A BETTER IDEA: UTILIZING THE DEPARTMENT OF EDUCATION'S RULEMAKING AUTHORITY TO REFORM THE SPECIAL EDUCATION PROCESS

JACOB W. WOHL*

* J.D. Candidate, 2023, American University Washington College of Law; M.Ed. 2016, University of Maryland; B.A. 2015, St. Mary's College of Maryland. I owe immense gratitude to my wife, Allison, for her support, insight, feedback, and patience throughout the Comment-writing process. Thank you also to my parents for their tireless encouragement. Finally, I am grateful to Professors Robert Dinerstein and Mark Gross for their invaluable feedback, and to the staff of the *Administrative Law Review*, particularly Bianca Walker, Lex Haris, Katie Tucci, Cannon Jurrens, and James Gallagher, for their thoughtful editing.

INTRODUCTION

The Individuals with Disabilities Education Act (IDEA)[1] is a landmark civil rights law. The IDEA intends to ensure that all children with disabilities have access to a public education that meets their unique needs.[2] "A model of cooperative federalism," the IDEA requires the collaboration of federal, state, and local governments.[3] The ultimate goal of that collaboration is to provide a free appropriate public education (FAPE)[4] in the "least restrictive environment"[5] to students with disabilities.[6] Because the goals of the IDEA necessitate the provision of an "appropriate" education, much of the special education process is individualized.[7] That process broadly consists of five steps: (1) identification and referral, (2) evaluation, (3) eligibility determination, (4) development of an individualized education program (IEP), and (5) placement.[8] After the first three

---

1. Pub. L. No. 101-476, 104 Stat. 1103 (1990). This citation references the Education of the Handicapped Act Amendments of 1990 which reauthorized the Education for All Handicapped Children Act of 1975 (EAHCA), Pub. L. No. 94-142, 89 Stat. 773. During that reauthorization, Congress changed the name of the Act to The Individuals with Disabilities Education Act (IDEA). Pub. L. No. 101-476, sec. 901, § 601(a), 104 Stat. 1103. In 2004's reauthorization, Congress changed the name to the Individuals with Disabilities Education Improvement Act of 2004. Pub. L. No. 108-446, 118 Stat. 2647, 2647. To avoid confusion, this Comment uses the more common name, IDEA, when referring to the current version of the law.

2. *See* 20 U.S.C. § 1400(c)(7) (noting that "[a] more equitable allocation of resources is essential for the Federal Government to meets its responsibility to provide an educational opportunity for all individuals."); *see also* 20 U.S.C. § 1400(d)(1)(A) (stating the purposes of the IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs . . . .").

3. *See* Eloise Pasachoff, *Special Education, Poverty, and the Limits of Private Enforcement*, 86 NOTRE DAME L. REV. 1413, 1422 (2011) (quoting Schaffer v. Weast, 546 U.S. 49, 52 (2005)).

4. 20 U.S.C. § 1400(d)(1)(A). The IDEA defines the relatively amorphous concept of a FAPE as those special education and related services that "meet the standards of a State educational agency," provided at public expense, and delineated in a student's individualized education program. 20 U.S.C. § 1401(9). *See* Mark C. Weber, *The Transformation of the Education of the Handicapped Act: A Study in the Interpretation of Radical Statutes*, 24 U.C. DAVIS L. REV. 349, 363 (1990) (stating that "[t]he regulations do little to furnish a more detailed definition of appropriate education . . . .").

5. 20 U.S.C. § 1412(a)(5). *See* Pasachoff, *supra* note 3, at 1421 (citing 20 U.S.C. § 1412(a)(5)) (noting that the least restrictive environment is a specific mandate requiring schools to educate children with disabilities to the maximum extent possible alongside children without disabilities).

6. *See* 20 U.S.C. § 1400(d)(1)(B) (ensuring that the rights of children with disabilities and the parents of children with disabilities are protected).

7. The term "appropriate" is decidedly ambiguous; the implications of such ambiguity are discussed further *infra* Part I.C.

8. *See* 34 C.F.R. § 300.111(a)(1)(i) ("The State must have in effect policies and procedures

steps, collectively known as the "child find" process,[9] the IEP team[10] compiles and evaluates the requisite information and constructs the child's IEP.[11] The IEP is considered the cornerstone of special education, serving not only as a framework for the student's educational support and academic goals, but as a memorialization of the team's responsibilities and agreements.[12] Because IEPs are forward-looking blueprints for a child's education, a key feature of an IEP is the child's annual goals.[13] The purpose of these goals, and indeed a requirement of their design, is to set measurable benchmarks for student achievement while accounting for the child's specific academic needs.[14] The IEP team must also identify the school-based services necessary to support the child's efforts in meeting these goals.[15] The IEP team must review the IEP at least once a year to gauge student progress, ensure the accuracy of the child's academic goals, and identify areas of adjustment.[16]

---

to ensure that [a]ll children with disabilities . . . are identified, located, and evaluated . . . .").

9. *See generally* 20 U.S.C. § 1412(a)(3) (defining and explaining the process for identifying children who need special education services).

10. *See* 20 U.S.C. § 1414(d)(1)(B) (listing the members of an IEP team to include the child's parents, a general education teacher, a special education teacher, a local educational agency representative, other individuals who have expertise regarding the child, and whenever appropriate, the child).

11. *See* 20 U.S.C. § 1412(a)(3) (describing the child find process as identifying, locating, and evaluating students in the State with disabilities in need of special education services); *see also* 20 U.S.C. § 1414(d)(2) (requiring that at the beginning of every academic year, all students identified as having a disability have an individualized education program (IEP)).

12. *See* Jon Romberg, *The Means Justify the Ends: Structural Due Process in Special Education Law*, 48 HARV. J. LEG. 415, 439 (2011) (noting that a key aspect of the IDEA's 1997 Amendments was a "continued emphasis on process . . . mandating that the IEP contain measurable annual goals for the child['s] . . ." academic progress).

13. *See* 20 U.S.C § 1414(d)(1)(A)(i)(III) & (IV)(aa) (including "to advance appropriately toward attaining those goals"); § 1414(d)(2)(A) (requiring an IEP be in place at the beginning of every school year).

14. 20 U.S.C § 1414(d)(1)(A)(i)(II)–(III) (highlighting that a child's IEP goals must be measurable, include both academic and functional goals, and consider any academic needs that result from the child's disability).

15. 20 U.S.C § 1414(d)(1)(A)(i)(IV) (requiring a statement by the school of the "special education and related services and supplementary aids and services, based on peer-reviewed research" that they will provide for the child). The IEP team, discussed in Part I.C, consists of the parents of a child with a disability, a general education teacher where appropriate, at least one special education teacher, a qualified representative from the local educational agency, and someone who is qualified to interpret and discuss the educational implications of the results of the student's evaluation. 20 U.S.C. § 1414(d)(1)(B).

16. 20 U.S.C. § 1414(d)(4).

It is no accident that the IEP is the primary vehicle for implementing the congressional promise of an appropriate education for students with disabilities;[17] parents have the have the most substantive opportunity to participate in educational decisionmaking for their child during the development of an IEP. Because so much is at stake, however, IEP meetings can become complex negotiations replete with contradictory subtexts and stark power differentials.[18] When disputes arise during this process, three formal resolution mechanisms are available to parents: (1) written complaints to the state educational agency, (2) due process hearings, and (3) mediation.[19] Much has been written about these formal processes, their strengths and weaknesses, and the possible legislative actions that might reinforce the IDEA's protections.[20] This Comment provides possible solutions aimed at strengthening the efficacy of the procedural safeguards available to parents during the IEP process and the role the U.S. Department of Education (Department) can play in bolstering those rights.[21]

---

17. *See* Honig v. Doe, 484 U.S. 305, 311 (1988) (emphasizing the critical role the IEP plays in education and prohibiting schools from unilaterally excluding students with disabilities from the classroom for disruptive conduct resulting from the student's disability).

18. *See* Daniela Caruso, *Bargaining and Distribution in Special Education*, 14 CORNELL J. L. & PUB. POL'Y 171, 177 (2005) (recognizing that while parents and school districts each appear to want what is best for a child, school districts must consider certain externalities that parents need not); *see also* Selene A. Almazan, Andrew A. Feinstein & Denise Stile Marshall, *Quality Education for America's Children with Disabilities: The Need to Protect Due Process Rights*, 5 CHILD & FAM. L. J. 1, 5–6 (2017) (highlighting the clear power imbalance parents face at IEP meetings).

19. *See* 20 U.S.C. § 1415(b)(5)–(7) (detailing the procedural requirements for parents disputing aspects of the IEP process); *see also* Elizabeth A. Shaver, *Every Day Counts: Proposals to Reform IDEA's Due Process Structure*, 66 CASE W. RES. L. Rev. 143, 152 n. 69 (2015) (describing in detail the IDEA's state complaint process).

20. *See, e.g.*, Elisa Hyman, Dean Hill Rivkin & Stephen A. Rosenbaum, *How IDEA Fails Families Without Means: Causes and Corrections from the Frontlines of Special Education Lawyering*, 20 AM. U. J. GENDER, SOC. POL'Y & L. 107 (2011) (providing a comprehensive list of possible legislative actions); Pasachoff, *supra* note 3 at 1435–50 (describing the limits to private enforcement of the IDEA's provisions); Debra Chopp, *School Districts and Families Under the IDEA: Collaborative in Theory, Adversarial in Fact*, 32 NAT'L ASS'N ADMIN. L. JUD. 423 (2012) (highlighting parental resource disparities that lead to underenforcement of the IDEA); Shaver, *supra* note 19, at 143 (discussing problems with the expense, time, and counterintuitive nature of the IDEA's current due process structures).

21. As a former elementary school teacher and as a sibling to a young adult with Down syndrome, I firmly believe in the IDEA's laudable framework and goals. Those roles, though, have given me a nuanced view of special education law and the IEP meeting's fundamentally unfair structure—one that lures parents into a false sense of security while curtailing meaningful participation in a so-called collaborative process. For a more detailed discussion of how various safeguards built into the IDEA are not

The Supreme Court has recognized the natural disadvantage parents face but has suggested that the IDEA's procedural safeguards and requirement for information dissemination balances the scales.[22] The view that the existing procedural safeguards are adequate can harm students with disabilities and their families because schools make the bulk of decisions regarding a student's education at IEP meetings. While the IDEA is a monumental piece of legislation, its core protections for parents and students navigating the IEP process are insufficient. As a result, the law's ambitious goals remain unfulfilled.

More than seven million students ages three through twenty-one receive special education services.[23] Yet, annually, fewer than one percent of families utilize the IDEA's dispute resolution mechanisms.[24] Either special education services are a public entitlement program with an astounding level of individual parent satisfaction, or parents are so overwhelmed by the process that they do not know how, when, why, or where to assert their rights. This Comment makes the case for the latter view and offers a pathway for how administrative action can begin to reset the balance of power throughout the special education process.

To address this complex and sensitive topic, this Comment, highlights the current state of parental due process rights and why it is crucial—and relatively painless—to reform the existing gaps in protection. Part I provides a comprehensive history of educating students with disabilities, a discussion of the IDEA, and a birds-eye view of the special education process. It also includes anecdotes that contextualize the IDEA's existing issues. Part II identifies the existing gaps in statutory, regulatory, and jurisprudential protections for parents of children with disabilities navigating the special education process.

Part III proposes administrative action addressing parental competence about, and external enforcement and balanced facilitation of the IEP process. This Comment concludes with a summary of the proposed changes and the powerful effects these suggestions could have on parents of children with disabilities.

---

always successful, see Almazan, Feinstein & Marshall, *supra* note 18, at 5.

22. *See* Schaffer v. Weast, 546 U.S. 49, 60 (2005) (recognizing the "natural advantage" school districts have over parents but arguing that § 1415 of the IDEA mitigates the disadvantage).

23. U.S. DEP'T OF EDUC., OFF. OF SPECIAL EDUC. AND REHAB. SERVS., OFF. OF SPECIAL EDUC. PROGRAMS, 43RD ANNUAL REPORT TO CONGRESS ON THE IMPLEMENTATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT, 2021, at 28, 40 (2022), https://files.eric.ed.gov/fulltext/ED616723.pdf. The data for students ages three to five and the data for students ages six to twenty-one were combined. Data for students younger than three were not considered here as this Comment does not discuss Early Intervention Services, Part C of the IDEA.

24. *Id.* at 84–87.

I. GETTING TO INCLUSION: THE IDEA, ITS HISTORY, AND THE SPECIAL EDUCATION PROCESS

A complete history tracing the educational exclusion of students with disabilities and the governmental lever-pulling that gradually changed those practices goes well beyond the scope of this Comment. Instead, this Part contextualizes why the IDEA's vision is so important and why its shortcomings must be addressed. From its inception, the enforcement of the congressional promise of a meaningful education for students with disabilities has relied in substantial part on due process protections for parents.[25] Lamentably, at all levels, implementation of these protections is fundamentally flawed, limiting the educational opportunities and outcomes of children with disabilities.

A. The History of Excluding Students with Disabilities

Throughout the nineteenth century, children with disabilities were dealt with discreetly as a family's "private trouble."[26] At the turn of the century, compulsory school attendance laws drew back the curtain, thrusting students with disabilities—previously deemed ineducable—into classrooms.[27] Educators and administrators were frustrated not simply with "numbers" but with the "nature of their clientele" and the state's charge to "make special provision for them."[28] Some of that frustration can be understood: in just two decades, average daily attendance nearly doubled, swamping local schools with never-before-educated students, no plans to address this surge, and no pedagogical resources for these new pupils.[29] Undercutting any legitimacy of that

25. Margaret M. Wakelin, *Challenging Disparities in Special Education: Moving Parents from Disempowered Team Members to Ardent Advocates*, 3 NW. J. L. & SOC. POL'Y 263, 273 (2008) (explaining how under the IDEA's framework, parental engagement and collaboration with teachers, psychologists, and other education professionals furthers the parent's role as their child's educational representative).

26. Marvin Lazerson, *The Origins of Special Education*, *in* SPECIAL EDUCATION POLICIES: THEIR HISTORY, IMPLEMENTATION, AND FINANCE 15, 16 (Jay G. Chambers & William T. Hartman eds., 1983). Discussion of the institutionalization of children with disabilities, though beyond this Comment's purview, is well-researched and well-reported. For a more exhaustive discussion, *see generally* Catherine Thornberry and Karin Olson, *The Abuse of Individuals with Developmental Disabilities*, 33 DEV. DISABILITIES BULL. 1 & 2, 1 (2005), https://files.eric.ed.gov/fulltext/EJ844468.pdf.

27. Lazerson, *supra* note 26, at 18–19.

28. *Id.* at 18, 20.

29. *Id.* at 18 (noting that even with school expenditures climbing by 329%, a shortage of teachers and desks led to "an emphasis on efficient use of resources and the creation of specialized classes for those previously excluded").

frustration, however, was school districts' continued demonization of "atypical" students: immigrants, those lacking foundational skills, and of course, individuals with disabilities.[30]

By the 1930s, the "deviant," "deficient," and "defect[ive]"[31] were political fodder for budgetary concerns, worries of social decline, and legitimate questions of effective educational practices.[32] The White House Committee on Special Classes sharply criticized the state of special education and the separate classrooms that became "dumping grounds" for wide arrays of seemingly atypical students.[33] The post-war xenophobia and Jim Crow racism that typified the public discourse of the 1930s through the late 1960s further placed special education in the national spotlight.[34] From its inception, special education was tied to views of racial inferiority and prejudicial concerns about deviating from the norm.[35] With public education and special education expanding simultaneously in the 1950s and 1960s, that prejudice found fertile ground when school districts sought a way to kill two birds with one stone: externally following the strictures of *Brown v. Board of Education*,[36] while internally segregating nonwhite students from their white peers under the guise of special education.[37]

From the 1950s through to the early-1970s, parents "lobbied aggressively to root out [the] entrenched discrimination" that continued to impede the educational opportunities for students with disabilities.[38] During that period, no federal law provided children with disabilities the right to attend public school—with some state laws going so far as to criminalize parental advocacy.[39] Then, in the early 1970s, advocates for students with disabilities made significant progress in their fight for meaningful inclusion with district court decisions in *Pennsylvania Association for Retarded Children v. Pennsylvania* (*PARC*)[40] and *Mills v. Board of Education of the District of Columbia*.[41] The plaintiffs in those cases, parents of

30. *Id.* at 20, 23.

31. *Id.* at 17–18.

32. *See id.* at 34.

33. *Id.* at 35.

34. *See* Chopp, *supra* note 20, at 427 (explaining how the rhetoric and practice of segregation was a familiar hardship for parents of children with special needs when faced with policies that separated their children from "normal" children).

35. Lazerson, *supra* note 26, at 40.

36. 347 U.S. 483 (1954).

37. Lazerson, *supra* note 26, at 40–41.

38. Chopp, *supra* note 20, at 426.

39. *See* Weber, *supra* note 4, at 355–56 (1990) (citing Act of May 18, 1965, ch. 584, 1965 N.C. Sess. Laws 641 (amending N.C. Gen Stat. § 115–165 (1963))).

40. 343 F. Supp. 279 (E.D. Pa. 1972).

41. 348 F. Supp. 866 (D.D.C. 1972).

children with disabilities, relied heavily on *Brown*'s application of the Equal Protection Clause to schools in their fight for more substantive due process rights.[42] *PARC* and *Mills* targeted then-existing state statutes and school policies that allowed school districts to exclude from public school any child deemed "uneducable" with little to no recourse for parents.[43] The *Mills* decision proved to be a watershed moment as aspects of its holding created "a blueprint for what would later become federal special education law."[44]

B. Alphabet Soup: From EAHCA to IDEA

While *PARC* and *Mills*' rulings were a victory for children with disabilities and their dedicated parent-advocates, the decisions "were insufficient to form the basis of a robust system of special education."[45] Instead, federal legislative and administrative action was needed to place special education on secure footing.[46] Up to that point, federal education programs for students with disabilities were loosely defined but starting to take shape.[47] In 1975, representing the culmination of years of federal legislative activity in special education,[48] Congress passed the Education for All Handicapped Children Act (EAHCA).[49] The EAHCA guaranteed some federal funding for special education programming and required that schools provide a

42. Shaver, *supra* note 19, at 146–47.

43. *Id.* at 147 (2015).

44. Chopp, *supra* note 20, at 428. *Mills* required District of Columbia public schools to provide a "free and suitable publicly-supported education[,] regardless of the degree of the child's . . . disability or impairment." *Mills*, 348 F. Supp. at 878. *Mills* also required identification of children with disabilities, individually tailored plans, compensatory services, and due process rights. *Id.* at 878–83.

45. Chopp, *supra* note 20 at 428.

46. *Id.*

47. *See, e.g.*, Elementary and Secondary Education Act (ESEA) Amendments of 1966, Pub. L. 89-750, sec. 161, §§ 601–610, 80 Stat. 1191, 1204–08 (creating the first Federal grant program for education of students with disabilities at the local level); ESEA Amendments of 1968, Pub. L. 90-247, sec. 151, §§ 608–610, 81 Stat. 783, 800–805 (expanding special education services and assistance to states); ESEA Amendments of 1970, Pub. L. 91-230, sec. 601, 84 Stat. 121, 175–88 (establishing the Education of the Handicapped Act which included a broad array of discretionary spending programs); Education Amendments of 1974, Pub. L. 93-380, sec. 611, § 613(a)(13) 88 Stat. 484, 583 (requiring schools to create identification, evaluation, and educational placement procedures for students with disabilities, and provide those students full educational opportunities).

48. Shaver, *supra* note 19, at 149 (discussing the ESEA and its subsequent amendments, as well as the 1970 Education of the Handicapped Act).

49. Pub. L. No. 94-142, 89 Stat. 773 (1975) (codified as amended at 20 U.S.C. §§ 1400–1482).

FAPE to all children in the least restrictive environment.[50] In addition, drawing from *PARC* and *Mills*, the EAHCA required school districts to provide, in the parents' native language, written notice regarding the identification, evaluation, or educational placement of their child.[51]

With such a comprehensive education law, Congress stepped into an area of governance traditionally reserved for states and localities.[52] To ensure the balance and protection of state control over education, the EAHCA allowed states to develop the substantive and qualitative components the federal law requires.[53] The Senate, however, was acutely aware that if states and local school districts were "left to their own devices," they would continue to provide inadequate education to children with disabilities.[54] As a result, key among the EAHCA's protections for students' rights—and parental empowerment—are specific procedural protections addressing notice, consent, participation, and complaints.[55] To ensure these protections, Congress offers funding to states, which, if accepted, requires state educational agencies to submit an annual plan that delineates how they will provide a FAPE to students with disabilities ages three through twenty-one.[56] That plan must include an explanation of procedural safeguards for parents, a description of all testing and evaluation procedures for determining whether a student has a disability, and an outline of how the state educational agency will allocate funding at the local level.[57]

---

50. Pub. L. No. 94-142, sec. 5, § 615, 89 Stat. 773, 788–89 (1975).

51. Pub. L. No. 94-142, sec. 5, § 615(b)(1)(C)(ii), (D), 89 Stat. 773, 788 (1975). The Education for All Handicapped Children Act (EAHCA) also created the framework for filing complaints and impartial due process hearings at the state level, granting the States some discretion in designing their due process structure. Shaver, *supra* note 19, at 151.

52. *See* Wakelin, *supra* note 25, at 266 (noting that fears of infringing on the "traditional primacy" of local and state control over education created the various balancing measures in both the EAHCA and now the IDEA).

53. *See id.* (recognizing that local control of public education is "pedagogically, politically, and ethically justified" but given the heinous treatment of individuals with disabilities, Congress felt justified in a somewhat unprecedented intrusion).

54. Julie F. Mead & Mark A. Paige, *Parents as Advocates: Examining the History and Evolution of Parents' Rights to Advocate for Children with Disabilities Under the IDEA*, 34 J. Legis. 123, 125 (2008).

55. *See id.* at 125–26 (2008) (recognizing that parents would need to be the key enforcement agents in ensuring their children received a free appropriate public education); S. Rep. No. 94-168, at 14 (1975) (noting that the goal of the EAHCA was to provide parents with better procedural protections).

56. M. Hannah Koseki, *Meeting the Needs of All Students: Amending the IDEA to Support Special Education Students from Low-Income Households*, 44 FORDHAM URB. L. J. 793, 806 (2017); *see also* Hyman, Rivkin & Rosenbaum, *supra* note 20, at 116 (describing the EAHCA and the IDEA as spending clause legislation).

57. *See generally* 20 U.S.C. § 1407 (listing the processes for state administration of the IDEA).

In 1990, Congress reauthorized and amended the EAHCA, changing the name of the statute to the Individuals with Disabilities Education Act.[58] Congress then reauthorized and amended the law again in 1997[59] (the 1997 Amendments), with the Department issuing additional regulations in 1999. Both the 1990 and 1997 actions were designed to strengthen the role of parents in the IEP process.[60] The 1997 Amendments recognized that "the education of children with disabilities can be made more effective by . . . strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home."[61] Notice, consent, participation, and due process complaint procedures undergirded many of the 1997 and 1999 statutory and regulatory provisions of the IDEA, from specifying what must be included in a notice of parental rights to requiring schools to notify parents when making determinations about a child's disability.[62] The 1997 Amendments also targeted parents' participation in decisionmaking.[63] A new section of the IDEA defined, while new regulations clarified, the members of the IEP team.[64] By including parents and a general education teacher, the 1997 Amendments seem to provide parents a mechanism by which they can both give input and gather information about their child in a more collaborative process.[65] Further strengthening the legal footing of parents seeking appropriate placements, the 1997 Amendments and resultant regulations created the legal presumption that children with disabilities must be educated alongside their peers without disabilities unless evidence demonstrates that the student needs a more restrictive environment.[66]

---

58. Pub. L. No. 101-476, 104 Stat. 1103 (1990). These amendments are often categorized as merely cosmetic with the language change—Congress swapped "handicapped child" for the person-first "child with a disability"—garnering the most attention. Mead & Paige, *supra* note 54, at 134. While there is some truth to that, the 1990 amendments also added provisions addressing student transitions out of high school and introduced assistive technology as a special education service. *Id.*

59. Pub. L. 105-17, 111 Stat. 37 (1997).

60. Mead & Paige, *supra* note 54, at 135–36.

61. Pub. L. 105-17, sec. 101, § 601(c)(5)(B), 111 Stat. 37 (1997) (codified at 20 U.S.C. § 1400(c)(5)(B)).

62. 34 C.F.R. § 300.504(a) (1997).

63. Mead & Paige, *supra* note 54, at 136 (noting that the 1997 statute and the 1999 regulations "can only be read as an enhancement of parental rights under the law").

64. *See* 20 U.S.C. § 1414(d)(1)(B)(i) (2000); 34 C.F.R. § 300.344(a)(1) (1997).

65. *See* 20 U.S.C. § 1414(d)(1)(B)(i) (2000); 34 C.F.R. § 300.344(a)(3) (1997); 20 U.S.C. § 1414(d)(1)(B)(ii) (2000); 34 C.F.R. § 300.344(a)(2) (1997).

66. 20 U.S.C. § 1414(d)(1)(A)(iv) (2000); 34 C.F.R. § 300.347(a) (1997).

In 2004, Congress sought to align the IDEA with the No Child Left Behind Act,[67] and address concerns about overrepresentation of minority students in special education.[68] While the 2004 reauthorization[69] tightened certain substantive requirements of the IEP process, many of the changes exacerbated existing problems with parental procedural rights.[70]

C. The Special Education Process

Under the IDEA, states receive federal financial assistance to support their special education programs only if they submit a plan demonstrating their ability to provide a FAPE to every student with a qualifying disability.[71] A FAPE includes both special education and its related services.[72] Congress defines a FAPE in somewhat nebulous terms as a free education that meets the standards of the state educational agency and is provided in conformity with an IEP.[73] In lieu of a meaningful definition, Congress relies on the IEP to ensure that schools are providing students with a FAPE.[74] This circular legislative reasoning means properly formulating and executing the IEP is the heart of special education.[75]

---

67. Pub. L. No. 105-17, 111 Stat. 37 (1997).

68. *See* Mead & Paige, *supra* note 54, at 143 (highlighting that the "collective effect of the changes made in 2004" likely restricted, rather than extended, parental rights with respect to the special education process). *See also* Paul L. Morgan, George Farkas, Michael Cook, Natasha M. Strassfeld, Marianne M. Hillemeier, Wik Hung Pun et al., *Are Hispanic, Asian, Native American, or Language-Minority Children Overrepresented in Special Education?* 84 Exceptional Child. 1, 2 (2018).

69. Pub. L. No. 108-446, 118 Stat. 2647 (2004).

70. *See* Chopp, *supra* note 20, at 441–43 (highlighting the more stringent requirements for the IEP itself, while demonstrating that prevailing case law does little to support procedural protection of these new rights). *See also* Mead & Paige, *supra* note 54, at 142–143 (describing the changes in more detail).

71. 20 U.S.C. § 1412(a)(1)(A) ("A free appropriate public education is available to all children with disabilities . . . ."). The term "child with a disability" is defined as a child with intellectual disabilities, hearing impairments[,] speech or language impairments, visual impairments[,] serious emotional disturbance[,] orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities," and, depending on the child's age, developmental delays. 20 U.S.C. § 1401(3).

72. 20 U.S.C. § 1401(9) (defining the term).

73. *See supra* note 4 and accompanying text.

74. Chopp, *supra* note 20, at 429. *See also* Bd. of Educ. v. Rowley, 458 U.S. 176, 189 (1982) ("[I]f personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a free appropriate public education as defined by the Act") (internal quotation marks omitted).

75. Yael Cannon, Michael Gregory & Julie Waterstone, *A Solution Hiding in Plain Sight: Special*

The IDEA's child find obligation requires states to establish and implement policies to identify, locate, and evaluate children with disabilities who need special education support and services.[76] While there are numerous ways to initiate this process, it can begin when a teacher, parent, or administrator recognizes a discrepancy in a child's perceived ability and academic output.[77] Once a child is suspected of having a statutorily recognized disability, the child's teacher refers the student for a comprehensive evaluation to assess the child in the area of a suspected disability.[78] Not all assessments are equal; sometimes, schools evaluate a child to determine if a lack of appropriate instruction or limited English proficiency, not disability, is the underlying cause of the child's academic struggles.[79] If, however, the school believes, and evaluations demonstrate, the presence of a qualifying disability and the child's parents consent to the determination, the next step in the special education process is the formulation of the IEP.[80]

The IEP, tailored to the "unique needs of a particular child," delineates the necessary educational services for students with disabilities.[81] All IEPs must include a student's present levels of academic achievement, describe how the student's disability may impact that achievement, and list the measurable goals for the student.[82] Equally important, the IEP must describe the necessary supports that enable student progress toward attaining those annual goals and how that progress will be measured.[83] Such a

---

Education and Better Outcomes for Students with Social, Emotional, and Behavioral Challenges, 41 FORDHAM URB. L.J. 403, 447 (2013); *see also* Honig v. Doe, 484 U.S. 305, 311 (1988) (stating that the IEP is "the centerpiece of the [IDEA's] education delivery system for disabled children . . . .").

76. *See* 20 U.S.C. § 1412(a)(3)(A) (describing the child find process); *see also* 34 C.F.R. § 300.111 (2022) (providing further explanation and clarification of the child find process).

77. For example, literacy avoidance behaviors in a student with high verbal acumen might signal to a general education teacher or a reading specialist that the student could have a specific learning disability in the areas of reading or reading comprehension. *See e.g.*, Rae Jacobsen, *Tips for Recognizing Learning Disorders in the Classroom: Characteristics of Learning Disabilities that Can Hide in Plain Sight*, CHILD MIND INST. https://childmind.org/article/recognizing-learning-disorders-in-the-classroom/#full_article (highlighting common characteristics of academic challenges that can otherwise be hard to recognize) (Aug. 19, 2021).

78. Hyman, Rivkin & Rosenbaum, *supra* note 20, at 119; *see also* 20 U.S.C. § 1414(a)(1)(D) (outlining the informed consent process for most initial evaluations).

79. 20 U.S.C. § 1414(b)(5).

80. *See* 20 U.S.C. § 1414(b)(2)(A); *see also* 20 U.S.C. § 1401(3)(A) (defining "child with a disability").

81. Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 137 S. Ct. 988, 994 (2017) (citing Bd. of Educ. v. Rowley, 458 U.S. 176, 181 (1982)) (internal quotation marks omitted).

82. *See* 20 U.S.C. § 1414(d)(1)(A)(i)(I)(aa), (II).

83. *See* 20 U.S.C. § 1414(d)(1)(A)(i)(III)–(IV).

comprehensive document necessitates participation from, at the bare minimum, parents, teachers, school officials, and related service providers—such as speech-language pathologists or occupational therapists.[84] The procedural aspects of the IEP formulation "emphasize collaboration among parents and educators and require careful consideration of the child's individual circumstances."[85]

To meet its obligation under the IDEA, a school must work to create and implement an IEP "reasonably calculated to enable a child to make progress" that is "appropriate in light of the child's circumstances."[86] That is a challenging standard to apply and requires that schools undertake a "fact-intensive exercise" and make a "prospective judgment" about student needs.[87] Many times, the IEP process is completed without substantive disagreement between the parents and the school.[88] However, when disagreements arise, parents may seek resolution of their concerns through a written complaint directed to their state's department of education, a formal mediation, or a due process hearing before a state educational agency.[89]

II. EXISTING GAPS IN PROTECTION

In interpreting the IDEA, the Supreme Court has focused more on the process of an IEP's creation rather than the substance of the IEP.[90] Indeed, the IDEA constrains how districts make a decision about special education, not what the decision is.[91] For instance, in *Board of Education v. Rowley*,[92] the Court's "central holding" established a two-part test for assessing whether a local education agency had violated the IDEA.[93] The Court's more recent

84. *See* 20 U.S.C. § 1414(d)(1)(B) (listing the IEP team members and including a representative of the local educational agency who is, *inter alia*, qualified to supervise the provision of specially designed instruction and interpret the instructional implications of the evaluation results).

85. *See Endrew F.*, 137 S. Ct. at 994 (citing 20 U.S.C. § 1414); *see also* Cannon, Gregory & Waterstone, *supra* note 75, at 448 (describing the IEP as the "robust document [that] constitutes the "blueprint for the student's education . . . .").

86. *Endrew F.*, 137 S. Ct. at 999.

87. *Id.* at 999 (internal quotation marks omitted).

88. *See id.* at 994 (recognizing that parents and educators do not always agree as to what the child's IEP should contain).

89. 20 U.S.C. § 1415(b)(5)–(8).

90. Romberg, *supra* note 12, at 416. The five-justice majority in *Rowley* felt that "opening the schoolhouse doors and requiring that districts listen to parents' input would ordinarily result in substantively appropriate IEPs, without the need for any significant administrative or judicial review . . . ."). *Id.* at 427.

91. *Id.* at 425.

92. 458 U.S. 176 (1982).

93. Romberg, *supra* note 12, at 416.

decision in *Endrew F. v. Douglas County School District Re-1*[94] somewhat modifies that test. It requires determining whether the state complied with the IDEA's procedures for IEP development[95] and whether the IEP is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.[96] Taken together with the Court's pronouncement in *Schaffer v. Weast*[97] that Congress intended the IEP meeting to be a cooperative process between parents and schools,[98] parents might expect a heavy emphasis on the child's needs and collaborative nature of this all-important process. For myriad reasons, this supposed "dynamic" process is frequently devoid of the mutual respect and information sharing Congress and the Court seemed to envisage.[99]

Put simply, Congress and the courts have elevated process over substance; as a result, this section zeroes in on flaws surrounding two fundamental portions of the IDEA's current procedural structure: notice and collaboration.[100] Notice is the affirmative duty the IDEA imposes on states to furnish parents with information regarding the special education process.[101] Collaboration is the IDEA's requirement that parental inclusion in formulating the IEP "emphasize[s] collaboration" between parents and educators.[102]

A. Notice

While it is factually correct to state that notice provisions are provided by the IDEA, in practice, local educational agencies provide notice more akin to the care Willy Wonka expresses when Violet Beauregard consumes the three-course dinner gum in the film adaptation of Road Dahl's *Willy Wonka and the Chocolate Factory*.[103] In that scene, Wonka recognizes Violet's impending doom—

94. The first question from *Rowley* is procedural, *id.*, and remains unchanged under *Endrew F. See* Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 137 S. Ct. 988, 994 (2017) (establishing that *Endrew F.* is about what constitutes sufficient progress—the second prong of the *Rowley* test). The second question, however, is substantive and under *Endrew F.* now requires examining progress "in light of the child's circumstances." *See id.* (recognizing that this requirement should "come as no surprise" because the IDEA clearly contemplated progress tied to the child's circumstances).

95. *Id.*

96. *Id.* at 999.

97. 546 U.S. 49 (2005).

98. Chopp, *supra* note 20, at 431 (quoting Schaffer v. Weast, 546 U.S. 49, 53 (2005)).

99. *See id.* at 431 (highlighting that parents' opinions are frequently discounted in IEP meetings, making the process less collaborative).

100. *See generally* 20 U.S.C. §§ 1414, 1415(a)–(c).

101. *See generally* 20 U.S.C. § 1415(a)–(c).

102. Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 137 S. Ct. 988, 994 (2017) (citing 20 U.S.C. § 1414).

103. WILLY WONKA AND THE CHOCOLATE FACTORY (Wolper Pictures 1971).

ultimately turning violet and inflating—halfheartedly telling onlookers "stop, don't" with a sardonic eyeroll.[104] Such is the "notice" that the IDEA requires from schools, a reticent "be careful" and an ineffective and inconsistent baseline for what state and local educational agencies must provide to parents.[105]

1. Procedural Safeguards and Prior Written Notice

Procedural protections form the core of the IDEA; those protections consist of everything from guidelines for parent participation in the IEP process to the power of parental consent in meetings.[106] Two documents serve as the main forms of procedural protections, yet their woeful inadequacies undercut their effectiveness.[107] The first document is a procedural safeguards guide that the local education agency must provide to parents once every year.[108] This document must include a full explanation of a parent's rights to seek an independent educational evaluation, give or withhold consent for educational decisions, review their child's educational records, and be informed of the dispute resolution procedures available.[109] While such a document sounds promising, it is frequently replete with barriers to meaningful use.[110] The greatest barrier is that these documents are written using excessively high-level language, with over half of all states providing procedural safeguards written at the college-level and forty percent of states providing documents written at or above a graduate reading level.[111]

---

104. *Id.*

105. *Compare* KAN. STATE DEP'T OF EDUC., PARENT RIGHTS IN SPECIAL EDUCATION (2020) https://www.ksde.org/Portals/0/SES/forms/ProcSafeguardsKansas.pdf (beginning with, "[w]e urge you to be actively involved in your child's education" before listing the federal and state regulations verbatim for thirty-one single-spaced pages), *with* ARIZ. DEP'T OF EDUC., NAVIGATING EARLY CHILDHOOD SPECIAL EDUCATION SERVICES (2021), https://www.azed.gov/sites/default/files/2017/09/Family%20Brochure.pub1%20%282%29.pdf?id=59c1ab1a3217e10dac1f261c (providing two pages of pictures, hyperlinks, bullet points, and a flow chart to clearly define and demystify the IEP process for parents).

106. *See* Hyman, Rivkin & Rosenbaum, *supra* note 20, at 119. These documents also detail the steps for filing a complaint, engaging in mediation, and requesting a due process hearing. 20 U.S.C. § 1415(d)(2).

107. Almazan, Feinstein & Marshall, *supra* note 18, at 26–27.

108. *See* 20 U.S.C. § 1415(d)(1). This document must also be provided upon initial referral or parental request for evaluation, upon the first occurrence of the filing of a complaint, and upon request by a parent. *Id.*

109. 20 U.S.C. § 1415(d)(2).

110. Chopp, *supra* note 20, at 436.

111. Carmen Gomez Mandic, Rima Rudd, Thomas Hehir & Delores Acevedo-Garcia, *Readability of Special Education Procedural Safeguards*, 45 J. SPECIAL EDUC. 195, 199–200 (2012). As a point of reference, Johns Hopkins University, like most research institutions, requires all informed

Considering that only forty-six percent of the U.S. adult population is able to read above a sixth-grade level,[112] such state tactics must stymie parental involvement. Equally troubling, the IDEA requires student participation in IEP meetings by age sixteen,[113] with some states initiating transition decisions as young as fourteen.[114] When schools do provide texts at the recommended level, they frequently present the special education process as a series of acronyms, like FBA (functional behavioral assessment), and BASC (behavior assessment system for children).[115] Additionally, the school's continued use of fine print and jargon—phonological awareness, pincer-grip, service time—make the documents difficult to comprehend for nonlawyers.[116]

As part of the IDEA's procedural safeguards, local educational agencies must also provide "[w]ritten prior notice" to parents in preparation for an IEP meeting.[117] This federal requirement notifies parents whenever the local educational agency proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child.[118] In essence, prior written notice is what the name suggests: written information detailing and providing rationale for the school's decisions and what next steps parents can take.[119] Like the procedural rights documents, prior written notice must be easily understandable;[120] however, like the procedural rights documents, prior written notice suffers from many of the same readability deficiencies and is further muddied with jargon.[121] Many parents, then, are given notice of the

---

consent documents provided to university students participating in studies and experiments to be written at or below an eighth-grade reading level. *Informed Consent Guidance—How to Prepare a Readable Consent Form*, JOHNS HOPKINS MED. (Apr. 2016), https://www.hopkinsmedicine.org/institutional_review_board/guidelines_policies/guidelines/informed_consent_ii.html.

112. *See* Michael T. Nietzel, *Low Literacy Levels Among U.S. Adults Could be Costing the Economy $2.2 Trillion a Year*, FORBES (Sept. 9, 2020, 7:14 AM), https://www.forbes.com/sites/michaeltnietzel/2020/09/09/low-literacy-levels-among-us-adults-could-be-costing-the-economy-22-trillion-a-year/?sh=47ed7f184c90 (referencing the results of a Bush Foundation study that determined that fifty-four percent of adults in the United States are unable to read above a sixth-grade level).

113. 20 U.S.C. § 1414(d)(1)(A)(i)(VII), (VIII); 34 C.F.R. § 300.321(b)(1).

114. *See, e.g.*, MD. CODE REGS 13A.05.01.07(D)(5)(b) (2021) (including this provision).

115. Wakelin, *supra* note 25, at 275.

116. *Id.*

117. 20 U.S.C. § 1415(b)(3).

118. *Id.*

119. Almazan, Feinstein & Marshall, *supra* note 18, at 26. Prior written notice must describe the action the local educational agency proposed or refused, explain the reasons for the decision, describe what information and documents the school district relied on to make the decision, and list other options the IEP team considered. *See* 20 U.S.C. § 1415(c).

120. Hyman, Rivkin & Rosenbaum, *supra* note 20, at 133.

121. *Id. See generally* Gomez Mandic, Rudd, Hehir & Acevedo Garcia, *supra* note 112 at 196, 201.

procedures surrounding their child's rights-determinative process but are unlikely to be able to read or understand what those documents mean.[122]

2. Information and Resource Void

If inaccessible procedural safeguards prevent parents from knowing their rights under the IDEA, the lack of resources available to parents navigating the IEP process prevents them from ever effectively exercising those rights.[123] Although parents may have a strong understanding of their child's academic needs—an assumption that, as parents grapple with a new diagnosis, may not yet be true—they typically are unfamiliar with the technical language of interventions, the IEP itself, or where to find more information.[124] Congress, when drafting the IDEA, recognized this knowledge gap and the importance "[p]arent training and information" plays in "creating and preserving constructive relationships" between parents and schools, and the impact that relationship has on the educational results for children with disabilities.[125]

To address the knowledge gap, the IDEA authorizes discretionary grants, awarded by the Department's Office of Special Education Programs (OSEP), to parent training and community resource centers.[126] Operated by local parent organizations, these parent training centers work with parents to help them understand their child's IEP, educate parents about their rights and responsibilities, and explain how to effectively use the procedural safeguards and dispute resolution processes.[127] In theory, these centers are a potentially constructive tool.[128] In practice, however, two problems impede their success.

First, state and local educational agencies fail to provide parents with usable information about the availability of parent resources and about the

122. *Id.* at 200.

123. Wakelin, *supra* note 24, at 274–75.

124. Koseki, *supra* note 56, at 811–12.

125. 20 U.S.C. § 1450(11)(A), (C).

126. *Discretionary Grants*, U.S. DEP'T OF EDUC., https://sites.ed.gov/idea/discretionary-grants/ (last visited Aug. 16, 2022). *See generally* 20 U.S.C. § 1471; 20 U.S.C. § 1472 (describing the parent training and information centers and the community parent resources). For the purposes of this Comment, the two different resource programs have essentially the same meaning and are referred to as one entity, parent training centers.

127. 20 U.S.C. § 1471(b)(1); *see also Special Education -- Parent Training and Information Centers*, U.S. DEP'T OF EDUC., https://www2.ed.gov/programs/oseppic/index.html (Feb. 10, 2020); 20 U.S.C. § 1463(e) (recognizing the Office of Special Education Programs' (OSEPs') role in supporting these parent hubs and the support they provide for children at birth through twenty-six-years-of-age).

128. *See, e.g.*, *Special Education Resources for Families*, CONN. DEP'T OF EDUC., https://portal.ct.gov/SDE/Special-Education/Special-Education-Resources-for-Families (last visited Aug. 16) (providing a broad array of accessible family guides to the IEP process).

IEP process altogether.[129] While local educational agencies are required to include in all prior written notice "sources for parents to contact to obtain assistance in understanding the provisions of [the IDEA],"[130] school districts provide "inadequate" and unreadable prior written notice, or "fail to provide" prior written notice altogether.[131]

Even when state and local educational agencies do inform parents of these parent information centers, the complementary information is not "generally translated into what services look like on real IEPs."[132] Ultimately, the parent training centers fail to give parents usable information about the IEP's substantive components or what accommodations and services parents might be able to request.[133] Additionally, privacy concerns bar parents from seeing other IEPs as reference, making it increasingly less likely that parents will know what to ask for or what to expect, and forcing many parents to use informal information networks.[134] These unregulated information networks are a double-edged sword. On the one hand, sites like Wrightslaw[135] provide relatively comprehensive, accessible discussions of various topics for parents.[136] Facebook, too, fills a necessary gap with advocate-run groups reminding parents of their rights.[137] On the other hand, many advocacy blogs and resources provide shoddy legal advice devoid of the state-specific nuances implicit in special education law.[138]

---

129. Hyman, Rivkin & Rosenbaum, *supra* note 20, at 135. *See, e.g.*, *Parent Information*, FLA. DEP'T OF EDUC., (2022), https://www.fldoe.org/academics/exceptional-student-edu/parent-info/ (providing a copy of Chapter 1002 of the Florida Statutes and an excel spreadsheet of phone numbers).

130. 20 U.S.C. § 1415(c)(1)(D). That language seemingly refers to, at bare minimum, the parent training centers.

131. Almazan, Feinstein & Marshall, *supra* note 18, at 26; *see also*, *supra* Part II.A.1 (discussing in detail the problems with text comprehensibility in procedural safeguard documents including prior written notice).

132. Pasachoff, *supra* note 3, at 1439.

133. *Id.* at 1439 n.131.

134. Koseki, *supra* note 56, at 812. *See also* Pasachoff, *supra* note 3, at 1437 (recognizing that with no public information on educational services, parents turn to their own information networks). For a discussion about the implications of children's privacy vis a vis parent social networks, see Stacey B. Steinberg, *Sharenting: Children's Privacy in the Age of Social Media*, 66 EMORY L. J. 839 (2017), which describes the conflict inherent between parental information sharing networks and the child's interest in retaining some level of privacy.

135. *See* WRIGHTSLAW, https://www.wrightslaw.com/topics.htm (last visited Aug. 16, 2022).

136. *Id.*

137. Koseki, *supra* note 56. *See, e.g.*, Special Kids Advocates Agency (@Specialkids advocatesagency), FACEBOOK, https://www.facebook.com/Specialkidsadvocatesagency (last visited Aug. 16, 2022) (explaining what an independent evaluation is and how and why to request one).

138. *See, e.g.*, Daphna Yeshua-Katz & Ylva Hård af Segerstad, *Catch 22: The Paradox of Social*

B. Collaboration

The quality and content of a student's FAPE depends on both the accuracy and comprehensiveness of the IEP.[139] The IEP, in turn, must be formulated in accordance with federal procedural requirements, including a collaborative process between all members of the IEP team.[140] Collaboration between the district and the family, then, is not just a procedural expectation but a key component to a FAPE.[141] Precisely because the quality of an IEP depends on a family's ability to negotiate with its school district, meaningful participation is necessary for a successful process.[142] In other words, these private negotiations require parent advocacy to ensure a well-formed IEP.[143] While an IEP must be tailored to the unique needs of a child, it is the school's response to parental input, and the child's present academic levels, through measurable annual goals and supports, that determines the IEP's quality.[144] With parents already lacking usable information, any diminished collaboration topples the last protective tenets of the IDEA.[145] This Part focuses on two key actions that, when employed by schools, stifle any ability for meaningful collaboration, in turn reducing the quality of a child's IEP.

1. Discounting Parent Input and Parental Fears of Participation

On paper, IEP meetings are not inherently suspect: parents working with a cadre of educational "experts" to achieve meaningful solutions for their child seemingly typifies educational best practices.[146] In practice, however,

---

Media Affordances and Stigmatized Online Support Groups, SOC. MEDIA & SOC'Y, Dec. 2020, at 1 (highlighting the challenges vulnerable and underrepresented groups face in online communities).

139. *See supra* Part I.C.

140. *Id.*

141. *See* Romberg, *supra* note 12, at 448 ("[T]he participatory right of genuine collaboration . . . is a vital normative goal.").

142. *See* Caruso, *supra* note 18, at 180 ("[T]he injection of negotiation elements into the picture raises the specter of substantive bargaining inequality and sweeps away the prospects of truly equal opportunities for all children with disabilities.").

143. *See* Caruso, *supra* note 18 at 194. (noting proper distribution during the IEP process may be achieved by balancing the interests of all parties involved).

144. *See* Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 137 S. Ct. 988, 999 (2017) ("Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal."); *see also* 34 C.F.R. § 300.320(a)(3), (4) (2022) (demonstrating the interrelatedness of each of the IEP's components).

145. *See* Romberg, *supra* note 12, at 452 ("[S]ignificant impairment of this procedural right violates the core structural protections of the [IDEA] . . . .").

146. *See* Schaffer v. Weast, 546 U.S. 49, 53 (2005) ("The core of [the IDEA] . . . is the cooperative process that it establishes between parents and schools . . . ."); Chopp, *supra* note

the IDEA's current procedural safeguards exacerbate the imbalance created by the IEP team consisting almost exclusively of school district personnel.[147] Even in the rare situation where parents do bring additional representation—an advocate, pediatrician, tutor, lawyer, or educational consultant—they routinely remain at a disadvantage.[148] This imbalance, in tandem with insufficient information about the IEP process, fosters explicit and implicit parental exclusion.

The clearest imbalance involves the sheer number of school-side team members compared to that of the parent-side—frequently intimidating parents into acquiescence.[149] This response is hardly surprising. As a general educator in many IEP meetings, I was often the only school-side representative the parents had ever met in person. Parents usually communicated with the special educator by email but were unacquainted with the assistant principal, speech-language pathologist, physical therapist, school psychologist, school counselor, pupil-personnel worker, reading specialist, and occupational therapist, nor did they know what services those team members could provide or how they regularly interacted with their child.

Less overt are the qualitative barriers to collaboration where parents, in lacking a comprehensive understanding of the IEP-formulation process to effectively participate, are "all but silenced."[150] The power imbalance and knowledge gap between parents and schools is hardly new. During deliberations on the IDEA's 1990 reauthorization, experts and advocates made clear to Congress that strengthening parent training was necessary if parents were to participate effectively in the IEP process.[151] Beyond expanding the capability of parent training centers, advocates testified that advocacy services, meant to provide legal, administrative, and other appropriate help to families of children with disabilities, were necessary.[152]

20, at 433 (highlighting why having parents and school officials share observations can be hugely beneficial under the right circumstances).

147. Chopp, *supra* note 20, at 432. *See also* 20 U.S.C. § 1414(d)(1)(B) (providing that, at minimum, four representatives from the school district attend every IEP meeting).

148. Chopp, *supra* note 20, at 432.

149. Koseki, *supra* note 56, at 823.

150. Chopp, *supra* note 20, at 438.

151. *Hearing on Reauthorization of Discretionary Programs-EHA Before the Subcomm. on Select Educ. of the H. Comm. on Educ. and Lab.*, 101st Cong. 101–102 (1989) (statement of Justine Maloney, Association for Children and Adults with Learning Disabilities).

152. *Reauthorization of the Education of the Handicapped Act Discretionary Programs Before the Subcomm. on the Handicapped of the S. Comm. on Lab. and Hum. Res.* 101st Cong. 124–125, 145 (1989) (statement and accompanying documents of Jamie Ruppman, Consortium for Citizens with Disabilities Task Force on Education).

"Under ideal circumstances," the IEP team regards a parent as the "expert on her child."[153] The idea that such mutual respect occurs stretches the fabric of imagination to a breaking point. In reality, school districts complain that parents lack the "emotional distance needed to meaningfully assist" in the process or that parental judgment is "inherently suspect."[154] Such negative views are widely reported and likely stem from the belief that, because parents are the most invested in their child's success, their requests in IEP meetings are inherently unrealistic.[155] To be sure, some parents, even the most engaged, may submit unreasonable requests. Much of the parent-school disconnect may come from a "territorial element" on the part of the school which, while rarely decisive in formulating the IEP, makes collaboration difficult, if not unlikely.[156]

Compounding the fallout from this posturing are the significant asymmetries parents face. The school's representatives will intuitively understand a parent's description of home behavior or routine, but parents, devoid of context, will struggle to understand the complexities of an academic setting.[157] Parents may initially possess only a limited understanding of the special education process but even those who try to inform themselves in advance of meetings, or receive detailed recommendations from a pediatrician, can struggle to comprehend the educational jargon that riddles an IEP.[158] Further limiting equal participation in an IEP meeting are state restrictions on a parent's ability to observe their child in a school setting.[159] This is a potential missed

153. Chopp, *supra* note 20, at 433.

154. *Id.* (quoting David M. Engel, *Law, Culture, and Children with Disabilities: Educational Rights and the Construction of Difference*, 1991 DUKE L. J. 166, 188 (1991)).

155. Wakelin, *supra* note 25, at 275.

156. Chopp, *supra* note 20, at 433.

157. Wakelin, *supra* note 25, at 275.

158. Chopp, *supra* note 20, at 438.

159. Almazan, Feinstein & Marshall, *supra* note 18, at 28–29. *See* U.S. Department of Education, Policy Letter on Educational Placements (May 26, 2004), https://sites.ed.gov/idea/idea-files/policy-letter-may-26-2004-to-education-law-center-staff-attorney-shari-a-mamas/ ("[N]either the statute nor the regulations implementing the IDEA provide a general entitlement for parents of children with disabilities, or their professional representatives, to observe their children in any current classroom or proposed educational placement."). Of course, children inherently change their behavior when they know a parent is watching and few schools offer the "naturalistic observation" studies found useful. *See, e.g.*, Leslie M. Booren, Jason T. Downer & Virginia E. Vitiello, *Observation of Children's Interactions with Teachers, Peers, and Tasks across Preschool Classroom Activity Settings.*, 23 EARLY EDUC. & DEV. 517 (2012) (highlighting the effectiveness of a specific type of classroom observation).

opportunity, as structured parent observation can be a useful tool, providing useful context for parents unsure of how the proposed services might function or benefit their child.[160]

2. Preying on Imbalance to Placate Parents

The other end of the dynamic is an equally vexing problem: families receiving services having no relation to the student's disability as an illusion of a well-constructed IEP or provision of a FAPE.[161] Without context, or a greater understanding of the process, parents may unknowingly allow school districts to make educational decisions for their children, while remaining unaware of the myriad alternatives that, with relatively limited effort on the school's part, might have been available.[162] For many parents, the idea of having educational options and the challenge of understanding what they mean is daunting.[163] Recognizing the knowledge gap, parents may be relieved to consign themselves to the sidelines for fear of making the wrong decision.[164] Even those parents who are outspoken in their meetings worry that asserting their perspective can jeopardize their relationship with the school and, by proxy, their child's educational outcomes.[165]

Whether they recognize these worries or not, teachers and school administrators frequently use the IEP meeting to "disseminate information to the parent[s]," as opposed to collaboratively set goals.[166] While parents and schools are meant to "pursu[e] the common target of an appropriate education for the [student]," they each operate with "conflicting subtexts."[167] Even when school personnel are committed to the meaningful educational progress of a

160. Almazan, Feinstein & Marhsall, *supra* note 18, at 28–29. For instance, it was not until I asked parents to come in and see how our reading period was structured that they recognized the need for and viability of incorporating executive functioning and gross motor supports into my classroom—two specific interventions that can benefit a broad array of students.

161. Understanding what different goals are meant to target and their relationship to a student's present levels requires knowledge of the system that many parents do not possess. Being willing to challenge the school district's recommendations requires capital that many parents are afraid to spend early in their child's academic career. *See supra* Part II.B (discussing the barriers to collaboration).

162. Chopp, *supra* note 20, at 434, 438–39.

163. *See* Wakelin, *supra* note 25, at 276 ("One parent remarked . . . 'I don't know if I have a choice [about my kid's program], but then—to be honest with you—I'm kind of glad I don't, because I don't want to make the wrong one anyway.'").

164. *Id.*

165. Notably, there are documented cases of retaliatory actions taken by school districts frustrated by a parent's persistent advocacy. *See id.* (describing a Chicago case where parents who complained of their child's poor educational services were targeted by the school district).

166. *Id.* at 275.

167. Caruso, *supra* note 18, at 177.

child with a disability, which is very often the case, their efforts can be stymied by administrators or caught up in "budgetary [as well as] political constraints . . . ."[168] Parents, on the other hand, at times mistakenly equate the IDEA's promise of an "appropriate education" to "absolutely the 'best education' for their children."[169]

The Supreme Court has recognized this phenomenon and, in *Rowley*, struck a balance between what parents want for their child and the school's obligation to fund additional services.[170] More recently, the Court clarified that while students are entitled to an IEP that provides for significantly more than merely *de minimis* progress from year to year, a FAPE is not a promise of equality.[171] This limitation can be a bitter pill to swallow for parents who frequently misunderstand "what an IEP really is" and the gravity of the stakes during their IEP meetings.[172]

Schools, on the other hand, are aware of their limited obligation and see FAPE as "merely aspirational."[173] A 1993 circuit court decision case typifies the power imbalance and misunderstanding on which schools rely.[174] In rejecting an IEP challenge brought by two parents, the U.S. Court of Appeals for the Sixth Circuit in *Doe v. Board of Education of Tullahoma City Schools*[175] likened the formulation of an IEP to choices between cars.[176] The majority noted that the IDEA only requires that schools provide the educational equivalent of a serviceable Chevrolet to every student with a disability, not a Cadillac.[177] In other words, while parents, and schools, may know that a child would benefit from more services, schools are under no obligation to provide those services so long as the IEP confers some educational benefits upon the student significantly more than merely *de minimis* progress.[178] Parent advocacy and the "appropriate" nature of the IEP are then inextricably linked: without teeth in the FAPE requirement, schools say they have met their obligations when in reality, they have not.[179]

---

168. *Id.*

169. *Id.* (quoting SALLY OZONOFF, GERALDINE DAWSON & JAMES MCPARTLAND, A PARENTS' GUIDE TO ASPERGER SYNDROME & HIGH-FUNCTIONING AUTISM, 165 (2002)).

170. *See* Mead & Paige, *supra* note 54, at 127.

171. *See* Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 137 S. Ct. 988, 1001 (2017) (reaffirming that the *Rowley* majority rejected any standard that used such clear terms as "equal to the opportunities afforded children without disabilities.") (internal quotation marks omitted).

172. Caruso, *supra* note 18, at 174.

173. *Endrew F.*, 137 S. Ct. at 995.

174. Chopp, *supra* note 20, at 444.

175. 9 F.3d 455 (6th Cir. 1993), *cert denied*, 511 U.S. 1109 (1994).

176. *Id.* at 459–60; Chopp, *supra* note 20, at 444.

177. *See Tullahoma City Schs.*, 9 F.3d at 459–60.

178. *Endrew F.*, 137 S. Ct. at 1000.

179. Chopp, *supra* note 20, at 439.

III. RECOMMENDATIONS

The preceding history reveals the inherent problems and inequity between parents and their child's school system. The IDEA creates in parents an individually enforceable right to services.[180] The shortcomings of the IDEA's current procedural safeguards, however, make meaningful parental enforcement unrealistic. This furthers the unequal bargaining power parents face. While the analogy is imperfect, "IEPs are as close to contracts as it gets in the realm of public services governed by federal law."[181] The comparison to contracts is most apt as schools create a child's IEP;[182] the similarity to a contract increases "in direct proportion to families' advocacy power or and access to resources."[183] Families that have a strong grasp on the tailored educational possibilities available for their child, and know how to demand those services, receive an IEP that looks more akin to a "bilateral exchange of promises": the school promises to provide specific educational benefits, while the parents promise not to sue the school district for another year.[184] That result is most often realized, perhaps unsurprisingly, by parents who have the financial means to hire educational consultants or special education lawyers who educate the families about viable solutions while putting pressure on the schools to provide better services.[185] Reform must then focus on areas that strengthen parental bargaining by addressing the notice and collaboration pitfalls of the current IEP process: (A) parental competence; (B) external enforcement; and (C) balanced facilitation.

Congress alone has the power to substantively change the law. It has been almost two decades, however, spanning three different presidents and ten different secretaries of education since Congress last amended and reauthorized the IDEA.[186] What is all too clear from this stalemate

---

180. *See* Pasachoff, *supra* note 3, at 14–23.

181. Caruso, *supra* note 18, at 177. While the IDEA does not contain any reference to contracts, and special education lawyers frequently downplay the contract analogy, schools use formal contract language in their communications with parents to make a powerful impression on the parties. *See id.* at 175–77; *see also* 20 U.S.C. § 1414(d)(1)(i) (stating that the IEP is merely a "written statement for each child with a disability . . . .").

182. *See* Caruso, *supra* note 18.

183. *Id.* at 178.

184. *Id.* at 179.

185. *See id.* at 180.

186. Hyman, Rivkin & Rosenbaum, *supra* note 20, at 116 ("The current version of the statute was adopted in 2004."). As an additional note, while my suggestions would likely require the Department to spend more under the Part B grants-to-states program, Congress has repeatedly failed to fully fund the IDEA. *See* KYRIE E. DRAGOO, CONG. RSCH. SERV., RL44624, THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA) FUNDING: A PRIMER 9 (2019). As a result, far from requesting more money from Congress, the Department could address many of the concerns laid out in this Comment were Congress to fund the IDEA at the level they

is that to remedy the IDEA's current due process failings, the current Secretary must commit to issuing meaningful, clarifying regulations.[187]

The IDEA vests the Secretary with this authority, and the Administrative Procedure Act (APA) establishes a broad framework for agency guidance and rulemaking.[188] The APA exempts from the rulemaking process guidance documents, including the Department's Policy Letters and Policy Statements,[189] as well as the Department's ability to provide technical assistance. While these actions do not carry the full force of law,[190] the Department frequently uses them to address specific concerns and clarify areas of the law that school districts have not uniformly applied.[191]

Additionally, the APA provides agencies the ability to "implement, interpret, [and] prescribe law or policy" through rulemaking.[192] Absent a directive to the contrary, agencies seeking to issue a regulation typically follow the notice-and-comment rulemaking process.[193] That process requires agencies to publish the substance of the proposed rule and reference its legal authority in the Federal Register.[194] Interested parties must then have an opportunity to comment.[195] The IDEA authorizes the Department to engage in notice-and-comment rulemaking to "ensure that there is compliance with the specific requirements of . . . [the IDEA]."[196] This broad authority allows the Secretary to dramatically address the IDEA's current areas of need.

---

promised in 1975. At that time, the EAHCA guaranteed coverage of 40% of the average per pupil expenditure. *See id.* at 21. Current funding, however, is not even half of that. *See* IDEA Full Funding Act, S. 3213, 117th Cong. (introduced Nov. 16, 2021).

187. 5 U.S.C. § 553(b)(3)(A) (describing agency authority to issue regulations).

188. *See* 20 U.S.C. § 1406 (describing both the regulatory authority and the guidance capabilities of the U.S. Secretary of Education); Administrative Procedure Act, 5 U.S.C. §§ 551–559, 561–570(a), 701–706.

189. *Policy Letters and Policy Support Documents*, U.S. DEP'T OF EDUC., https://sites.ed.gov/idea/policy-letters-policy-support-documents/ (last visited Aug. 16, 2022) [hereinafter *Support Documents*].

190. *See, e.g.*, United States v. Mead Corp., 533 U.S. 218, 226 (2001) ("[T]hey 'do not carry the force of law and are not, like regulations, intended to clarify the rights and obligations of [affected parties] beyond the specific case under review.'" (citations omitted)).

191. *Support Documents*, *supra* note 189.

192. 5 U.S.C. § 551(4). For the purposes of this Comment, only legislative rules, or regulations, are discussed.

193. 5 U.S.C. § 553(c) (differentiating between notice and comment rulemaking and on-the-record rulemaking).

194. 5 U.S.C. § 553(b).

195. 5 U.S.C. § 553(c).

196. 20 U.S.C. § 1406(a).

A. Parental Competence

To effectively use the procedural protections in the IDEA, parents must know their rights. As it stands, however, school districts provide parents with procedural safeguards—including prior written notice—that are incomprehensible and incomplete.[197] These deficiencies violate both the federal requirement that the IDEA's procedural safeguards be "easily understandable"[198] and that it aid parents navigating the IEP process.[199] Parents are trapped in a Catch-22: to know that school districts are violating their children's rights, requires parents to receive and understand these rights. Any reform must aim to increase parental competency of the special education process.[200]

The Department can bolster parental competency by issuing two regulations. The first regulation should address the readability of the procedural safeguards that schools provide to parents. Properly solving the current problem necessitates the Department's clarification of the IDEA's "understandable language" requirement.[201] The Secretary should explain that procedural safeguards that are "understandable to the general public" are only those written at or below a sixth-grade reading level.[202] Since the procedural safeguards notice includes some of the most important information for parents navigating the IEP process, this simple clarification could have far-reaching effects.[203]

Utilizing regulations to define what constitutes understandable language is not without precedent. The Securities and Exchange Commission (SEC), for example, requires that any reports by security issuers be written in an "understandable manner."[204] Far from leaving that phrase open for interpretation, the SEC, citing their authority to issue necessary regulations,[205] provides ten specific requirements defining a "[p]lain English

197. *Supra* Part II.A.1.

198. 20 U.S.C. § 1415(d)(2). *See also* 34 C.F.R. § 300.503(c)(1)(i) ("language understandable to the general public").

199. 20 U.S.C. § 1415(c)(1)(D).

200. *See* Karen Syma Czapanskiy, *Special Kids, Special Parents, Special Education*, 47 U. MICH. J. L. REFORM 733, 753 (2014).

201. 20 U.S.C. § 1415(d)(2); 34 C.F.R. §§ 300.503(c), 504(d) (2022).

202. 34 C.F.R. § 300.503(c) (2022). *See supra* Part II.A.1. (discussing the results of a U.S. literacy study showing that majority of Americans read at or below a sixth-grade level).

203. 34 C.F.R. § 300.504(c) (2022) (stating that the procedural safeguards notice must explain the procedural safeguards relating to: (1) independent educational evaluations; prior written notice; parental consent; access to education records;" and dispute resolution).

204. 17 C.F.R. § 240.13a–20 (2022).

205. 17 C.F.R. § 240 (2022).

presentation of specified information."[206] Similarly, the IDEA grants the Secretary the authority to issue regulations to the extent necessary to ensure compliance with the IDEA's requirements.[207] Certainly, ensuring parents are able to actually read and understand their rights seems to meet that threshold.

The Department's second regulation must focus on strengthening the role of parent training and information centers. While these centers are required to assist parents in the development of IEPs,[208] no regulation harnesses the possibilities that role entails. A regulation that focuses on building proactivity and engaging with local parents could improve parental competency early in the IEP process.

One option is for the Secretary to place an affirmative obligation on every parent training center to develop and distribute tools for parents new to the special education process. As they currently function, parent training and information centers play a relatively passive, undefined role.[209] Such a rule, proposed under the authority of § 1471(b),[210] would require parent training and information centers to seek out parents new to the special education system and provide them with useful resources and connect them to legal representation.[211]

Requiring more from parent training centers will help build parental competency, but the Department must provide specific direction. OSEP guidance could explain the benefits of providing, at minimum, webinars, question and answer sessions, and a broad array of electronically accessible information for parents. Additionally, because most states have only one parent training and information center, ensuring online access, a broad distribution of resources, and targeted advertising aimed at parents is crucial.[212]

---

206. 17 C.F.R. § 240.13a–20(a)(1)–(10) (2022) (including requirements to use short sentences and avoid legal jargon and highly technical terminology).

207. 20 U.S.C. § 1406.

208. 20 U.S.C. § 1471(b)(4)(C).

209. 20 U.S.C. § 1471(b). Most of the centers' required activities involve "assist[ing]" parents or "meet[ing]" needs.

210. 20 U.S.C. § 1471(b).

211. Maryland's parent information center, as an example, provides a checklist for finding a daycare that addresses the needs of a child with a disability. *See* THE PARENTS' PLACE OF MD., HOW TO FIND INCLUSIVE CHILDCARE (June 2021), https://www.ppmd.org/wp-content/uploads/2021/06/Inclusive-Childcare-6.2021-1.pdf. Tennessee's provides parents access to recorded webinars and trainings. *See Webinars, Videos & Virtual Trainings*, TNSTEP, https://tnstep.org/webinars/ (last visited Aug. 16, 2022).

212. *Find Your Parent Center*, CTR. FOR PARENT INFO. & RES., https://www.parentcenterhub.org/find-your-center/ (last visited Aug. 16, 2022).

B. External Enforcement

The IDEA relies in large part on private enforcement by parents to achieve its public policy goals. Given the existing problems with that system, a shift to more robust public enforcement is necessary for the statute to remain viable.[213] Notably, some degree of public enforcement does already occur at both the state and federal levels.[214] The current state enforcement system under the IDEA monitors local school districts for compliance with various requirements of the law.[215] The federal system then provides oversight to determine what states need assistance or intervention.[216] Because the infrastructure to monitor state performance is already in place, administrative action by regulation will simply build on the existing framework.

The main enforcement area the Secretary should target is formulation of the IEP. Given the "cryptic" meaning of a FAPE,[217] and the importance of the IEP to delivering on that guarantee, strengthening state monitoring of IEPs and the process of IEP formulation is a necessity. External enforcement targeting the quality of the IEP must walk a delicate line between the courts' and Congress's refusal to impose a strict substantive requirement on IEP formulation and the IDEA's mandate to provide a FAPE.

One path for the Secretary would be to issue a rule expanding the current monitoring system to require spot-check investigations at the state level into the base quality of IEPs. The Secretary already determines whether states require federal government intervention in their educating of students with disabilities.[218] Part of that oversight requires the Secretary to ensure states meet the requirements "most closely related to improving educational results for children with disabilities."[219]

It stands to reason that more closely monitoring the quality of IEPs—the centerpiece of the IDEA[220]—falls into that category. A rule aimed at proper monitoring would update the current requirements for data collection and state performance plans by mandating that every local education agency

213. *See* Pasachoff, *supra* note 3, at 1462.

214. *See* 20 U.S.C. § 1416(a)(1) (noting that the U.S. Secretary of Education monitors implementation of the IDEA by providing oversight of state enforcement and by reviewing state performance plans). *See also* 20 U.S.C. § 1416(b)(1) (describing state performance plans as a self-evaluation by the states of their efforts to implement the requirements and purposes of the IDEA).

215. 20 U.S.C. § 1416(b)(1).

216. 20 U.S.C. § 1416(e).

217. Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 137 S. Ct. 988, 995 (2017) (internal quotation marks omitted).

218. 20 U.S.C. § 1416(e)(1)–(3).

219. 20 U.S.C. § 1416(a)(2)(B).

220. Honig v. Doe, 484 U.S. 305, 311 (1988).

provide one redacted IEP, selected at random, for annual review by OSEP. OSEP would examine whether these IEPs include realistic goals that align with the student's present academic levels, accurate accommodations, proper use of assistive technologies, and other key determiners of improving educational results for children with disabilities.

Complementing the overall monitoring goals of this rule must be a provision addressing those local education agencies that fail to meet OSEP's standards. While the premise of a spending clause program like the IDEA is that Congress can take funds away when it is dissatisfied with the states' performance, restricting funding to failing districts will only exacerbate the problem. Instead, federal spot-checking would provide support to the drafters and cosigners of the IEPs—the teachers, administrators, and service providers—through trainings, workshops, and skills checks throughout the year.[221]

C. Balanced Facilitation

Any reform efforts will fall far short of meaningful change without addressing the imbalance of IEP meetings. With parents quantitatively outnumbered and qualitatively outmatched in these meetings, parents and schools need a neutral facilitator to guide meetings toward a common, collaborative goal. Some states have, presumably, recognized this need by providing for a special education ombudsman that shepherds schools and parents through the IEP drafting process.[222] During the deliberations for the IDEA's 1990 reauthorization, the United Federation of Teachers expressed their support to Congress for the creation of an ombudsman's office that would stop "questionable or illegal interpretations" of the IDEA.[223]

The Secretary, without waiting for congressional action, could begin the process of turning the IEP meetings into a more neutral venue by using parent training centers as a state's hub for local reform. Currently, the Secretary provides discretionary grants to parent training centers and directs

221. Section 1462 describes the broad authority the Secretary has in ensuring personnel development to improve services and results for children with disabilities. 20 U.S.C. § 1462. Eloise Pasachoff describes in detail the numerous ways educational agencies, at all levels, could undertake similar review. *See* Pasachoff, *supra* note 3, at 1473–77. In her work, Pasachoff primarily targets low-income students, however, her suggested monitoring systems can be employed for all families.

222. *See, e.g.*, *Parent Ombudsman for Special Education*, VA. DEP'T OF SPECIAL EDUC., https://www.doe.virginia.gov/special_ed/resolving_disputes/ombudsman/index.shtml (last visited Aug. 16, 2022) (recognizing the independent nature of the ombudsman and their role in facilitating parents participating in non-legal matters).

223. *Hearing on the Reauthorization of EHA Discretionary Programs Before the Subcomm. on Select Educ. of the H. Comm. on Educ. and Lab.* 101st Cong. 52 (statement of Ira Kurland, United Federation of Teachers).

them to network with the appropriate organizations and agencies that protect and advocate for parents and families of children with disabilities.[224] Strengthening the role advocacy agencies play in the partnerships between schools and community services might improve the dynamic at IEP meetings.[225] The Secretary should, then, issue a rule requiring parent training centers, local education agencies, and legal advocacy services to jointly develop materials and trainings for parents and schools navigating the IEP process. Consistent with their purpose and mandate, this action would train school districts and put advocacy and nonprofit organizations on notice of local education agency failings.

CONCLUSION

The IDEA is a broad civil rights law that attempts to provide students with disabilities meaningful access to public education.[226] That right includes an "extraordinarily rich, if somewhat ambiguously defined, right to a free appropriate public education."[227] To fully realize that promise, parents and schools are expected to collaborate on the creation of an IEP: a rich document that details what support the student needs to meet measurable, team-generated goals.[228] It cannot be overstated how comprehensive and impressive the IDEA is. The problem is not that public policy has ignored students with disabilities, but that the IDEA's provisions are ignorant of the reality of the special education process.

The truth is, creating an IEP is not as collaborative as parents think it is nor as the law requires it to be. Instead, a lack of information and systemic barriers impede meaningful parental participation in a child's rights-determinative meeting. Certainly, those two shortcomings work to compound the problem. A solution requires addressing them separately. As far as insufficient notice, having regulations that demand more from school districts while also holding state educational agencies accountable for their failings would, at minimum, support parent competency. Similarly, providing more resources to foster collaboration, and requiring local oversight and training to ensure schools are meeting student needs could reset the scales in IEP meetings and help hold schools and administrators accountable. Most importantly, these recommendations would strengthen parental ability to access the formal dispute resolution procedures already established by the IDEA, enabling collaborative engagement by all parties working to provide each child with a fair and public education.

---

224. 20 U.S.C. § 1471(b)(11).

225. *Id.* (describing the expected role of parent training centers).

226. *See* Koseki, *supra* note 56, at 806.

227. Cannon, Gregory & Waterstone, *supra* note 75, at 408.

228. *See id.* at 408–09.