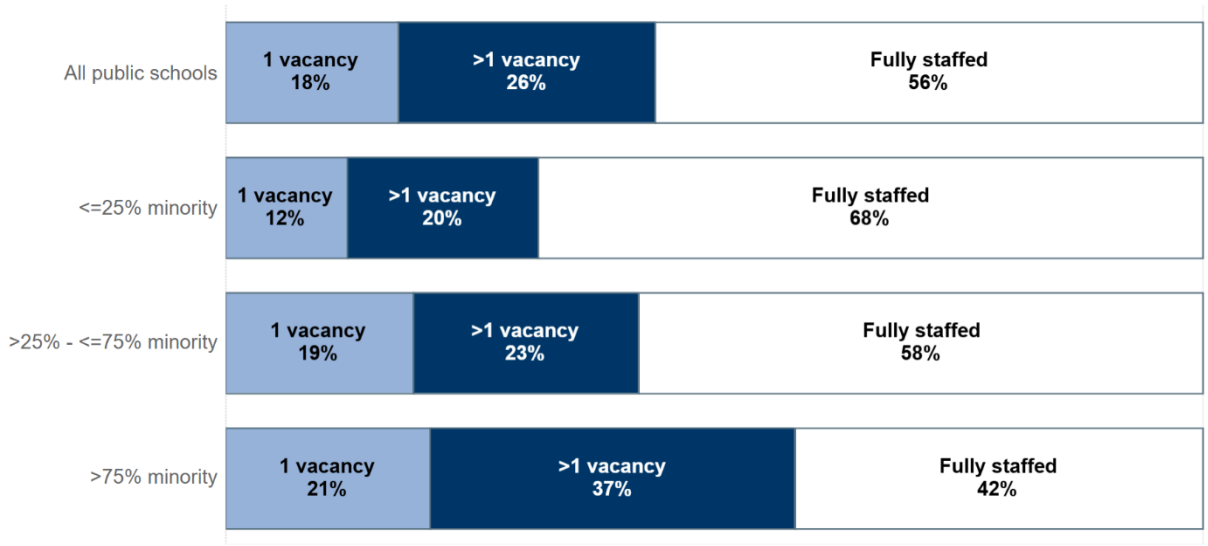
grade public schools.[146] The 2021-22 school year study found that 62% of public schools were concerned about filling vacant staff positions, and public schools expected to have an average of three teaching vacancies for the 2022-23 school year.

The School Pulse Panel also found that vacancies were more prevalent in high-minority schools. In January 2022, 15% of public schools with 75% or more students of color had teacher vacancies in excess of 10% of total teaching staff. By contrast, 7% of public schools where students of color made up less than 25% of students had teacher vacancies in excess of 10%.[147] Teacher vacancy rates are also consistently higher in schools in high-poverty areas. Sixteen percent of schools in high-poverty neighborhoods had teacher vacancies of 10% or higher in January 2022 compared with 8% of schools in low-poverty neighborhoods.[148]

In October 2022, 44% of public schools reported at least one vacancy for the school year (18% reported one vacancy and 26% reported more than one vacancy).[149] Urban schools were more likely to report at least one vacancy (53%) compared to suburban (45%) and rural schools (36%).[150] Similar to the previous year, Figure 2.3 shows that the 2022-23 school year vacancies were more prevalent in high-minority schools: 58% of public schools with 75% or more students of color had at least one vacancy compared to 32% of schools where students of color made up less than 25% of students.[151]

[146] Institute of Education Sciences, "School Pulse Panel," https://ies.ed.gov/schoolsurvey/spp/ (accessed Oct. 23, 2024).
[147] Institute of Education Sciences, "School Staffing Shortages: Results from the January School Pulse Panel, 2022," https://nces.ed.gov/surveys/spp/docs/release/2022_SPP_Staffing.pdf.
[148] Ibid.
[149] Institute of Education Sciences, "School Pulse Panel."
[150] Ibid.
[151] Ibid.

**Figure 2.3: Percentage of Public Schools by Vacancies and Share of Minority Students, October 2022**

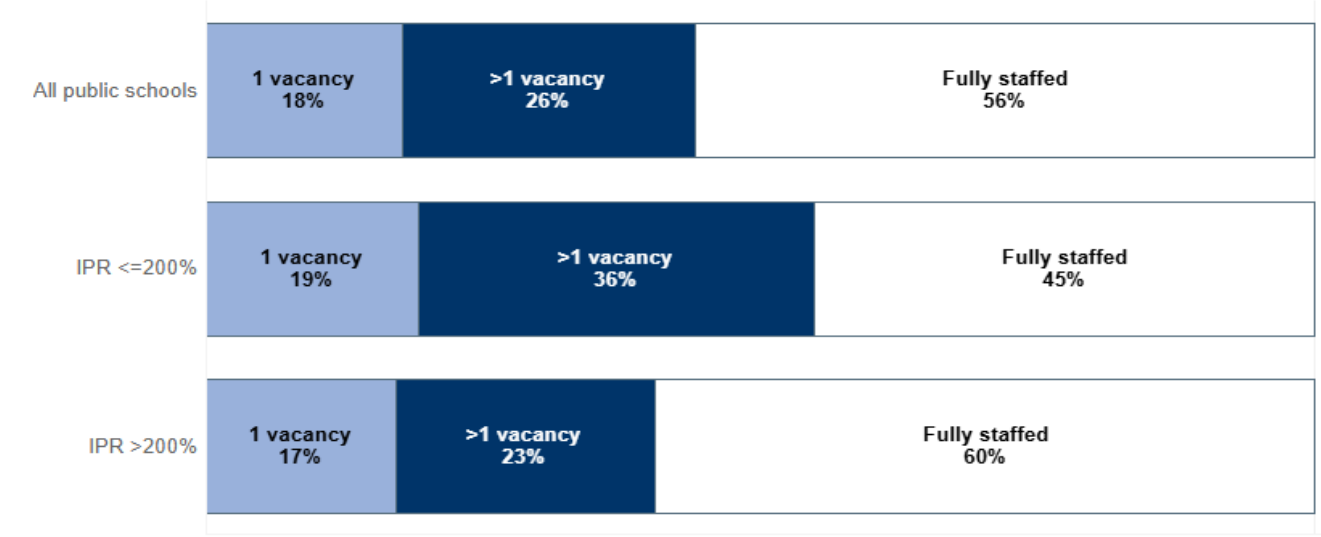



Source: Institute of Education Sciences, "School Pulse Panel," https://ies.ed.gov/schoolsurvey/spp/ (accessed Oct. 23, 2024).

Figure 2.4 below shows that 55% of schools in high-poverty neighborhoods[152] had at least one teacher vacancy compared to 40% in low-poverty neighborhoods.[153] In October 2022, 37% of public schools reported operating with at least one teaching vacancy and 45% reported operating with at least one non-teaching staff vacancy.[154]

[152] Poverty levels measured by income-to-poverty ratio (IPR). Figure 2.4 shows the IPR as a percentage that can range from 0 to 999, with lower values indicating greater poverty.
[153] Institute of Education Sciences, "School Pulse Panel."
[154] Ibid.

**Figure 2.4: Percentage of Public Schools by Vacancies and Poverty Level, October 2022**




*Poverty levels measured by income-to-poverty ratio (IPR). The IPR is shown as a percentage that can range from 0 to 999, with lower values indicating greater poverty.
Source: Institute of Education Sciences, "School Pulse Panel," https://ies.ed.gov/schoolsurvey/spp/ (accessed Oct. 23, 2024).

At the end of 2021, RAND surveyed 359 district and charter network leaders and found that two-thirds perceived a shortage of classroom teachers because of the pandemic.[155] The shortage of staff in the fall of 2021 was most acute for substitute teachers, followed by bus drivers, special education teachers (discussed in the following subsection), and paraprofessionals.[156] More charter management organizations, urban districts, and high-poverty districts reported pandemic-caused teacher shortages than did their traditional public, non-urban, and low-poverty counterparts.[157]

According to the National Center for Education Statistics, 84% of teachers in public schools and 82% of teachers in private schools in 2020-21 remained at the same school in 2021-22.[158] Meanwhile, 8% of public school teachers and 6% of private school teachers moved to a position as a teacher at another school, and 8% of public school teachers and 12% of private school teachers left the profession.[159]

According the Institute of Education Sciences, for the 2022-23 school year, 70% of public schools had too few candidates applying for open teaching positions, and 64% indicated a lack of qualified

[155] Heather L. Schwartz and Melissa Kay Diliberti, "Flux in the Educator Labor Market: Acute Staff Shortages and Projected Superintendent Departures," RAND, Feb. 15, 2022, https://www.rand.org/pubs/research_reports/RRA956-9.html.
[156] Ibid.
[157] Ibid.
[158] National Center for Education Statistics, "Teacher Turnover: Stayers, Movers, and Leavers," https://nces.ed.gov/programs/coe/indicator/slc/teacher-turnover (accessed Oct. 2, 2024).
[159] Ibid.

candidates applying for open teaching positions.[160] Research by the Higher Education Research Institute at UCLA, which tracks undergraduates' interest in particular majors over time, found that the percentage of students intending to study education remained steady at about 10% throughout much of the 1990s, but fell to 4.3% by 2018.[161]

The School Pulse Panel also reported an increased need to use non-teaching staff (64%) and teachers outside of their intended duties (59%).[162] More than half of schools (51%) reported that resignations were the reason for their teaching vacancies and 21% reported vacancies due to staff retirement. Schools also reported that vacancies were due to new staff positions being created (31%). Nevertheless, about 35% reported vacancies due to other reasons and 3% stated reasons unknown,[163] which echoes Max Eden of the American Enterprise Institute's testimony regarding the distinct difficulties in assessing the extent of teacher shortages using vacant positions.[164]

Research suggests that teacher retention is a contributing factor to the teacher shortage. Common factors that push teachers out of the profession include low salaries, high student loan debt,[165] quality of teacher preparation programs, overwhelming workloads, and poor working conditions.[166] One study found that schools where teachers rated their working conditions more satisfactory had lower attrition rates than schools rated as having less satisfactory conditions.[167] Amanda Mazin of Teachers College at Columbia University testified that "[a]ttrition is a huge driver of teacher shortages, as roughly 9 of 10 teachers hired each year are replacing colleagues that left."[168] Longstanding research has also shown that special education, math, and science are fields with the greatest turnover and that special education teachers are the most likely to leave the

[160] Institute of Education Sciences, "School Pulse Panel."
[161] Biran O'Leary, "Backgrounds and Beliefs of College Freshman," *Chronicle of Higher Education,* Aug. 12, 2020, https://www.chronicle.com/article/backgrounds-and-beliefs-of-college-freshmen/.
[162] Institute of Education Sciences, "School Staffing Shortages: Results from the January School Pulse Panel, 2022."
[163] Ibid.
[164] Max Eden, Written Statement for the *Federal Response to Teacher Shortage Impacts on Students with Disabilities* briefing, at 2 (hereinafter Eden Statement).
[165] Tang Statement, at 1.
[166] *See e.g.,* Bonnie Billingsley and Elizabeth Bettini, "Special Education Teacher Attrition and Retention: A Review of the Literature," *Review of Educational Research*, 2019, vol. 89, no. 5, https://journals.sagepub.com/doi/abs/10.3102/0034654319862495; Carol R. Rinke and Lynnette Mawhinney, "Insights from Teacher Leavers: Push and Pull in Career Development," *Teaching Education*, 2017, vol. 28, no. 4, https://www.researchgate.net/profile/Lynnette-Mawhinney/publication/315629185_Insights_from_teacher_leavers_push_and_pull_in_career_development/links/59e4a8f1a6fdcc7154e13ab3/Insights-from-teacher-leavers-push-and-pull-in-career-development.pdf; Diane D. Schaack, Courtney V. Donovan, Tobiloba Adejumo, and Mari Ortega, "To Stay or to Leave: Factors Shaping Early Childhood Teachers' Turnover and Retention Decisions," *Journal of Research in Childhood Education*, 2022, vol. 36, no. 2, https://www.tandfonline.com/doi/abs/10.1080/02568543.2021.1955779.
[167] Tray Geiger and Margarita Pivovarova, "The Effects of Working Conditions on Teacher Retention," *Teachers and Teaching*, Mar. 2018, vol. 24, no. 6, https://www.tandfonline.com/doi/full/10.1080/13540602.2018.1457524.
[168] Mazin Statement, at 2.

profession compared to any other teaching group.[169] Scholars posit that the teacher shortage crisis cannot be fixed by solely focusing on recruiting more teachers if many leave after a few years.

As previously stated, understanding the extent of the teacher shortage is difficult due to the lack of national data collection. Tuan Nguyen, Associate Professor at the University of Missouri, explained in his testimony that what is known about teacher shortages nationally comes from researchers collecting, validating, and verifying information from news reports and state departments of education.[170] A broader discussion of these data inadequacies is provided in Chapter 3 of this report.

An important component of the teacher shortage is its impact on student achievement. A National Assessment of Educational Progress (NAEP) report on long-term trend scores for 13-year-old students showed an average decline of nine scale points in math from 2020 to 2022-23.[171] Eric Hanushek of the Hoover Institution at Stanford University testified about learning losses following school closures in economic terms:

> The average student will face a six percent loss in lifetime earnings. Think of this as the equivalent of a six percent income tax surcharge. Disadvantaged students who suffered larger learning losses will face an average nine percent loss in lifetime earnings…. The learning losses mean a lower quality labor force for the nation, and this will have clear implications for economic growth. According to historical growth patterns, the present value of the GDP losses amounts to $31 trillion (in 2020 dollars).[172]

These losses were even greater for minority students, for both 9- and 13-year-olds, as Table 2.1 illustrates.

**Table 2.1: Changes in NAEP Math Scores for 13-Year-Old Students Overall and by Race/Ethnicity, 2020-2022/23**

| | Age 9 | Age 13 |
|---|---|---|
| **Overall** | Down 7 points | Down 9 points |
| **Black** | Down 13 points | Down 13 points |
| **Hispanic** | Down 8 points | Down 10 points |
| **White** | Down 5 points | Down 6 points |

Source: National Assessment of Educational Progress, "Performance Declines in Basic Mathematics and Reading Skills Since the COVID-19 Pandemic Are Evident Across Many Racial/Ethnic Groups," Nov. 9, 2023, https://nces.ed.gov/nationsreportcard/blog/pandemic_performance_declines_across_racial_and_ethnic_groups.aspx.

[169] Bonnie S. Billingsley, "Special Education Teacher Retention and Attrition," *Journal of Special Education*, 2004, vol. 38, no. 1, https://files.eric.ed.gov/fulltext/EJ693730.pdf.
[170] Nguyen Statement, at 2.
[171] National Assessment of Educational Progress, "Performance Declines in Basic Mathematics and Reading Skills Since the COVID-19 Pandemic Are Evident Across Many Racial/Ethnic Groups," Nov. 9, 2023, https://nces.ed.gov/nationsreportcard/blog/pandemic_performance_declines_across_racial_and_ethnic_groups.aspx.
[172] Hanushek Statement, at 2.

A collaboration between the Center for Education Policy Research at Harvard University, the Educational Opportunity Project at Stanford University, and faculty at Dartmouth College published its third "Education Recovery Scorecard" in February 2025.[173] This is a study of 8,719 school districts, combining NAEP results with state test results to assess district-level changes in achievement. The latest scorecard revealed:

- While no state scored above 2019 levels on assessments in math or reading, a number of districts are scoring above 2019 levels in both subjects;
- The highest income districts were nearly four times more likely to have recovered in both subjects than the lower income districts;
- Socioeconomic and racial/ethnic disparities in math achievement have grown since the start of the pandemic both within districts and across districts;
- The federal relief dollars prevented larger losses in the highest poverty districts.[174]

Professor Sean Reardon, Director of the Educational Opportunity Project at Stanford, found:

> [t]he slide in average NAEP scores masks a pernicious inequality: scores have declined far more in America's middle- and low-income communities than in its wealthy ones. The good news is that it could have been worse: the federal investment in public schools during the pandemic paid off, limiting academic losses in high-poverty districts.[175]

*Teacher Quality and Certification*

A 2018 Commission report on public education funding equity, *Public Education Funding Inequity in an Era of Increasing Concentration of Poverty and Resegregation*, outlined a growing body of research linking student achievement to teacher quality.[176] However, in response to teacher vacancies, some states issued emergency and provisional licenses to teachers, or filled positions with substitute teachers, as well as lowered teaching requirements and certifications.[177] Professor Nguyen testified to the Commission that the most recent data suggest there may be as many as 400,000 underqualified teachers in the U.S., making up more than 10% of the existing teacher workforce.[178]

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[173] Harvard University Center for Education Policy Research, "Education Recovery Scorecard," Feb. 11, 2025, https://educationrecoveryscorecard.org/wp-content/uploads/2025/01/ERS-2025-National-PR_FINAL.pdf.
[174] Ibid.
[175] Ibid.
[176] U.S. Commission on Civil Rights, "Public Education Funding Inequity in an Era of Increasing Concentration of Poverty and Resegregation," Jan. 2018, https://www.usccr.gov/reports/2018/public-education-funding-inequity-era-increasing-concentration-poverty-and.
[177] Nguyen Statement, at 1.
[178] Ibid.

Longstanding research shows that students have better educational outcomes and performance when they are taught by qualified, well-trained, and experienced teachers.[179] This may be more pronounced for students with intellectual, behavioral, and/or learning disabilities. In her written testimony to the Commission, Amanda Mazin, Senior Lecturer at Teachers College, Columbia University, testified that there is a direct connection between special education teacher certification and learning outcomes for students with disabilities.[180] She wrote that:

> To be a certified teacher, candidates must complete an approved and accredited preparation program and pass a series of competency exams. This process matters. It matters for the professionalization of teaching and the learning outcomes of students with disabilities. Teachers are widely regarded as the most important influences on students' academic development.[181]

Despite these findings, Jessica Tang of the American Federation of Teachers, testified that 8% of teachers working with children receiving services under IDEA are not fully certified.[182] Jessica Levin, Litigation Director at the Education Law Center, testified that a

> [l]ack of certified special education teachers causes many schools to hire uncertified or emergency credentialed teachers, despite federal regulations requiring fully certified staff. Because low-income, high-minority schools are the most likely to have uncertified teachers, the most vulnerable students are frequently taught by the least qualified teachers.[183]

Research also shows that students learn less from new teachers compared to veteran teachers, and underqualified teachers are more likely to leave their profession.[184] Additionally, experienced teachers can improve test scores and attendance.[185] Karen Lockerman, a national board-certified special education teacher, testified that "[s]adly, there are incentives offered to gain more teachers but not to keep teachers."[186] Hanushek stressed that schools should not be relying on attracting new people into teaching to meet shortages, but providing incentives (monetary or otherwise) to existing teachers in the shortage areas to work more intensively.[187] However, the Commission

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[179] Linda Darling-Hammond and Joan Baratz-Snowden, "A Good Teacher in Every Classroom: Preparing the Highly Qualified Teachers Our Children Deserve," *Educational Horizons*, 2007, vol. 85, no. 2, https://www.jstor.org/stable/42926597?seq=1; Kati Haycock, "Good Teaching Matters: How Well-Qualified Teachers Can Close the Gap," Education Trust, 1998, https://files.eric.ed.gov/fulltext/ED457260.pdf.
[180] Mazin Statement, at 5.
[181] Ibid.
[182] Tang Statement, at 3.
[183] Levin Statement, at 3.
[184] Nguyen Statement, at 1.
[185] Heilig Statement, at 4.
[186] Lockerman Statement, at 1.
[187] Hanushek Statement, at 4.

received testimony from multiple panelists describing the demanding workload of special education teachers as a main source of stress[188] or as a reason they leave the profession.[189]

Jessica Tang, President of the American Federation of Teachers Massachusetts, testified in her written statement that

> [b]eyond overall classroom teachers, we're facing shortages of essential support staff, such as speech language pathologists, occupational therapists, and behavioral aides. Students…are not able to access these critical services in a timely way – directly affecting their educational and social development. Services are further reduced because of unmanageable workloads, which 68 percent of school-based therapists report having according to the American Speech-Language-Hearing Association (ASHA).[190]

The staff shortage and subsequent overload on remaining staff has real and direct impacts on students with disabilities–many of whom are also students of color, English language learners, and multilingual learners.[191]

**Special Education Teacher Shortages**

While an examination of teacher shortages over time shows significant variation in shortages across states and subject areas, special education is as a common shortage area. A study by Bellwether Education Partners found that 80% of states identified special education as a shortage area from 1998-2018.[192]

Data collected in August 2024 by IES found that 72% of public schools with vacancies in special education had difficulty filling the position with a fully certified teacher for the upcoming school year.[193] Amanda Mazin, a Senior Lecturer at Teachers College, Columbia University, testified that newly certified and under-certified teachers are often placed in classrooms with students with disabilities, and the "lack of preparation is perpetuating the already visible issues in access to education for all students, whereas a highly qualified teacher should be the baseline and not the exception."[194] It is important to note that educator shortages do not reduce a school district's responsibility to provide services to students; these shortages only increase caseloads for existing teachers.[195] In turn, these increased pressures can lead to professional burnout and can contribute to pushing educators out of the profession.

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[188] Seyedin-Elahian Statement, at 3; Lauber Statement, at 4; Tang Statement, at 2.
[189] Gusby Statement, at 1; Levin Statement, at 6.
[190] Tang Statement, at 2.
[191] Ibid., at 1.
[192] Kaitlin Pennington McVey and Justin Trinidad, "Nuance in the Noise: The Complex Reality of Teacher Shortages," Bellwether Education Partners, 2019, https://bellwether.org/wp-content/uploads/2019/01/Nuance-In-The-Noise_Bellwether.pdf.
[193] Ibid.
[194] Mazin Statement, at 4.
[195] Anderson Statement, at 2.

The 2021 RAND survey discussed above found that 41% of all districts reported considerable shortages of special education teachers in the fall of 2021.[196] The shortages were highest in urban areas (65%) compared to suburban (34%) and rural (41%) areas. The shortages were substantially higher in districts with high poverty (55%) versus low poverty (30%) and in districts with a majority of students of color (56%) versus a majority of white students (35%).[197]

These shortages had tremendous consequences for students. Children with disabilities were less likely to be officially diagnosed during the pandemic, which delayed their eligibility for services.[198] Researchers examining education data in Michigan found that special education identifications fell by 19% and 12% in the 2019-20 and 2020-21 school years for K-5 students, respectively.[199] The researchers also found that Black, Asian, and economically disadvantaged students and districts with remote schooling had larger decreases in special education identifications.[200]

In her written testimony to the Commission, Alison Lauber, a Special Education Coordinator in Delaware, testified about her school's students being unable to access the specialized equipment they require, such as gait trainers, Augmentative and Alternative Communication (AAC) devices, switches, weight vests, and sensory items.[201] Terita Gusby, CEO of Education Prescriptions, also testified that children with disabilities who require specific resources often find that virtual learning options do not meet their needs.[202] Alysha Legge, a mother of an impacted student, described how children with autism often rely on structure and routine to thrive, and virtual schooling provided neither.[203] Additionally, without staff administering accommodations and collecting data, schools were not able to make adequate progress on IEP goals.[204] Lauber testified about the practice of filling vacancies with virtual services becoming the norm despite the fact that virtual resources also require additional staffing:

> With the virtual SLP [(speech and language pathologist)], there is a need for an in-person paraprofessional (or a substitute) to help locate the students in the building, travel with them, and facilitate the sessions so the services can be delivered. Sometimes those positions

[196] Heather L. Schwartz and Melissa Kay Diliberti, "Flux in the Educator Labor Market: Acute Staff Shortages and Projected Superintendent Departures," RAND, Feb. 15, 2022, https://www.rand.org/pubs/research_reports/RRA956-9.html.
[197] Ibid.
[198] *See* Mazin Statement, at 7.
[199] Bryant G. Hopkins, Matthew Guzman, Scott A. Imberman, Adrea J. Truckenmiller, Katharine O. Strunk, and Marisa H. Fisher, "Trends in Special Education Identification During the COVID-19 Pandemic: Evidence from Michigan," *Educational Evaluation and Policy Analysis*, 2024, https://doi.org/10.3102/01623737241274799.
[200] Ibid.
[201] Lauber Statement, at 2.
[202] Gusby Statement, at 2.
[203] Legge Statement, at 1.
[204] Lauber Statement, at 3.

> cannot be filled. This leads [to] large consumption of missed sessions that are either made up or families are provided compensatory services (educational compensation).[205]

Amanda Mazin of Teachers College at Columbia University testified about the pandemic intensifying the "already critical" shortage of special educators. She noted that:

> [I]nequalities in access to quality education were spotlighted. This was even more so for students with disabilities, who could not access supplemental support, modified curriculum, and adaptive technologies guaranteed under their IEPs. The increased special education teacher attrition, exacerbated by COVID-19, directly threatens equitable learning opportunities for students with disabilities.[206]

Jessica Levin, Litigation Director at the Education Law Center, testified about the challenges of students struggling to learn without in-person instruction, writing that "the burdens of virtual education for students with disabilities fall disproportionately on low-income families, who are less likely to have reliable internet connectivity, personal devices, and an adult available to be present with the student during the school day."[207] Robert Varela Rodriguez, a middle school special education teacher in San Bernardino, California, testified that his tenure as a teacher taught him that:

> [N]o computer program or online program can supplement the services we can provide in the classroom. My own experiences have also led me to know that the number of students per classroom teacher makes a huge difference in the quality of instruction a student can receive. Finally, my experience has led me to know that there is no substitute for trained, credentialed support staff (speech therapists, school psychologists, counseling services, paraprofessionals in the classroom, etc.).[208]

Additionally, as Dan Stewart of the National Disability Rights Network testified, the overall teacher shortage impacts students with disabilities if they end up "placed in larger classes, have fewer adults monitoring for bullying and harassment, encounter more substitute educators who are often not familiar with an IEP or Section 504 plan and who may not have the correct credentials or training, and have less individual attention."[209]

Jessica Tang, President of the American Federation of Teachers (AFT) Massachusetts, testified:

> When the specialized instruction, student accommodations/modifications, and related services (e.g., speech therapy, counseling, hearing/vision services) documented in students' IEPs are not implemented due to the absence of a licensed special education

[205] Ibid.
[206] Mazin Statement, at 5-6.
[207] Levin Statement, at 13.
[208] Robert Varela Rodriguez, Written Statement for the *Federal Response to Teacher Shortage Impacts on Students with Disabilities* briefing, at 3 (hereinafter Rodriguez Statement).
[209] Stewart Statement, at 3.

> teacher and specialized instructional support personnel, the respective school is in violation of the federally mandated provision of a free appropriate public education (FAPE). In doing so, students who are already at a disadvantage academically, behaviorally and/or with social-emotional concerns, suffer a greater injustice when their documented needs are not addressed and consequently, the window for growth and development narrows substantially.[210]

Tang also indicated that AFT is hearing from educators who are leaving their profession because of the lack of support they receive from their schools;[211] this sentiment was echoed by Terita Gusby.[212] Jessica Levin stated that "overwhelming workloads are a major factor contributing to special education teachers' burnout and intent to leave their jobs."[213] She also described a focus on administrative duties contributing to a lack of "qualified, certified, and prepared special education teachers in schools."[214] Similarly, Brittany Patrick of the National Education Association, testified:

> The excessive administrative demands placed on educators in particular, balancing paperwork, meetings, delivering special education services, and fulfilling routine classroom responsibilities contributes significantly to educator burnout. This cycle not only impacts teacher wellbeing, but also compromises the quality of education for students requiring special education services.[215]

Teacher shortages are not only evident in school staffing, but data suggest that there is less interest in entering the field of special education, which may indicate a long-term issue in providing meaningful education to students with disabilities. Tiffany Anderson, Superintendent of Topeka, Kansas schools, testified about the lack of undergraduate degree programs in Kansas for aspiring special education teachers.[216] She stated that the "lack of teachers entering special education is contributing to the crisis and any support to universities and school districts to make this path simpler would be of great value and benefit to the students being impacted."[217] Alysha Legge testified that she believes there is "a need to bolster up student teacher programs and cultivating a desire within our students to become educators and possibly making this profession viewed more like a trade."[218]

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[210] Tang Statement, at 5.
[211] Ibid., at 4.
[212] Gusby Statement, at 1.
[213] Levin Statement, at 6.
[214] Jessica Levin, Testimony, *The Federal Response to Teacher Shortage Impacts on Students with Disabilities* Briefing Before the U.S. Commission on Civil Rights, Washington, D.C., Nov. 15, 2024, transcript pp. 33-34 (hereinafter cited at *Teacher Shortage Briefing* Testimony).
[215] Brittany Patrick, *Teacher Shortage Briefing* Testimony, p. 95.
[216] Anderson Statement, at 2.
[217] Ibid.
[218] Legge Statement, at 2.

Similarly, Ariel Simms of Disability Belongs testified that addressing the teacher shortage should also involve making recruitment and hiring processes more accessible for educators with disabilities to ensure that the educational workforce better reflects the lived experiences of the students it serves.[219] They stated that:

> By actively including people with disabilities in the education workforce, we can address teacher shortages while advancing the principle of "nothing about us, without us"—ensuring that those directly affected are part of shaping educational policies and environments.[220]

Eric Hanushek of the Hoover Institution at Stanford University testified that there is only anecdotal evidence that students with disabilities suffered more than other students in performance. Nevertheless, he testified that "[w]e do not have reliable performance evidence for these students, but it seems very likely that many will be among the students most harmed by the pandemic. Many special education programs simply do not work well in remote form."[221] Additionally, Jonathan Butcher, Senior Research Fellow at the Heritage Foundation, testified that the "combination of a weak supply line, challenging work requirements, and a sizeable, and growing, population of children with special needs are all contributing to the teaching vacancies."[222]

Concerns about educational outcomes for students with disabilities are not new. For instance, Brittany Patrick, Senior Policy and Program Analyst of Disability Rights and Inclusion with the National Education Association, testified that NAEP scale scores have shown consistent declines since 2012, and that data from 2019 show that states with higher levels of special education staff do not consistently achieve better reading outcomes.[223] Patrick indicated that simply hiring individuals to teach special education is not sufficient to improve student outcomes. She explained:

> The fact that states with more special education staff did not consistently see improved reading outcomes underscores the importance of not just the quantity but the quality and expertise of educators. While staff shortages may contribute to lower outcomes, effectively addressing these issues requires more than just increasing staff numbers. It necessitates hiring qualified professionals who can provide the necessary expertise and support, as well as offering ongoing training and mentorship to help educators deliver high-quality instructional programs that meet the individualized needs of students with disabilities.[224]

The importance of teacher quality was echoed by Sepi Seyedin-Elahian, a teacher in the Los Angeles Unified School District, who testified that a new state law intending to attract more

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[219] Simms Statement, at 4.
[220] Ibid., at 7.
[221] Hanushek Statement, at 3.
[222] Jonathan Butcher, Written Statement for the *Federal Response to Teacher Shortage Impacts on Students with Disabilities* briefing, at 5 (hereinafter Butcher Statement).
[223] Patrick Statement, at 3.
[224] Ibid.

prospective educators into the classroom is not a panacea in that "it's not just about quantity; we need quality teachers."[225] Thus, high-quality training programs and professional development opportunities should be part of a package incentivizing new teachers into the field. She explained:

> Teachers should have a solid understanding of the curriculum so they can teach it effectively and make changes to it as needed using supplemental tools. Trainings that will assist teachers in staying up to date with the use of educational technology to make lessons more engaging is desperately needed and missing in the classrooms.[226]

Brittany Patrick of the National Education Association also testified about an increase in civil rights complaints[227] to state education agencies: a 47% increase in 2021-22 compared to the previous year, indicating a rise in concerns or disputes regarding special education service provisions.[228] The Government Accountability Office (GAO) examined special education disputes in five states and found that high-minority districts generally had high rates of dispute activity, yet a smaller proportion of high-minority districts had dispute resolution activity compared to districts with fewer minority students.[229] When examining state complaints, GAO found that high-minority districts had a higher percentage of reports containing findings of noncompliance.[230]

Terita Gusby, CEO and Founder of Education Prescriptions, testified that in addition to a shortage of special education teachers, there is also a shortage of teaching aides or paraprofessionals who are trained to assist teachers and support students.[231] Robert Varela Rodriguez, a middle school special education teacher in San Bernardino, California, and Jessica Tang, President of AFT Massachusetts, testified about overall shortages in other types of personnel. Speech therapists, school psychologists, occupational therapists, behavioral aides, and counselors are also essential educational professionals who support students with disabilities.[232] Rodriguez stated that

> [s]ome years I am the only special education teacher on campus with no additional in-classroom support. This impacts on the teacher to student ratio and the quality of one-to-one or small group instruction that can occur. It is heartbreaking to not be able to provide the direct support that I know is best for a student due to the lack of classroom support.[233]

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[225] Seyedin-Elahian Statement, at 2.
[226] Ibid., at 3.
[227] An organization or individual may file a signed written complaint when a public agency has violated a requirement of IDEA Part B. *See* Sec. 300.153.
[228] Patrick Statement, at 3.
[229] U.S. Government Accountability Office, "Special Education: IDEA Dispute Resolution Activity in Selected States Varied Based on School Districts' Characteristics," Dec. 2019, https://www.gao.gov/products/gao-20-22.
[230] Ibid.
[231] Gusby Statement, at 2.
[232] Rodriguez Statement, at 2; Tang Statement, at 2.
[233] Rodriguez Statement, at 2-3.

Additionally, the Arkansas State Advisory Committee to the Commission published a report in 2023 that found a shortage of counselors and therapists, particularly Board Certified Behavior Analysts who serve children with difficult behaviors and skill deficits.[234]

Due to challenges some schools face in providing enough resources to students with disabilities, some parents have opted for alternative education placement for their children.[235] Many families access school choice programs through 25 voucher programs in 16 states—Arkansas, Georgia, Indiana, Louisiana, Maine, Maryland, Mississippi (2), New Hampshire, North Carolina, Ohio (5), Oklahoma, Utah, Vermont, Wisconsin (4)—and Washington D.C. and Puerto Rico.[236] Jonathan Butcher, Senior Research Fellow at the Heritage Foundation, testified that some states are creating streamlined licensure programs or providing stipends for educators willing to work with students with special needs, and that some states adopted education savings accounts for children with disabilities.[237]

Below are some examples of state-level options for parents who wish to send their children to private or alternative schools:

- The Georgia Special Needs Scholarship (GSNS) program provides scholarships for qualifying students with an IEP or 504 Plan during the previous school year.[238] The funds may be used to offset the cost of attending a private school participating in the scholarship program.[239] If tuition and fees charged by a private school are higher than the scholarship award, a parent is responsible for paying the additional tuition and/or fees.[240]
- The Utah State Board of Education (USBE) currently oversees two scholarship grant programs that provide funding to eligible students wishing to attend private schools to meet their unique learning needs: the Carson Smith Scholarship Program and the Special Needs Opportunity Scholarship.[241] The Carson Smith Scholarship provides tuition assistance for eligible students with disabilities not enrolled in a public school and is designed for

[234] Arkansas Advisory Committee to the U.S. Commission on Civil Rights, "IDEA Compliance and Implementation in Arkansas Schools," Jan. 2023, https://www.usccr.gov/files/2023-01/2023_idea-compliance-and-implementation-in-ar.pdf.
[235] *See* Legge Statement, at 1; *see also* Center on Reinventing Public Education, "How Has the Pandemic Affected Students with Disabilities?"
[236] EdChoice, "School Choice Facts & Statistics," https://www.edchoice.org/school-choice/fast-facts/ (accessed Feb. 13, 2025).
[237] Butcher Statement, at 6-7.
[238] Georgia Dep't of Education, "Georgia Special Needs Scholarship," https://gadoe.org/parent-family-resources/georgia-special-needs-scholarship/ (accessed Feb. 21, 2025).
[239] Ibid.
[240] Georgia Dep't of Education, "Special Needs Scholarship Program Parent Responsibilities," https://lor2.gadoe.org/gadoe/file/786dd278-ee6b-4b1a-9fb6-94966e45af95/1/GSNS%20-%20PARENTS%20-08-%20PARENT%20RESPONSIBILITIES%20FTP.pdf.
[241] Utah State Board of Education, "Special Needs Scholarship Grants," https://schools.utah.gov/specialeducation/programs/specialneedsscholarshipgrants (accessed Feb. 21, 2025).

students who would qualify for special education and related services in public schools.[242] The Special Needs Opportunity Scholarship Program provides tuition assistance to eligible students with disabilities not enrolled in public school.[243] These scholarships may or may not pay the full tuition, and any remaining tuition is the responsibility of the parent.[244]

- The Autism Scholarship Program (ASP) in Ohio provides a scholarship to send a child to a special education program other than the one operated by the school district of residence to receive education and services outlined in the IEP or Autism Education Plan (AEP).[245]
- The Family Empowerment Scholarship for Students with Unique Abilities in Florida offers families of students with disabilities educational options, such as enrolling their student in another public school, or receiving a personal education savings account for their student that can be used for tuition, online programs, and other approved learning services and materials.[246] The amount of a student's scholarship depends on a number of different factors, including grade level, county of residence, and a student's individual level of need.[247] Parents are responsible for fulfilling financial obligations for all eligible expenses in excess of the amount of the scholarship as applicable.[248]

Jonathan Butcher testified about the diversity of the population of children with special needs, and described some of his research that found families in North Carolina, Arizona, and Florida used education savings accounts to purchase multiple products or services simultaneously.[249] Additionally, William Trachman of Mountain States Legal Foundation, testified about the potential benefit of parents being able to select schools:

> Because the labor market is affected by economic principles, it would be discordant for there not to be similar principles in the context of education. Parents are consumers, and act in the best interests of their child. Empowering parents to select schools—indeed, setting high expectations that this is part of their duties as a parent—will force schools to

[242] Utah State Board of Education, "Carson Smith Opportunity Scholarship Program (CSOS) General Overview," https://schools.utah.gov/specialeducation/_specialeducation/_specialneedsscholarship/_carsonsmithscholarship/CSSGeneralOverview.pdf.
[243] Utah State Board of Education, "Special Needs Opportunity Scholarship Program General Overview," https://schools.utah.gov/specialeducation/_specialeducation/_specialneedsscholarship/_specialneedsopportunity/SpecialNeedsOverview.pdf.
[244] Utah State Board of Education, "Carson Smith Opportunity Scholarship Program (CSOS) General Overview"; Utah State Board of Education, "Special Needs Opportunity Scholarship Program General Overview."
[245] Ohio Dep't of Education & Workforce, "Autism Scholarship," https://education.ohio.gov/Topics/Other-Resources/Scholarships/Autism-Scholarship (accessed Feb. 21, 2025).
[246] Florida Dep't of Education, "Family Empowerment Scholarship," https://www.fldoe.org/schools/school-choice/k-12-scholarship-programs/fes/ (accessed Feb. 21, 2025).
[247] Florida Dep't of Education, "Family Empowerment Scholarship – Unique Abilities (FES US) FAQs," https://www.fldoe.org/core/fileparse.php/18766/urlt/FES-UA-FAQs.pdf.
[248] Ibid.
[249] Butcher Statement, at 8.

> respond to market incentives. Because the way to stop a teacher shortage is to get more teachers.[250]

Alternatively, other education experts argue that voucher-type programs are not a solution to the teacher shortage or improving the educational opportunities for students with disabilities. For instance, Brittany Patrick, Senior Policy and Program Analyst of Disability Rights and Inclusion with the National Education Association (NEA) explained in her written testimony that "[d]iverting public funds to private school voucher programs disproportionately harms students with disabilities (SWD) and likely constitutes a violation of the Equal Protection Clause of the U.S. Constitution."[251] Patrick testified that special education vouchers for private schools require "parentally placed" students to waive their civil rights and protections under the ADA and IDEA.[252]

An amicus brief submitted by the Public Funds Public Schools, et al., to the Supreme Court of Kentucky detailed the negative effects of voucher programs on student outcomes, especially for students with disabilities.[253] The authors argued that the statutory protections provided to students with disabilities under federal law (i.e., Title II of the Americans with Disabilities Act, IDEA, and Section 504 of the Rehabilitation Act) are only explicitly enforced in public schools. Many parents are not aware that when they choose to use vouchers to attend private schools, they may forgo a vast majority of these protections, including their rights to an IEP, intra-school segregation, and unfair disciplinary actions.[254] Moreover, parents may not realize that they are also giving up the right to seek judicial remedies if their child's educational needs are not being met. The brief also mentioned that even though some private schools are covered by Title II of the ADA, it does not generally apply to private schools as the statute does not limit the schools' ability to deny enrollment to students with disabilities or require them to provide an appropriate education or services.[255] With the absence of state protections, students who have disabilities are not entitled to the basic ADA accommodations.

Additionally, GAO found in 2017 that:

> [P]rivate school choice programs inconsistently provide information on changes in rights and protections under the Individuals with Disabilities Education Act (IDEA) when parents move a child with a disability from public to private school. In 2001, the U.S. Department of Education (Education) strongly encouraged states and school districts to notify parents

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[250] William Trachman, Written Statement for the *Federal Response to Teacher Shortage Impacts on Students with Disabilities* briefing, at 4 (hereinafter Trachman Statement).
[251] Patrick Statement, at 1.
[252] Ibid., at 6.
[253] *Commonwealth of Kentucky ex rel. Cameron v. Johnson*, 658 S.W.3d 25 (2022).
[254] 20 U.S.C. §$ 1412(a)(10), 1415(k)(1)(E)-(F); 29 U.S.C. § 794(b)(1).
[255] 42 U.S.C. §§ 12181-12189.

> of these changes, but according to Education, IDEA does not provide it with statutory authority to require this notification. According to GAO's review of information provided by private school choice programs, and as confirmed by program officials, in school year 2016-17, 83 percent of students enrolled in a program designed specifically for students with disabilities were in a program that provided either no information about changes in IDEA rights or provided information that Education confirmed contained inaccuracies about these changes.[256]

The Commission also heard testimony indicating that private voucher schools may deny admission to students with disabilities, or to students based on other factors like disciplinary history, which disproportionately affects students with disabilities.[257] Jessica Tang of the American Federation of Teachers Massachusetts recounted an Institute of Education Sciences report on the Washington, D.C. voucher program that found a significant reason students did not use a voucher was due to inability to find a participating school with special needs services, and more than 12% that accepted a voucher left the program because the child was not receiving adequate services.[258] Moreover, Julian Vasquez Heilig, Director of the Network for Public Education, testified that teacher migration from one school to another is 97% higher for teachers at schools managed by Education Management Organizations and 58% higher for those at schools managed by Charter Management Organizations.[259] Heilig described research finding that charter and private schools often experience higher rates of teacher turnover and attrition than traditional public schools.[260] He stated that private schools participating in voucher programs are often unprepared to serve students with special academic needs, unlike public schools, which are mandated to provide appropriate accommodations under federal law.[261]

However, as noted above, several panelists at the Commission's briefing testified about the benefits of parental choice in education, including the use of voucher programs.[262] In January 2025, President Trump signed E.O. 14191, "Expanding Educational Freedom and Opportunities for Families,"[263] which, among other things, directs ED to issue guidance on how states can use federal funding to prioritize school choice programs in the Department's discretionary grant programs. As

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[256] U.S. Government Accountability Office, "Private School Choice: Federal Actions Needed to Ensure Parents Are Notified About Changes in Rights for Students with Disabilities," Nov. 2017, https://www.gao.gov/products/gao-18-94.
[257] Tang Statement, at 4.
[258] Ibid., at 5.
[259] Heilig Statement, at 2. Nearly two-thirds of public charter schools operate independently; the remaining 35% belong to some type of management organization. Charter Management Organizations (CMOs) are organizations with a nonprofit tax status, and Education Management Organizations (EMOs) operate as for-profit entities. *See* National Alliance for Public Charter Schools, "National Charter School Management Overview, 2016-17 School Year," https://publiccharters.org/wp-content/uploads/2023/01/napcs_management_report-3.pdf.
[260] Heilig Statement, at 2.
[261] Ibid., at 3.
[262] Trachman Statement, at 4; Butcher Statement, at 6-8.
[263] Exec Order No. 14191, 90 FR 8859 (Jan. 29, 2025).

discussed in Chapter 3, more data are needed to understand teacher shortages overall at a national level, as well as the impacts of various educational options on students with disabilities.

**USCCR Analysis**

*Sampling and Methodology*

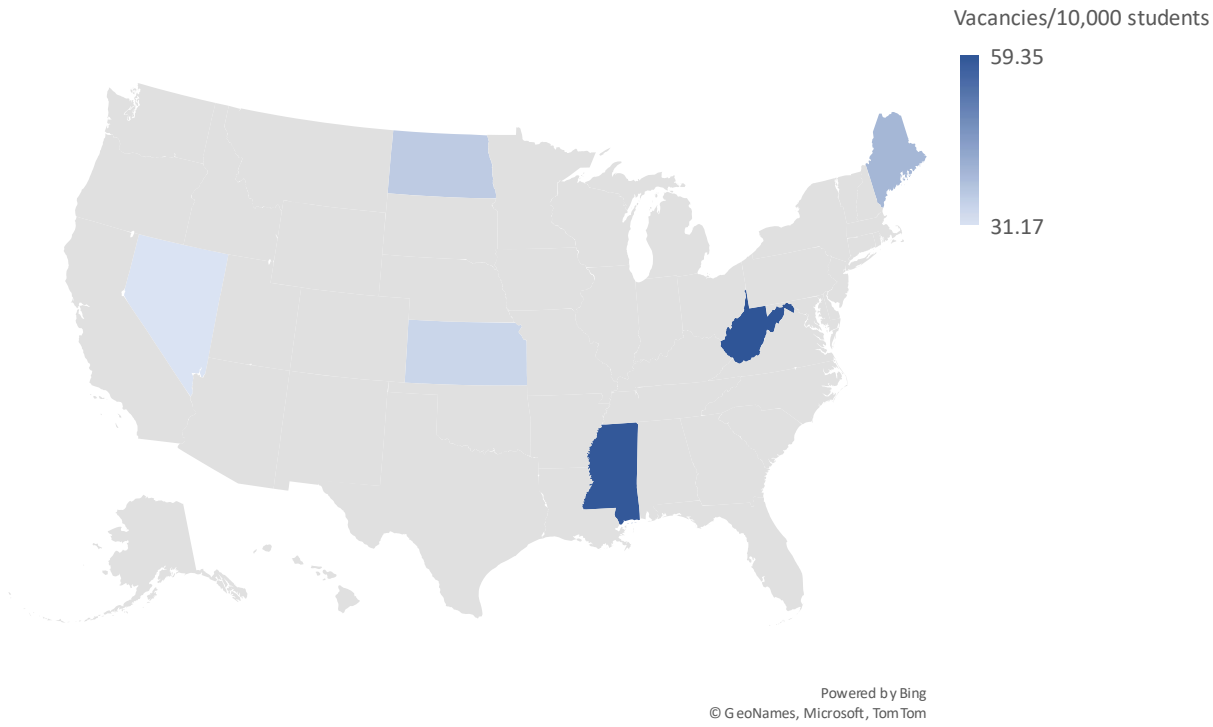
To better understand the impact of teacher shortages on students with disabilities, the Commission selected six states to use as case studies. Most, if not all, states reported teacher shortages within the time frame of this study (2017-2023), however there is no single national database that collects these statistics. While ED tries to capture states reporting teacher shortages, states are not mandated to report their data. Therefore, education researchers have addressed this gap by systematically examining news reports, ED data, and other publicly available data to create data for every state.

For this study, the first selection criterion was to assess states that are known to be experiencing teacher shortages. One of the more comprehensive databases is teachershortages.com, which is maintained by education scholars at the University of Missouri and the University of Pittsburgh. These researchers have examined and mapped out teacher vacancies in every state by systematically reviewing ED data[264] and presentations, policy briefs, news reports, journal publications, state-level data, and state licensed personnel data policy. The researchers estimate that there are at least 49,000 vacant teacher positions in the U.S. This is likely an undercount, however, since some reports are outdated, and some states do not report any information regarding teacher vacancies.[265]

Since raw vacancies are not as informative as vacancies relative to student populations, Commission staff examined vacancies per 10,000 students in the state. Six states were chosen from the nine states with the highest vacancy rates. The states, listed from highest to lowest vacancy rates, are West Virginia, Mississippi, Maine, North Dakota, Kansas, and Nevada (see Figure 2.5 below). The three states not included from the top nine were dropped because they are similar/adjacent to a state already selected in the geographical region (i.e., Louisiana, Delaware, and Rhode Island).

[264] ED data used by researchers included data on teacher preparation enrollment and completion from Title II (referring to Title II of the Higher Education Act) reports. *See* https://title2.ed.gov/Public/Home.aspx.
[265] *See* Tuan D. Nguyen, Chanh B. Lam, Paul Bruno, Josh Bleiberg, and Patricia Saenz-Armstrong, Teachershortages.com.

**Figure 2.5: Teacher Vacancy Rates in Selected Study States**




As discussed in Chapter 1, ED does not enforce IDEA. Under 20 U.S.C. § 1416(a)(1)(C) and (a)(3), IDEA requires states to monitor implementation of IDEA Part B by local education agencies in accordance with monitoring priorities in 20 U.S.C. § 1416(a)(3), and the statute also requires states to enforce IDEA Part B in accordance with 20 U.S.C. § 1416(e).[266] The selected states are racially and ethnically diverse, as well as geographically diverse. Table 2.2 below provides some basic demographic information for the states using data from the U.S. Census Bureau.

**Table 2.2: Selected States Demographics, 2024**

| | Population | <18 | White | Black | Hispanic | Asian | AI/AN | Poverty | Disability |
|---|---|---|---|---|---|---|---|---|---|
| *Kansas* | 2,940,546 | 23.6% | 73.7% | 6.2% | 13.7% | 3.2% | 1.3% | 11.2% | 9.6% |
| *Maine* | 1,395,722 | 17.8% | 91.8% | 2.1% | 2.3% | 1.4% | 0.7% | 10.4% | 11.5% |
| *Mississippi* | 2,939,690 | 23.1% | 55.6% | 37.8% | 3.9% | 1.2% | 0.7% | 18.0% | 12.6% |
| *Nevada* | 3,194,176 | 21.5% | 45.4% | 11.0% | 29.9% | 9.7% | 1.7% | 12.0% | 8.8% |
| *North Dakota* | 783,926 | 23.6% | 82.6% | 3.8% | 4.9% | 1.7% | 5.3% | 9.8% | 7.7% |
| *West Virginia* | 1,770,071 | 19.9% | 90.9% | 3.8% | 2.2% | 0.9% | 0.3% | 16.7% | 13.8% |

Notes: The White column is % non-Hispanic White residents, Hispanic is % Hispanic of any race, AI/AN is % American Indian/Alaska Native, Poverty is % people living under the poverty line, and Disability is % people with at least one disability.
Source: U.S. Census Bureau, "QuickFacts" https://www.census.gov/quickfacts/ (accessed Oct. 17, 2024).

[266] ED Responses to Interrogatories, at 12.

ED provides counts at the state level of school-aged children covered under IDEA, including some basic demographic information, shown below in Table 2.3 for the selected states. Trends in IDEA child counts for each state are provided in their respective sections below.

**Table 2.3: IDEA Child Counts for School Age Children (Ages 5-21), 2023**

| | Total | English Learners | Male | White | Black | Asian | AI/AN | Hispanic |
|---|---|---|---|---|---|---|---|---|
| *Kansas* | 73,795 | 8.1% | 63.5% | 61.9% | 8.1% | 1.4% | 0.9% | 20.3% |
| *Maine* | 34,742 | 3.7% | 64.0% | 86.4% | 3.9% | 0.8% | 1.1% | 3.6% |
| *Mississippi* | 67,075 | 3.3% | 65.2% | 44.2% | 47.0% | 0.5% | 0.2% | 3.6% |
| *Nevada* | 62,069 | 21.0% | 66.0% | 29.0% | 15.0% | 2.8% | 1.2% | 43.3% |
| *North Dakota* | 16,343 | 3.9% | 63.9% | 67.3% | 6.7% | 0.8% | 10.5% | 8.3% |
| *West Virginia* | 45,991 | 0.8% | 63.0% | 88.4% | 4.7% | 0.3% | 0.1% | 2.0% |

Source: U.S. Dep't of Education, "Child Count and Educational Environments," https://data.ed.gov/dataset/idea-section-618-state-part-b-child-count-and-educational-environments/resources?resource=aa572553-f494-49a6-a01e-99c52f0cf948 (accessed Dec. 10, 2024).

It is important to reiterate that measuring the impacts of teacher shortages is difficult. As mentioned in Chapter 1 and further discussed in Chapter 3, the quality of data about teacher vacancies is mixed at best.[267] Moreover, this study's time frame includes a global pandemic that created unprecedented changes to schools and their operation,[268] in addition to changed routines, reduced socialization, limited health care, economic challenges, fear of illness, and death of loved ones for some.[269] Finally, there are not discrete measures to examine the impact of the special education teacher shortage, as variables such as identification of students with disabilities and students' test scores are impacted by a variety of factors, of which teacher vacancies are only one. However, having qualified and experienced teachers is essential for learning,[270] so test data is provided, when available, as a one way to demonstrate the effects of teacher shortages for students with disabilities.

*Kansas*

The Kansas State Department of Education houses Special Education and Title Services (SETS), which states its purpose as providing:

> effective, evidence-based technical assistance to districts and schools across the state. We support all Kansas students, early childhood through secondary, meeting or exceeding Kansas Standards. This includes the development, implementation, and continuous

[267] *See infra* notes 376-380 (data issues).
[268] *See supra* notes 130-135 (school closures).
[269] Jacqueline M. Swank, Jo Lauren Weaver, and Alena Prikhidko, "Children and Adolescents' Lived Experiences During the COVID-19 Pandemic," *Family Journal*, 2022, vol. 30, no. 2, https://journals.sagepub.com/doi/full/10.1177/10664807211052303.
[270] Darling-Hammond and Baratz-Snowden, "A Good Teacher in Every Classroom"; Haycock, "Good Teaching Matters."

improvement of the monitoring process that ensures compliance with federal and state laws and administrative regulations, including the engagement of the student, families, and the community.[271]

Additionally, the Kansas Special Education for Exceptional Children Act expands federal law and regulations to include children who are identified as gifted and provides an opportunity for children enrolled in private schools by their parents to receive a FAPE.[272] According to its website, the "Kansas State Department of Education is required to provide information regarding any rules, regulations, and policies not required by IDEA 2004 or Federal Regulations."[273]

Table 2.4 below provides the number of reported educator positions and vacancies, as well as special educator and paraprofessional positions and vacancies, from academic years 2017-18 through 2022-23. Vacancies in all positions increased every year, with substantial increases in all positions in the 2021-22 school year.

**Table 2.4: Kansas Educator Positions and Vacancies by Year**

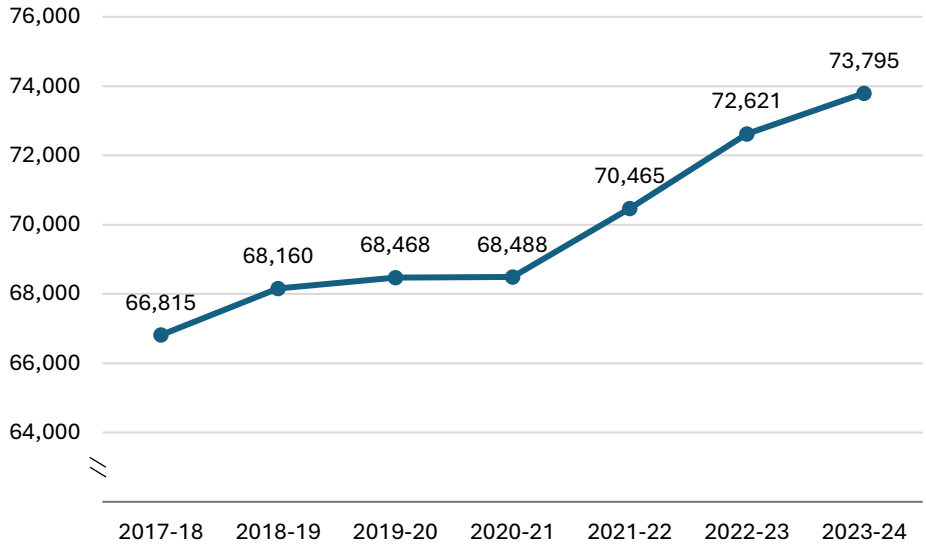
| | 2017-18 | 2018-19 | 2019-20 | 2020-21 | 2021-22 | 2022-23 |
|---|---|---|---|---|---|---|
| *Educator Positions* | 42,762 | 42,873 | 43,183 | 43,497 | 44,054 | 43,574 |
| *Educator Vacancies* | 355 | 550 | 705 | 839 | 1,381 | 1,634 |
| *% of Educator Vacancies to Positions* | 0.8% | 1.3% | 1.6% | 1.9% | 3.1% | 3.7% |
| *Special Educator Positions* | 4,856 | 4,757 | 4,765 | 4,836 | 4,964 | 4,992 |
| *Special Educator Vacancies* | 93 | 155 | 173 | 181 | 305 | 377 |
| *% of Special Educator Vacancies to Positions* | 1.9% | 3.3% | 3.6% | 3.7% | 6.1% | 7.6% |
| *Special Ed. Paraprofessional Positions* | 12,878 | 13,215 | 13,542 | 12,501 | 12,345 | 12,003 |
| *Special Ed. Paraprofessional Vacancies* | 73 | 44 | 205 | 221 | 524 | 566 |
| *% of Special Educator Paraprofessional Vacancies to Positions* | 0.6% | 0.3% | 1.5% | 1.8% | 4.2% | 4.7% |

Source: Kansas State Dep't of Education, Received Jan. 31, 2025.

Figure 2.6 shows the count of students in Kansas served under IDEA Part B (ages 5-21) from 2017-18 through 2023-24. The number of eligible students has been steadily rising, with sharper increases after 2020.

[271] Kansas State Dep't of Education, "Special Education and Title Services," https://www.ksde.org/Agency/Division-of-Learning-Services/Special-Education-and-Title-Services (accessed Dec. 12, 2024).
[272] Kansas State Dep't of Education, "Kansas Special Education Process Handbook," https://www.ksde.org/Agency/Division-of-Learning-Services/Special-Education-and-Title-Services/Special_Education/Legal-Special-Education-Law/Kansas-Special-Education-Process-Handbook (accessed Dec. 12, 2024).
[273] Ibid.

**Figure 2.6: Kansas IDEA Child Counts (Ages 5-21) by Year**




Source: Dep't of Education, "IDEA Section 618 State Part B Child Count and Educational Environments," https://data.ed.gov/dataset/idea-section-618-state-part-b-child-count-and-educational-environments/resources?resource=91dfcdc0-7e9b-4945-8319-684f9ffd2a24 (accessed Dec. 10, 2024).

Table 2.5 below shows the percentage of all students in Kansas who were served under IDEA from 2017-18 through 2023-24.

**Table 2.5: Percentage of Kansas Students Served Under IDEA by School Year**

| | 2017-18 | 2018-19 | 2019-20 | 2020-21 | 2021-22 | 2022-23 | 2023-24 |
|---|---|---|---|---|---|---|---|
| *Students Served under IDEA* | 14.7% | 15.0% | 15.4% | 15.7% | 16.0% | 16.4% | 16.9% |

Source: Kansas State Dep't of Education, "Special Education Reports," https://datacentral.ksde.org/sped_rpts.aspx (accessed Dec. 12, 2024).

Table 2.6 below shows the percentage of students with IEPs in Kansas who dropped out before completing high school and the percentage who graduated from high school.

**Table 2.6: High School Outcomes of Kansas Students with Disabilities by Year**

| | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 |
|---|---|---|---|---|---|---|
| *% Dropped Out* | 17.9% | 16.8% | 17.9% | 14.1% | 16.6% | 15.2% |
| *% Graduated* | 81.2% | 82.2% | 80.5% | 84.5% | 81.9% | n/a |

Note: Percentages do not add up to 100 since students do not graduate for reasons outside of dropping out.
Source: Kansas Special Education and Title Services Team (SETS), "SPR/APR Indicator 2 Dropout Measurement Option 1"; Kansas Special Education and Title Services Team (SETS), "Kansas Indicator 1 Graduation."

The Kansas State Department of Education also provides Dynamic Learning Maps (DLM), stating that:

> The DLM® project is guided by the core belief that all students should have access to challenging grade-level content. The DLM Alternate Assessment System will let students with significant cognitive disabilities show what they know in ways that traditional multiple-choice tests cannot. The DLM system is designed to map a student's learning throughout the year. The system will use items and tasks that are embedded in day-to-day instruction. In this way, testing happens as part of instruction, which both informs teaching and benefits students.[274]

Data are available for the number of students with disabilities undergoing regular or DLM assessments, with or without accommodations. Table 2.7 below shows that more students are assessed through the regular system.

**Table 2.7: Assessment Types for Kansas Students with Disabilities, 2022**

| | DLM Assessment *with* Accommodations | DLM Assessment *without* Accommodations | Regular Assessment *with* Accommodations | Regular Assessment *without* Accommodations |
|---|---|---|---|---|
| **Math** | 2,192 | 2,348 | 21,400 | 37,068 |
| **ELA** | 2,340 | 2,187 | 21,405 | 37,139 |
| **Science** | 913 | 939 | 8,380 | 14,368 |

Source: Kansas State Dep't of Education, "Special Education Reports."

A special education attrition report published in 2021 using data from the Kansas State Department of Education found that at the beginning of the 2020-21 school year, 1,489 of the 9,833 personnel employed during the 2019-20 school year did not return to a special education position in Kansas—an attrition rate of 15.1%.[275] Table 2.8 below provides teacher attrition from 2019-20 through 2020-21 and shows a growing rate over the years. More recent attrition rates are not currently publicly available.

**Table 2.8: Kansas Special Education Teacher Attrition Rates by Year**

| | **2018-19** | **2019-20** | **2020-21** |
|---|---|---|---|
| *Attrition Rate* | 9.3% | 12.9% | 15.1% |

Source: Kylie Stewart, "Kansas Special Education Attrition Report, 2020-2021," Sept. 2021, https://www.ksde.org/Portals/0/SES/funding/CatAid/Attrition20-21.pdf.

*Maine*

In Maine, the state education department's Office of Special Services & Inclusive Education provides support and oversight to local education agencies to ensure a FAPE for children with

[274] Kansas State Dep't of Education, "Dynamic Learning Maps (DLM) & Essential Elements," https://www.ksde.org/Agency/Division-of-Learning-Services/Career-Standards-and-Assessment-Services/CSAS-Home/Assessments/Dynamic-Learning-Maps-DLM-Essential-Elements (accessed Dec. 12, 2024).
[275] Kylie Stewart, "Kansas Special Education Attrition Report, 2020-2021," Sept. 2021, https://www.ksde.org/Portals/0/SES/funding/CatAid/Attrition20-21.pdf (accessed Nov. 20, 2024).

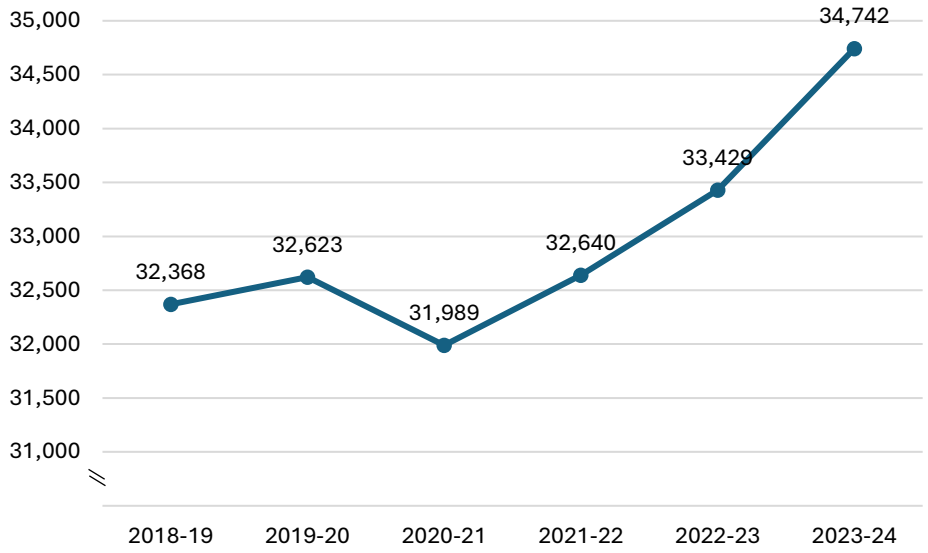
disabilities.[276] According to the Maine Department of Education (DOE), the Office of Special Services & Inclusive Education is responsible for:

- Ensuring that, to the maximum extent appropriate, children with exceptionalities, including children in public or private institutions or other care facilities, are educated with their typical peers.
- The collection and analysis of data to inform decision-making, support continuous improvement, and complete state and federal reporting.
- Protecting the educational rights of children with disabilities through the provision of due process.
- Federal special education funding distribution and the assurance that those funds are used appropriately, effectively, and efficiently.
- The General Supervision and monitoring of Maine's provision of special education to improve educational results and functional outcomes and to ensure that public agencies meet requirements.
- The provision of informational resources to educators and families to support the education of children with disabilities.
- The development and distribution of policies, procedures, and technical assistance to the education community.[277]

Figure 2.7 provides the count of students in Maine served under IDEA Part B (ages 5-21) from 2018-19 through 2023-24. Notably, ED flagged the 2017-18 data due to questionable data quality, which makes comparisons difficult. Nevertheless, there was a marked drop in the number of students eligible for IDEA in the 2020-21 school year. As the figure below shows, following that decline, the number of students served under IDEA steadily increased to higher than pre-pandemic numbers and has continued to climb through the 2023-24 school year.

[276] Maine Dep't of Education, "Special Services & Inclusive Education," https://www.maine.gov/doe/learning/specialed (accessed Dec. 10, 2024).
[277] Ibid.

**Figure 2.7: Maine IDEA Child Counts (Ages 5-21) by Year**




Source: Dep't of Education, "IDEA Section 618 State Part B Child Count and Educational Environments," https://data.ed.gov/dataset/idea-section-618-state-part-b-child-count-and-educational-environments/resources?resource=91dfcdc0-7e9b-4945-8319-684f9ffd2a24 (accessed Dec. 10, 2024).

The Maine DOE informed the Commission that it does not collect or report on teacher vacancies,[278] which makes understanding the ratio of students to teachers and gauging the impact of teacher shortages difficult. The Maine DOE does, however, provide basic information regarding students with disabilities for the 2019-20 through 2023-24 academic years, shown below in Table 2.9. The percentage of students with disabilities has risen from 17% in 2017 to almost 20% in the 2023-24 school year.

**Table 2.9: Percentage of Students in Maine with Disabilities by Year**

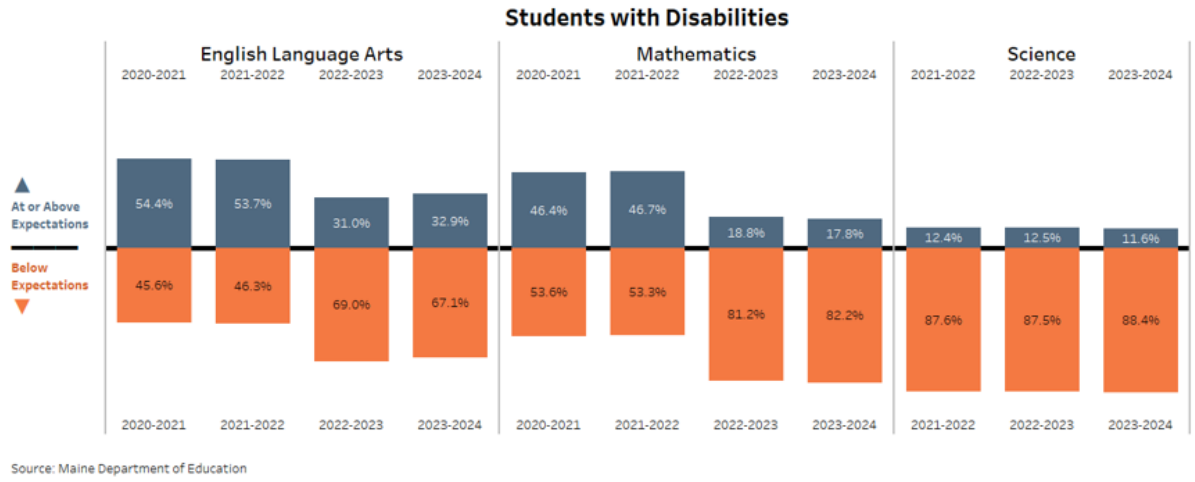
| | % with Disabilities |
|---|---|
| *2017-18* | 17.0 |
| *2018-19* | 17.8 |
| *2019-20* | 18.1 |
| *2020-21* | 18.6 |
| *2021-22* | 18.8 |
| *2022-23* | 19.5 |
| *2023-24* | 19.9 |

Source: Maine Dep't of Education, "ESSA Dashboard," https://www.maine.gov/doe/dashboard (accessed Dec. 10, 2024).

[278] Correspondence with Maine Dep't of Education (rec'd Jan. 23, 2025).

Maine also provides an ESSA (Every Student Succeeds Act) data dashboard examining student scores on state assessments that can be broken down by student type. Figure 2.8 provides assessment outcomes for students with disabilities in English/Language Arts (ELA), math, and science, across school years 2020-21 through 2023-24.

**Figure 2.8: Results of Assessments for Maine Students with Disabilities**




Source: Maine Dep't of Education, "Academic Performance on the Assessments by Student Population," https://www.maine.gov/doe/dashboard (accessed Dec. 10, 2024).

The share of students with disabilities in Maine that performed below state expectations increased for the 2022-23 and 2023-24 school years in both ELA and math and remained stagnant (and high) in science.[279] Scores prior to the 2020-21 school year are not available on the public dashboard.

Maine also provides supplemental IDEA data on the number of students with disabilities undergoing alternate assessments,[280] or regular assessments with or without accommodations. Table 2.10 shows that most students with disabilities in Maine are assessed without accommodations.

[279] Maine Dep't of Education, "Academic Performance on the Assessments by Student Population," https://www.maine.gov/doe/dashboard (accessed Dec. 10, 2024).

[280] Alternate assessments are based on alternate academic achievement standards (AA-AAAS). These assessments are intended for students with the most significant cognitive disabilities who are unable to participate in general assessments, even with accommodations. *See* National Center on Educational Outcomes, "Alternate Assessments: AA-AAAS," https://nceo.info/Assessments/aa-aas (accessed Dec. 10, 2024).

**Table 2.10: Assessment Types for Maine Students with Disabilities, 2023**

| | Alternate Assessment | Regular Assessment *with* Accommodations | Regular Assessment *without* Accommodations |
|---|---|---|---|
| **Math** | 497 | 4,269 | 12,089 |
| **ELA** | 489 | 3,608 | 12,742 |
| **Science** | 222 | 1,259 | 5,074 |

Source: Maine Dep't of Education, "IDEA Data & Public Reporting," https://www.maine.gov/doe/learning/specialed/ideapublic (accessed Dec. 10, 2024).

*Mississippi*

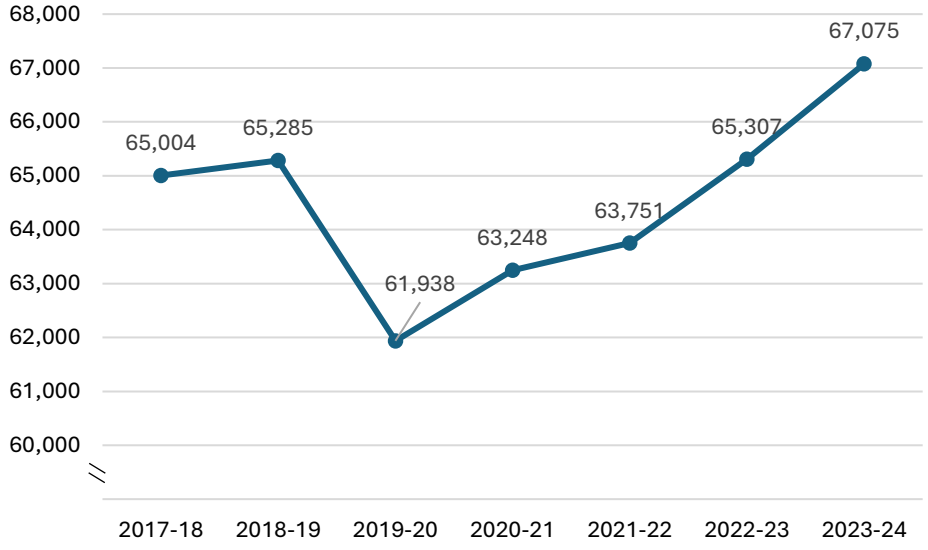
The Office of Special Education (OSE) within the Mississippi Department of Education helps local schools and districts provide programs for students with disabilities needing special education and related services.[281] According to its website:

> The OSE ensures that local school districts in Mississippi have special education programs, policies, and procedures that comply with the Federal Individuals with Disabilities Education Act (IDEA) and its implementing regulations, and that eligible children and youth with disabilities receive a Free Appropriate Public Education (FAPE). The OSE also provides professional learning opportunities, provides technical assistance to schools, supports the needs of families of students with disabilities, monitors schools for student outcomes and compliance with the regulations of the IDEA, and administers the IDEA entitlement grant.[282]

Figure 2.9 provides the count of students in Mississippi served under IDEA Part B (ages 5-21) from 2017-18 through 2023-24.

[281] Mississippi Dep't of Education, "Special Education," https://mdek12.org/specialeducation/ (accessed Dec. 12, 2024).
[282] Ibid.

**Figure 2: Mississippi IDEA Child Counts (Ages 5-21) by Year**




Source: Dep't of Education, "IDEA Section 618 State Part B Child Count and Educational Environments," https://data.ed.gov/dataset/idea-section-618-state-part-b-child-count-and-educational-environments/resources?resource=91dfcdc0-7e9b-4945-8319-684f9ffd2a24 (accessed Dec. 10, 2024).

The Mississippi Department of Education (MDE) 2023-24 Educator Shortage survey, conducted between August and November 2023, found 5,012 vacancies among teachers, administrators and school support staff across the state.[283] There was an increase of 24 vacancies from the 4,988 vacancies in the 2022-23 school year, but fewer than the 5,503 vacancies reported in 2021-22.[284] Table 2.11 below shows Mississippi FTE teachers and the percent of teachers considered experienced (with four or more years of experience). The percentage of experienced teachers has decreased since the 2017-18 school year.

**Table 2.11: Mississippi FTE Teachers and Experienced Teachers by Year**

| | 2017-18 | 2018-19 | 2019-20 | 2020-21 | 2021-22 | 2022-23 | 2023-24 |
|---|---|---|---|---|---|---|---|
| *FTE Teachers* | 31,292 | 31,480 | 31,364 | 31,641 | 31,858 | 31,261 | 31,151 |
| *Experienced Teachers* | 77.7% | 77.3% | 77.2% | 76.6% | 75.1% | 74.8% | 75.1% |

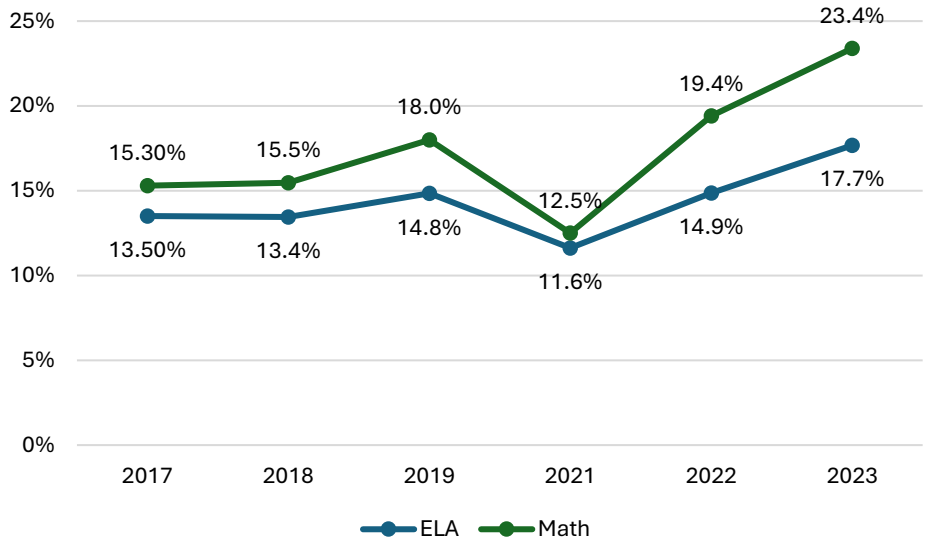
Source: Mississippi Dep't of Education, "Teachers and School Leaders," https://msrc.mdek12.org/teaching?EntityID=0000-000&SchoolYear=2023&Component=EXPTCH (accessed Dec. 12, 2024).

Mississippi provides a gap analysis report from student assessments each year. Figure 2.10 below shows the percentage of students with disabilities rated as proficient for ELA (English/Language

[283] Becky Gillette, "Teacher Shortages in State," *Mississippi Business Journal,* Oct. 8, 2024, https://msbusinessjournal.com/teacher-shortages-in-state/.
[284] Ibid.

Arts) and math for school years 2017-18 through 2023-24. The 2019-20 school year is not shown as assessments were not administered that year.

**Figure 2.10: Mississippi Students with Disabilities Percent Proficient by Year**




Source: Mississippi Dep't of Education, "Student Assessment Data," https://mdek12.org/publicreporting/Assessment/ (accessed Dec. 13, 2024).

Table 2.12 provides the assessment gap in proficiency levels of students with disabilities compared to students without disabilities for ELA and math for 2017-2023, except for the 2020-21 school year when assessments were not administered.

**Table 2.12: Mississippi Assessment Gap for Students with Disabilities by Year**

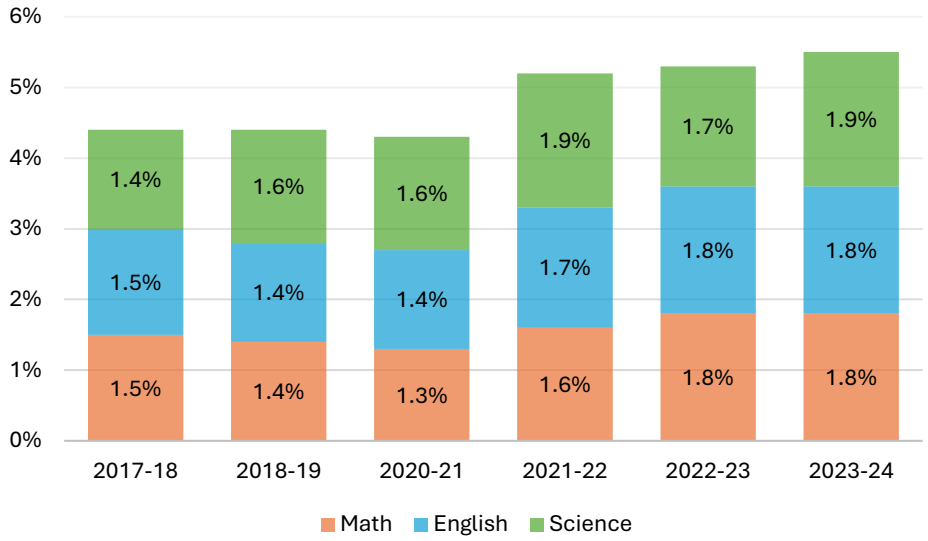
| | 2017-18 | 2018-19 | 2019-20 | 2021-22 | 2022-23 | 2023-24 |
|---|---|---|---|---|---|---|
| **ELA** | -25.8% | -29.9% | -30.5% | -26.6% | -31.5% | -33.7% |
| **Math** | -25.7% | -32.2% | -33.4% | -25.7% | -31.8% | -33.6% |

Source: Mississippi Dep't of Education, "Student Assessment Data," https://mdek12.org/publicreporting/Assessment/ (accessed Dec. 13, 2024).

Figure 2.11 below illustrates that there was a slight increase in students taking alternate assessments after 2020. Alternate assessments in Mississippi are for students with "significant cognitive disabilities."[285] Alternate assessments were not administered in the 2019-20 school year.

[285] Mississippi Dep't of Education, "Accountability Data," https://msrc.mdek12.org/alternateparticipation?EntityID=0000-000&SchoolYear=2020&Component=MATHALTP (accessed Dec. 13, 2024).

**Figure 2.11: Alternate Assessments of Mississippi Students by Year**




Source: Mississippi Dep't of Education, "Accountability Data," https://msrc.mdek12.org/alternateparticipation?EntityID=0000-000&SchoolYear=2020&Component=MATHALTP (accessed Dec. 13, 2024).

The Commission asked selected states to provide information on various educator positions and vacancies for school years 2017-18 through 2022-23, as well as teachers rated ineffective, teaching outside of their field, or considered inexperienced. Mississippi provided the Commission with position data but not vacancy data, which are shown in Table 2.13 below.

**Table 2.13: Mississippi Educator Positions by Year**

| | 2017-18 | 2018-19 | 2019-20 | 2020-21 | 2021-22 | 2022-23 |
|---|---|---|---|---|---|---|
| *Educator Positions* | 31,625 | 31,963 | 31,578 | 31,480 | 31,686 | 33,768 |
| *Administrator Positions* | 3,055 | 3,060 | 3,104 | 3,075 | 3,125 | 3,159 |
| *Special Educator Positions* | 5,411 | 5,517 | 5,626 | 5,660 | 6,376 | 6,368 |
| *Special Educator Paraprofessional Positions* | 1,377 | 1,349 | 1,333 | 1,304 | 1,352 | 1,183 |
| *Teachers Rated Ineffective* | 711 | 6,879 | 508 | 1,481 | 6,599 | 7,523 |
| *Teachers Considered Teaching Out of Field* | 1,369 | 1,241 | 1,388 | 1,442 | 1,349 | 1,047 |
| *Teachers Considered Inexperienced* | 6,984 | 7,149 | 7,150 | 7,418 | 7,933 | 7,884 |

Source: Correspondence with Dr. Lance Evans, State Superintendent of Education, Mississippi Dep't of Education (rec'd Dec. 20, 2024).

Table 2.13 above shows that the number of teachers rated ineffective in the state more than doubled in the 2020-21 school year, and then quadrupled in the 2021-22 school year, compared to the 2017-18 school year. Additionally, the number of special educator paraprofessional positions decreased in the 2022-23 school year by nearly 170, while the number of special educator positions continued

to increase. Across the study years, the percentage of special educator positions remains around 17-18% of the total educator positions, except for the 2021-22 school year, where special educators made up over 20% of the total educator positions.

The Commission also asked states to provide information about funding received from ED during the study's time frame. IDEA funding for Mississippi is in Table 2.14, below, including additional funding received in 2022 from the American Rescue Plan Act (ARP).[286]

**Table 2.14 Mississippi IDEA Funding by Year**

| | IDEA Part B, Section 611* | IDEA Part B, Section 619 | IDEA Part B, Section 611 ARP | IDEA Part B, Section 619 ARP |
|---|---|---|---|---|
| **2017** | 122,244,254 | 4,118,158 | -- | -- |
| **2018** | 123,243,806 | 4,118,158 | -- | -- |
| **2019** | 125,613,268 | 4,247,816 | -- | -- |
| **2020** | 126,410,148 | 4,348,127 | -- | -- |
| **2021** | 130,125,428 | 4,398,557 | -- | -- |
| **2022** | 131,816,371 | 4,282,435 | 24,607,784 | 2,150,650 |
| **2023** | 134,593,667 | 4,544,778 | -- | -- |

Note: ARP funding only existed for 2022.
*IDEA Part B Section 611 are grants to states for children ages 3-21, and Section 619 are preschool grants for children ages 3-5. *See* U.S. Dep't of Education, "State Formula Grants," https://sites.ed.gov/idea/state-formula-grants/ (accessed Jan. 7, 2025).
Source: Correspondence with Dr. Lance Evans, State Superintendent of Education, Mississippi Dep't of Education (rec'd Dec. 20, 2024).

*Nevada*

In January 2024, the Nevada Advisory Committee of the Commission published a report about the state's staff shortages and their impacts on equity in education.[287] According to the Nevada Department of Education, the number of vacancies during the 2022-23 school year (9.58%) was lower than the previous year (12.44%), but not as low as the 2020-21 school year (8.27%).[288] The report found that the highest concentration of teacher vacancies is in urban areas where there is a high concentration of Black and Latino students. In rural areas, Native American students who live on reservations are also disproportionately impacted.[289]

As discussed previously, having qualified and well-trained teachers in the classroom is essential for providing students with a quality education. The Nevada State Advisory Committee report

[286] Public Law No: 117-2. *See infra* notes 323-325 in Chapter 3 for more information.
[287] Nevada Advisory Committee to the U.S. Commission on Civil Rights, "Teacher and Professional Staff Shortages and Equity in Education in Nevada," Jan. 2024, https://www.usccr.gov/reports/2024/teacher-and-professional-staff-shortages-and-equity-education-nevada.
[288] Ibid.
[289] Ibid.

found that long-term substitutes lack training to address Individualized Education Plans (IEP) and 504 needs and lacked training on how to use assessment strategies that personalize student learning.[290] Additionally, the report also found the state had recently lowered its standards for educational attainment and training to become a substitute teacher throughout Nevada.[291]

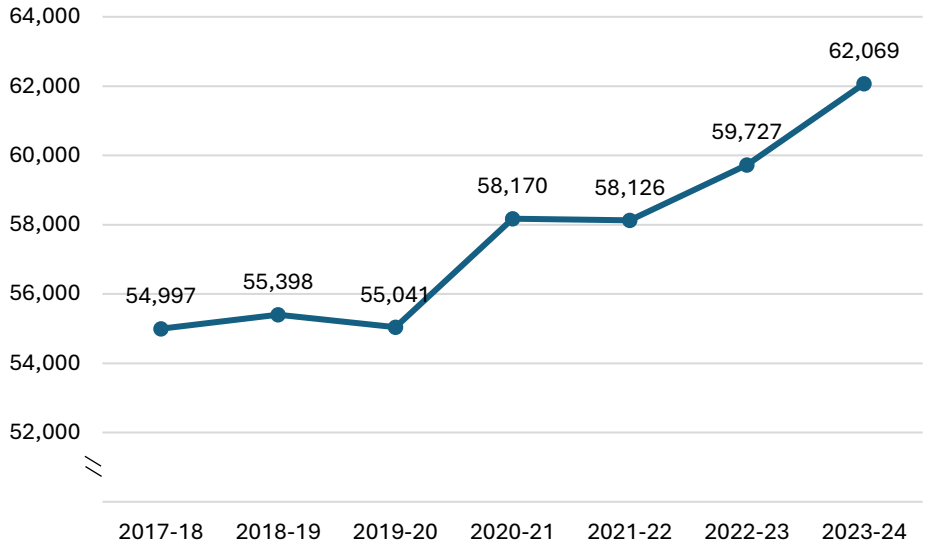
The Nevada Department of Education's Office of Inclusive Education (OIE) provides general supervision over the implementation of federal and state regulations. Within OIE, the Nevada General Supervision System (NVGSS) is the department's approach for monitoring, documenting, and enforcing accountability of the implementation of IDEA.[292] According to the website, the focus for NVGSS is:

- A coherent system for LEAs which seamlessly integrates annual LEA Special Education Determinations with monitoring and support activities designed to assist LEAs in meeting the 17 targets in Nevada's State Performance Plan;
- A strong focus on results in addition to compliance to provide technical assistance to LEAs; and
- Coordinating existing agency structures, processes, and protocols to reduce burden and duplication of efforts at the state and local levels.[293]

Figure 2.12 provides the count of students in Nevada served under IDEA Part B (ages 5-21) from 2017-18 through 2023-24, reported by the federal Department of Education. The number of students under IDEA in Nevada increased substantially for the 2020-21 school year and has continued to steadily increase.

[290] Ibid.
[291] Ibid.
[292] Nevada Dep't of Education, "Office of Inclusive Education," https://doe.nv.gov/offices/inclusive-education/ (accessed Dec. 13, 2024).
[293] Ibid.

**Figure 2.12: Nevada IDEA Child Counts (Ages 5-21) by Year**




Source: Dep't of Education, "IDEA Section 618 State Part B Child Count and Educational Environments," https://data.ed.gov/dataset/idea-section-618-state-part-b-child-count-and-educational-environments/resources?resource=91dfcdc0-7e9b-4945-8319-684f9ffd2a24 (accessed Dec. 10, 2024).

The Nevada Accountability Portal provides basic information on students, including the percentage of students each year with an IEP, shown in Table 2.15 below.

**Table 2.15: Percentage of Nevada Students with an IEP**

| | % Individual Education Program |
|---|---|
| *2017-2018* | 12.3 |
| *2018-2019* | 12.2 |
| *2019-2020* | 12.7 |
| *2020-2021* | 12.6 |
| *2021-2022* | 12.3 |
| *2022-2023* | 12.9 |
| *2023-2024* | 13.7 |

Source: Nevada Accountability Portal, "Group Summary Report."

Notably, there are conflicting data about the number of students covered by IDEA Part B. For example, the OIE website provides "IDEA Child Counts" for each school year every October,[294] and the number of children served by IDEA for the 2023 school year differs from the number in the Nevada Accountability Portal, as well as the official count provided by the Department of Education (see Table 2.16 below). These differences are minor but important, as understanding

[294] Nevada Dep't of Education, "Counts of Students with Disabilities," https://doe.nv.gov/offices/inclusive-education/data-systems/counts-of-students-with-disabilities (accessed Dec. 13, 2024).

proportions of students with disabilities better prepares districts, states, and federal agencies to ensure the proper resources are procured and allocated.

**Table 2.16: IDEA Part B Child Counts by Source**

| Data Source | Number of students covered by IDEA Part B |
|---|---|
| *IDEA Child Counts* | 67,252 |
| *NV Accountability Portal* | 65,918 |
| *U.S. Dep't of Education* | 62,069 |

Source: Nevada Dep't of Education, "Counts of Students with Disabilities"; Nevada Accountability Portal, "Group Summary Report"; Dep't of Education, "IDEA Section 618 State Part B Child Count and Educational Environments."

The Nevada Accountability Portal also provides information regarding the Nevada Alternative Assessment (NAA), which is designed for students with significant cognitive disabilities. The NAA, which assesses student academic performance on Nevada Content Standards Connectors through direct observation of specific tasks, is administered to fewer than 1% of all students in Nevada because they meet the criteria required.[295] The Portal reports that 2,631 students took the NAA in the 2023-24 school year; Table 2.17 shows their proficiency data.

**Table 2.17: Nevada Alternative Assessment Proficiency, 2023-24**

| | Math | ELA | Science |
|---|---|---|---|
| *% Proficient* | 11.6 | <5 | 7.3 |

Source: Nevada Accountability Portal, "Group Summary Report."

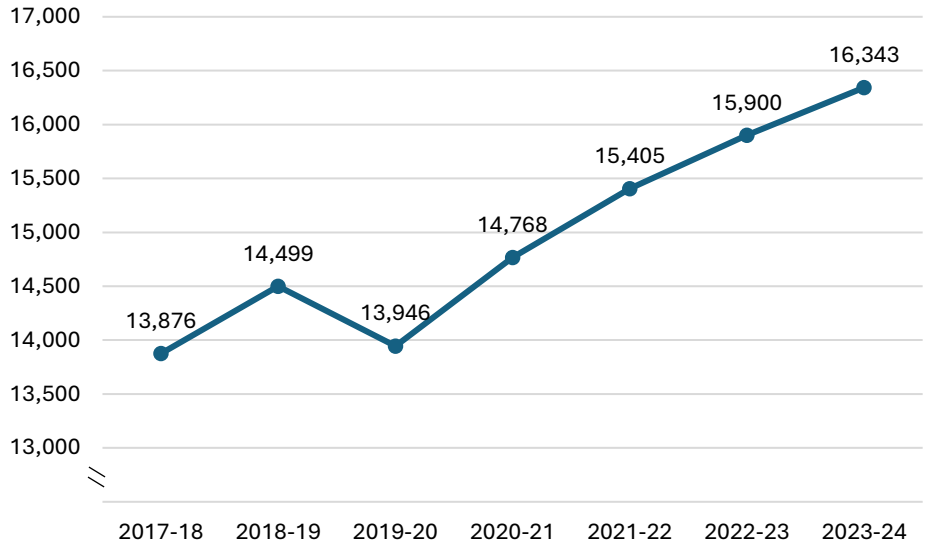
*North Dakota*

The North Dakota Department of Public Instruction (NDDPI) oversees special education programs in the state.[296] NDDPI's website emphasizes how it complies with IDEA, including through policy design and implementation, documentation, technical assistance, training, and dispute resolution.[297]

Figure 2.13 provides the count of students in North Dakota served under IDEA Part B (ages 5-21) from 2017-18 through 2023-24. There was a dip in IDEA child counts in 2019-20 and then a steady climb in numbers in post-pandemic years.

[295] Nevada Dep't of Education, Nevada Accountability Portal, https://nevadareportcard.nv.gov/DI/nv/2024 (accessed Dec. 13, 2024).
[296] North Dakota Department of Public Instruction, "Special Education," https://www.nd.gov/dpi/education-programs/special-education.
[297] Ibid.

**Figure 2.13: North Dakota IDEA Child Counts (Ages 5-21) by Year**




Source: Dep't of Education, "IDEA Section 618 State Part B Child Count and Educational Environments," https://data.ed.gov/dataset/idea-section-618-state-part-b-child-count-and-educational-environments/resources?resource=91dfcdc0-7e9b-4945-8319-684f9ffd2a24 (accessed Dec. 10, 2024).

The share of students with disabilities in North Dakota increased slightly from 13.6% in 2017-2018 to 15.3% in 2023-2024 (see Table 2.18 below). The percentage of students served by IDEA in North Dakota is roughly the same as it is in the U.S. at the aggregate.[298]

**Table 2.18: Percentage of North Dakota Students with IEPs by Year**

| | 2017-2018 | 2018-2019 | 2019-2020 | 2020-2021 | 2021-2022 | 2022-2023 | 2023-2024 |
|---|---|---|---|---|---|---|---|
| *% IEP* | 13.6% | 14.0% | 14.2% | 14.4% | 14.6% | 15.0% | 15.3% |

Source: Raw counts of students with IEPs from December of each school year: https://www.nd.gov/dpi/sites/www/files/documents/SpeEd/1999-2023%20Child%20Count%20Comparison%20by%20disability.pdf. Total student counts from: North Dakota, Insights, https://insights.nd.gov/Education/State/Enrollment.

NDDPI's website includes the Department of Education's State Performance/Annual Performance reports by year. These reports include various performance metrics and statistics, such as trends in how students with disabilities perform on state assessments and their post-school outcomes.[299]

[298] National Center for Education Statistics, "Students with Disabilities," https://nces.ed.gov/programs/coe/indicator/cgg/students-with-disabilities.
[299] U.S. Dep't of Education, "North Dakota State Performance Plan/Annual Performance Report: Part B, FFY 2022," https://www.nd.gov/dpi/sites/www/files/documents/SpeEd/ND%20SPP%20PART%20B%20FFY%202022-23%20(Final).pdf.

Table 2.19 shows the proficiency rates for students with IEPs compared to all students in North Dakota by grade and year.[300]

**Table 2.19: North Dakota Proficiency Rates for Students Scoring at or Above Proficient Against Grade Level Academic Achievement Standards**

| | 2020-2021 | | 2021-2022 | | 2022-2023 | |
|---|---|---|---|---|---|---|
| | Students with IEPs | All Students | Students with IEPs | All Students | Students with IEPs | All Students |
| *Reading* | | | | | | |
| Grade 4 | 13.2% | 37.5% | 16.5% | 42.0% | 12.9% | 38.8% |
| Grade 8 | 11.9% | 48.6% | 9.4% | 43.5% | 12.2% | 46.8% |
| High School | 8.8% | 42.6% | 9.0% | 46.7% | 10.5% | 48.1% |
| *Math* | | | | | | |
| Grade 4 | 14.9% | 35.4% | 13.5% | 36.8% | 15.0% | 37.8% |
| Grade 8 | 9.4% | 37.2% | 7.8% | 33.5% | 8.0% | 34.4% |
| High School | 5.0% | 28.0% | 2.9% | 30.5% | 5.9% | 30.3% |

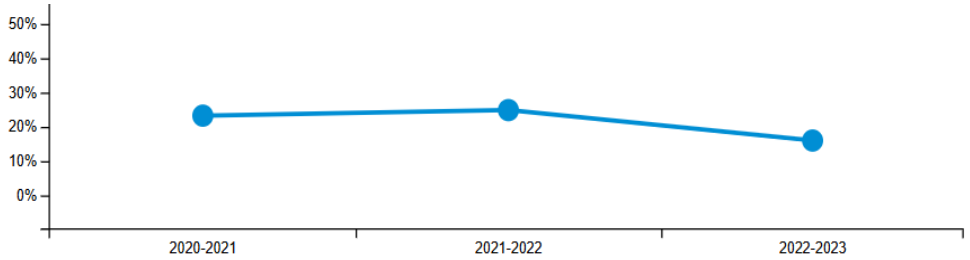
Source: U.S. Dep't of Education, "North Dakota State Performance Plan/Annual Performance Report: Part B, FFY 2020, https://www.nd.gov/dpi/sites/www/files/documents/SpeEd/NDSPPPARTBFFY%202020-2%20.pdf (2020-2021), U.S. Dep't of Education, "North Dakota State Performance Plan/Annual Performance Report: Part B, FFY 2021, www.nd.gov/dpi/sites/www/files/documents/SpeEd/ND%20SPP%20PART%20B%20FFY%202021-22.pdf (2021-2022), U.S. Dep't of Education, "North Dakota State Performance Plan/Annual Performance Report: Part B, FFY 2022, https://www.nd.gov/dpi/sites/www/files/documents/SpeEd/ND%20SPP%20PART%20B%20FFY%202022-23%20(Final).pdf (2022-2023).

As the table above shows, the gap in proficiency rates for students with disabilities compared to all students is consistent across years, grades, and subjects. High schoolers with IEPs had the lowest reported proficiency rate on the math assessment in 2021-2022, which was during the COVID-19 pandemic.[301]

North Dakota's online dashboard provides student summary statistics and shows state assessment proficiency gaps between students with disabilities and their peers.[302] Figures 2.14 and 2.15 below show the math and reading assessment gaps for all students with disabilities in North Dakota from 2020-2023. The gap in both reading and math was stagnant in the first two years and declined slightly in 2022-2023.

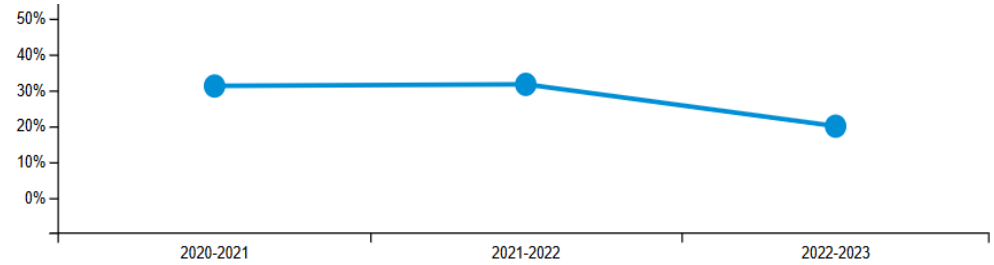
[300] Though available on NDDPI's website (https://www.nd.gov/dpi/education-programs/special-education), the annual reports for 2018-2019 and 2019-2020 do not contain statistics about proficiency rates for students with IEPs and all students.
[301] U.S. Dep't of Education, "North Dakota State Performance Plan/Annual Performance Report: Part B, FFY 2021," https://www.nd.gov/dpi/sites/www/files/documents/SpeEd/ND%20SPP%20PART%20B%20FFY%202021-22.pdf.
[302] Insights.nd.gov, "Insights into North Dakota Education," https://insights.nd.gov/Education/State/Summary.

**Figure 2.14: North Dakota Math Gap Rate for Students with Disabilities**




Source: North Dakota Special Education Performance Information, https://insights.nd.gov/Education/State/SPED/StatewideAssessment#.

**Figure 3: North Dakota Reading Gap Rate for Students with Disabilities**




Source: North Dakota Special Education Performance Information, https://insights.nd.gov/Education/State/SPED/StatewideAssessment#.

North Dakota provided the Commission with the numbers of educator positions and vacancies (Table 2.20). These include FTEs from all North Dakota entities: public school districts, special education units, career and technical education centers, regional education associations, Bureau of Indian Education (BIE) schools, private schools, and state institutions.[303] In North Dakota, an educator is defined as anyone working with a teaching license (i.e., this includes administrator positions but does not include paraprofessional positions). Special education paraprofessional vacancy data were not available, so only filled positions were reported. Additionally, ratings for teacher effectiveness were not collected in the 2019-20 school year due to COVID-19.[304]

**Table 30: North Dakota Education Personnel Data by Year**

| | 2017-18 | 2018-19 | 2019-20 | 2020-21 | 2021-22 | 2022-23 |
|---|---|---|---|---|---|---|
| Reported Educator Positions | 11,804 | 12,099 | 12,261 | 12,495 | 12,534 | 12,709 |
| Reported Educator Vacancies | 120 | 181 | 194 | 149 | 166 | 231 |
| Reported Administrator Positions | 737 | 746 | 763 | 785 | 793 | 797 |
| Reported Administrator Vacancies | 2 | 5 | 7 | 4 | 6 | 8 |
| Reported Special Educator Positions | 1,511 | 1,573 | 1,634 | 1,670 | 1,695 | 1,691 |
| Reported Special Educator Vacancies | 19 | 38 | 45 | 43 | 42 | 68 |
| Reported Special Educator Paraprofessional *Filled* Positions *Only* | 1,843 | 1,965 | 2,119 | 2,104 | 2,139 | 1,973 |

[303] Correspondence with North Dakota Dep't of Public Instruction (rec'd Dec. 20, 2024).
[304] Ibid.

| | | | | | | |
|---|---|---|---|---|---|---|
| Reported Special Educator Paraprofessional Vacancies | n/a | n/a | n/a | n/a | n/a | n/a |
| Teachers Rated Ineffective | 135 | 148 | n/a | 89 | 111 | 107 |
| Teachers Considered Teaching in Subject(s) Out of Field | n/a | 15 | 51 | 31 | 4 | 5 |
| Teachers Considered Inexperienced | 1,386 | 1,456 | 1,530 | 1,528 | 1,468 | 1,477 |

Source: Correspondence with North Dakota Dep't of Public Instruction (rec'd Dec. 20, 2024).

North Dakota indicated that the number of teachers considered to be teaching in subjects outside of their field areas were high during the height of COVID-19 due to disruptions to the verification process, and that "[i]n all likelihood, 2019-20 and 2020-21 values are overestimates."[305]

North Dakota also provided IDEA Part B funding information, available in Table 2.21 below. Funding increased steadily for the first four years of the study, increased more substantially in 2021-2022, and continued to increase in 2022-2023.

**Table 2.21: North Dakota IDEA Funding by Source**

| | Administrative Funds | Grant Funds to School Districts | Grant Funds to Others | Total Grant Award |
|---|---|---|---|---|
| **2017-18** | 2,250,465.0 | -- | 28,091,806.0 | **30,342,271.0** |
| **2018-19** | 2,457,174.1 | 45,074.2 | 29,460,845.7 | **31,963,094.0** |
| **2019-20** | 3,508,092.5 | 15,824.0 | 29,476,005.0 | **32,999,921.5** |
| **2020-21** | 2,599,778.6 | 11,853,435.2 | 18,156,550.1 | **32,609,764.0** |
| **2021-22** | 2,452,960.3 | 19,789,035.4 | 14,327,381.9 | **36,569,377.6** |
| **2022-23** | 3,744,740.3 | 17,079,951.7 | 18,679,987.6 | **39,504,679.6** |

Source: Correspondence with North Dakota Dep't of Public Instruction (rec'd Dec. 20, 2024).

The Department of Public Instruction explained how funding to provide resources for students with disabilities is allocated to school districts:

> NDCC [North Dakota Century Code] 15.1-32-08 mandates that each Local education agency (LEA) is required to provide special education and related services as a single LEA or as a multi-district special education unit member. In 2023-2024, there were 11 single LEAs and 20 multidistrict special education units, which NDDPI refers to as local special education units (LSEUs) in North Dakota. The largest multidistrict special education unit currently consists of 18 LEAs. NDCC 15.1-32-21 deems special education units as local education agencies for purposes related to federal funding. Therefore, IDEA funds (611 and 619) are allocated at the special education unit level.[306]

[305] Ibid.
[306] Ibid.

Finally, the NDDPI told the Commission that the state has implemented several strategies to address teacher shortages in special education:

- In 2021 the ND legislature granted authority to NDDPI to administer certificates for special education technicians in North Dakota. Special education technicians are allowed to conduct academic and behavioral screenings, document student progress, assist with regulatory paperwork, participate in multidisciplinary team meetings, prepare materials, and assist with scheduling and maintaining space and equipment under the supervision of a special education teacher.
- The Para-to-Teacher Pipeline seeks to attract special education paraprofessionals and supports them in transitioning to licensed special education teachers. The program's inception was in the summer of 2020, and the legislature is currently funding it at three million biannually.
- The North Dakota Educational Employment System website is a one-stop recruitment resource with various features and information. The main feature of the website is the Educational Employment System. This system is free to North Dakota educational entities. The system includes educational job openings for employers seeking help and a job seekers section for those looking for employment across North Dakota.
- During the 2021-2022 school year, the Educator Pathway Program created course codes for five courses that enabled school districts to recruit potential teacher candidates while still in high school. The Educator Pathway Program allows high school students interested in entering the teaching field to take dual credit while still in high school, which will count towards both graduation requirements and college credit. During the 2022-2023 school year, five North Dakota Universities offered dual credits courses at no cost to the students. Through this program in 2022-2023, approximately 121 dual courses in education were taken and paid for with ESSER funds.[307]

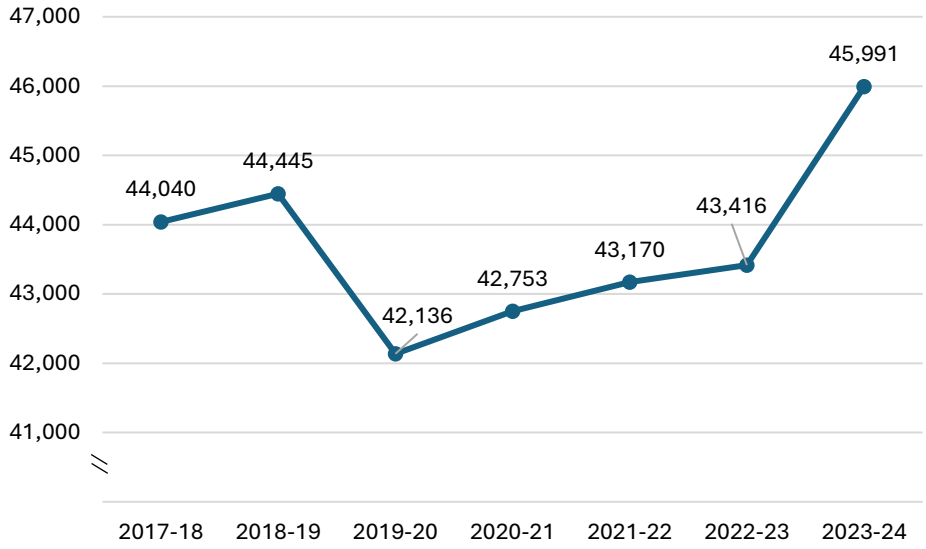
*West Virginia*

The West Virginia Department of Education's Office of Special Education (OSE) monitors the implementation of IDEA by local education agencies.[308] In addition, West Virginia Code § 18-20-1 (Education of Exceptional Children) requires the state to assure that all exceptional students receive an education in accordance with state and federal laws and regulations.[309]

Figure 2.16 provides the count of students in West Virginia served under IDEA Part B (ages 5-21) from 2017-18 through 2023-24. There was a large decrease in the 2019-20 school year, followed by a steady increase and then a large increase in 2023-24.

[307] Ibid. For more information about ESSER funding, see Chapter 3.
[308] West Virginia Dep't of Education, "Policies and Compliance," https://wvde.us/special-education/policies-and-compliance/ (accessed Dec. 14, 2024).
[309] Ibid.

**Figure 2.16: West Virginia IDEA Child Counts (Ages 5-21) by Year**




Source: Dep't of Education, "IDEA Section 618 State Part B Child Count and Educational Environments," https://data.ed.gov/dataset/idea-section-618-state-part-b-child-count-and-educational-environments/resources?resource=91dfcdc0-7e9b-4945-8319-684f9ffd2a24 (accessed Dec. 10, 2024).

West Virginia provides IDEA Section 618[310] reporting data online with information about students covered by IDEA, including participation in assessments. Table 2.22 provides the percentage of students with disabilities across assessment types for school years 2017-18 through 2021-22 (the most recent year available). Assessments were not conducted in the 2019-20 school year.

**Table 2.22: Assessment Types for West Virginia Students with Disabilities**

| | Alternate Assessments | Regular Assessment *with* Accommodations | Regular Assessment *without* Accommodations |
|---|---|---|---|
| **2017-18** | | | |
| *Math* | 5.5% | 73.2% | 21.3% |
| *Reading/Language Arts* | 7.1% | 72.0% | 21.0% |
| **2018-19** | | | |
| *Math* | 6.7% | 73.0% | 20.3% |
| *Reading/Language Arts* | 6.7% | 73.0% | 20.3% |
| **2019-20** | | | |
| *Math* | * | * | * |
| *Reading/Language Arts* | * | * | * |

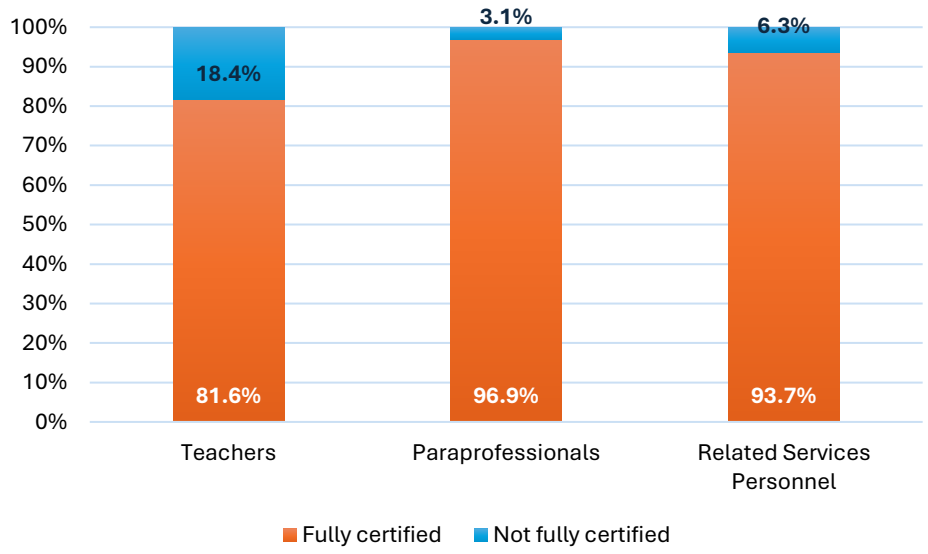
[310] Section 618 of the Individuals with Disabilities Education Act (IDEA) requires that each state submit data about infants and toddlers (birth through age 2) who receive early intervention services under Part C of IDEA and children with disabilities (ages 3 through 21) who receive special education and related services under Part B of IDEA. U.S. Dep't of Education, "IDEA Section 618 Data Products," https://www.ed.gov/idea-section-618-data-products (accessed Dec. 14, 2024).

| | | | |
|---|---|---|---|
| **2020-21** | | | |
| *Math* | 5.8% | 73.5% | 20.7% |
| *Reading/Language Arts* | 6.5% | 30.4% | 63.2% |
| **2021-22** | | | |
| *Math* | 6.5% | 72.9% | 20.6% |
| *Reading/Language Arts* | 5.9% | 36.1% | 58.0% |

* Data are not available for that school year.
Source: West Virginia Dep't of Education, "Data and Public Reporting," https://wvde.us/special-education/data-and-public-reporting/ (accessed Dec. 15, 2024).

While assessment data for the 2022-23 school year were not available, educator certification for that year is provided in Figure 2.17 below.

**Figure 47: West Virginia Educator Certification, 2022-23**




Source: West Virginia Dep't of Education, "Data and Public Reporting," https://wvde.us/special-education/data-and-public-reporting/ (accessed Dec. 15, 2024).

The West Virginia Department of Education (WVDE) stated in correspondence with the Commission that it collects information about staff but does not have information about employment vacancies and that employment data "are maintained primarily by local districts."[311]

Table 2.23 below shows the personnel metrics provided by the state. WVDE explained that, following ED guidance, it changed its reporting mechanisms regarding personnel metrics, such as teacher experience. WVDE explained that it now reports the percentage of teachers fully certified for the courses they are teaching as opposed to the percentage of classes taught by fully certified

[311] Correspondence with West Virginia Dep't of Education (rec'd Dec. 20, 2024).

teachers. WVDE provided both metrics for 2022 and 2023 as a point of reference for the transition.[312]

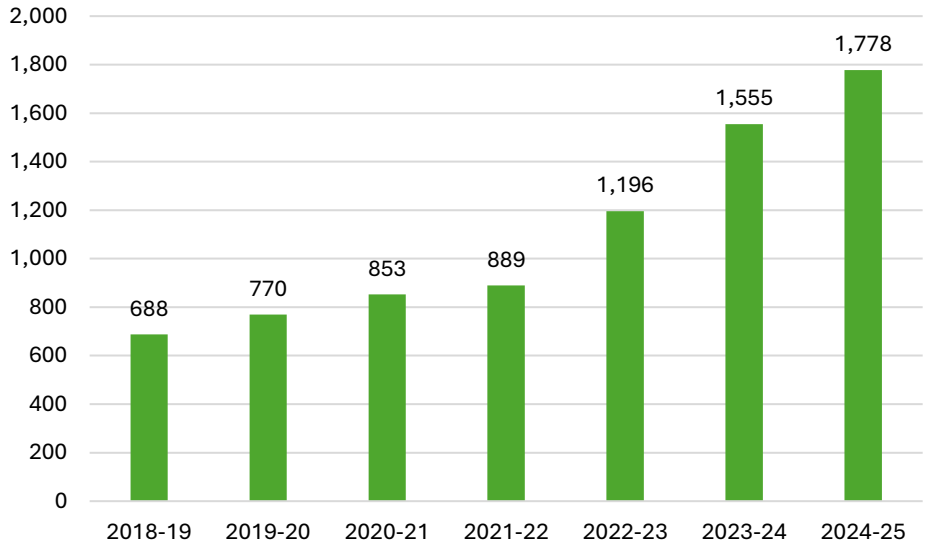
**Table 2.23: West Virginia Personnel Metrics by Year**

| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 |
|---|---|---|---|---|---|---|---|
| *Principals with ≤3 Years Experience* | 28.8% | 28.5% | 28.4% | 27.2% | 26.2% | 28.8% | 34.5% |
| *Classroom Teachers with ≤3 Years Experience* | 19.2% | 18.6% | 18.4% | 17.9% | 18.4% | 19.8% | 19.9% |
| *Other school leaders with ≤3 Years Experience* | 26.5% | 23.7% | 26.0% | 26.7% | 31.7% | 29.0% | 29.2% |
| *Teachers with Provisional Credentials* | 4.9% | 6.0% | 5.6% | 5.7% | 6.8% | 8.4% | 9.1% |
| *Percent of Classes Taught by Fully Certified Teachers* | 90.7% | 88.9% | 88.2% | 87.5% | 87.6% | 88.9% | -- |
| *Percent of Teachers Fully Certified* | -- | -- | -- | -- | 92.2% | 95.1% | 94.3% |

Source: Correspondence with West Virginia Dep't of Education (rec'd Dec. 20, 2024).

WVDE also provided the number of out-of-field teachers for each year, illustrated in Figure 2.18 below.

**Figure 2.18: West Virginia Out-of-Field Teachers by Year**




Source: Correspondence with West Virginia Dep't of Education (rec'd Dec. 20, 2024).

West Virginia's Department of Education noted that they have updated their method for identifying out-of-field teachers over the years, thus the numbers over time might not be comparable.[313]

[312] Ibid.
[313] Ibid.

**Regional Variations**

ED provides personnel data for each state, including the number of teachers who are fully certified and paraprofessionals who are deemed qualified. Paraprofessionals are defined as employees who provide instructional support, including those who:

- provide one-on-one tutoring if such tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher,
- assist with classroom management, such as organizing instructional and other materials,
- provide instructional assistance in a computer laboratory,
- conduct parental involvement activities,
- provide support in a library or media center,
- act as a translator, or
- provide instructional support services under the direct supervision of a teacher.[314]

Certified teachers must be a person employed as a special education teacher in the state/entity who teaches elementary school, middle school, or secondary school and:

- Has obtained full State/entity certification as a special education teacher (including certification obtained through participating in an alternate route to certification as a special educator, if such alternate route meets minimum requirements described in section 200.56(a)(2)(ii) of title 34, Code of Federal Regulations, as such section was in effect on November 28, 2008), or passed the State/entity special education teacher licensing examination, and holds a license to teach in the State/entity as a special education teacher, except with respect to any teacher teaching in a public charter school who shall meet the requirements set forth in the State/entity's public charter school law;
- Has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
- Holds at least a bachelor's degree.[315]

Table 2.24 below shows the percentage of special education teachers fully certified, and paraprofessionals deemed qualified, for school years 2017-18 through 2022-23. There is substantial variation between states. For instance, in Kansas only 66% of teachers were certified in 2017, but that number increased by 33% in the following school year; however, it dropped slightly and has remained in the 80% range since 2019. Notably, North Dakota reports all teachers as fully certified for the selected years.

[314] U.S. Dep't of Education, OSEP Data Documentation, "IDEA Part B Personnel for School Year 2021-2022," Nov. 2023, https://data.ed.gov/dataset/99ddf3d6-09b7-48a2-8ab3-32bf9f97c23a/resource/00f36354-4381-400b-beb6-f1fc152c2866/download/idea-partb-personnel-2021-22.docx. Definition adapted from 20 U.S.C. § 6319(g)(2).
[315] Ibid.

**Table 4.24: Percentage of Fully Certified Special Education Teachers, Selected States**

| | Kansas | Maine | Mississippi | Nevada | North Dakota | West Virginia |
|---|---|---|---|---|---|---|
| *2017-18* | 66.7% | 94.5% | 98.8% | 96.5% | 100.0% | 88.3% |
| *2018-19* | 100.0% | 95.7% | 98.9% | 79.3% | 100.0% | 87.8% |
| *2019-20* | 85.8% | 96.7% | 99.0% | 89.1% | 100.0% | 87.8% |
| *2020-21* | 88.8% | 97.8% | 99.5% | 90.9% | 100.0% | 85.7% |
| *2021-22* | 87.8% | 96.7% | 99.2% | 95.0% | 100.0% | 84.8% |
| *2022-23* | 84.7% | 97.8% | 99.4% | 95.5% | 100.0% | 80.4% |

Source: U.S. Dep't of Education, "IDEA Section 618 State Part B Personnel," https://data.ed.gov/dataset/idea-section-618-state-part-b-personnel/resources?resource=80bc1b6e-f748-4b2e-81a6-746d8fcbd975 (accessed Dec. 12, 2024).

The share of federal funding for schools also differs for the selected states, as Table 2.25 below illustrates. In 2022, while federal sources were responsible for 13.6% of public school funding at the national level, federal money accounted for as little as 10.1% of school funding for Kansas, and as much as 23.3% of school funding for Mississippi.

**Table 5.25: Percentage of Public School Funding by Source in Selected States, 2022**

| | Federal | State | Local |
|---|---|---|---|
| *United States* | 13.6% | 43.7% | 42.7% |
| *Kansas* | 10.1% | 65.2% | 24.8% |
| *Maine* | 10.2% | 40.2% | 49.6% |
| *Mississippi* | 23.3% | 43.8% | 32.9% |
| *Nevada* | 16.0% | 69.3% | 14.7% |
| *North Dakota* | 18.2% | 49.1% | 32.7% |
| *West Virginia* | 18.6% | 47.1% | 34.3% |

Source: Source: U.S. Census Bureau, "2022 Public Elementary-Secondary Education Finance Data," https://www.census.gov/data/tables/2022/econ/school-finances/secondary-education-finance.html (accessed Dec. 16, 2024).

Table 2.26 provides the breakdown of federal sources (in thousands of dollars) of elementary-secondary revenue for the U.S. as well as for the selected states. The national amounts are substantially higher in the most recent years, 2021 and 2022, due to congressional funding in response to the COVID-19 pandemic (see Chapter 3 for more information). However, there is variation in how much additional support the selected states received in those years.

**Table 2.26 Federal Sources (in Thousands) of Elementary-Secondary Revenue by Year**

| | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 |
|---|---|---|---|---|---|---|
| *United States* | **55,377,552** | **55,322,196** | **57,878,962** | **57,778,738** | **85,299,748** | **119,089,043** |
| *Kansas* | 537,064 | 525,541 | 578,647 | 522,172 | 685,850 | 777,750 |
| *Maine* | 184,381 | 187,280 | 184,603 | 177,918 | 464,134 | 358,435 |
| *Mississippi* | 671,484 | 656,763 | 680,426 | 663,957 | 1,013,753 | 1,333,727 |
| *Nevada* | 426,468 | 420,117 | 448,460 | 408,478 | 627,403 | 993,423 |
| *North Dakota* | 163,451 | 171,381 | 195,994 | 192,922 | 336,071 | 402,070 |
| *West Virginia* | 403,856 | 365,828 | 402,311 | 431,832 | 547,741 | 747,059 |

Source: U.S. Census Bureau, "Public Elementary-Secondary Education Finance Data," 2017-2022.

As this chapter has shown, many states struggle to hire and retain qualified special education teachers and ensure that students with disabilities have their educational needs met. The state data presented show that these challenges have been pervasive for many years, but the pandemic may have exacerbated issues for schools and students. While schools are mandated to provide all students an equal and quality education, the next chapter provides a discussion on the federal role to address the national teacher shortage.

# CHAPTER 3: Federal Response to Teacher Shortages

## Congressional Response

As discussed in Chapter 2, COVID-19 had immense impacts on elementary and secondary schools. On March 27, 2020, Congress set aside approximately $13.2 billion of the $30.75 billion allotted to the Education Stabilization Fund through the Coronavirus Aid Relief and Economic Security (CARES) Act[316] for the Elementary and Secondary School Emergency Relief Fund (ESSER).[317] ED awarded these grants to state educational agencies (SEAs) for the purpose of providing local educational agencies (LEAs), including charter schools that are LEAs, with emergency relief funds.[318] According to ED, ESSER Fund awards to SEAs were in the same proportion as each state received funds under Part A of Title I of the Elementary and Secondary Education Act of 1965, as amended, in fiscal year 2019.[319]

The 2021 Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act was signed into law on December 27, 2020;[320] it provided $54.3 billion for the Elementary and Secondary School Emergency Relief (ESSER II) Fund.[321] ESSER II Fund awards to SEAs were in the same proportion as each state received funds under Part A of Title I of the Elementary and Secondary Education Act of 1965, as amended, in fiscal year 2020.[322]

On March 11, 2021, the American Rescue Plan (ARP) Act was signed into law, which included $122 billion for the ARP Elementary and Secondary School Emergency Relief (ARP ESSER) Fund.[323] ED reported to the Commission that an estimated $30 billion of the $122 billion went to recruiting, preparing, and hiring new teachers.[324] Funds were provided to SEAs and LEAs to help reopen and sustain the same operation of schools and address the impact of the pandemic.[325]

ED guidance indicates that each SEA must allocate at least 90% of the ESSER funds it receives as subgrants to LEAs in proportion to the amount of funds each LEA received under Part A of Title I of the Elementary and Secondary Education Act of 1965 (ESEA) in the most recent fiscal year.[326]

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[316] Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136.
[317] U.S. Dep't of Education, "Elementary and Secondary School Emergency Relief Fund," https://www.ed.gov/grants-and-programs/formula-grants/response-formula-grants/covid-19-emergency-relief-grants/elementary-and-secondary-school-emergency-relief-fund (accessed Dec. 6, 2024).
[318] Ibid.
[319] Ibid.
[320] Pub. Law No. 117-2, 135 STAT. 4 (2021).
[321] U.S. Dep't of Education, "Elementary and Secondary School Emergency Relief Fund."
[322] Ibid.
[323] Ibid.
[324] U.S. Dep't of Education Statement, at 1.
[325] U.S. Dep't of Education, "Elementary and Secondary School Emergency Relief Fund."
[326] U.S. Dep't of Education, "Frequently Asked Questions: Elementary and Secondary School Emergency Relief Programs / Governor's Emergency Education Relief Programs," Updated Dec. 2022, https://www.ed.gov/sites/ed/files/2022/12/ESSER-and-GEER-Use-of-Funds-FAQs-December-7-2022-Update-1.pdf.

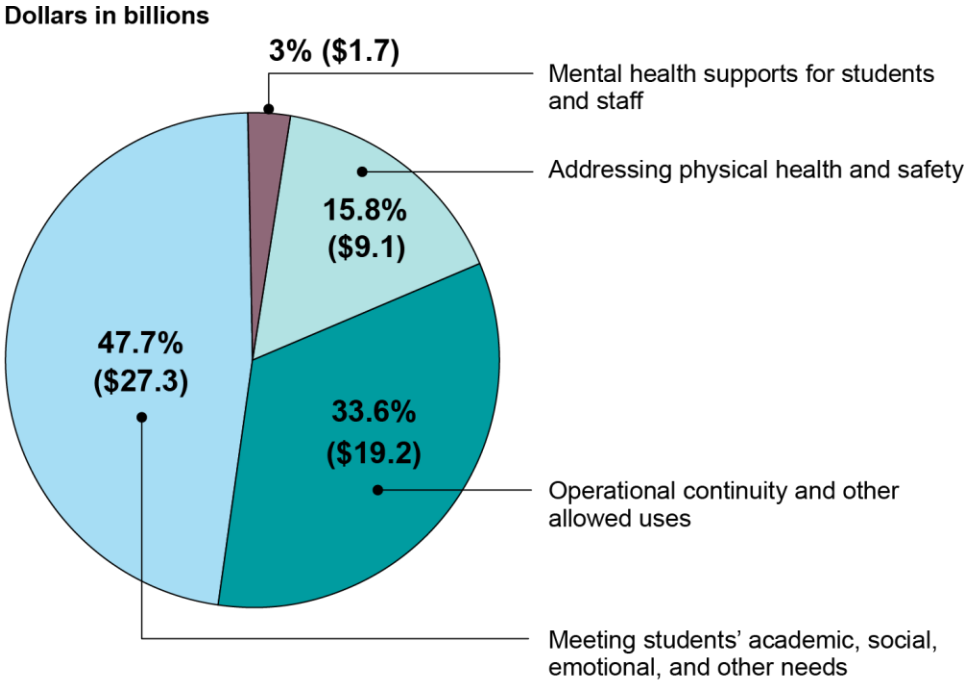
According to ED guidance, school districts could use ESSER funds to support a wide variety of activities, including:

- Coordinating efforts to prevent, prepare for, and respond to COVID-19.
- Planning, coordinating, and implementing activities during long-term closures, such as providing meals to eligible students.
- Implementing protocols to maintain health and safety when reopening schools.
- Addressing the unique needs of students with disabilities, English learners, low-income students, racial and ethnic minorities, students experiencing homelessness, or students in foster care.
- Purchasing educational technology.
- Planning and implementing summer learning and enrichment activities and afterschool programs.
- Addressing the academic impact of lost instructional time.
- Providing mental health services.
- Repairing and improving facilities to reduce virus transmission and exposure to environmental health hazards.[327]

Congress requested that the Government Accountability Office (GAO) review how school districts used their ESSER funds and analyze spending data for school years 2020-21 and 2021-22. It found that school districts reported spending about $57.3 billion (approximately 80%) in ESSER funds through school year 2021-22, primarily to address students' academic, social, and emotional needs, and continue school operations.[328] The remaining 20% went to address physical health and safety, and mental health supports for students and staff (see Figure 3.1 below).[329]

[327] U.S. Gov't Accountability Office, "School Districts Reported Spending Initial COVID Relief Funds on Meeting Students' Needs and Continuing School Operations," Sept. 2024, https://www.gao.gov/assets/gao-24-106913.pdf.
[328] Ibid.
[329] Ibid.

**Figure 3.1: School District Reported Spending of ESSER through 2021-22**




Source: GAO analysis of Department of Education data. | GAO-24-106913

Note: Percentages in this figure do not add to 100 percent due to rounding.

Source: U.S. Gov't Accountability Office, *School Districts Reported Spending Initial COVID Relief Funds on Meeting Students' Needs and Continuing School Operations,* Sept. 2024, https://www.gao.gov/assets/gao-24-106913.pdf.

GAO also conducted site visits to districts in six states, and officials from all states said they required districts to submit applications describing how their planned use of ESSER funds aligned with the statute's allowable uses of the funds, and rejected proposals that did not meet that requirement.[330] Districts reported both supply chain issues as well as difficulty finding vendors or contractors to implement ESSER-funded activities.[331]

### U.S. Department of Education

As discussed in Chapter 1, the number of students ages 3-21 served under IDEA in the United States increased from 6.4 million in school year 2012-13 to 7.5 million in school year 2022-23.[332] IDEA authorizes formula grants to states as well as discretionary grants to eligible applicants, such

[330] Ibid.
[331] Ibid.
[332] National Center for Education Statistics, "Fast Facts: Students with Disabilities," https://nces.ed.gov/FastFacts/display.asp?id=64 (accessed Oct. 2, 2024).

as state educational agencies, institutions of higher education, and other nonprofit organizations. Currently, 15.2% of children enrolled in public schools are served under IDEA Part B.[333]

Formula grants are awarded to states annually to support early-intervention services for infants and toddlers with disabilities and their families, preschool children ages 3-5, and special education for children and youth with disabilities.[334] Part B formula grants assist states in providing a free appropriate public education in the least restrictive environment for children with disabilities, ages 3-21, and Part C formula grants support early intervention services for infants and toddlers.[335]

According to ED, Part B funds are allocated among states in accordance with a variety of factors, as outlined in the funding formula under section 611(d) of IDEA:

> First, each state is allocated an amount equal to the amount that it received for fiscal year 1999. If the total program appropriation increases over the prior year, 85 percent of the remaining funds are allocated based on the number of children in the general population in the age range for which the states guarantee FAPE to children with disabilities. Fifteen percent of the remaining funds are allocated based on the number of children living in poverty that are in the age range for which the states guarantee FAPE to children with disabilities…
>
> Most of the federal funds provided to states must be passed on to local education agencies (LEAs). However, a portion of the funds may be used for state-level activities. Any funds not set aside by the state must be passed through to LEAs. These sub-state allocations are made in a fashion similar to that used to allocate funds among states when the amount available for allocation to states increases.[336]

Additionally, the amount that a state's allocation may increase each year is capped at the amount the state received in the prior year multiplied by the sum of 1.5% and the percentage increase in the total amount appropriated for Part B of IDEA from the prior year.[337] The maximum amount a state may receive is calculated by multiplying the number of children with disabilities ages 3-21 served during the 2004-2005 academic year in that state by 40% of the annual per pupil expenditure, adjusted by the rate of annual change in the sum of 85% of the children aged 3-21 for

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[333] National Center for Education Statistics, "Table 207.70: Number and Percentage of Children Served Under Individuals with Disabilities Education Act (IDEA), Part B, by Age Group and State or Jurisdiction: Selected School Years, 1990-1991 through 2022-2023," https://nces.ed.gov/programs/digest/d23/tables/dt23_204.70.asp?current=yes (accessed Nov. 26, 2024).
[334] U.S. Dep't of Education, IDEA, "State Formula Grants," https://sites.ed.gov/idea/state-formula-grants/ (accessed Nov. 20, 2024).
[335] Ibid.
[336] *See* 34 C.F.R. Part 300, Subpart C; U.S. Dep't of Education, "Special Education – Grants to States (ALN: 84.027)," https://www.ed.gov/grants-and-programs/formula-grants/formula-grants-special-populations/special-education-grants-to-states (accessed Nov. 20, 2024).
[337] U.S. Dep't of Education, "Part B Award Letters," https://www.ed.gov/laws-and-policy/individuals-disabilities/part-b-grant-award-letters (accessed Dec. 24, 2024).

whom that state ensures the availability of FAPE and 15% of the children living in poverty.[338] Thus, because there are multiple caps, in any year the "effective cap" on an allocation is the lowest cap for that state.[339]

IDEA requires that states maintain financial support for special education and related services, and each LEA must maintain total expenditures (including state and local contributions) for special education from one year to the next. Permitted expenditures include the salaries of special education teachers and costs associated with related services personnel (such as speech therapists and psychologists).[340] Other state-level activities include technical assistance and personnel preparation, assisting LEAs in providing positive behavioral interventions and supports, and improving the use of technology in the classroom.[341]

As mentioned in Chapter 1, ED also provides discretionary grant awards. According to ED:

> [T]he Department recognizes that having skilled educators who are prepared to do the job well is essential to their retention in those roles and is what children with disabilities deserve. The Department is working to reduce barriers for educators to enter the profession and has made significant investments in several discretionary grant programs aimed at recruiting, preparing, and retaining highly qualified educators in these hard-to-fill roles.[342]

The Office of Special Education Programs (OSEP) conducts application reviews through a formal peer review process using a standing panel.[343] The reviewers who serve on the standing panel score applications based on the legislative and regulatory requirements as well as by the published selection criteria established for the grant programs and projects.[344] These grants are provided to state educational agencies, institutions of higher education, and other nonprofit organizations to support the various activities listed in Table 3.1, below.

**Table 3.1: Department of Education Grant Program Names and Descriptions**

| |
|---|
| *Technical Assistance and Dissemination* |
| Improve services provided under the IDEA, including the practices of professionals and others involved in providing services that promote academic achievement and improve results for children with disabilities. |
| *Educational Technology, Media, and Materials for Individuals with Disabilities* |
| Support accessible technology and educational media and material. |
| *Personnel Development to Improve Services and Results for Children with Disabilities* |

[338] Ibid.
[339] Ibid.
[340] U.S. Dep't of Education, "Special Education – Grants to States (ALN: 84.027)."
[341] Ibid.
[342] ED Statement, at 4.
[343] U.S. Dep't of Education, "Discretionary Grants," https://sites.ed.gov/idea/discretionary-grants/ (accessed Dec. 3, 2024).
[344] Ibid.

| |
|---|
| Help states meet state-identified needs for adequate numbers of fully-certified personnel to serve children with disabilities by supporting competitive awards. |
| *State Personnel Development Grants* |
| Help state educational agencies reform and improve their systems for personnel preparation and professional development of individuals providing early intervention, educational, and transition services to improve results for children with disabilities. |
| *Technical Assistance on State Data Collection* |
| Improve the capacity of states to meet the IDEA data collection and reporting requirements. |
| *Parent Training and Information Centers* |
| Ensure parents of children with disabilities and youth have access to resources, information, and training. |

Source: U.S. Dep't of Education, "Discretionary Grants," https://sites.ed.gov/idea/discretionary-grants/ (accessed Dec. 3, 2024).

IDEA requires each state to develop an State Performance Plan (SPP)/Annual Performance Report (APR) that evaluates the state's efforts to implement the requirements and purposes of the IDEA and describes how the state will improve its implementation.[345] The SPP/APRs include indicators that measure child and family outcomes and other indicators that measure compliance with the requirements of the IDEA.[346] Based on SPP/APRs, ED issues one of the following yearly determinations for states:

- Meets the requirements and purposes of IDEA;
- Needs assistance in implementing the requirements of IDEA;
- Needs intervention in implementing the requirements of IDEA; or
- Needs substantial intervention in implementing the requirements of IDEA.[347]

According to ED:

> Under 20 U.S.C. § 1416(a)(1)(A), IDEA requires the Department to monitor the implementation of IDEA through oversight of the exercise of general supervision by the States, as required in section 1412(a)(11); and through the State performance plans, described in section 1416(b). Under 20 U.S.C. § 1416(d)(2)(A), IDEA requires the Department to make an annual determination of the extent to which each State is meeting IDEA Part B requirements by determining whether a State 'meets requirements,' 'needs assistance', 'needs intervention', or 'needs substantial intervention.' Under 20 U.S.C. § 1416(a)(1)(B) and (e), the Department is required, under certain circumstances, to take enforcement actions based on the State's determination. Further, under 20 U.S.C. §

[345] ED Responses to Interrogatories, at 16.
[346] Ibid.
[347] U.S. Dep't of Education, "2024 Determination Letters on State Implementation of IDEA," Jun. 21, 2024, https://sites.ed.gov/idea/files/ideafactsheet-determinations-2024.pdf.

1416(a)(1)(C) and (a)(3), IDEA requires States to monitor implementation of IDEA Part B by LEAs in accordance with monitoring priorities in 20 U.S.C. § 1416(a)(3) and also requires States to enforce IDEA Part B in accordance with 20 U.S.C. § 1416(e).[348]

Figure 3.2 provides the Part B State determinations for 2024. OSEP reviews the data in the annual performance report consistent with the requirements in 20 U.S.C. 1416(c).[349] For states that received a determination of "needs assistance" for two or more consecutive years, ED must take one or more enforcement actions, including, among others, requiring the state to access technical assistance, designating the state as a high-risk grantee, or directing the use of state set-aside funds to the area(s) where it needs assistance. If a state receives a determination of "needs intervention" for three or more consecutive years, ED must take certain enforcement actions.[350] However, these enforcement actions are not described in the published letter.

**Figure 3.2: IDEA Part B Determinations, 2024**

**IDEA PART B DETERMINATIONS**

Following is a list of each State's performance in meeting the requirements of IDEA Part B, which serves students with disabilities, ages 3 through 21:

**MEETS REQUIREMENTS**

| | | |
|---|---|---|
| Alabama | Maryland | Republic of the Marshall Islands |
| Connecticut | Massachusetts | Texas |
| Florida | Minnesota | Virginia |
| Georgia | Missouri | Washington |
| Illinois | Nebraska | Wisconsin |
| Indiana | New Jersey | Wyoming |
| Kansas | Pennsylvania | |
| Kentucky | | |

**NEEDS ASSISTANCE (one year)**

| | | |
|---|---|---|
| Arkansas | Idaho | South Dakota |
| Federated States of Micronesia | Ohio | West Virginia |
| | Rhode Island | |

**NEEDS ASSISTANCE (two or more consecutive years)**

| | | |
|---|---|---|
| Alaska | Hawaii | North Carolina |
| American Samoa | Iowa | North Dakota |
| Arizona | Louisiana | Oklahoma |
| California | Maine | Oregon |
| Colorado | Michigan | Puerto Rico |
| Commonwealth of the Northern Mariana Islands | Mississippi | Republic of Palau |
| Delaware | Montana | South Carolina |
| District Of Columbia | Nevada | Tennessee |
| Guam | New Hampshire | Utah |
| | New Mexico | Vermont |
| | New York | Virgin Islands |

**NEEDS INTERVENTION**

Bureau of Indian Education

Source: U.S. Dep't of Education, "2024 Determination Letters on State Implementation of IDEA," Jun. 21, 2024, https://sites.ed.gov/idea/files/ideafactsheet-determinations-2024.pdf.

[348] ED Responses to Interrogatories, at 12.
[349] Ibid., at 14.
[350] U.S. Dep't of Education, "2024 Determination Letters on State Implementation of IDEA."

Of the selected sample states in this report, only Kansas met the requirements for 2024. The remaining states have been determined to "need assistance" for one or more years. However, because multiple variables account for meeting the IDEA Part B requirements, this table alone does not provide enough information to understand how states measure up in providing students with disabilities with the education and resources to which they are entitled.

ED issued a fact sheet about providing students with disabilities with their FAPE during the COVID-19 pandemic, maintaining that while the pandemic created unique challenges, schools were still responsible to comply with Section 504 regardless of how schools were providing education.[351] The Department also indicated that students with disabilities may be entitled to compensatory services if they did not receive appropriate evaluations or services during the pandemic, including the services that the school had previously determined they were entitled to.[352]

ED provided written testimony to the Commission that the Department has worked with states to:

- Increase compensation and improve working conditions for educators, and that the average teacher salaries are estimated to have increased 9.5% from 2020-21 to 2023-24
- Expand access to high-quality and affordable pathways into the profession, to include teacher apprenticeship programs in 45 states, D.C., and Puerto Rico
- Strengthen educator diversity through recruitment and retention, including awarding nearly $38 million to support educator preparation programs at Historically Black Colleges and Universities, Tribal Colleges or Universities, and Minority Serving Institutions.[353]

ED's Raise the Bar initiative in 2022 has a goal of eliminating the educator shortage for all schools by "ensuring that schools are appropriately staffed, paying educators competitively, and strengthening pathways into the profession."[354] There are 95,000 fewer public education employees compared to pre-pandemic levels, and recovery of these jobs has varied significantly from state to state.[355] According to ED's website, the Department

> is working not only to return to pre-pandemic staffing levels but also to ensure all students have access to the educators, specialized instructional support personnel, and other school

[351] U.S. Dep't of Education, "Providing Students with Disabilities Free Appropriate Public Education During the COVID-19 Pandemic and Addressing the Need for Compensatory Services Under Section 504," https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/fape-in-covid-19.pdf (accessed Dec. 6, 2024).
[352] Ibid.
[353] ED Statement, at 6.
[354] U.S. Dep't of Education, "Raise the Bar: Boldly Improve Learning Conditions," https://www.ed.gov/about/ed-initiatives/raise-the-bar/raise-the-bar-boldly-improve-learning-conditions (accessed Dec. 18, 2024).
[355] U.S. Dep't of Education, "Raise the Bar Policy Brief: Eliminating Educator Shortages through Increased Compensation, High-Quality and Affordable Educator Preparation and Teacher Leadership," Jul. 2023, https://www.ed.gov/about/ed-initiatives/raise-the-bar/raise-the-bar-policy-brief.

> staff they need to meet their academic, social, and emotional needs, including their mental health and well-being.[356]

Dan Stewart, Managing Attorney for Education and Employment with the National Disability Rights Network, testified that he does not believe enough school districts have taken advantage of ED's options.[357]

*IDEA Funding Issues*

In 2024, ED published a document detailing how determinations were made under Section 616(D) of IDEA Part B.[358] It reports considering the "totality of the information we have about a State," and uses a Results Driven Accountability (RDA) Matrix, which consists of:

- a Compliance Matrix that includes scoring on SPP/APR (State Performance Plan/Annual Performance Report) Compliance Indicators and other compliance factors;
- a Results Matrix that includes scoring on Results Elements;
- a Compliance Score and a Results Score;
- an RDA Percentage based on the Compliance Score and the Results Score;
- the State's Determination[359]

The maximum amount of a Part B grant a state may receive is 40% of the state's average per-pupil expenditure in public elementary and secondary schools.[360] In the four decades since the signing of the Act, appropriations for the Part B grants-to-states program have never met the authorized "full-funding" level of 40% of the national average per-pupil expenditure.[361] Current funding is at less than 13%.[362]

The Congressional Research Service explains that:

> States may reserve a portion of their federal IDEA funding for statewide activities, but they are required to distribute the majority of their IDEA allocation to local educational agencies (LEAs) and public charter schools that operate as LEAs. In order for states to allocate IDEA funds to individual LEAs they must use a formula similar to the one used to divide IDEA funds among states, except that the sources of population and poverty data vary from state to state.

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[356] Ibid.
[357] Stewart Statement, at 4.
[358] U.S. Dep't of Education, "How the Department Made Determinations," Revised Jun. 21, 2024, https://www.cnmipss.org/sites/default/files/how-the-department-made-determinations-part-b-entities-2024.pdf.
[359] Ibid.
[360] Ibid.
[361] Congressional Research Service, "The Individuals with Disabilities Education Act (IDEA) Funding: A Primer," Aug. 29, 2019, https://crsreports.congress.gov/product/pdf/r/r44624; *see also* Levin Statement, at 7.
[362] Patrick Statement, at 7.

> First, the states are required to award each LEA an amount based on its FY1999 base-year allocation. Then states distribute the remaining allocation according to the share of the population of children in both public and private schools in the LEA (85%) and the LEA's share of children living in poverty (15%). If a state educational agency determines that an LEA is providing a free appropriate public education [FAPE] to all children with disabilities in the LEA using only state and local funds, the SEA [state education agency] may reallocate any unneeded federal IDEA Part B funds to other LEAs in the state that are not adequately providing FAPE to all the children with disabilities they serve.[363]

Tiffany Anderson, Superintendent of Topeka, Kansas schools, testified to the Commission that because authorized funding levels have not been met at the federal or state levels, districts are compelled to reallocate funds away from general education programs.[364] Jessica Levin, Litigation Director for Education Law Center, added that:

> Lack of funding for special education expenses causes shortages in staff and other resources for students with disabilities, as well as cuts to resources for the general education population when funds are shifted to meet special education mandates. Such cuts might even include the interventions that help prevent some students from being classified for special education in the first place.[365]

Levin further explained that in Wisconsin, for example, the state's low reimbursement rate for special education costs forces districts to divert funds slated for general education to cover the shortfall.[366] Levin also testified that there are disparities in per-pupil funding levels, and that many states lack the fiscal effort required to adequately fund schools.[367] She stated that "the worst funded states are often guilty of low effort, indicating a failure to prioritize public education."[368]

The Arkansas State Advisory Committee to the Commission found that schools may lack funding to provide adequate supports legally required under IDEA. The Committee heard testimony from panelists who described 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."[369] Like Tiffany Anderson's testimony, the Arkansas Committee also heard about reallocation of funds in their state. For instance, the Special Education Supervisor of Mountain Pine School Districts testified that the district's special education budget was $144,555 in 2020, and in order to provide special education students with necessary supports, an additional

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[363] Congressional Research Service, "The Individuals with Disabilities Education Act (IDEA) Funding: A Primer."
[364] Anderson Statement, at 4.
[365] Levin Statement, at 7.
[366] Ibid.
[367] Ibid., at 6.
[368] Ibid.
[369] Arkansas Advisory Committee to the U.S. Commission on Civil Rights, "IDEA Compliance and Implementation in Arkansas Schools," Jan. 2023, https://www.usccr.gov/files/2023-01/2023_idea-compliance-and-implementation-in-ar.pdf.

$723,000 was reallocated from the maintenance and operating budget to supplement the special education budgetary deficiency.[370]

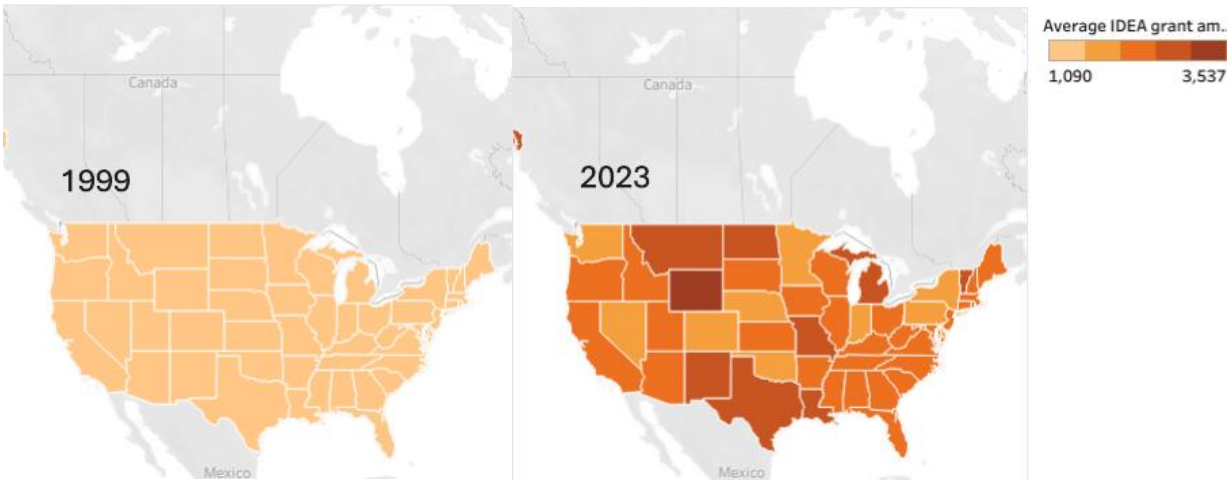
A Brookings Institution report points out that the existing formula for state funding in IDEA creates disparities:

> The existing formula generates substantial differences among states in the amount of federal funding available to pay for a child's special education services, and these differences have grown over time. For FY2020, the difference in IDEA grant amounts between the states at the top and bottom of the distribution was about $1,442 per child; Wyoming received about $2,826 for each child receiving special education and Nevada received $1,384 per child. To put this difference in context, for that year federal IDEA funding covered about 23% of the national average additional cost of educating a student with a disability in Wyoming, whereas federal dollars covered about 11% of additional spending in Nevada."[371]

Figure 3.3 shows a side-by-side comparison of the yearly average dollars between state IDEA grant amount per child receiving special education in 1999 and 2023. States with *larger* shares of eligible children are receiving on average *fewer* dollars per child than states with less need. Moreover, larger states and states with more children experiencing poverty are also receiving *fewer* IDEA dollars per child.[372]

[370] Ibid.
[371] Tammy Kolbe, Elizabeth Dhuey, and Sara Menlove, "More Money is Not Enough: The Case for Reconsidering Federal Special Education Funding Formulas," Brookings, Oct. 3, 2022, https://www.brookings.edu/articles/more-money-is-not-enough-the-case-for-reconsidering-federal-special-education-funding-formulas/.
[372] Ibid.

**Figure 3.3: Average State IDEA Grant Amounts per Child Receiving Special Education, 1999 and 2023**




Source: Tammy Kolbe, Elizabeth Dhuey, and Sara Menlove, "More Money is Not Enough: The Case for Reconsidering Federal Special Education Funding Formulas," Brookings, Oct. 3, 2022, https://www.brookings.edu/articles/more-money-is-not-enough-the-case-for-reconsidering-federal-special-education-funding-formulas/.

Brookings researchers argue that increasing IDEA appropriations, or moving to full funding, without modifying the current formula will only "perpetuate existing disparities in federal grant amounts to states" and thus the formula grants should be recalculated before any significant increases are made.[373] They state that by fixing the portion of states' grants in perpetuity, the distribution becomes increasingly disconnected from changes in a states' special education child count, and that the formula's population-poverty calculation is an inadequate proxy for children needing special education services within a state.[374] The report concludes that:

> [T]he formula's adjustments that hold states "harmless" from substantial reductions in IDEA funding further undermine the population-poverty calculations' capacity to effectively adjust for changes in states' student population counts over time. Instead, the formula protects small states and states with declining student populations from possible reductions in IDEA dollars, and in doing so, prevents IDEA funding from being shifted to states with growing and increasingly diverse student populations.[375]

[373] Ibid.
[374] Ibid.
[375] Ibid.

*Lack of Data Examining Teacher Shortages*

As discussed in Chapter 2, lack of data remains a core issue in understanding teacher shortages, as well as how these shortages impact students with disabilities. ED's OCR collects data related to Section 504 and Title II from public school districts through the Civil Rights Data Collection, which is a biennial collection (though canceled in 2019-20 due to the pandemic).[376] This collection includes data on full time teacher counts as well as IDEA and Section 504 enrollments, but does not include information about teaching vacancies. As Professor Nguyen of the University of Missouri testified:

> Another limitation is that what we know about teacher shortages are not specific to special education. The federal government collects information on shortage categories and almost every state has indicated that they have special education shortages, but there is no information on the magnitude of the special education teacher shortage. In other words, we know that basically every state needs more special education teachers, but we do not know whether it is three more special education teachers that a state needs, or if it is thousands. Knowing that there is a shortage here is not particularly helpful if we do not know the exact number of vacant and underqualified positions.[377]

Max Eden of the American Enterprise Institute espoused the definitional issues surrounding a teacher shortage: if a school determines the number of positions to fill based on individual preferences, the number of shortages the school has reflects those preferences.[378] However, the National Center for Education Statistics identified that resignations and retirements are the leading causes for unfilled positions in public schools.[379]

One way to address the lack of data is to create data infrastructures allowing for rapid collection of teacher labor market data. Nguyen argues, "we need to know whether we need 10 or 100 special education teachers, in rural or urban settings, or in affluent or economically disadvantaged schools."[380]

Additionally, not enough is known about how students with disabilities are impacted by teacher shortages. The Center on Reinventing Public Education (CRPE) published an updated report in October 2022 emphasizing that little is understood about how the pandemic impacted academic, behavioral, socio-emotional and post-graduation outcomes for students with disabilities, stating

[376] ED Responses to Interrogatories, at 2.
[377] Nguyen Statement, at 2.
[378] Eden Statement, at 2.
[379] National Center for Education Statistics, "U.S. Schools Report Increased Teacher Vacancies Due to COVID-19 Pandemic, New NCES Data Show," Mar. 3, 2022, https://nces.ed.gov/whatsnew/press_releases/3_3_2022.asp.
[380] Nguyen Statement, at 2.

that "[t]he disconnect between the urgent concerns raised by families and the limited evidence about the pandemic's impact on students with disabilities is jarring."[381]

According to CRPE, in a review of rigorous research since summer 2021 of the pandemic's academic impact, only 6 of 23 research analyses reviewed disaggregated outcomes for students with disabilities.[382] Students with disabilities generally score far lower than their peers on academic standardized assessments, and new research shows that this trend generally worsened during the pandemic.[383] Additionally, current research often views students with disabilities as a "monolith," thus likely hiding variations in outcomes across demographics, and the report added that "[n]otably, little is known about the outcomes of the approximately 1.4 million students with disabilities who qualify under Section 504 only."[384]

IDEA requires that states receiving assistance shall provide for the collection and examination of data to determine if "significant disproportionality based on race and ethnicity is occurring" with respect to:

- the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 1401(3) of this title;
- the placement in particular educational settings of such children; and
- the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.[385]

ED's Open Data Platform provides data on child counts by age for various disabilities and education environments, such as home, homebound/hospital, percent of the day spent in a regular class, or residential facility.[386] However, there are data quality concerns because there are no consequences for states or districts that fail to report their data to the public, nor are there sufficient technical aids or resources to assist districts with their reporting.[387]

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[381] Center on Reinventing Public Education, "How Has the Pandemic Affected Students with Disabilities? An Update on the Evidence: Fall 2022," Oct. 2022, https://crpe.org/wp-content/uploads/Special-Education-Impact-Brief_v3.pdf.
[382] Ibid.
[383] Ibid.
[384] Ibid.; *see also supra* notes 65-66 ("504 only" students).
[385] 20 USC §1418.
[386] *See* Dep't of Education, "IDEA Section 618 State Part B Child Count and Educational Environments," https://data.ed.gov/dataset/idea-section-618-state-part-b-child-count-and-educational-environments/resources?resource=91dfcdc0-7e9b-4945-8319-684f9ffd2a24 (accessed Dec. 10, 2024).
[387] Daniel J. Losen, Paul Martinez, and Grace Hae Rim Shin, "Disabling Inequity: The Urgent Need for Race-Conscious Resource Remedies," Center for Civil Rights Remedies at The Civil Rights Project, Mar. 22, 2021, https://www.civilrightsproject.ucla.edu/research/k-12-education/special-education/disabling-inequity-the-urgent-need-for-race-conscious-resource-remedies/final-Report-03-22-21-v5-corrected.pdf.

**Local Approaches**

A difficult issue to reconcile is that over the last decade, public school expenditures per pupil have increased by 13%,[388] while, as Max Eden of the American Enterprise Institute points out, teacher salaries have remained stagnant.[389] Similarly, Jonathan Butcher of the Heritage Foundation testified that since 2000, the number of principals and assistant principals has increased 37%, and the number of district administrative staff has increased 88%, all while the increase in overall teaching staff was only 8%.[390] This concern about the increase in federal spending going to education while teacher salaries remain stable was also voiced by Alysha Legge, a mother of an impacted student. She testified to the Commission that "the more money you put into something doesn't mean we have better outcomes."[391]

William Trachman, General Counsel at Mountain States Legal Foundation, also testified about teacher wages:

> Employers are constrained by budgets, most notably, but also other factors like state and federal laws, and the need to balance priorities like classroom space with their enrollment numbers… Employees, for their part, are not monolithic. Nearly every teacher places a high value on the rewarding nature of the job, of course needing to balance the ability to put food on the table. So, phenomena like severe inflation can impact teachers especially, because state and local budgets will have difficulty matching the economy—in other words, if inflation is 8% or 9%, even if a teacher receives a 3-5% raise, that is essentially a pay cut.[392]

Joshua Woods, an impacted student who testified at the Commission's briefing, encouraged an increase in teacher pay to retain certified teachers, including special education teachers. He stated that "[e]xcellent teachers who know their students and are focused on the classroom, ensures that students like me enjoy a successful journey through school."[393] Joshua's father, Tony, described how his son's progress at school was impacted when teachers left:

> We would run into teachers having to move on because they had bills, and they had goals. And they had opportunities that they wanted to do. But they didn't have enough money to do what they wanted to do.[394]

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[388] National Center for Education Statistics, "Public School Expenditures," https://nces.ed.gov/programs/coe/indicator/cmb/public-school-expenditure (accessed Dec. 4, 2024).
[389] Eden Statement, at 2.
[390] Butcher Statement, at 6.
[391] Legge Statement, at 1.
[392] Trachman Statement, at 3.
[393] Joshua Woods, *Teacher Shortage Briefing* Testimony, p. 213.
[394] Tony Woods, *Teacher Shortage Briefing* Testimony, p. 216.

Amanda Mazin of Teachers College at Columbia University stated that local initiatives aimed at providing more learning opportunities for students with disabilities "cannot be fulfilled because most, if not all, rely on increasing the number of special education teachers."[395] Thus, local schools are engaging in options such as offering high school students an "intent to hire contract" to return to teach after graduating from college.[396] Other incentives being utilized by some districts include referral bonuses for current staff, use of marketing teams, ongoing coaching support, and the creation of appealing bargaining contracts through negotiations.[397]

Many panelists testified about state and local initiatives working to fill teacher vacancies. The Commission received multiple references to "Grow Your Own" (GYO) programs, which aim to support people within the local community to become a teacher.[398] GYO programs are often referred to as methods to diversify the educator workforce.[399] Jonathan Butcher outlined a program in Tennessee, and also described a program in Indiana that streamlines the coursework for teachers to earn a full special educator license.[400] Julian Vasquez Heilig of the Network for Public Education described Michigan's GYO program as an approach to

> recruit and train community members, including paraprofessionals and support staff, to become certified educators. This approach fosters a diverse, committed teaching workforce that is more likely to remain in the community and reflect the student population's demographics. GYO programs also have the potential to provide long-term solutions to teacher shortages, as they build a pipeline of educators who are deeply rooted in and committed to their communities.[401]

Kulsoom Tapal, Education Policy Coordinator at the Coalition for Asian American Children and Families (CACF), stated that improved data collection and disaggregation is needed so that schools can tailor recruitment efforts for bilingual and "culturally competent staff needed to meet diverse needs."[402] A representative educator workforce can help foster a more supportive learning environment for students who need special education services.[403]

Beth Ackerman, Senior Vice President of Rivermont Schools, which oversees more than 17 schools across Virginia, described offering a program for paraprofessionals to become

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[395] Mazin Statement, at 3-4.
[396] *See* Anderson Statement, at 2.
[397] *See* Lauber Statement, at 4.
[398] *See* Danielle Edwards and Matthew A. Kraft, "'Grow Your Own' Teacher Programs: What are They, and What Can (And Can't) They Accomplish?" Brookings, Jul. 17. 2024, https://www.brookings.edu/articles/grow-your-own-teacher-programs-what-are-they-and-what-can-and-cant-they-accomplish/.
[399] Heilig Statement, at 3; Tang Statement, at 3.
[400] Butcher Statement, at 6-7.
[401] Heilig Statement, at 3.
[402] Kulsoom Tapal, Education Policy Coordinator, Coalition for Asian American Children and Families (CACF), Teacher Shortage Listening Session, Dec. 13, 2024.
[403] Ibid.

provisionally licensed at the school's expense to address the "exodus" of special education teachers during the pandemic.[404] The Topeka, Kansas district participates in a paraprofessional to teacher program as well.[405]

In Arkansas, the Division of Elementary and Secondary Education's Special Education Resource Teacher Academy is accessible to currently licensed Arkansas public school teachers to receive job-embedded professional development while obtaining school credit hours.[406] Additionally, the Division provides an online database of consultancy groups that support districts with additional resources.[407]

As the population of students with disabilities continues to grow across the country, the number of education professionals and personnel who are trained to meet their needs has severely lagged behind.[408] This has resulted in a dearth of special educators, thus depriving students with disabilities of their right to a free appropriate public education. The Commission heard many different voices and perspectives on the matter; the unifying theme is that students with disabilities are not currently receiving the support they need to thrive in schools. This report shows that there is a substantial need for more comprehensive and available data that are also disaggregated to better understand the magnitude of teacher shortages and their impact on students with disabilities. Additionally, more research is needed that examines the allocation of federal dollars to ensure that all students can receive a quality education regardless of their protected status.

[404] Ackerman Statement, at 2.
[405] Anderson Statement, at 3.
[406] Arkansas Advisory Committee to the U.S. Commission on Civil Rights, "IDEA Compliance and Implementation in Arkansas Schools."
[407] Ibid.
[408] *See* Jonathan Butcher, *Teacher Shortage Briefing* Testimony, pp. 88-89.

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# Appendix A: Department of Education Resolution Types and Descriptions

| Resolution Type | Description |
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| *Closure with Change* | Resolution Agreement reached during an investigation. A complaint may be resolved at any time when, before OCR issues a final determination, if the recipient expresses an interest in resolving the complaint. Resolution Agreement reached after completion of investigation (non-compliance determination.) When OCR determines that a preponderance of the evidence supports a conclusion that the recipient failed to comply with applicable regulations. |
| *Closure with Change (No Monitoring)* | OCR obtains information indicating that the allegations raised by the complaint were resolved **with** OCR's involvement, **resulting in benefit or change to the alleged injured party and/or others**. (No monitoring or agreement is required). |
| *Dismissal (prior to July 18, 2022)* | A complaint was coded as a Dismissal (prior to July 18, 2022) if it was dismissed by OCR on one of the following grounds:<br>(a) The allegation, on its face or as clarified, fails to state a violation of one of the laws and regulations OCR enforces.<br>(b) The allegation, on its face or as clarified, lacks sufficient factual detail (*e.g.*, who, what, where, when, how), or is so speculative, conclusory or incoherent that OCR cannot infer that discrimination or retaliation may have occurred or may be occurring.<br>(c) Based on all of the facts/information provided by the complainant, OCR cannot reasonably conclude that the recipient has violated a law(s) OCR enforces.<br>(d) The allegation is not timely filed with OCR pursuant to CPM Section 106 and a waiver was not requested or was requested but not granted pursuant to CPM Section 107.<br>(e) OCR determines that a signed Consent Form is required to proceed with an investigation, and the Consent Form has not been provided.<br>(f) OCR determines that it lacks jurisdiction over the entity alleged to have discriminated. When appropriate, OCR will refer the complaint to the appropriate agency. See CPM Section 701.<br>(g) OCR transfers or refers the complaint to another agency for investigation. See CPM Section 701.<br>(h) The same or a similar allegation based on the same operative facts has been filed either by the complainant or someone other than the complainant against the same recipient with another federal, state, or local civil rights enforcement agency or through a recipient's internal grievance procedures, including due process proceedings, and anticipates that all allegations will be investigated and that there will be a comparable resolution process pursuant to legal standards that are acceptable to OCR. OCR will advise the complainant that she or he may re-file within 60 days of the completion of the |

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| | other entity's action. Generally, OCR will not conduct its own investigation; instead, OCR reviews the results of the other entity's determination and decides whether the other entity provided a comparable resolution process pursuant to legal standards that are acceptable to OCR.<br>ii. The same or similar allegation(s) filed with OCR involve the same operative facts that has been resolved by another federal, state, or local civil rights enforcement agency or through a recipient's internal grievance procedures, including due process proceedings, and all allegations were investigated and there was a comparable resolution process pursuant to legal standards that are acceptable to OCR.<br>(i) The same or a similar allegation based on the same operative facts has been filed either by the complainant or someone other than the complainant against the same recipient with state or federal court. An OCR complaint may be re-filed within 60 days following termination of the court proceeding if there has been no decision on the merits or settlement of the complaint allegations. Dismissal with prejudice is considered a decision on the merits.<br>(j) OCR obtains credible information indicating that the allegations raised by the complainant are currently resolved and are therefore no longer appropriate for investigation.<br>(k) A class action with the same or a similar allegation(s) with the same operative facts has been filed against the same recipient with state or federal court. An OCR complaint may be re-filed within 60 days following termination of the court proceeding if there has been no decision on the merits or settlement of the state or federal complaint.<br>(l) The complaint filed by the complainant or someone other than the complainant against the same recipient raises the same or similar allegation(s) based on the same operative facts that was previously dismissed or closed by OCR.<br>(m) OCR has recently investigated or is currently investigating the same or similar allegation(s) based on the same operative facts involving the same recipient in a compliance review, directed investigation, or an OCR complaint.<br>(n) The complainant withdraws the complaint.<br>(o) The death of the complainant makes it impossible to investigate the allegations fully, or forecloses the possibility of individual relief.<br>(p) OCR determines that its ability to complete an investigation is substantially impaired by the complainant's refusal to provide information that is reasonably accessible to the complainant and is necessary for investigation of the complaint. OCR will include documentation in the case file of its efforts to contact the complainant by phone, in writing, or via electronic mail to request the necessary information and of the complainant's refusal to provide information.<br>(q) OCR determines that its ability to complete an investigation is substantially impaired by its inability to contact the |

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| | complainant in order to obtain information that is necessary for investigation of the complaint. OCR will include documentation in the case file of its unsuccessful efforts to contact the complainant by phone, in writing, or via electronic mail to request the necessary information.<br>(r) OCR determines that the complaint is moot or unripe. |
| *Dismissals 108 (after July 18, 2022)* | A complaint was coded as a Dismissal 108 (after July 18, 2022) if it was dismissed by OCR on one of the following grounds: OCR will dismiss an allegation(s) for the following reasons:<br>(a) OCR lacks jurisdiction over the subject matter of the allegation(s).<br>(b) OCR lacks jurisdiction over the entity alleged to have discriminated. When appropriate, OCR will refer the allegation(s) to the agency with jurisdiction.<br>(c) The allegation(s) was not timely filed, and a waiver was not requested or was requested but not granted pursuant to section 107.<br>(d) The allegation(s) lacks sufficient detail (*i.e.*, who, what, where, when, or how) for OCR to infer that discrimination or retaliation may have occurred or is occurring.<br>(e) A signed consent form is required to proceed with an investigation and the consent form has not been provided.<br>(f) The allegation(s), on its face or as clarified, fails to state a violation of one of the laws or regulations that OCR enforces. |
| *Dismissals 110 (after July 18, 2022)* | A complaint was coded as a Dismissal 110 (after July 18, 2022) if it was dismissed by OCR on one of the following grounds: Closed with successful FMCS referral.<br>110 (a)(1) same allegation filed by the complainant in federal, state, or local civil rights enforcement agency, internal, including due process proceedings/pending<br>110 (a)(2) same allegation filed by the complainant in federal, state, or local civil rights enforcement agency, internal, including due process proceedings/resolved<br>110 (b) same allegation(s) filed by the complainant in state or federal court<br>110 (c) decisions of the federal courts<br>110 (e) complainant's refusal to provide information<br>110 (f) substantially impaired by its inability to contact the complainant<br>110 (g) same allegation(s) filed by someone other than the complainant with another federal, state, or local civil rights enforcement agency, internal, due process<br>110 (h) class action, state or federal court<br>110 (i) continuation of a pattern of allegations by complainant, or someone other than the complainant<br>110 (j) OCR has recently addressed or is currently addressing<br>110 (k) complainant withdraws, no systemic<br>110 (l) OCR transfers or refers to another agency<br>110 (m) death of the complainant, no systemic<br>110 (n) moot or unripe<br>110 (o) 201(a) unsuccessful |

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| | 110 (p) failure to comply with the requirements of CRDC<br>Currently in litigation -- 60 day rule.<br>Prior findings by other agency meet OCR standards. |
| *Mediation 201 (a)* | A complainant who is interested in resolving their complaint through the early mediation process must indicate their interest at the time they file their complaint, either by checking the appropriate box on the on-line complaint form or indicating their interest in participating in early mediation when they send a copy of their complaint to OCR. If OCR determines that the complaint is appropriate for resolution through the early mediation process, OCR will contact the complainant and the recipient and offer this resolution process. If the recipient agrees to participate in the early mediation process, OCR will facilitate settlement discussion between the parties. The early mediation process is available only in evaluation. |
| *Mediation 201 (b)* | During the course of OCR's investigation of the complaint, the complainant and recipient may express interest in resolving it through mediation. If OCR determines that mediation is appropriate, OCR will facilitate settlement discussions between the parties. OCR does not approve, sign or endorse any agreement reached between the parties as a result of the early mediation process or the mediation during investigation process, and OCR does not monitor the agreement. However, if a material breach of the agreement occurs, the complainant may file another complaint with OCR within 180 days of the date of the original discrimination or within 60 days of the date the complainant obtained notice that a material breach occurred, whichever date is later. |
| *FRBP / ECR* | Facilitated Resolution Between the Parties (FRBP) allows the parties (the complainant and the recipient which is the subject of the complaint) an opportunity to resolve the complaint allegations quickly; generally, soon after the complaint has been opened for investigation. If both parties are willing to try this approach, and if OCR determines that FRBP is appropriate, OCR will facilitate settlement discussions between the parties and work with the parties to help them understand the legal standards and possible remedies. Staff assigned by OCR to conduct FRBP will not be the staff assigned to the investigation of the complaint. OCR does not approve, sign or endorse any agreement reached between the parties as a result of FRBP, and OCR does not monitor the agreement. However, if the recipient does not comply with the terms of the agreement, the complainant may file another complaint with OCR within 180 days of the date of the original discrimination or within 60 days of the date the complainant learns of the failure to comply with the agreement, whichever date is later. |
| *No Violation or Insufficient Evidence* | When OCR determines that the evidence does not support a conclusion that the recipient failed to comply with applicable regulations. |

Source: U.S. Dep't of Education Responses to U.S. Commission on Civil Rights Interrogatories, at 3-5.

## Appendix B: Glossary of Terms

- **The Individuals with Disabilities Education Act (IDEA)** is a law that makes available a free appropriate public education to eligible children with disabilities throughout the nation and ensures special education and related services to those children, supports early intervention services for infants and toddlers and their families, and awards competitive discretionary grants.
- **Section 504** is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (ED). Section 504 provides: "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . ."
- **Individualized Education Program (IEP):** The purpose of an IEP is to lay out the special education instruction, supports, and services a student needs to thrive in school. IEPs are part of PreK-12 public education. An IEP is more than just a written legal document (or "plan"). It is a map that lays out the program of special education instruction, supports, and services needed to make progress and thrive in school.
- **Title II (of the Americans with Disabilities Act of 1990)** prohibits discrimination against individuals with disabilities in state and local government services, programs, and activities (including public schools), regardless of whether they receive Federal financial assistance.
- **Title III (of the Americans with Disabilities Act of 1990)** prohibits discrimination on the basis of disability in the activities of places of public accommodation (businesses that are generally open to the public and that fall into one of twelve categories listed in the ADA, such as restaurants, movie theaters, schools, day care facilities, recreational facilities, and doctors' offices) and requires newly constructed or altered places of public accommodation—as well as commercial facilities (privately owned, nonresidential facilities like factories, warehouses, or office buildings)—to comply with the ADA Standards. 42 U.S.C. 12181B89.
- **American with Disabilities Act (ADA):** The Americans with Disabilities Act (ADA) became law in 1990. The ADA is a civil rights law that prohibits discrimination against individuals with disabilities in many areas of public life, including jobs, schools, transportation, and many public and private places that are open to the general public.
- **Every Student Succeeds Act (ESSA):** ESSA is the primary federal law for K-12 public education in the U.S. It includes provisions that require states to ensure that students with disabilities are included in statewide assessments and that their performance is reported with that of their non-disabled peers.
- **The Family Educational Rights and Privacy Act (FERPA)** is a federal law that affords parents the right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of personally identifiable information from the education records. When a student turns 18

years old, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student ("eligible student"). The FERPA statute is found at 20 U.S.C. § 1232g and the FERPA regulations are found at 34 CFR Part 99.

- **Mediated Settlement Agreement and Due Process:** IDEA provides for parents and schools the right to resolve disputes through mediation or due process hearings. This ensures that parents can advocate for their child's educational rights and seek legal remedies if necessary.

## Statement of Vice Chair Victoria Nourse

I would like to commend our staff for drafting this important report. Dr. Marik Xavier-Brier, Director of our Office of Civil Rights Evaluation and Acting Staff Director, continues to lead our career staff in producing high quality reports in spite of severe staffing shortages.

Commissioner Gilchrist merits recognition for leading this report to completion and taking up such an important topic. Highlighting the disproportionate impact of teacher shortages on children with disabilities is a timely subject and reflective of the core role of the Commission.

We regret that proposed findings and recommendations were not brought to a vote, but remain hopeful that the contents of the report will receive due consideration.

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## Statement of Commissioner Stephen L. Gilchrist

When I contemplated what topic to submit for consideration regarding the Commission's statutory enforcement report, my interest was piqued by a presentation we (the Commissioners) heard from one of our state advisory committees.[409] Additionally, as an advocate, I've accompanied parents in individual evaluation plans (IEP) meetings. Unfortunately, most of those meetings left parents feeling frustrated and demoralized.

The parents I have met of special needs students are some of the most active and resilient folks I know. Many of them are remarkably familiar with education law related to disabilities and they rarely take no for an answer, including demanding a lot from their own child. Conversely, there are many parents that are confused, unsure, afraid and perplexed and they don't know what to do.

I'm sure being a parent of a special needs child can't be easy. The range and depth of emotions and experiences must be intense. I can't imagine the profound sense of weight and responsibility to provide the best possible care and support for one's child. Not to mention learning how to navigate an educational landscape filled with its own unique challenges; from understanding the child's specific needs to advocating for appropriate services. Additionally, I know there must be feelings of never-ending obstacles built through years of overcoming challenges. It is quite common for feelings of frustration and fatigue to surface, stemming from constantly fighting for your child and not to mention the emotional toll that can be accompanied by caring for a child with special needs. I am sure that the experience can be quite demanding.

On the lighter side, I'm sure there are moments of immense pride, witnessing your child's milestones, no matter how small, as they conquer each achievement. However, this joy may be tempered by the weight of worry about the future and how their child will navigate a world that can sometimes be unaccommodating. Parents might frequently feel a sense of isolation, as it can be difficult for others to fully comprehend the day-to-day realities and emotions they face. At our briefing Mr. Tony Woods moved me, father of a 17-year-old, impacted student, Joshua Woods, describing for us the challenges, hopes and opportunities for his son.

*"I want to tell you how this all started. At BabyNet through South Carolina Department of Health and Human Services from 1-3, from 3 to the present registered in two special education services through individualized education, which is an IEP, the service had been provided at the school attended, at each school he's attended. We're in the process of getting an IEP transferred to a 504 plan before he graduates in May. He was not tested for autism spectrum disorder until 3rd grade by the school district. We also took it upon ourselves additional help through Total Rehab, and also physical therapy through Midlands Therapy. When you are told that you have a child, it's an exciting time. Children bring so much hope to the world. Each and every one of us here has a cousin, a sister, a brother, a family member that's going to be touched with something.*

[409] Nevada State Advisory Committee, Teacher and Professional Shortages and Equity in Education in Nevada, January 12, 2024, https://share.google/F0ZJBJR8izSZnK7t1.

*When I was raising my children, I always thought about them being in the forest alone. And I had to give them everything they needed to either sustain them in the forest, or to get out of that forest. And then all of a sudden you are told that your son is on the autism spectrum. What does that mean*?

*Now the fear now becomes when you send him to school. Does every teacher see the potential in him that I see in him? What do they see*?[410]

As I talk to special education teachers, in which several of them themselves are parents of a special needs child, they see their students as their own. Most educators, particularly those that are trained to teach our special needs students are thoughtful, caring, patient and loved by their students. There is no question that the pandemic created a chasm in our education system like never before. [411] The different learning styles of students were reduced, for the most part to a singular modality-via a computer monitor. For students that needed in-person instructions, particularly our special needs students, this was a challenge. Too many of our parents were not equipped to provide the specific tailor-made instructions that were occurring at their schools every day. Therefore, these students were regressing while parents were left with limited choices and frustrated about how to adequately educate their children. For families that resided in "technology deserts"[412] they didn't even have access to Wi-Fi within their homes. They either had to park outside a public library or public school to access the internet. And for those without transportation this created another barrier to accessing education for their children. And according to Dr. Hanushek's, professor from Standford University when schools shut down it contributed to massive learning loss for our students, particularly our disabled students. Dr. Hanushek stated that:

> "*The bottom line is that learning across the board fell precipitously during the pandemic and it has not recovered. The schools have not gotten back to where they were in March of 2020. The losses of learning are serious and they're most serious for disadvantaged students. And we have to address those problems within the context of teacher shortage that have been exacerbated by the pandemic…We now have consistent evidence on what was the magnitude of the loss that was suffered in learning where loss is compared to what we would expect given what previous students had gained."* [413]

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[410] Tony Woods, Testimony at "The Federal Response to Teacher Shortage Impacts on Students with Disabilities," briefing transcript, U.S. Commission on Civil Rights, November 15, 2024, 214:9–25, https://www.usccr.gov/meetings/public-briefings.

[411] Laura Stelitano, Sumeyra Ekin, and Lauren Morando Rhim, How Has the Pandemic Affected Students with Disabilities? An Update on the Evidence (Center for Reinventing Public Education and Center for Learner Equity, October 2022), https://crpe.org/wp-content/uploads/Special-Education-Impact-Brief_v3.pdf.

[412] A technology desert refers to a geographic area or community where residents lack reliable access to digital tools and infrastructure—such as broadband internet, computers, or smartphones. These areas often suffer from limited or no broadband connectivity, low rates of computer ownership, dependence on smartphones as the only digital device and socio-economic barriers that hinder access. During the COVID-19 pandemic, technology deserts became especially visible as schools shifted to online learning. Students in these areas, particularly those with disabilities—faced significant challenges accessing virtual instruction, specialized services, and consistent communication with educators. https://www.wilmapco.org/data/Tech_Desert_Report_Dec_20.pdf

[413] Eric Hanushek, Testimony at "The Federal Response to Teacher Shortage Impacts on Students with Disabilities," briefing transcript, U.S. Commission on Civil Rights, November 15, 2024, 20:24-25, 21:1-14

Dr. Hanushek testimony was quite intriguing because he was able to make the link between learning loss and its economic impact. He shared the following:

*"…And if we look at just eight graders that are 13-year-olds in math in 2023, National Assessment of Educational Progress (NAEP) tells us that they are nine NAEP scale points lower than they would've been---what we would expect on the basis of 2020 evidence. And so people look at nine scale points like the local newspaper here ran an article and says, oh, it's only nine scale points. How could that be very serious?...Nine scales points on NAEP translates into a loss of lifetime earnings to every student who is in school of six percent. Think of this as a six percent income tax surcharge on everybody who is in school during the pandemic. And this will stay with them unless we do something about it immediately. For disadvantage students, we see that the losses are probably on average nine percentage. And his will stay with them unless we do something about it immediately. For the nation, it amounts to a loss and a lower quality workforce in the future because of less skills in schools. This translates into 31 trillion-dollar loss in GDP or equivalent to, like, six times the total loss from the 2008 recession."*[414]

I believe the long-term economic benefit of investing in students with disabilities will enhance their employment opportunities and earning potential as well as reduce dependence on social services. But the pandemic challenges did not completely rob the aspirations and hopes of innovative educators like Dr. Terita Gusby. Dr. Gusby, an expert in special education with more than 35 years of teaching and administration experience and author of the book, "*Autism Support Tools For Parents and Caregivers*" and CEO of Education Prescriptions, a virtual education company that specialize in teaching special needs students. Dr. Gusby just did not accept the fact that the closure of our schools should be fully accepted as an anecdote to the pandemic. She did what she could with what she had to try and bridge the gap between home and school. As she explained before the commission:

*"We began right out of Covid. And when schools sent kids home they also sent special needs kids home. And that's the difference. We found out that a lot of special needs kids, they didn't have laptops, they didn't have Wi-fi. And they had parents who did not know how to operate computers…because I'm a special education person, I knew we needed to do something…And so when these kids got sent home they had issues with computers…we created an academic learning kit of sorts… and we sent them home to parents so that way when we're teaching children we would teach them how to count and use them blocks while we were on the other side of the screen we had those same blocks while were on the other side of the screen we had those same blocks that we were teaching with…but special ed kids, they were not used to having teachers on screens, they were used to having teachers that they could touch, you know, that they could stand by. And so we had to make it that kind of program that it was inclusive of all the things that they know."*[415]

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[414] Hanushek, transcript, 21:23-25,22:3-16

[415] Dr. Terita F. Gusby, Testimony at "The Federal Response to Teacher Shortage Impacts on Students with Disabilities," briefing transcript, U.S. Commission on Civil Rights, November 15, 2024, 173:20-25, 174:1-3, 13-14,18-24, 175:1-6

Our country has made tremendous strides over the past sixty years in how we treat our special needs students. Initially, individuals with disabilities were often marginalized and excluded from mainstream education, with many placed in institutions that prioritized more separation and isolation over integration.[416] Early special education training focused mainly on those that could afford it, most were either private and/or residential. Many parents felt shameful and sometimes guilty for having a special needs child and many were ostracized by family and the larger community due to a lack of understanding and stigma. I think of the words that were used to describe special need students when I was growing up; "slow," "stupid" "touched" "dumb" "retarded" etc. This was during the 70's and early 80's. In more recent times, popular movies like "*Rain Man"* "*Forrest Gump*" and "*Radio*" brought greater attention to how we treat persons with special needs**.**[417] I believe movies like these significantly contributed to our understanding and acceptance of individuals with special needs by humanizing their experiences and showcasing their unique perspectives. While these movies displayed characters of differing needs, they gave us a greater understanding about the challenges and abilities of special needs people. They also help increase our understanding of special needs beyond a stereotype. It was refreshing to witness a cinematic display of positive portrayals of special needs people being capable, curious, and able to do things uniquely on their own. These movies not only did an excellent job of entertaining, but the characters also moved us due to their internal strength, friendships and resilience.

I want to make a particular note regarding the movie, "Radio," starring Cuba Gooding Jr, a film primarily made in my home state, in rural Colleton County, South Carolina which tells the story of a high school football team's relationship with a young man with intellectual disabilities.[418] Radio had capabilities yet, limited abilities, but more than anything he experienced acceptance, compassion and support from the greater community.[419] Additionally, the movie was filmed in an area of South Carolina known as the "corridor of shame." What a name! It is a descriptive phrase to emphasize the depiction of the dilapidated schools that were located along I-95 coordinator in rural South Carolina where test scores and school facilities were subpar at best. The school districts sued the state for violation of the state's constitution, which held the state

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[416] Lucinda S. Spaulding and Sharon M. Pratt, "A Review and Analysis of the History of Special Education and Disability Advocacy in the United States," American Educational History Journal 42 (2015), https://facultyshare.liberty.edu/en/publications/a-review-and-analysis-of-the-history-of-special-education-and-dis.

[417] Rain Man (1988), Forrest Gump (1994), and Radio (2003) each offer distinct portrayals of individuals with intellectual or developmental disabilities, helping to humanize and destigmatize these conditions. Rain Man introduced audiences to autism through Raymond Babbitt, an autistic savant whose rigid routines and extraordinary memory challenged stereotypes while revealing the emotional depth of neurodivergent individuals. https://the-art-of-autism.com/a-look-back-at-the-movie-rain-man-and-how-are-views-of-autism-have-changed/

[418] Radio depicted the true story of James Robert "Radio" Kennedy, a young man with an intellectual disability who, through the compassion of a high school football coach, became a beloved figure in his community—highlighting the transformative power of inclusion and empathy. https://the-art-of-autism.com/the-film-radio-shows-the-effects-an-intellectually-disabled-young-man-can-have-on-the-community/

[419] The town of Anderson, South Carolina is portrayed as a compassionate and inclusive community that embraced James "Radio" Kennedy, a young man with an intellectual disability. After initial ridicule, Coach Harold Jones and the T.L. Hanna High School football team welcomed Radio into their lives, offering him friendship, purpose, and dignity. Over time, Radio became a beloved figure—attending school events, leading pep rallies, and inspiring students and residents. Radio was never institutionalized but protected by the larger community.

responsible for not meeting the "minimum adequate education" standard. The state revised its education funding formula as remedy to address the court's concerns.[420]

One of the main reasons why I am a staunch school choice supporter is because I'm a parent. The idea of a system or law telling me I must send my kid to a certain school simply based on my zip code is unacceptable. Instead of having "corridors of shame" throughout our country, we can create "corridors of hope and possibilities" for all our students, particularly our special needs students. These parents need our support, and they need power. Power to find and select the best possible education services for their children.

We owe a lot of thanks to our special needs parents, advocates and political leaders who played a crucial role in securing federal protections for individuals with disabilities through persistent activism, legal challenges, and legislative efforts.[421] Their efforts lead to landmark legislation, including the Education for All Handicapped Children Act of 1975 (Public Law 94-142),[422] which mandated free and appropriate public education for children with disabilities, and the Americans with Disabilities Act of 1990 (ADA), prohibiting discrimination based on disability. The culmination of these advocacy efforts established essential federal protection, ensuring equal access to education, employment, and public services, thereby significantly improving the lives of millions of individuals with disabilities.[423]

The educational landscape in America is undergoing momentous changes. During President Trump's last presidential campaign there were promises made, and now we are witnessing what

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[420] The "Corridor of Shame" refers to a stretch of impoverished, rural school districts along Interstate 95 in South Carolina, where students have long endured crumbling facilities, outdated materials, and underfunded programs. In 1993, several districts filed a lawsuit—Abbeville County School District v. State of South Carolina—arguing that the state failed to provide a "minimally adequate education" as required by its constitution. After decades of litigation, the South Carolina Supreme Court ended the case in 2017, ruling in a 3–2 decision that continued judicial oversight would be an overreach. Despite some legislative efforts to improve funding, critics argued that the decision left vulnerable students without enforceable protections, and dissenting justices warned that the court had abdicated its responsibility to ensure educational equity. In 2006, South Carolina passed Act 388, a property tax reform law that exempted owner-occupied homes from school operating taxes and replaced that revenue with a statewide one-cent sales tax. The intent was to reduce the property tax burden on homeowners, but the shift created instability in school funding, especially during economic downturns when sales tax revenues declined. Critics argue that Act 388 disproportionately affected poorer districts and contributed to ongoing inequities in education funding https://abcnews4.com/news/local/south-carolina-supreme-court-ends-24-year-old-school-lawsuit. https://www.statehousereport.com/2022/12/16/our-turn-act-388s-impact-on-school-taxes-largely-unknown-today-study-shows/

[421] Hendricks, Monet. "Empowerment Through Advocacy: A Brief History of the Disability Rights Movement." Social Studies, September 29, 2024. https://www.socialstudies.com/blog/empowerment-through-advocacy-a-brief-history-of-the-disability-rights-movement/.

[422] United States. Education for All Handicapped Children Act of 1975. Public Law 94-142. Washington, D.C.: U.S. Government Printing Office, 1975. The Education for All Handicapped Children Act of 1975 (later renamed the Individuals with Disabilities Education Act, or IDEA) was a landmark law that guaranteed: Free and Appropriate Public Education (FAPE) for all children with disabilities, Individualized Education Programs (IEPs) tailored to each student's needs, Least Restrictive Environment (LRE), ensuring students are educated alongside their non-disabled peers whenever possible.

[423] U.S. Department of Education. Ensuring Equal Access. Washington, D.C.: Office for Civil Rights, 2025. https://www.ed.gov/laws-and-policy/civil-rights-laws/ensuring-equal-access.

is rare in politics; promises kept.[424] As of this writing, we are experiencing a tectonic educational shift. The power of the federal government over the lives of parents is dwindling. The responsibility of education will become more of the priority of the states, local governments, families, and communities. Returning the primary role of education back to the states and local communities is really where it belongs.[425] The Department of Education Secretary, Linda McMahon, applauded a court ruling that the Dept of Education can now "carry out the reduction in force to promote efficiency and accountability and to return education back to the states."[426]

We are experiencing in real time the transition to a more parent-centered focus in education. A parent-centered approach to education emphasizes the role of parents as primary decision-makers in their children's educational journeys.[427] This model advocates for the inclusion of parents in the development of curriculum choices, school policies, and engagement strategies. By actively involving parents, schools aim to foster collaboration and responsiveness to individual students' needs and preferences. The parent-centered approach encourages flexibility, allowing for personalized education plans that cater to each child's unique abilities and challenges, ultimately enhancing student motivation and academic success.[428] When president Trump signed executive order, "Expanding Educational Freedom and Opportunity for Families" (January 29, 2025): The Presidential Executive order focused on increasing educational choice for families, emphasizing their ability to select the best educational settings for their children rather than government mandates. It included provisions for states to use federal funds to support K-12 educational choice programs, including universal scholarship programs. The Departments of Education, Health and Human Services, Defense, and the Interior were tasked with developing plans and guidance to facilitate these options, including private, faith-based, and charter schools.[429]

By fostering an environment where schools are more accountable and responsive to diverse needs, the executive order supports the allocation of resources and funding specifically for special education services. Furthermore, it emphasizes the importance of individualized education plans (IEPs) and encourages the implementation of tailored teaching methods, thereby enhancing the overall educational experience and outcomes for special needs students.[430] There are scholarship and choice programs throughout the country that assist parents in choosing the educational setting for their child. There is an increasing belief that what we have been doing for

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[424] Lonas Cochran, Lexi. "Conservatives Hope for Major Education Changes if Trump Wins." The Hill, April 2, 2024. https://thehill.com/homenews/education/4567527-conservatives-education-trump/.
[425] Smith-Schoenwalder, Cecelia. "Tracking Trump's Crackdown on Higher Education." U.S. News & World Report, August 12, 2025. https://www.usnews.com/news/national-news/articles/trumps-higher-education-crackdown-visa-revocations-dei-bans-lawsuits-and-funding-cuts.
[426] Jacobson, Linda, and Greg Toppo. "In Ruling's Aftermath, Some See Beginning of the End for Department of Education." The 74 Million, July 15, 2025. https://www.the74million.org/article/in-rulings-aftermath-some-see-beginning-of-the-end-for-department-of-education/.
[427] Sparx Services. "Family-Centered Education." Sparx Services, July 19, 2024. https://www.sparxservices.org/blog/family-centered-education.
[428] IBID
[429] Trump, Donald J. Executive Order 14191—Expanding Educational Freedom and Opportunity for Families. January 29, 2025. The White House. https://www.whitehouse.gov/presidential-actions/2025/01/expanding-educational-freedom-and-opportunity-for-families/.
[430] Rahn, Amanda. "A Parent's Guide to Navigating IEPs in Chicago Public Schools." Chicago Parent, April 2, 2025. https://www.chicagoparent.com/education/public-schools/iep-chicago-public-schools/.

the past 60 years is not working for most kids. Test scores are down and parents, teachers sense of dread is up. Continuing down the same ole path, doing the same ole thing, is not the answer.

The federal government can surely be a partner in assisting states and local districts with various initiatives, but it should not be their role in creating a more burdensome environment. Money is important, but it is not the only factor. The heavy hand of government must be one of true partnership. The more we can diminish the footprint of the administrative state the better for all of us. Jonathan Butcher, senior research fellow at the Heritage Foundation and Chair of the South Carolina State Advisory Committee (SAC) suggested at our briefing when he stated:

> "…lawmakers can update the Individuals with Disability Act, IDEA, by giving families more choices over the private services that they can use to help their students, relieving some of the pressure on public school administrators to find more educators for children with special needs."[431]

Mr. Butcher also stated that our issue may be more than just a money issue but a prioritization issue:

> "…any review on the data of school employment would be incomplete without recognizing the disproportionate levels of non-instructional staff in K-12 public schools. Using data from the U.S. Department of Education, my colleague, Lindsey Burke reports that that since 2000, the number of principals and assistant principals has increased 37%, and the number of district administrative staff has increased 88%, all while the increase in overall teaching staff was only 8%."[432] …how much money is delivered to the education system matters far less than how those resources are used. The amount of money spent on public education has only increased. Any plateaus or temporary declines have been marginal and short-lived. And that is also true in the case of IDEA and how much has been spent in real dollars on children with special needs."[433]

There is no better time than now to change how we deliver education to the public, instead of just blindly funding a public education system. Systems do not teach children, teachers do. We must reprioritize current dollars to get more resources into the classrooms. Our current educational system is too top heavy! We spend way too much money on administering education than doing education. Streamlining the implementation of education will save billions! We have created offices of administration and "bureaucratic mouse traps"[434] to conduct burdensome regulations. All of this while sacrificing teachers and students at the classroom level. The "magic" of education occurs in the classroom between teacher and student, which is where the real action occurs. We can deliver education to the public differently, and do it with greater

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[431] Jonathan Butcher, Testimony at "The Federal Response to Teacher Shortage Impacts on Students with Disabilities," briefing transcript, U.S. Commission on Civil Rights, November 15, 2024, 89: 13-19. https://www.usccr.gov/meetings/public-briefings.
[432] Butcher transcript, 92: 17-25, 93:1
[433] Butcher, transcript, 110: 2-10
[434] Bureaucratic mousetrap refers to the complex, rigid, and often redundant administrative systems imposed by district offices that entangle educators in excessive paperwork, compliance protocols, and procedural hurdles—diverting time and energy away from teaching and student engagement.

efficiency, accountability, and freedom. Our bureaucracy's insatiable appetites will always want more money for everything. Instead of funding a system, I believe we should empower families (the consumer) to find the delivery system that best works for them, whether public, faith-based, virtually, homeschooling, charter school, etc.

It is difficult to have any discussions about teacher retention and its impact on our most vulnerable students without discussing school culture. School culture plays a vital role in how satisfied our teachers are and how successful our students are at school.

I recently submitted an opinion piece in my home state that spoke to the importance of school culture, choice in education and how we keep and recruit good teachers are interrelated:

***As a Trustee of the South Carolina Public Charter School District, I am encouraged by the growing demand from parents for options that better meet their children's needs — options that traditional public schools are increasingly unable to provide.***

***Over the past decade, we have seen a troubling trend: rising safety concerns, inconsistent academic outcomes, and a community that feels its schools are falling short. Recent data from the South Carolina Department of Education indicates that several traditional public schools in our region have struggled with issues related to safety and student engagement. In contrast, charter schools — driven and managed by dedicated community members and parents — have demonstrated their ability to foster safer environments and innovative educational practices.***

***The rapidly rising number of proposed charter and private schools in Northeast Richland County is a clear sign of our community's desire for more educational choices, safer learning environments, and a renewed focus on student success. As a Trustee of the South Carolina Public Charter School District, I am encouraged by the growing demand from parents for options that better meet their children's needs — options that traditional public schools are increasingly unable to provide.***

***Over the past decade, we have seen a troubling trend: rising safety concerns, inconsistent academic outcomes, and a community that feels its schools are falling short. Recent data from the South Carolina Department of Education indicates that several traditional public schools in our region have struggled with issues related to safety and student engagement. In contrast, charter schools — driven and managed by dedicated community members and parents — have demonstrated their ability to foster safer environments and innovative educational practices. These schools are governed by boards comprised of parents elected by the community, ensuring accountability and a student-centered approach.***

***The importance of safety cannot be overstated. Parents want to know their children are in secure, supportive environments that foster learning and growth. When school safety is compromised, students' academic and emotional well-being suffer. Charter schools excel in this regard by maintaining smaller class sizes, implementing tailored discipline policies, and building strong school cultures that prioritize student safety and success.***

***Moreover, our community stands at a crossroads with a significant economic opportunity on the horizon. The South Carolina General Assembly recently approved a major economic***

***development project — the establishment of SCOUT MOTORS here in Richland County. This project promises to bring hundreds of jobs and stimulate economic growth. Preparation for this new workforce begins with education. Our schools must adapt, equipping students with the skills and knowledge necessary for the jobs of tomorrow. Charter schools, flexible by design, can innovate curricula and focus on STEM education, trades, and other high-demand fields to ensure our youth are workforce-ready.***

***Educational excellence and economic development go hand in hand. Data shows that communities with dynamic charter school sectors experience higher levels of educational attainment, greater economic growth, and increased competitiveness. According to the National Charter School Conference, students in charter schools outperform their peers in traditional public schools on standardized tests and are more likely to graduate and attend college.***

***Importantly, public charter schools are inherently community and parent-driven institutions. Unlike some traditional models, they operate under a governing board composed of parents and community leaders, ensuring that local voices have direct influence over school policies and priorities. This model fosters accountability, transparency, and an ethos that truly reflects the community's values and aspirations.***

***In conclusion, the proposed increase in charter and private schools in Northeast Richland County reflects a community eager for better educational choices, safer schools, and a workforce prepared for the economic opportunities ahead. Embracing these options is crucial to meeting the needs of our children and our region's future prosperity. Let's continue to support innovative, community-led solutions that put students first and build a stronger, safer, and more competitive Richland County.***[435]

**Recommendations:**

I believe the federal government, in partnership with states, can encourage states with incentive grants, not mandates. The following recommendations can assist states in stabilizing and growing their special needs profession:

1. Incentivize Special Education Careers: Introduce competitive salary packages, bonuses, and loan repayment programs to attract more individuals into the special education field. Additionally, offering scholarships for education students specializing in special needs could encourage more graduates to enter this vital area.

2. Enhance Training and Professional Development: Develop targeted training programs and ongoing professional development opportunities for teachers to better equip them with the skills and knowledge necessary for teaching special needs students.

[435] Gilchrist, Stephen. "Guest Editorial: Free Public Charter and Private Schools on the Rise." The Voice of Blythewood & Fairfield County, July 31, 2025. https://www.blythewoodonline.com/2025/07/guest-editorial-free-public-charter-and-private-schools-on-the-rise/

3. Foster Collaboration and Support Networks: Create support systems within schools by fostering collaboration between special education teachers, general education teachers, and support staff. Establish mentorship programs where experienced special education teachers can guide new educators, sharing strategies and resources to create a more cohesive teaching environment for special needs students.

4. Incentivize veteran teachers to remain in the classroom: The teacher shortage cannot be adequately addressed without addressing how we keep good veteran special education teachers in the classroom. States/school districts should examine a stipend and bonus structure tied to experience and high-need areas. States/districts should also investigate a pay scale that is more reflective of the demands of job. The rate of teachers leaving the profession must be staved off to create an adequate pipeline for the profession.

5. Establishing mentorship programs: The knowledge and wisdom of veteran teachers can be harnessed by pairing them with newer educators not only supports the novices but also gives experienced teachers a leadership role.

6. Create and cultivate “Grow Your Own” & Career Pathways programs: States and local school districts should strongly consider supporting “Grow Your Own” (GYO) programs, which recruit and support people within the local community in becoming certified educators. These programs help cultivate a diverse and committed teaching workforce that is more likely to remain in the community.

7. Establishment of alternative certification initiatives: Alternative does not mean less than. States’ creation of alternative certification programs is just a recognition that we cannot continue training all teachers in the exact same model as we did sixty years ago. It is important that quality and competence is accessed, yet we do not have to create an expensive bureaucratic framework to get more qualified people into the classroom.

8. Cap the percentage of money that can be spent for the administration of education. Our current system is too top heavy, and more resources need to go directly into the classroom either in additional incentive pay for teachers and or indirect support for families and students.

9. Establish robust school choice initiatives: School choice initiatives will not only serve as an accountability measure for schools, but they will also serve as a lever for parents to have empowered choices as they are related to their children. Our special needs students need students need a plethora of options! The most effective way to do this is by “back packing.” This allows the money (resources) to follow the child to where they will receive the educational services chosen by the parent. Additionally, President Trump’s approach to protecting special needs students in 2025 included several initiatives outlined

in his executive orders and education policies to include inclusive educational practices, access to federal funding and parental rights.[436]

**Conclusion:**

I initially proposed some Findings and Recommendations that I believe succinctly captured the testimony given at our briefing and from talking to other experts in the field. However, upon further reflection I declined to formally submit those. Usually, the lead commissioner on a project would submit findings and recommendations to his/her colleagues with the intention of corralling enough votes to get them passed by a simple majority of the commissioners. However, I believe it is more important that the public can get an assessment of the Commission through the words of its leaders, the Commissioners. It is safe to say that we all want the best for all our students. And with a good, caring teacher our children can soar, especially our most vulnerable students.

As our educational landscape continues to shift, it is important that we all try to find consensus on the way forward. I believe this moment will bring greater freedom and expand more opportunities. Change, though often met with uncertainty, is upon us, and now is the time to seize the moment. Change invites us to reimagine what learning can look like, to break free from outdated constraints, and to build systems that honor our teachers, families, and communities.

As our nation begins to emphasize the localization of education with a parent-centered focus it is important that parents and teachers make decisions that reflect the values and needs of their community. Special needs students possess unique requirements that, when met with adequate resources and tailored instructional strategies, it can lead to concrete educational outcomes. By prioritizing access and real power for these students and their families, we are not merely complying with legislative obligations but embracing a broader vision that recognizes their value and potential as valuable members of our communities.

Furthermore, providing choice options—such as charter schools, magnet programs, religious schools, homeschooling, and specialized resources—enhances the educational landscape. These options not only empower families to select the educational resources that align with the needs of their children, but they also create opportunities for educators to thrive.

President Trump's education initiatives represent a significant step forward in offering support and flexibility for both parents and states. By promoting policies aimed at increasing school choice and competition among educational institutions, these initiatives help to ensure that parents have access to a variety of educational options. Such a framework empowers families to find the best fit for their child's unique needs, thereby enhancing educational outcomes. Additionally, these initiatives encourage states to develop and implement their own education

[436] White House. Fact Sheet: President Donald J. Trump Expands Educational Opportunities for American Families. January 30, 2025. https://www.whitehouse.gov/fact-sheets/2025/01/fact-sheet-president-donald-j-trump-expands-educational-opportunities-for-american-families/.

models, creating an environment where best practices can be implemented and shared across districts.

The future of education is not fixed; it is fluid, dynamic, and full of possibilities. By embracing change with courage and creativity, we can create a system that not only adapts—but flourishes.

I want to thank my fellow Commissioners, without their leadership none of this would be possible. I want to thank the staff and our Special Assistants their support and behind the scenes work. I also want to thank my Special Assistant, Thomas Simuel, for his guidance and leadership on this project.

I want to thank the parents and teachers of every special need student. You all understand love, support, and commitment in a different kind of way. And because of that we are a better country for it!

Thank you,

Stephen L. Gilchrist

## Statement of Commissioner Gail Heriot

This report bristles with charts and graphs. It's full of data. But in the end, I'm not sure it provides enough information for me to decide whether there is a critical shortage of teachers.

It does, however, give me the opportunity to highlight the recent decision of President Trump to disassociate the federal government from the very misguided school discipline policies of the Obama and Biden Eras.[437] I strongly suspect those now-abandoned policies caused some talented men and women to leave the teaching profession. For that and many other reasons, President Trump's action deserves to be noted in this report.[438]

But let me say a bit about the report's core issue first.

### *Is there a nationwide teacher shortage?*

One might think that it would be easy to determine whether there really is a nationwide shortage of teachers (or, if there isn't such a shortage, whether there is a nationwide shortage of special-education teachers specifically). But that turns out not to be so.[439]

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[437] Executive Order: Reinstating Common Sense School Discipline Policies, April 23, 2025. See Joint "Dear Colleague" Letter on the Nondiscriminatory Administration of School Discipline, U.S. Dep'ts of Educ. & Justice, January 8, 2014; Joint "Dear Colleague" Letter on the Nondiscriminatory Administration of School Discipline, U.S. Dep'ts of Educ. & Justice, May 26, 2023.

[438] See Editorial, *School Discipline Makes a Comeback*, Wall St. J., July 4, 2025. See also Gail Heriot & Alison Somin, *The Department of Education's Obama-Era Initiative on Racial Disparities in School Discipline: Wrong for Students and Teachers, Wrong on the Law*, 22 Tex. Rev. L. & Politics, 471, 481-482 (2018).

[439] Report at 19 (acknowledging this difficulty). Not all of numbers cited in this Report mean what they might first seem to appear. One piece of evidence offered for the proposition that "there are fewer hires than openings" is a chart prepared by the National Education Association (a labor union for teachers). Report at 19-20 (Figure 2.1). The chart purports to show the ratio of hires to job opening for teachers. The ratio for 2022 is said to be .55. It is tempting to interpret that to mean that for every 100 job openings in 2022, only 55 teachers were hired. If so, that suggests a serious teacher shortage. But that is not what it means. If it did, looking at the rest of the chart, it would mean that between the years 2007 and 2013, there were considerably more hires than job openings. For 2010, it would mean that for every 100 job openings, there were 153 hires. That wouldn't make sense. In reality, the NEA chart is taken from the U.S. Bureau of Labor Statistics' monthly Job Openings and Labor Turnover ("JOLT") data. Each month, the Bureau publishes the number of job openings in any given industry that existed on the last day of the month. In addition, it publishes the number of hires in that industry over the course of the whole month. The Bureau doesn't compute the ratio of hires to job openings because it doesn't make much sense to. The job openings figure is a snapshot in time, while the hiring figure is collected over the course of a month.

One problem with the NEA's methodology is that while adding together the hires to reach an annual figure usually makes sense (though in rare cases the school might be hiring twice into the same job slot), adding together the job openings to reach an annual figure makes no sense at all, since the same job opening can be counted multiple times if it takes many months to file the job.

The NEA's "ratio" can make jobs with a complicated hiring process, but many eager applicants, appear to be experiencing a labor shortage relative to jobs where hiring is quick. Imagine two employers, both of which hire 120 employees a year, spread evenly over the year at 10 each month. Employer A is a coffeehouse that hires baristas by placing a "Help Wanted" sign in the window and invariably gets applicants within minutes and hires within a few

Over the last few years, many school districts have reported that they are having trouble filling job openings for teachers.[440] I can believe it. While there may be disagreement as to its cause, there is plenty of evidence that teacher burn-out is a real phenomenon.[441] On the other hand, the post-COVID labor shortage is hardly confined to teachers.[442] At least in 2021, these

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days. Its average ratio of hires to end-of-month job openings will be around 10 to 1. Contrast that with Employer B who posts a professional job that opens up unexpectedly and gets many applicants. But Employer B then goes through a hiring process that requires multiple interviews with prospective candidates. The full process takes two months in total. In any given month, 10 people are hired and 20 jobs remain open for a ratio of 1 to 2 (or 0.5).

Of course, in my hypothetical, there's a difference between Employer A and Employers B. At any given moment, Employer A is fully staffed up, while Employer B at any given moment has 20 job openings. But many employers would build this problem into their business plan, such that the optimum number of employees to have on hand may be less than the number that looks on paper to be "full staff." And whatever else you want to say about Employer B's situation, it doesn't make sense to say Employer B has a shortage of applicants.

Now let me vary the hypothetical to include a school district. Consider Employer C, a school district that aims to have a full staff of teachers during the school year, but during the summer, while it keeps its teachers on its employee roster if they intend to teach in September, it pays them only a tiny retainer. Resignations are highly seasonal. Invariably, 120 teachers announce at the end of the school year that they don't intend to come back in September, and invariably it takes two months to fill the job openings. At the end of June, there are 120 job openings and zero hires. The same is true for July. In August, there are 120 hires and zero job openings at month's end. There would be no problem with such a situation, yet the ratio of hires to openings over the course of the year would be 120 to 240 (0.5).

[440] It's certainly true that there has been a lot in the media about a teacher shortage lately. See Jason Odom, *5 Strategies to Refine Recruitment and Help Solve the Teacher Shortage*, *e*School News, June 12, 2025; Megan Tomasic, *Pennsylvania Educators are Continuing to Leave the Profession, Adding to Teacher Shortage*, Pittsburgh Post-Gazette, June 2, 2025; Bethany Rodgers, *Severe Teacher Shortages Plague Most Pennsylvania Counties, New Report Finds*, USA Today, May 29, 2025; Robbie Sequeira, *As Teacher Burnout Deepens, States Scramble to Fill School Job Vacancies*, Stateline, May 21, 2025; Evie Blad, *Why We Still Haven't Solved Teacher Shortages (Despite Decades of Trying)*, Education Week, October 31, 2024.

One could say that where's there's smoke, there's fire. But as President John F. Kennedy once said, "Sometimes where there's smoke, there's a smoke-making machine." Lawrence Brown, *Beware the* "*Smoke-Making Machine*," Cape Cod Times, August 28, 2009. It is worth pointing out that large teacher labor unions like the National Education Association and the American Federation of Teachers as well as various teacher-oriented think tanks have an interest in publicizing news about teaching (and perhaps a duty to do so). If there's a longer than average waiting period before job openings for teachers can be filled, the public will hear about it. It's not so clear the public will hear about a longer than average period for filling jobs for insurance adjusters, elevator inspectors, or paralegals.

[441] Stephanie Marken & Sangeeta Agrawal, *K-12 Workers Have Highest Burnout Rate in U.S.*, Gallup.com, June 13, 2022, https://news.gallup.com/poll/393500/workers-highest-burnout-rate.aspx#:~:text=Story%20Highlights&text=WASHINGTON%2C%20D.C.%20%2D%2D%20More%20than,outpacing%20all%20other%20industries%20nationally.

[442] U.S. Bureau of Labor Statistics, Department of Labor, Job Openings Reach Record Highs in 2022 as the Labor Market Recovery Continues, Monthly Labor Review, May 2023; Dee-Ann Durbin, Restaurants Say They Can't Hire Enough Servers Due to the Labor Shortage. Some are Turning to Robots, Fortune, April 6, 2023.

school districts were having as much trouble finding bus drivers.[443] Their difficulty in finding teachers may thus be largely a reflection of the labor shortage generally.

If that's true, things are already getting better on that score.[444] Recent data from the U.S. Bureau of Labor Statistics—published after this report was drafted—show the number of unfilled job openings is starting to decrease both for labor in general and for state and local education specifically.[445] It's possible that, if a problem did exist, it is resolving itself.

Even if it turns out the teacher shortage is more serious than the bus driver shortage and will require more effort to resolve, there is still insufficient evidence to view it as a crisis. For the sake of perspective, a few things need to be kept in mind. To begin with, there has been a lot of chatter over the past few decades about a looming crisis in the supply of teachers.[446] Yet the crisis has never quite materialized.[447] I note that the average student-teacher ratio in the United

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[443] Report at 2, citing Institute of Education Sciences, "School Pulse Panel," https://ies.ed.gov/schoolsurvey/spp/ (accessed Oct. 23, 2024).

[444] I really shouldn't call that "better," so I have called it "better on that score." In general, a labor shortage is good for laborers, since it tends to create the conditions for higher wages and better conditions. For the same reason, it is not-so-good for employers. Conversely, when employers have an easy time finding employees, that's bad for employees. Of course, if the number of job openings is starting to decrease, it may be because the system is working: Wages and working conditions have begun to get better.

[445] Compare U.S. Bureau of Labor Statistics, Department of Labor, *News Release: Job Openings and Labor Turnover*, July 2025 (for April 2025, 7,395,000 job openings for all industries and 242,000 for state and local education) with U.S. Bureau of Labor Statistics, Department of Labor, *News Release: Job Openings and Labor Turnover—May 2023*, July 6, 2023 (for April 2023, 10,320,000 job openings for all industries and 313,000 for state and local education).

The staff-written part of this report states, "ED does not require [teacher job vacancies] to be reported, therefore it is difficult to determine the full extent of teacher vacancies." Report at 26. The JOLT data on state and local education vacancies is thus the best we have.

[446] Elizabeth Moser & Matthew J. Bouillette, *Teacher Shortage Forces States to Relax Rules for Educators*, Mackinac Center for Public Policy, November 1, 2000; William Hussar, *Predicting the Need for Newly Hired Teachers in the United States to 2008–09*, National Center for Education Statistics (1999); Linda Darling-Hammond, *Beyond the Commission Reports: The Coming Crisis in Teaching, Rand Corporation* (1984); Hope Aldrich, *Teacher Shortage: Likely to Get Worse Before It Gets Better*, Education Week, July 27, 1983;

[447] See Kaitlin Pennington McVey and Justin Trinidad, *Nuance in the Noise: The Complex Reality of Teacher Shortages*, Bellwether Education Partners, January 2019:

> For decades, talk of a looming teacher shortage crisis has caused anxiety in education policy and practice circles. A 1984 report warned that "shortages of qualified teachers in subjects such as mathematics and science are expected to grow into a more generalized teacher shortage." A 1999 report predicted the need for an outsized number of new teachers. Most recently, a 2016 report suggested there would soon be a national teacher shortage crisis.
>
> But a generic, national teacher shortage has yet to materialize — at least in the way these reports warned. In the '80s and '90s researchers assumed large numbers of teachers would retire and that the new teacher supply would be unable to keep up with increases in student

States has substantially decreased over time[448] and that the number of school-age children in the United States is decreasing.[449] The public schools of the 1950s probably faced far greater difficulties in staffing classrooms when the Baby Boom generation reached school age than schools are now facing.

Might the country have a significant problem with a shortage of special education teachers in particular? Yes, it might. But even there, I'm not sure we have enough evidence to call it a crisis.[450]

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> enrollment. Three decades later, we now know these reports predicted incorrectly: The new teacher supply has more than kept pace with increases in student enrollment.

*Id.* at 4 (footnotes omitted).

See C. Emily Feistritzer, *The Truth Behind the "Teacher Shortage*," Wall St. J., January 28, 1998 ("The teacher shortage "crisis" has been resurrected--again. It seems every few years this issue is trotted out and used to get more money, more programs, more publicity, more political points—all in the name of meeting the huge demand, now said to be two million new teachers in the next decade."). See also Sol Stern, *Solving the Real Teacher* "*Crisis*," Manhattan Institute, April 9, 2000 (pointing out that the United Federation of Teachers had spent $2 million in prime-time television spots to convince New Yorkers that New York City was experiencing a teacher shortage crisis shortly before contract negotiations were set to take place).

[448] As one of our Briefing witnesses, Max Eden, Senior Research Fellow at the American Enterprise Institute, stated, "The student-to-teacher ratio has fallen substantially over time. From about 27-to-1 in 1955, to 20 to 1 in 1975, to 17-to-1 in 1995, to about 15-to-1 in 2021. Much of this was driven by a demand, based on limited and disputed empirical data, of the benefits of small class sizes. According to the OECD, America's primary school class sizes are smaller than those of Germany, Portugal, Spain, France, Australia, and the United Kingdom (amongst others)." Max Eden Statement at 2, citing U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, *Teacher Characteristics and Trends*, accessed November 4, 2024, https://nces.ed.gov/fastfacts/display.asp?id=28 and Organisation for Economic Co-operation and Development, "What Is the Student-Teacher Ratio and How Big Are Classes?," in *Education at a Glance 2020: OECD Indicators* (OECD Publishing, 2020), https://doi.org/10.1787/315d95e6-en.

[449] Aaron Garth Smith & Jude Schwalbach, *What the Birth Dearth Means for Public Schools*, Reason November 4, 2024. They wrote:

> Nationwide, public school enrollment has declined by 1.2 million students—about 2.3 percent—since 2020. Research suggests that 40 percent of these students switched to private schools or homeschooling as parents grew weary of prolonged school closures, masking policies, and curricular battles. However, demographics also played a key role, with about one-quarter of the decrease attributable to a declining number of school-aged kids thanks to the birth dearth.
>
> The number of births in the U.S. dropped by 17 percent between 2007 and 2023. This means that 720,000 fewer births occurred in 2023 than in 2007. This baby bust also extends to U.S. immigrants. In 2019, immigrant fertility rates dropped below replacement levels for the first time.

See also Report at 21-23 (acknowledging both a fall and partial recovery in student numbers between 2019 and 2022).

[450] I note that while it's true that the number of students classified as having a disability has gone up, it's not clear that this is due to real changes in the student population as opposed to changes in what gets classified as a disability.

If I were advising a school district on what to do, I would want the school district to find out whether the problem is largely a regional one before deciding on a course of action. We all know that some states—like Florida, South Carolina, Tennessee, and Texas—have been growing fast, while others—like Hawaii, Illinois, Louisiana, and New York—have not.[451] My own State of California has been growing only very slowly for decades, and between 2019 and 2022 it actually lost population.[452] At our briefing, Max Eden, Senior Research Fellow at the American Enterprise Institute, suggested that some states have what appears to be a significant teacher shortage, while others don't.[453] If he is right that the problem is regional, even if it is more serious than the general labor shortage, it will likely iron itself out in relatively short order. Americans are a mobile people. They go where the jobs are. All the federal and state governments need to do is keep out of the way.

***If there is a serious teacher shortage, what should the federal response be?***

But let me change gears and assume there is a serious nationwide teacher shortage.[454] Even so, it's not clear to me that the federal government has a significant role to play in solving the problem. To be sure, if the federal government has helped to create the problem through ill-considered policies, it may have a duty to reverse those policies. That includes the Obama-Era and Biden-Era school discipline policies, which I discuss later in this Statement. But that is different matter from affirmatively inserting itself into a problem it didn't create.[455]

In general, I oppose any more intervention into education by the federal government than is necessary. Federal intervention inevitably means the further bureaucratization of education. The federal government acts by imposing regulations and policies from afar—usually without much in the way of knowledge of how those

[451] U.S. Census, Annual Estimates of the Resident Population for the United States, Regions, States, District of Columbia and Puerto Rico: April 1, 2020 to July 1, 2024 (NST-EST2024-POP), https://www.census.gov/data/tables/time-series/demo/popest/2020s-state-total.html.

[452] Blake Jones, California Finally Reverses its Population-Loss Streak, Politico, April 30, 2024.

[453] Max Eden Statement at 2. See also Richard M. Ingersoll, *Is There Really a Teacher Shortage?*, The Consortium for Policy Research in Education, September 2003.

[454] Commissioner Magpantay makes the recommendation that "States and districts should prioritize recruiting educators who reflect the demographics of the student population." Such an approach would, of course, only make any teacher shortage worse. Moreover, it would be illegal and (for public schools) unconstitutional.

[455] One issue I would like to know more about is whether funding sources—like private foundations or state or federal governments—are earmarking grants for the hiring of teachers. If they are, the demand (and hence the shortage) could be viewed as artificial. I don't mean to suggest that it is always a mistake to earmark funds. For decades, schools have been expanding the number of administrators at rates much higher than the number of teachers. I sympathize if, for example, a private foundation is trying to incentivize schools to hire more teachers instead. Still, I would prefer to investigate whether there are artificial incentives in place that cause schools to hire administrators and, if possible, get rid of any such incentives, rather than add an extra layer of artificial incentive on top of already existing ones.

regulations and policies are affecting things locally.[456] Platoons of federal employees investigate complaints and conduct compliance reviews in an effort to ensure federal edicts are being obeyed. Even when the federal government gives away money (something that the school districts seem to like, though perhaps they should be careful about what they wish for), it does so through complicated programs that require extensive grant applications, interim project reports, audits, and much more. School districts must hire more and more administrators and lawyers to deal with the bureaucratic workload. In turn, those administrators and lawyers impose internal regulations and policies on teachers to ensure that the school district can respond to the various demands placed on it by federal officials. Everything must be documented and subjected to internal approvals.[457] In such an environment, creative teaching and learning are no longer at the center of things. Instead, responding to the federal oversight is perpetually at the top of the school district's agenda. That's not good for education.

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[456] Frequently, the federal government doesn't know its own strength. In the past, it had pressed local schools to adopt tough "zero tolerance" rule for guns that include things that simply appear to be guns. As a result, tiny tots ended up getting suspended for "guns" made out of a nibbled breakfast pastry or a stick. See *Boy, 7, Suspended for Shaping Pastry into Gun, Dad Says*, Fox News (March 5, 2013); Samantha Schmidt, *5-Year-Old Girl Suspended from School for Playing with "Stick Gun" at Recess*, Wash. Post (March 30, 2017); Elahe Izadi, *Kindergartner Suspended for Bringing Princess Bubble Gun to School*, Wash. Post. (May 19, 2016). This concern over purportedly dangerous pastries can be traced back to Congress's passage of the Gun-Free Schools Act of 1994, Pub. L. 103-382, 108 Stat. 270 (1994)(codified at 20 U.S.C. §§ 8921-23). Somewhere along the line, the implementation of an arguably sensible idea turned bad. Such is the problem with bureaucracies. Similarly, on too many occasions, the federal government's get-tough policies on sexual harassment have led to disciplinary actions against kindergartners and first graders—children too young to spell "sexual harassment," much less engage in it. See Gitika Ahuja, *First-Grader Suspended for Sexual Harassment*, ABC News (February 7, 2006); Yvonne Bynoe, *Opinion: Is that 4-Year-Old Really a Sex Offender?*, Wash. Post (October 21, 2007); Kelly Wallace, *6-Year-Old Suspended for Kissing Girl, Accused of Sexual Harassment*, CNN (December 12, 2013).

[457] I am in agreement with Former Deputy Assistant Secretary of Education for the Office for Civil Rights William Trachman, who testified at our briefing that the job of special education teacher would be a lot more pleasant if there were fewer paperwork demands. In his Statement, Commissioner Jones seems to be in general agreement that extensive paperwork is a problem. Mondaire Jones Statement at 128. That's something to think about if the goal is to retain good teachers and attract more candidates to the field.

> [T]here are definitely ways to make the job of special education teacher less satisfying, and thus less attractive. More paperwork. More discussion and training surrounding onerous legal compliance duties. More cumbersome meetings. More documentation. More time outside of the classroom or with the student. Perhaps even more pressure that the Office for Civil Rights is peering over your shoulder, or embarking on new regulatory projects that will impact your work. (Including dense guidance packages). These are the types of process-based measures that may sound in good intent—we want to make sure that teachers are abiding by the law of course—but which disincentivize teachers from taking roles as special education professionals.

William Trachman Statement at 3. One reason I view Mr. Trachman's concern about bureaucratic red tape believable is that teacher salaries at private schools tend to be lower than at public schools and yet many teachers prefer it. There may be multiple reasons for this, but I'd be surprised if less red tape isn't one of them.

I note that Commissioner Magpantay writes in his Statement that we need more data collection. Glenn Manpantay Statement at 131-133. This, of course, will only compound the problem noted by Mr. Trachman.

As a separate (but equally important matter), placing schools under the federal government's direction inevitably leads to a uniform approach to education. And that's not good for education either.[458] If there is an area of human endeavor that cries out more for diverse approaches than education, I am unaware of it. More so than most products and services, education is prone to fads. Large segments of American education latch onto ideas—from Jim Crow segregation to the "New Math" to the craze for minimally guided learning—before they are recognized as counterproductive. This is bad enough when it's only the trendiest schools that are captured by these novel, but wrongheaded, ideas. When it's *all* schools because those ideas have been imposed by a central authority, it is a disaster.[459] We need alternative approaches. Conscientious parents must be able to go *somewhere* to get their children a good education. They certainly can't rely on the dominant approach being the best approach. Efforts to bring the entire system under the federal yoke should therefore be resisted—*strenuously*.

Consequently, if the "teacher shortage" is simply a labor shortage, no matter how serious, I see no need to initiate any kind of federal intervention. The market knows how to take care of labor shortages. School districts have several choices available. They can (1) lower the required qualifications needed to get the job; (2) offer better working conditions; and/or (3) offer higher wages.

Of course, the Trump Administration's decision to back away from the school discipline policies promoted by the Obama and Biden Administrations is not simply a new federal intervention designed to end a labor shortage. Rather it is the withdrawal of ill-considered past interventions. The primary effect of those interventions was to make it difficult for students to learn. Nevertheless, it very likely had a secondary effect on the supply of teachers. That leads me to want to discuss its withdrawal here.

But first let me say a few words about lowering job qualifications for teaching.

a. Lower Qualifications

My kneejerk reaction to any suggestion that qualifications should be lowered for anything is "*Noooo!!!*" But then I remember what woke hellholes American schools of education have

[458] I agree with Commissioner Gilchrist, who discusses the importance of community and parent-driven schools of many varieties—public, faith-based, charter and much else. Stephen Gilchrist at 99-103.

[459] As I have written in other contexts, some of these fashionable ideas—like the notion that learning will be enhanced by painting mathematics classrooms blue or indigo and painting social studies classrooms orange, green, or brown—have been harmless. Others—as in the case of the extreme popularity of pedagogical methods that emphasize unguided or minimally guided student learning—can be disastrous. See William Daggett et al., Color in an Optimum Learning Environment, International Center for leadership in Education (2008)(classroom color); Paul A. Kirschner et al., Why Minimal Guidance During Instruction Does Not Work: An Analysis of the Failure of Constructivist, Discovery, Problem-Based, Experiential, and Inquiry-Based Teaching, 41 Educ. Psychologist 75 (2006). Gail Heriot & Carissa Mulder, The Sausage Factory 167, 172, in A Dubious Expediency: How Race Preferences Damage Higher Education (Gail Heriot & Maimon Schwarzschild, eds. 2021).

become,[460] and I start wanting to take a much closer look at exactly what "qualifications" education advocates are talking about. This report gives little hint at what is currently required. But color me skeptical of any notion that extending or even maintaining the influence of schools of education would be a good idea.[461] Education schools may even be contributing to the

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[460] Jay Schalin, The Politicization of University Schools of Education: The Long March Through the Education Schools, The James G. Martin Center for Academic Renewal (February 2019). "Education schools are fundamental to all education. They are serving the nation badly, and it's not just about test scores and graduation rates. Teacher education has become one of the most politicized corners of academia, an institution that is already out of step with the rest of the country politically. Education schools are leading the charge to 'transform' the nation, and that transformation is not leading us to a better, freer, more prosperous, more humane society."

[461] I have been working at a university—the University of San Diego—for 36 years. During those years, I learned that of the university's various components, the school of education is by far the least academically rigorous and the wokest.

A week or so ago, I learned further that USD's School of Leadership and Education Sciences confers a degree it calls "Doctor of Philosophy in Education for Social Justice." A majority (18 out of 35) of the doctorates awarded by USD's education school this year fell into this category.
This is a random sample (i.e. the first seven on the list) of the dissertation titles:

> *Black Parents' Use of Educational Advocates: Disrupting Structural and Systemic Racism in Education*
>
> *Culturally Affirming Independent School Board Governance (CAISBG): Narratives of Board Members of Color in K-12 Independent Schools*
>
> *Restricted Access: Structural Gatekeeping and the Black Student Experience in Accounting Education*
>
> *Ethnic Studies for Secondary Schooling: Collaborative Curricular Insights from a Working Collective*
>
> *Challenging Dominant Ideologies: Transforming Teaching and Learning that Support Classroom Learning Environments of Latinx Students*
>
> *Liberatory Love: Exploring Educators' Perspectives in Alternative Education*
>
> *Constructing Portraits of Elementary Teachers of Ethnic Studies: Examining the Narratives of Anti-Racist Educators in an Era of Common Core Curriculum and Instruction.*

Most of the rest contain words like "antiracist," "equity," "equity-centered," "racial reckoning," or "radical."

The other Ph.D. program offered—Doctor of Philosophy in Leadership Studies—is somewhat less oriented to education and more oriented toward "leadership." But it was also dominated by dissertations steeped in "identity." A sampling of the titles:

> *Coming Back to Life: Inner Work, Intentional Containers and Feminine Leadership for Social Change: And Anthropological Case Study of a Social Change-Oriented Organization and the Self.*

problem of teacher recruitment. Not everybody is willing to go through the kind of "education" these schools currently offer to become a teacher. Many would prefer to stick a needle in their eye.

b. Working Conditions: School Discipline

This is where I believe I have the most to say.

Student behavior … or rather misbehavior is clear and unequivocal contributor to the problem of teacher attrition. One study found that an astonishing 51.9% cited "student behavior" as their primary reason for leaving. Only 21.8% cited "salary insufficient" as their primary reason. (Interestingly, for my point about schools of education, an additional 22.4% cited "progressive political activity" as their primary reason.)[462]

It's no wonder that teachers are concerned about student behavior. One recent study found that 8% of teachers had been physically assaulted by their students or their students' parents in the last year.[463] Another study found that some 3,300 employees of Texas schools district employees were the targets of assaults by students in 2023-24.[464]

The concern over student behavior is directly related to a deeply misguided (but unfortunately trendy) school discipline policy that holds that disruptive students should be allowed to remain in the classroom and that disciplining such students is both racist and ableist.

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*Belonging is Resistance: Illuminating the Power of Women of Color Mid-Level Administrators in Higher Education*

*Latinas Leading with Latinidad: Incorporating the Latina Identity into Leadership*

*How Do LGBT Employees Assess Their Firm's Organizational Culture Regarding LGBT Leadership*

*Latinas in Higher Education: Paving & Weaving Wholeheartedly*

See University of San Diego, Sixty-sixth Graduate Commencement Program, May 18 & 24, 2025. The problem with education schools is by no means confined to the University of San Diego. See, e.g., Daniel Buck, *Education Schools Have Long Been Mediocre. Now They Are Woke Too*, Wall St. J., August 19, 2022; Brandy Shufutinsky, *Who Teaches the Teachers?,* LIF (2023).

[462] Micah Ward, Student Behavior is the Leading Cause for Teachers Leaving, District Administration, July 22, 2022.

See Daniel Buck, *Teachers Are Fed Up with No-Consequence Discipline*, Fordham Institute, January 18, 2024, PBS NewsHour, *States Push for Harsher School Discipline Practices to Address Student Misbehavior*, PBS, May 10, 2023 (quoting numerous teachers concerning the discipline problems they face).

[463] Lauraine Langreo, *How Many Teachers Have Been Assaulted by Students or Parents? We Asked Educators*, Education Week, August 9, 2022)(8% of teachers and 20% of principals reported being physically assaulted in the past year).

[464] See Editorial, *School Discipline Makes a Comeback*, Wall St. J., July 4, 2025.

This policy was pushed down school districts' throats by the Obama Administration. And it was largely continued under the Biden Administration. Indeed, the same federal official—Assistant Secretary of Education for the Office for Civil Rights Catherine Lhamon--was in charge of the issue during both administrations.

The policy initiative began with a much-publicized speech delivered from the historic Edmund Pettus Bridge in Selma, Alabama on March 8, 2010 by then-Secretary of Education Arne Duncan. He declared that African-American students "are more than three times as likely to be expelled as their white peers,"[465] and that the Obama Administration was set to do something about it. Left unsaid was the fact that, for complicated reasons that only be partially explained, rates of misconduct rates themselves vary by race.[466] Nobody should be surprised by

[465] Arne Duncan, Sec'y of Educ., Crossing the Next Bridge: Remarks on the 45th Anniversary of "Bloody Sunday" at the Edmund Pettus Bridge, Selma, Alabama (Mar. 8, 2010), https://www.ed.gov/news/speeches/crossing-next-bridge-secretary-arne-duncan%E2%80%99s-remarks-45th-anniversary-bloody-sunday-edmund-pettus-bridge-selma-alabama [https://perma.cc/53RZ-TVGL].

[466] Even self-reported data demonstrate racial differences in aggregate student conduct by race. For example, the National Center for Education Statistics has asked students in grades 9-12 every other year since at least 1993 whether they have been in a physical fight on school property over the past 12 months. The results have been consistent. Each time, more African American students have reported participation in such a fight than white students.

In 2015, 12.6% of African American students reported being in a fight on school property, as contrasted with 5.6% of white students. Put differently, the African American rate was 125% higher than the white rate. Similarly, in 2013, 12.8% of African American students reported being in a fight on school property and 6.4% of white students did. Back in the 1990s, the number of students reported participating in a fight on school property was generally higher. But the racial gaps were just as real. In 1993, 22% of African American students and 15% of white students admitted to participating in such a fight. Two years later, in 1995, the African American rate had declined to 20.3%, and the white rate had decreased to 12.9%. It should go without saying that these are aggregate statistics and have nothing to do with individual conduct. If a particular student is African American and has not been in a fight on school property, then … well … he hasn't been in a fight on school property. If another student is white and she has been in a fight, then she has. Their race has nothing to do with it.

Note that neither African Americans nor whites were at the extremes among racial groups on the issue of fighting. Data on Asian American and Pacific Islander students didn't start to be collected until 1999. But in nearly every year for which data were collected, Asian American rates of participation in fights on school property were *lower* than white rates. On the other end of the spectrum, in every year since 1999 for which sufficient data existed, Pacific Islander students reported *higher* rates than African American students. For example, in 2005, 24.5% of Pacific Islander students reported being in such a fight, while only 16.9% of African American students did. The rates for whites and Asian Americans in that year were 11.6% and 5.9% respectively. See Digest of Education Statistics, Percentage of students in grades 9-12 who reported having been in a physical fight at least one time during the previous 12 months by location and selected student characteristics: Selected years, 1993 through 2015, available at https://nces.ed.gov/programs/digest/d16/tables/dt16_231.10.asp .

this. Levels of poverty are different, levels of fatherless households are different, many things are different. Hence the only way to even up the numbers would be to discipline Asian-American or white students for things that African-American or Pacific-Islander students would not be disciplined for—or to avoid disciplining anyone. It soon became clear that the Department of Education was mostly for the latter option. Not-so-subtle pressure to lighten up on discipline was applied. Therapy- or mediation-oriented "positive interventions" were urged on schools rather than expulsions, suspensions, in-school suspensions, or other removals from the classroom.

Soon after Secretary Duncan's speech, the Department of Education launched a program under which hundreds of compliance reviews of school districts that disciplined African-American students at higher rates than white or Asian-American students were undertaken.[467] Schools were selected for these reviews based on statistical differences in rates of discipline by race.[468] School districts scrambled to do what the Department of Education wanted them to do.

The Administration's policy was embodied in its "Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline." Schools were warned that their federal funding could be jeopardized if their school discipline practices were found to be in violation of Title VI's prohibition on race discrimination. That's true enough in itself. But they were further told that they must eliminate not just "different treatment" based on race (that is, actual discrimination in the administration of discipline), but also any "unjustified" "disparate impact" (that is, differences in rates of discipline among races, even if the reasons for the difference have nothing to do with discrimination). Specifically, the letter stated: "Schools also violate Federal law when they evenhandedly implement facially neutral policies and practices that, although not

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Similarly, among 10th grade boys, 3.0% of whites and 7.9% of African Americans confess to having possessed a gun at school in the last 12 months. That means the rate reported for African Americans was 163.3% higher than the rate reported by whites. The rate reported by American Indian boys (7.4%) was 146.7% higher than that for white boys. Asian American boys on the other hand were at 2.7%, which is 10% lower than that for white boys (although, unlike the other sample sizes, the sample size for Asian American boys was too small to yield statistically significant figures at the $p < .01$ level). See John M. Wallace, Sara Goodkind, Cynthia M. Wallace, & Jerald G. Bachman, *Racial, Ethnic, and Gender Differences in School Discipline Among U.S. High School Students: 1991-2005*, 59 Negro Educ. Rev. 47 (2008).

For more such statistical evidence, see Statement of Commissioner Gail Heriot in U.S. Commission on Civil Rights, Beyond Suspensions: Examining School Discipline Policies and Connection to School to Prison Pipeline for Students of Color with Disabilities 186, 188-92 (2019).

[467] This included Anne Arundel County, Maryland, Lafayette Parish, Louisiana, Hillsborough County, Florida, Cedar Rapids, Iowa, Wake County, North Carolina, Fort Bend County, Texas, Waukegan, Illinois. Since the Department of Education did not publicly post a mater lists of school districts that were under investigation, this list is incomplete. The Department's web site claimed to have had over 300 school discipline investigations underway as of January 3, 2017. It had completed investigations and entered into resolution agreements with schools in Oakland, California, Christian County Kentucky, Minneapolis, Minnesota, Tupelo, Mississippi, Christina, Delaware, Rochester, Minnesota, Amherst County, Virginia, and Oklahoma City, Oklahoma. See Gail Heriot & Alison Somin, *The Department of Education's Obama-Era Initiative on Racial Disparities in School Discipline: Wrong for Students and Teachers, Wrong on the Law*, 22 Tex. Rev. L. & Politics, 471, 481-83 (2018).

[468] See Gail Heriot & Alison Somin, *The Department of Education's Obama-Era Initiative on Racial Disparities in School Discipline: Wrong for Students and Teachers, Wrong on the Law*, 22 Tex. Rev. L. & Politics, 471, 473 & n.4 (2018).

adopted with the intent to discriminate, nonetheless have an unjustified effect of discriminating against students on the basis of race. The resulting discriminatory effect is commonly referred to as 'disparate impact.'"

For reasons I have discussed in depth elsewhere, this was a misstatement of applicable law. But it didn't matter much.[469] Schools districts on tight budgets would have been well-advised just to comply with the Obama Administration's desire for "positive interventions" rather than removal from the classroom.

So what happens when schools are pressured to reduce suspensions in this way? The most likely result is that those schools will face increased classroom disorder. And that is exactly what happened.[470] Consider the case of the Oklahoma City School District, one of many jurisdictions investigated by the Department of Education. As a result of that investigation, in 2015, the district instituted a new discipline policy that led to a 42.5% reduction in the number of suspensions.[471]

If the newspaper reports are to be believed, teachers hated it. According to an article in *The Oklahoman*, "[m]any describe chaotic classroom settings and said they feel like baby sitters who spend more time trying to control defiant students than planning and teaching."[472] The article continues:

> "Students are yelling, cursing, hitting and screaming at teachers and nothing is being done but teachers are being told to teach and ignore the behaviors," [a] teacher reported. "These students know there is nothing a teacher can do. Good students are now suffering because of the abuse and issues plaguing these classrooms."[473]

Why was this happening? "'Most of the teachers, if they write a referral, nothing will happen,' [a high school teacher] said. 'Either the administrator won't process the referral or they will be told that it's their fault due to lack of classroom management.'"[474] But the school administrators appeared to be simply following orders from higher up.

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[469] *Id.* at 526-68.

[470] See Paul Sperry, *How Liberal Discipline Policies Are Making Schools Less Safe*, N.Y. Post (Mar. 14, 2015), https://nypost.com/2015/03/14/politicians-are-making-schools-less-safe-and-ruining-education-for-everyone/ [https://perma.cc/P5NA-W2BE] (surveying the situation in multiple cities).

[471] Tim Willert, *Many Oklahoma City School District Teachers Criticize Discipline Policies in Survey*, Oklahoman (Oct. 31, 2015), http://newsok.com/article/5457335 [https://perma.cc/8XZN-XGUM].

[472] *Id.*

[473] *Id.*

[474] *Id.*

> "It is clear principals are receiving the message to hold down referrals and suspensions as evidenced by numerous teachers reporting their principal saying their 'hands are tied' by direction of district-level administrators," [Ed Allen, president of the Oklahoma City American Federation of Teachers,] said. "The district can deny all they want that they are not telling principals to ignore discipline issues, but principals are reporting this across the district."[475]

What could motivate the Oklahoma City School District to be so lax on discipline? Allen spelled it out: "I believe the district's main reason for wanting to develop a new code of conduct is simply to *get the civil rights complaints off the table*."[476]

*The Oklahoman* ran an editorial on the issue entitled *Survey Shows Disconnect Between OKC School District and Its Teachers* in which still more teachers were quoted. "'We were told that referrals would not require suspension unless there was blood,' one teacher said. 'Students who are referred . . . are seldom taken out of class, even for a talk with an administrator.'"[477]

Tellingly, 60% of those teachers surveyed stated that the amount and frequency of offending behavior had increased.

In response to the Dear Colleague Letter, Indianapolis public schools adopted a new discipline policy designed to reduce suspensions and expulsions, especially for African-American students, in mid-2015. As in Oklahoma City, in Indianapolis, it was not just individual teachers, but also local teachers' union leaders who were upset.[478] That was

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[475] *Id.*

[476] *Id.* (emphasis added).

[477] *The Oklahoman* Editorial Board, *Survey Shows Disconnect Between OKC School District and Its Teachers,* Oklahoman (Nov. 4, 2015), http://newsok.com/article/5457999 [https://perma.cc/75JR-DQEC].

[478] Florida's Hillsborough County public schools, which were made the subject of an OCR investigation that began in 2014 and is still ongoing, are another example. The *Tampa Bay Times* reported:

> As more than 200,000 Hillsborough County children return to school today, they will experience a well-intended discipline policy that, according to some teachers, still needs work.
>
> Reforms that took effect last year are keeping more students in class instead of home on suspension.
>
> But two-thirds of teachers who responded to a union survey said the new policies did not make schools more orderly. Some say principals discourage them from taking action out of pressure to keep their numbers down. Only 28 percent agreed with the statement, "I feel supported by my administration when I write a referral."

Marlene Sokol, Some Hillsborough Teachers Say New Discipline Policies Aren't Making Schools More Orderly, Tampa Bay Times (Aug. 9, 2016), http://www.tampabay.com/news/education/k12/many-hillsborough-teachers-say-new-discipline-policies-arent-making/2288777 [https://perma.cc/ARQ3-Y54F].

significant in itself. Teachers' union tend to lean to the left. When a left-leaning policy is criticized by the teachers' unions, it has to be quite unpopular:

"'I am hearing from a lot of places that the teachers don't feel safe,' said Rhondalyn Cornett, head of the [Indianapolis Public Schools] teacher union. 'I'm getting a lot of calls (and) a lot of emails.'"[479] According to *Chalkbeat*, a nonprofit news website covering education issues, a handful of newer teachers left one high school in the middle of the year, because they felt unsafe there. Another teacher told the school board: "Suspensions are down. But why? At the beginning of the year, a student assaulted a teacher in broad daylight in a hallway of our school . . . . He was back the next day."[480]

Lafayette Parish, Louisiana adopted and implemented a school discipline policy in accord with the Department of Education's recommended "positive intervention" approach beginning in the 2012–13 school year (two years after Secretary Duncan's speech).[481] Superintendent Patrick Cooper said the new policy would eliminate essentially all out-of-school suspensions and expulsions in the 30,500- student district.[482]

Things did not go well. By January, the local school board was discussing purchasing a new alarm system and security cameras because there had been an increase in "discipline issues."[483] A few months later, a teacher-intern felt so strongly about the disorder in the classroom that he appeared before the school board. His oral statement went like this:

> . . . I had a recent meeting with my fellow interns at UL-Lafayette, and I can tell you the atmosphere in that [classroom] was disgust, absolute disgust with . . . enforcement of discipline in school. . . .

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[479] Dylan Peers McCoy, Effort to Reduce Suspensions Triggers Safety Concerns in Indianapolis Public Schools, Chalkbeat (Mar. 23, 2016), http://www.chalkbeat.org/posts/in/2016/03/23/effort-to-reduce-suspensions-triggers-safety-concerns-in-indianapolis-public-schools/#.V6I76zUsBFt [https://perma.cc/378K-2CEP].

[480] Andrew Polley, Speech to the IPS School Board, Youtube (Feb. 28, 2016), https://www.youtube.com/watch?v=KNVDUdVzYcg [https://perma.cc/8HUA-7G7Q].

[481] Lafayette Parish School System Turnaround Plan 15, 17 (2012), http://www.lpssonline.com/uploads/TurnaroundPlan.pdf [https://perma.cc/SA68-8BT8]. Many of OCR's resolution agreements required school districts that had been under investigation for the disparate impact of their disciplinary practice to adopt the Department of Education's so-called "Positive Behavioral Interventions and Supports." See, e.g., Resolution Agreement OCR Docket #07141149 Oklahoma City Public Schools, April 7, 2016; Resolution Agreement #05-10-5003 Rochester Public School District, September 1, 2015; Agreement to Resolve: Oakland Unified School District OCR Case Number 09125001, September 17, 2012. The 2014 Dear Colleague Letter similarly "emphasiz[es] positive interventions over student removal." Dear Colleague Letter, supra note 437 at App. II(C).

[482] Nirvi Shah, Groups Ask Districts to Stop Using Out-of-School Suspensions, Novo Found. (Aug. 22, 2012), https://novofoundation.org/newsfromthefield/groups-ask-districts-to-stop-using-out-of-school-suspensions-2/ ("At a recent conference . . . , Lafayette Parish, La., Superintendent Patrick Cooper said that his district has eliminated essentially all out-of-school suspensions and expulsions in his 30,500-student district.").

[483] Bernadette Lee, *Lafayette Parish School System Approves School Safety Package*, KPEL Radio (Jan. 24, 2013), www.kpel965.com/Lafayette-parish-school-system-approves-school-safety-package/ [https://perma.cc/V4Y2-5S7Z].

. . . I came from parents that were dirt poor. We had nothing. Growing up, I got my cousins' clothes. I graduated high school with honors.

I had a student the other day that I told, "Go home, do a project, get on the computer." And he looked at me and he said, "Mr. Comeaux, I don't even have a home to go to. My . . . mother and brother live in a shelter." That student in my class, from my working with him, has an A average. So it can be done. . . .

And it is just so disheartening—that when you ask a student to do something, they look at you and, with all due respect, say, "Shut the [expletive] up." Or "Go to hell, you [expletive]." Or "Who the [expletive] do you think you are?" And the administration does nothing.

I had a student threaten me physically in my classroom, to put his hands on me and, he would have been back in the classroom the very next morning had I not said, "I will get an attorney and I will get a restraining order against this student." Otherwise, the administration would have done nothing. And it's sickening. . . .

I have also come across warning notes from guidance counselors that have said, "Possible physical harm from this student against faculty members." And these children are still in our schools. I have students who have had 40, 50, 60 referrals, who sit next to students, fart in class, curse in class, talk about pornography, what they did to this girl, what they did to this boy. And they don't do anything. And that's why we are having the problems we're having in education, not because the kids come from a poor background, because I made it. And that young man is making it. He has a 96 average in my class. *And he lives in a shelter.*

So unless Jesus Christ himself comes down before us . . . and tells me differently, poverty is not it. Or ineffective teaching is not it. It's the discipline. It's the disruptions. It's having to stop your class and go write somebody up 40 and 50 times over a grading period.

I've had to leave my class, just today, eight times for three different students . . . . [O]ne [was] dangling a student over the balcony at school by the shirt collar. And another teacher, witnessing it and saying, "Hey, stop that!" And he turned and said, "You back the [expletive] up. Who the [expletive] you think you are, correcting me?" And that student is still at our school.

Now why can't anybody on this board address this? Why? . . .[484]

[484] The Independent, Derrick Comeaux, Youtube (Mar. 22, 2013), https://www.youtube.com/watch?v=6ixbVSpvvrQ [https://perma.cc/8HY4-U5WY] (emphasis added).

Mr. Comeaux's statement was met with applause. But as a result of his statement, in less than 24 hours, he was fired by the Lafayette Parish School District.[485] Recordings of his statement made it onto YouTube, Facebook, and Twitter, and an online petition to rehire him was circulated.[486] But I looked him up on the internet as I was writing this Statement. He is now a businessman.[487]

Still the anecdote that I believe is the most telling was brought to me by a close friend of mine. Several years ago, he reported that he had just had dinner with two young elementary school teachers—the daughters of an old friend of his. The two teachers faithfully hewed to the Progressive line on every single issue with one curious exception: *school discipline*. On that, they were troubled by their school's failure to support them as teachers in their efforts to maintain order in the classroom. The unruly students they sent to the principal would return shortly thereafter ***with candy*.**

These teachers understood fully that the federal government's Obama-Era policy on school discipline was doing students, very much including minority students, no favors. They fully understood the importance of orderly classrooms for student learning.[488]

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[485] Marsha Sills, *Student-Teacher Loses Post*, Acadian Advoc. (Apr. 2, 2013), http://www.theadvocate.com/acadiana/news/education/article_12e0f9a3-d243-5e78-bc4e-8044a11a7c0b.html [https://perma.cc/MW55-25FR].

[486] Lee, supra note 481; KATC-TV 3: Acadiana's Newschannel, Derrick Comeaux Speech to the Lafayette Parish School Board, Facebook (Mar. 22, 2013), https://www.facebook.com/katctv3/videos/10101377252187530/ [https://perma.cc/9EG4-RNYL]; Laura Lavergne, *Reinstate Student Teacher Derrick Comeaux*, Change.org, https://www.change.org/p/lafayette-parish-school-board- reinstate-student-teacher-derrick-comeaux [https://perma.cc/AU4U-5HU6];
@LYBIOnews, Twitter (Dec. 23, 2015), https://twitter.com/LYBIOnews.

[487] Zane Hogue, Resident Frustrated with Opelousa's Sewer and Water Issues, KLFY-TV, May 1, 2025, https://www.klfy.com/local/st-landry-parish/resident-frustrated-with-opelousas-sewer-and-water-issues/.

[488] Students get this too. A 2007 article in the San Francisco Chronicle, entitled Students Offer Educators Easy Fixes for Combatting Failure, had this to say on the topic:

> As thousands of learned men and women gathered in Sacramento this week to chew over the vexing question of why black and Latino students often do poorly in school, someone had a fresh idea: Ask the students.
>
> So they did. Seven struggling students—black, brown and white—spent an hour Wednesday at the Sacramento Convention Center telling professional educators what works and doesn't work in their schools . . . .
>
> "If the room is quiet, I can work better—but it's not gonna happen," said Nyrysha Belion, a 16-year-old junior at Mather Youth Academy in Sacramento County, a school for students referred for problems ranging from truancy to probation.
>
> She was answering a question posed by a moderator: "What works best for you at school to help you succeed?"
>
> Simple, elusive quiet.

The story is an excellent example of historian Robert Conquest's rule that everyone is a conservative about the things they know best. Put in the context of this encounter, when it comes to dealing with problems in their own professions, even the most ardent Progressives are able to see the nuance and complexity, which allows them to understand better and appreciate the traditions of that profession. They resent interventions by distant bureaucrats.

After President Donald Trump was elected for the first time, he appointed a Commission on School Safety. It issued its report on December 18, 2018. Among other things, the report stated that as a result of the 2014 Dear Colleague Letter, "schools ignored or covered up—rather than disciplined—student misconduct in order to avoid any purported racial disparity in discipline numbers that might catch the eye of the federal government." Classrooms thus became more chaotic and, in some cases, even dangerous. In such an environment, students can't learn. Or, as the report on school safety put it, "Research clearly indicates that the failure of schools to appropriately discipline disruptive students has consequences for overall student achievement."

In response to the report, the 2014 Dear Colleague Letter was withdrawn. But it didn't last long. In 2021, Joseph Biden succeeded Donald Trump as U.S. President, and he appointed Catherine Lhamon to her previous position as Assistant Secretary of Education for Civil Rights. As one of the primary architects of the Obama-Era policy, there was little chance that she would not bring it back the previous policy. In 2023, she did exactly that—but with a slight twist.

The Biden-Era policy differed from the Obama-Era policy in that it conspicuously failed to mention that schools could be liable for mere disparate impact. I like to think that's because the legal analysis written by Alison Somin and me—*The Department of Education's Obama-Era Initiative on Racial Disparities in School Discipline: Wrong for Students and Teachers, Wrong on the Law*—persuaded Lhamon and lawyers for the Department of Education that the application of disparate impact liability to Title VI is not supported by law. It should have persuaded them, but even if it merely worried them that the issue could get tied up in the courts, that would still be a move in the right direction.

Under normal circumstances, I would have considered that a major victory. And it was a minor victory. But with Assistant Secretary Lhamon in charge, there is less there than meets to eye. Between her two stints as Assistant Secretary of Education for Civil Rights, she was Chair of this Commission. During that period, we produced a report entitled *Beyond Suspensions:*

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> Nyrysha said if she wants to hear her teacher, she has to move away from the other students. "Half our teachers don't like to talk because no one listens."
>
> The others agreed. "That's what made me mess up in my old school—all the distractions," said Imani Urquhart, 17, a senior who now attends Pacific High continuation school in the North Highlands suburb of Sacramento.

Nanette Asimov, Students Offer Educators Easy Fixes for Combatting Failure, S.F. Chron. (Nov. 15, 2007), https://www.sfgate.com/education/article/Students-offer-educators-easy-fixes-for-3301337.php [https://perma.cc/LYP8-M67X].

*Examining School Discipline Policies and Connections to School-to-Prison Pipeline for Students of Color with Disabilities*. While the report was in process and after, she made it clear that she is unalterably committed to the belief—against all evidence—that there are no differences in rates of misbehavior among the different races and ethnicities.[489] To her, therefore, any statistically significant difference in rates of discipline at a school district is more than sufficient to conclude that a violation of the law has taken place. That makes the Biden-Era policy the functional equivalent of the Obama-Era policy. The nation's schools were back to square one.

Then came President Trump's re-election.[490] Unlike the first Trump Administration that approached the issue slowly with the appointment of a commission, the second Trump Administration was all too familiar with the school discipline issue. In less than 100 days,

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[489] One of the underlying assumptions behind that report was that when students are disciplined for misconduct and then go on as adults to go to prison, it is *because* they were disciplined in school rather than because they are inclined toward misconduct—a dubious assumption. Another assumption—this one not just dubious but against all evidence—was that all groups misbehave at the same rate. For a taste of the evidence to the contrary, see *supra* at note 464. See also Statement of Commissioner Gail Heriot in U.S. Commission on Civil Rights, *Beyond Suspensions: Examining School Discipline Policies and Connections to School-to-Prison Pipeline for Students of Color with Disabilities* 186-87 (2019).

One of the Commissioner's findings—championed by Chair Lhamon—was: "*Students of color as a whole, as well as by individual racial group, do not commit more disciplinable offenses than their white peers ....*" This is simply false. As far as I could tell, Chair Lhamon's tenacious belief in this finding was a result of a serious misinterpretation of empirical studies that purported to demonstrate that *some* of the difference in discipline rates could be due to discrimination rather than differences in behavior; she jumped from that to *all* of it is. See *id.*

The Commission's report had a special wrinkle to it. Rather than look at school discipline through a racial lens, it used an "intersectional lens," looking not just at how race affects it, but also how disability affects it. Among other things, the report purported to be dismayed that, on average, disabled students (and disabled students of color in particular) are disciplined more commonly than non-disabled students (and non-disabled white students in particular). But here's the problem: These days students who repeatedly misbehave get diagnosed solely based on that misbehavior as having "behavioral disorders" and hence are classified as "disabled." True to their diagnosis, they tend to misbehave. In other words, the Commission was dismayed to find that students who misbehave a lot, often continue to misbehave and therefore are subject to discipline a lot. And when they grow up, they sometimes are still breaking the rules. This should not have been a surprise to anyone. But somehow it was treated as a scandal.

My dissent from that report focused mainly on how this policy hurt students—especially those who share a classroom with disruptive students.[489] But it's obvious how it could lead to teacher attrition too. *Id.* at 186-87 (2019). See also Josh Kinsler, *School Discipline: A Source or Salve for the Racial Achievement Gap?*, 54 Int'l Econ. Rev. 355 (2013)("I find that the threat of suspension deters students from ever committing an infraction, particularly those students who pose the greatest risk for poor behavior. Losing classroom time as a result of suspension has a small negative impact on the performance, whereas exposure to disruptive behavior significantly reduces achievement."). For earlier work of the subject, see Richard Arum, Judging School Discipline: The Crisis of Moral Authority 2 (2003); Sasha Volokh & Lisa Snell, Strategies to Keep Schools Safe, Policy Study No. 234, January 1998, available at http://reason.org/files/60b57eac352e529771bfa27d7d736d3f.pdf. "Some of my classes are really rowdy," a student from Seattle told the researchers, "and it's hard to concentrate." "They just are loud and disrupting the whole class," a student from Chicago similarly said about some of her classmates. "The teacher is not able to teach. This is the real ignorant people."

[490] I will pass by in silence Commissioner Jones's suggestion that the American education system has failed because it produced voters who declined to put more members of his preferred political party in office. Mondaire Jones at 1. Well … not complete silence.

President Trump issued an Executive Order stating that the federal government "will no longer tolerate known risks to children's safety and well-being in the classroom that result from the application of school discipline based on discriminatory and unlawful 'equity' ideology."[491] This is exactly what was needed. With luck, this time it will stick.

The *Wall Street Journal* reports that some states are also taking up the cause. In May, the Texas Legislature passed a bill that gives teachers more authority to remove students for misconduct and extends the maximum time for in-school suspensions. In April, the Arkansas legislature passed a law that prevents students who have been removed from the classroom from returning to it and directs Arkansas schools away from so-called "positive interventions" instead of more common-sense disciplinary techniques. Washington State, Louisiana and Nevada have also taken steps in this direction.[492]

*Higher Salaries?*

Since I commented on two of the three ways that school districts can deal with a teacher shortage—lower qualifications and improve working conditions—I would be remiss if I failed to comment briefly on the third. Is it possible that the school districts that are having trouble recruiting teachers should be raising their pay scale? Sure, that's possible. It is not my intention to suggest by omission that it is not appropriate. But it is something individual school districts and schools will have to decide for themselves based on their individual circumstances. One way or another, the teacher shortage, if it exists at all, will be solved.

[491] Executive Order: Reinstating Common Sense School Discipline Policies, April 23, 2025.

[492] Editorial, *School Discipline Makes a Comeback*, Wall St. J., July 4, 2025.

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## Statement of Commissioner Mondaire Jones

I am more concerned than ever about the failure of America's public and private schools to adequately educate our children. In recent years, the consequences for our democracy, the rule of law, U.S. national security, and even public health have been devastating. The 2024 Annenberg Constitution Day Civics Survey found that fewer than two-thirds of all U.S. adults could name the three branches of government, and just over half knew which political party controlled the House and Senate.[493] Meanwhile, a report from the American Enterprise Institute concluded: "Students of international affairs and security planning must recognize that America's flagging educational performance has direct national security implications."[494] Education is, of course, essential for increasing trust in science and medical institutions, which are necessary for strong public health systems.[495] Education also improves earning potential,[496] which can increase life expectancy.[497]

The failure of U.S. educational systems to fulfill their missions to provide quality educations for their enrolled students has led directly to voters electing a federal government actively engaged in the deprivation of their civil rights. For this reason, along with the unmet promise of the school desegregation case *Brown v. Board of Education*, in which Chief Justice Earl Warren wrote "it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education,"[498] education remains one of the defining civil rights issues of our time.

This report specifically studied the federal response to teacher shortage impacts on students with disabilities, a protected class under our nation's civil rights laws. Since teachers are paramount to students receiving a quality education, the enduring problem of teacher shortages is a crisis.

### Causes and Implications of Teacher Shortages

As our investigation makes clear, teacher shortages have existed for as long as scholars have collected data on teacher vacancies.[499] However, this problem has been especially acute in the last decade, as there have been fewer job hires than job openings since 2017, and the COVID-19 pandemic only exacerbated the existing difficulty of filling teacher vacancies.[500] Aside from the pandemic, these teacher shortages are driven by declining interest in teaching as a career,

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[493] https://www.annenbergpublicpolicycenter.org/most-americans-cant-recall-most-first-amendment-rights/
[494] https://www.aei.org/wp-content/uploads/2022/04/The-Changing-Global-Distribution-of-Highly-Educated-Manpower.pdf?x85095
[495] https://pubmed.ncbi.nlm.nih.gov/33911228/
[496] https://www.ssa.gov/policy/docs/research-summaries/education-earnings.html
[497] https://pmc.ncbi.nlm.nih.gov/articles/PMC4866586/
[498] *Brown v. Board of Education*, 347 U.S. 483, 493 (1954)
[499] *The Federal Response to Teacher Shortage Impacts on Students with Disabilities*, U.S. Commission on Civil Rights, Sept. 2025, p. 25
[500] *Teacher Shortage*, pp. 26-27

intensive workloads that offer little time for relationship-building with students, and inadequate teacher salaries.[501] The impacts of teacher shortages on schools are clear: student achievement decreases, teacher effectiveness declines, and high turnover among teachers wastes economic resources.[502] Estimates suggest there may be as many as 400,000 underqualified teachers in the United States.[503] Hiring inexperienced teachers, with little training, is a myopic solution that worsens the crisis of teacher shortages when these teachers inevitably leave the profession.[504]

Our report documents that burnout and attrition are more severe for the special education teachers who instruct students with disabilities than their general education counterparts.[505] While teachers are often burdened by extensive paperwork, this is particularly true for special education teachers who work on documents ranging from statutorily required Individual Education Plans (IEPs) to evaluations. Children with disabilities were less likely to be formally diagnosed during the pandemic, which means they were ineligible for accommodation services for a longer period of time than normal.[506] Moreover, as many experts made clear, there is no substitute for the in-person services provided to students with disabilities, such as speech therapists and school psychologists. Put simply, special education programs often did not work well in the virtual environment of the pandemic and in an era when schools lacked the trained professionals who could help students in special education programs.

**Obtaining Better Teacher Shortage Data**

Our report identifies clear obstacles to ameliorating teacher shortages. For example, it is hard to quantify the depth of the challenge because there is no unified database of teacher vacancies at the Department of Education.[507] Some states, like Maine, which comprises one of the six case studies in this report, do not collect any data on teacher vacancies.[508] Thus, one important action Congress and the President should take is incentivizing states to collect and study such data, as well as requiring the federal government to do the same. This would allow researchers and policymakers to better assess the impacts of teacher shortages on students with disabilities and how those impacts are distributed across states and school districts.[509]

**American Rescue Plan Act**

The American Rescue Plan Act (ARPA), which I was proud to vote for and pass into law in 2021 as a member of the 117th Congress, provides a blueprint for solving the problem of teacher shortages. ARPA contained $122 billion in emergency relief for elementary and secondary

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[501] Mazin Statement
[502] *Teacher Shortage*, p. 18.
[503] *Teacher Shortage*, p. 27.
[504] Mazin statement
[505] Ibid
[506] *Teacher Shortage*, p. 30.
[507] *Teacher Shortage*, p. 21.
[508] *Teacher Shortage*, p. 46.
[509] Nguyen Statement

schools; the Department of Education estimates $30 billion of that amount went to recruiting, preparing, and hiring new teachers.[510] ARPA allowed emergency relief funds for Grow Your Own (GYO) programs, which this report highlights as a promising solution to the perennial problem of teacher shortages.[511] GYO programs allow individuals from local communities—such as current high school students and paraprofessionals—to become teachers through mentoring, pedagogical training, and even financial support for the costs related to teacher preparation. As a result of ARPA funding, Tennessee was able to establish its own GYO program, which enabled more than 650 future educators to become Tennessee teachers for free.[512] Due to the financial investments in ARPA, student achievement in math and reading improved.[513]

**Expert Recommendations**

Our report highlights the following expert recommendations as the most optimal path forward to tackle the crisis facing our students:

1. Congress should enact legislation to fully fund the Individuals with Disabilities Education Act (IDEA). IDEA originally authorized federal funding up to 40% of average per-pupil spending nationwide, however federal funding is far below this target.
2. Congress should fund pipelines to recruit and retain qualified teachers. Congress should appropriate funds specifically for GYO programs with a focus on special education.
3. Congress should enact legislation to increase the pay of teachers through tax credits for educators and grants that incentivize school districts to increase teacher salaries
4. Congress should require the Department of Education to begin collecting comprehensive data on teacher shortages across the nation.
5. Congress should require school districts to notify parents of changes in rights and protections under the IDEA when they move their children from public to private school. In 2001, the United States Department of Education encouraged school districts to notify parents, but the IDEA does not require notification.

**Conclusion**

I am the proud product of the East Ramapo Central School District in New York's Lower Hudson Valley. Through the tutelage of phenomenal public school teachers, I rose from poverty all the way to the halls of Congress, and now I get to serve as a member of this great Commission. Clearly, the solution to the problem of teacher shortages is to invest in our public schools. Studies indicate that increasing investments in public education improves student

[510] *Teacher Shortage*, p. 67.
[511] *Teacher Shortage*, p. 82.
[512] https://www.ed.gov/sites/ed/files/documents/coronavirus/teacher-shortage.pdf
[513] https://edopportunity.org/papers/June_24_ERS_Report_20240625.pdf

achievement.[514] And this new, distressing period in American political history indicates that a positive future for our country also depends on it.

[514] https://edopportunity.org/papers/June_24_ERS_Report_20240625.pdf

# Statement of Commissioner Glenn D. Magpantay

The United States has faced a long-standing teacher shortage, driven by low compensation and high stress. COVID-19 significantly worsened this crisis by disrupting normal school operations.[515] I commend Commissioner Stephen Gilchrist for taking up this issue and leading this important report addressing the troubling challenges these vulnerable students experience due to staffing shortages.

## Multilingual and/or Special Education Students of Color

This investigation has made clear that the national teacher shortage poses a significant challenge to public education, particularly for students with disabilities, many of whom are also English language learners and students of color. These students are disproportionately affected by gaps in educator staffing, with special education vacancies reported at twice the rate of most other teaching positions, especially in schools serving high poverty and rural communities.[516]

Federal law, including the Individuals with Disabilities Education Act (IDEA), mandates that students with disabilities be taught by fully certified personnel.[517] Research consistently demonstrates that when students are taught by qualified, experienced teachers, they achieve higher learning outcomes, including improved reading and math scores.[518]

Despite these legal requirements and clear educational benefits of qualified instruction, many districts struggle to meet this staffing mandate. Our investigation revealed a troubling pattern: low-income schools and schools serving predominantly minority students are disproportionately staffed by uncertified or underprepared teachers. This staffing disparity means that the most vulnerable student populations, those who would benefit most from expertly trained educators—are receiving instruction from individuals who lack adequate training in special education methodologies and culturally responsive teaching practices. Such gaps in teacher preparation and certification can significantly undermine student educational outcomes precisely where high-quality instruction is most critical.[519]

## Improved Data Collection

*Data Collection for Students*

I am particularly concerned about the impact of the teacher shortage on Asian American, Native Hawaiian, and Pacific Islander (AANHPI) students—a community that is regularly overlooked in both policy design and data collection. AANHPI students who are English learners and require special education services face challenging barriers in receiving appropriate instruction. When

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[515] John Schmitt & Katherine deCourcy, *The pandemic has exacerbated a long-standing national shortage of teachers*, Economic Policy Institute (Dec. 6, 2022), https://www.epi.org/publication/shortage-of-teachers/#:~:text=the%20declining%20compensation%20in%20the,greatly%20exacerbated%20by%20COVID%2D19.

[516] Jessica Tang, Written Statement for the *Federal Response to Teacher Shortage Impacts on Students with Disabilities* briefing (Nov. 15, 2024).

[517] Individuals with Disabilities Education Act, 104 Stat. 1142 (Oct. 30, 1990).

[518] Kati Haycock, *Good Teaching Matters: How Well-Qualified Teachers Can Close the Gap*, Education Trust (1998), https://files.eric.ed.gov/fulltext/ED457260.pdf.

[519] Amanda Levin Mazin, Written Statement for the *Federal Response to Teacher Shortage Impacts on Students with Disabilities* briefing (Nov. 15, 2024); Tang, *supra* note 2.

schools lack receptive, linguistically competent educators, student outcomes suffer. These challenges are compounded by language isolation and the continued absence of disaggregated data which would reveal the full scope of educational disparities affecting marginalized students.

Jessica Tang, President of the AFT Massachusetts, an affiliate of AFT/AFL-CIO, and former President of the Boston Teachers Union, testified about the need for specific and accurate data collection for the AANHPI community and all racial categories:

> "Asian Americans, Native Hawaiians, and Pacific Islanders make up a diverse demographic, including various communities with not just different languages, immigration histories and cultures, but also trends and experiences. The great inequities within this demographic are obscured by the fact that we continue to categorize and report all of these students as 'Asian.' More disaggregated data is needed to better understand the disparities and needs of AANHPI students and other populations and all racial categories would benefit from a closer look at disaggregated groups as well."[520]

Kulsoom Tapal, Education Policy Coordinator at the Coalition for Asian American Children and Families (CACF), also reiterated that there is a need for improved data collection and disaggregation so that schools can recruit bilingual and "staff needed to meet diverse needs."[521] A representative educator workforce can help foster a more supportive learning environment for students who need special education services.[522]

Tang also shared that recent data has revealed that "we are seeing a higher prevalence for [autism spectrum disorder] among Black, Hispanic, and Asian children than among white children." She highlighted the need for systems to adapt quickly to the shifting demographic pattern, especially due to the disproportionate impact of special education teacher vacancies on students of color. [523]

*Data Collection for Teaching Vacancies*

The severity of the teacher shortage for special education students is compounded by the absence of comprehensive data collection systems tracking teacher shortages.[524] This data gap undermines efforts to address the teacher shortage crisis effectively.

Without reliable, standardized data on vacancy rates, turnover patterns, and regional disparities, policymakers cannot accurately assess the scope of the problem or target interventions where they are most needed. Schools and districts may struggle in isolation, unaware that their staffing challenges are part of a broader national pattern. Federal and state agencies lack the information necessary to develop evidence-based solutions or allocate resources strategically. Moreover, the absence of consistent data collection makes it nearly impossible to evaluate whether implemented policies and programs are actually improving teacher recruitment and retention.

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[520] Tang, *supra* note 2.
[521] Kulsoom Tapal, Education Policy Coordinator, Coalition for Asian American Children and Families (CACF), Teacher Shortage Listening Session (Dec. 13, 2024).
[522] Ibid.
[523] Tang, *supra* note 2.
[524] Samuel Comai et al., *2025 Update: Latest National Scan Shows Teacher Shortages Persist*, Learning Policy Institute (July 15, 2025), https://learningpolicyinstitute.org/blog/2025-update-latest-national-scan-shows-teacher-shortages-persist ("[...] there is no publicly available national data that captures the number of teachers who are not fully certified or unfilled teaching positions in each state.").

**Overseas Workers Filling the Gap**

In response to growing shortages, many districts have turned to recruiting overseas educators, particularly from the Philippines, India, and China, as a short-term solution to fill critical teaching gaps.[525] While these international teachers provide essential services, especially in special education and STEM, they often face civil and labor rights issues once in the U.S., including exploitative recruitment practices, visa-related instability, and inadequate professional support.[526] As such, while international recruitment may help relieve pressure on the system, it must be paired with stronger protections, oversight, and pathways to permanent residency to ensure fairness and sustainability.

**Next Steps**

To address these challenges, the following steps should be taken:

- **We must have broad representation of the educator workforce.** A representative educator workforce is critical for supporting students from various backgrounds, especially those receiving special education services. States and districts should prioritize recruiting educators who reflect the demographics of the student population.[527]
- **States and localities should encourage and support local community recruitment and training programs.** These programs recruit individuals from within the local community, such as paraprofessionals, parents, and recent graduates, and support them in becoming certified educators. Often called "Grow Your Own" programs, these have shown promise in building a stable, community-rooted teaching force and should be funded and scaled accordingly, particularly in high-need areas.[528]
- **State and federal agencies should collaborate to develop a centralized database** to track teacher vacancies, certification status, and demographic information. This data should be disaggregated by role (e.g., special education, bilingual education), region, and student population served, including AANHPI subgroups, to guide effective recruitment and resource allocation.[529]
- **The federal government can assist states in developing strategies to recruit, retain, and retrain educators,** particularly in special education. This includes incentivizing

[525] Bridge USA, U.S. Dep't of State (2022), https://j1visa.state.gov/basics/facts-and-figures/top-sending-countries-2022/ (last visited Aug. 13, 2025).
[526] Virginia Myers, *AFT fights exploitation of teachers from the Philippines*, AFT (Jan. 27, 2021), https://www.aft.org/news/aft-fights-exploitation-teachers-philippines; Akemi Tamanaha, *AsAmNews: Filipino immigrant nurses file charges over unfair contract*, AALDEF (Dec. 7, 2023), https://www.aaldef.org/news/asamnews-filipino-immigrant-nurses-file-charges-over-unfair-contract/; Stuart J. Sia, *Filipino immigrant nurses targeted with coercive "stay or pay" contracts secure settlement with their former employers*, AALDEF (July 22, 2024), https://www.aaldef.org/press-release/filipino-immigrant-nurses-targeted-with-coercive-stay-or-pay-contracts-secure-settlement-with/; Brian Eckert, *Class Action Alleges Foreign Healthcare Worker Exploitation*, Milberg (Mar. 31, 2025), https://milberg.com/news/foreign-healthcare-worker-exploitation/.
[527] Tapal, *supra* note 7.
[528] *See* Danielle Edwards & Matthew A. Kraft, *Grow Your Own Teacher Programs" What are They, and What Can (And Can't) They Accomplish?* (Jul. 17. 2024), https://www.brookings.edu/articles/grow-your-own-teacher-programs-what-are-they-and-what-can-and-cant-they-accomplish/.
[529] Tapal, *supra* note 7.

teacher preparation programs that focus on underserved areas and requiring states to submit relevant staffing data to federal agencies.

- **There must be more oversight to ensure ethical hiring practices, legal protections, and transparent employment conditions for overseas educators.** These workers play a growing role in supporting U.S. schools and should not face systemic barriers that undermine their rights or effectiveness.

Addressing the teacher shortage, especially within special education and multilingual learning, requires not only increased investment but also a coordinated policy effort that prioritizes data, equity, and sustainability. Without such steps, the quality of education available to students with disabilities, minority students, low-income students, AANHPI students, and other high-need populations will remain inconsistent and inequitable.

I thank Commissioner Gilchrist for his leadership in initiating this work and for his deep commitment to public education and to the needs of our most vulnerable students, including those who are low-income, students of color, and students with disabilities.