THE PROMISE ACT

PROTECT THE RIGHTS OF MILITARY CHILDREN IN SPECIAL EDUCATION

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Proposed by:

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THE PROMISE ACT was created to address the education challenges that military children with disabilities are experiencing at an alarming rate. Despite federal and state regulations in place to protect students with special needs, unique aspects of military life, such as frequent moves, lead to significant educational deficiencies for these vulnerable children. The inconsistent delivery of special education and lack of legal public school accountability has caused special education to fall well below the legal standards. The lost instruction and insurmountable challenges for parents create undue burdens on military families and their children with special needs, significantly decreasing military readiness and retention.

Until now, there has been no significant data collection or surveying of these families. Before this survey, parents’ voices were silenced by reprisal from school districts. A group of military spouses created the Military Special Education 2020 Survey (MilSped2020), a grassroots advocacy effort to collect data from military families across all service branches with children who depend on special education. Many still refused to take the survey for fear of reprisal, but over 200 families trusted the military spouses who created the survey enough to tell their stories.

The survey asked participants to “share your experience with special education.” Although many parents compared schools or mentioned both good and bad experiences in public schools, the response was overwhelmingly negative. Only 3% related positive experiences. The remaining 97% of families related some or all negative experiences. Narrative responses varied in length from one sentence to several pages, but among the responses were the following words parents to describe their experiences with public school special education: horrible, tough, horrific, lacking, disappointing, difficult, garbage, awful, challenging, horrible, extremely poor, utter failure, and absolute nightmare.

These preliminary results indicate that special education is an unspoken challenge for military families at duty stations around the world. Parents reported special education issues in schools spanning 39 states, Washington D.C., Guam and all DODEA schools. Military families representing all Service Branches responded, with Army representing the largest percentage of responses at 50%, Air Force at 23%, Navy at 17%, Marine Corps at 6%, and Coast Guard at 4%. These proportions mirror the current populations of each of our services, showing that the systemic problems with special education of our military children span the entire population of the U.S. Armed Forces. Service member ranks range from E3 to O6 with the largest amount of feedback from E-6s and E-7s, pay-grades that are generally too low to hire an advocate or attorney to ensure a child is receiving appropriate special education. Many of the most negative experiences occur in Exceptional Family Military Program (EFMP) approved locations that are receiving additional DoD Impact Aid for military students with IEPs. Most of these are families who have served 10-15 years and have moved numerous times, often reporting significant and compounding challenges in ensuring their child receives a Free and Appropriate Public Education (FAPE), the legally mandated minimums for special education in public schools in the Individuals with Disabilities Education Act (IDEA). IDEA does not need to be amended, it needs to be enforced through re-regulation and directives.

THE PROMISE ACT provides safeguards for military families with children with special needs.
THE PROMISE ACT provides accountability and transparency of taxpayer dollars.
THE PROMISE ACT further supports military families forced to pursue due process to ensure their child receives a Free Appropriate Public Education.
Summary: The following legislative proposals fall under the purview of the U.S. Department of Education.

Current Legislation:
1) Federal Statutes:
   ● Individuals with Disabilities Education Act (IDEA) (20 U.S.C § 1400)

2) Federal Regulations:
   ● IDEA Regulations (34 C.F.R. Part 300)
   ● Section 504 Regulations (34 C.F.R. Part 104)

New Legislative Proposals:
1) Through a directive for State Education Agencies (SEAs) to provide information on military children, the U.S. Department of Education (ED) will determine the number of complaints filed (due process and state complaints) and benchmark testing for special education. The ED will also include complaints received directly from military parents. Data will be shared annually by ED with service branches and on a public website.
   ● Currently, there is no process for collecting and analyzing data on special education disputes or benchmark testing that involve military children who require special education.
   ● The ED has proposed funding priority and requirements for a State Data Collection program that is designed to improve the capacity of states to meet the data collection requirements of the Individuals with Disabilities Education Act (IDEA). A Data Management Center would be established to help states collect, report, and determine how to best analyze and use the data to establish and meet high expectations for each child with a disability (not just military children). The State Data Collection program would meet the needs of military families if it collected specific data on military children, to include the number of complaints related to military children, and shared the data with service branches and on a public website.

2) GAO will study how much military parents spend on witness fees, associated state complaint filing fees, and testing fees in due process for not receiving FAPE. The study shall make recommendations on the feasibility of reimbursing parents who win due process for FAPE.
   ● School districts pay all special education legal fees with taxpayer money. Parents are required to pay all of their own fees out of pocket, but can only petition a court to be reimbursed for their attorneys fees during the due process if they prevail. There is no venue for reimbursement of expert witness fees, testing associated with the case, and state complaint fees associated with enforcing a hearing officer’s decision.
   ● Most military families are single-income and this would remove financial barriers in due process hearings and empower parents to advocate for the education their children are guaranteed under IDEA.

3) GAO will study parents’ success rate in achieving appropriate education for their child with needs through special education advocates, state complaints, mediation, and due process.
The consensus of parents is that there are no effective methods for holding the school accountable. Advocates make the process adversarial, SEA offices have no effective method of enforcement for their decisions, schools use mediation to increase the burden on parents, and even for parents able to pay for representation in due process, school districts are not compelled to follow the orders of judges and hearing officers when parents win FAPE cases.

4) Through a U.S. Department of Education directive, no school district will discipline, suspend, terminate or otherwise punish any member of an Individual Education Plan (IEP) team who discusses or makes recommendations concerning the provision of special education and related services for a child during an IEP team meeting.
- One of the primary obstacles to students with disabilities receiving the services they require is that their teachers often feel pressured not to recommend services which might cost the district money.
- Parents report teachers and staff approaching them for “off the record” conversations where they recommend services and supports that the parents should ask for at IEP meetings. Teachers and staff members state they cannot make recommendations at the IEP meeting for fear of reprisal.
- IDEA defines the collaborative process of IEP meetings, but school districts preclude collaboration by pre-determining limits and threatening teachers and staff. Most school districts hold pre-IEP meetings without parents present, where administrators tell teachers and staff members the limits on educational services and supports the district is willing to offer at the IEP meeting. Many teachers and staff report that often when they make recommendations at these pre-IEP meetings, the district administrator rejects the recommendations, because of the cost, and prohibits them from making recommendations during the IEP team meeting when the parents are present.
- In most IEP meeting, there is no collaboration to determine what the child needs. School district personnel rarely make any recommendations. Teachers and staff report that if they make recommendations at the IEP meeting which are not agreed upon at the pre-IEP meeting, they face potential disciplinary action including letters of reprimand, adverse performance reviews, and termination.

5) As an extension of evaluation of children, which requires parental consent per IDEA, the U.S. Department of Education will direct states that they must document parental consent before any IEP changes can be implemented for military children.
- Several states assume parental consent is not required to make changes to the IEP. However, IEP changes should always be made based on evaluations of the child, which require parental consent. Without the directive to obtain parental consent, school districts routinely take advantage of military families by degrading the quality of IEPs well below the established needs of the military child in a conscious effort to reduce school resources required. Similar to nonstandard IEP forms, state laws regarding parental consent are not only unique, they are complex and difficult for parents to understand. School districts take advantage of the fact that not all parents are experts in interpreting law. A directive explicitly requiring parental consent for IEP alterations will level the playing field so that school districts cannot unilaterally take advantage of parents and their children with needs.

6) A U.S. Department of Education directive to school districts that prohibits the removal of goals, accommodations and services in a military child’s IEP for 6 months of school after arrival to a new duty station.
IEPs do need to be updated on a yearly basis, but the first six months in a new school is not the time to make changes. The informal testing for 30 days under current regulations gives the school an excuse for minimizing the needs of the student to match the services that are convenient for the school district to offer, regardless of the child’s actual needs.
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Summary: The following legislative proposals fall under the purview of the Department of Defense.

Current Legislation:
1) Federal Statutes:
   ● ARMED FORCES (10 U.S.C Title 10)

New Legislative Proposals:
1) DOD directive that school districts become ineligible for Impact Aid if they do not provide remote enrollment for all military children.
   ● Most school districts refuse to enroll a student unless they have a physical address within school boundaries. For military children with special needs, districts also refuse to review IEPs or collaborate on strategies for transition until they are enrolled. Military children often move right before school starts, which increases the potential that they will be placed in an improper classroom or services will not be established for them when they arrive.

2) DOD directive that school districts must use standardized IEP forms to be eligible for Impact Aid.
   ● IEPs vary in appearance State to State, but few if any are logical or intuitive. All state forms are confusing to military families, enabling schools to degrade the IEP while making it seem as if they are providing equivalent services. Standardizing the forms will create transparency that will reduce the temptation for school districts to take advantage of trusting parents.

3) DoD provide special education attorneys across all services to work in collaboration with EFMP Liaisons, Coordinators and Case Managers for each EFMP family.
   ● The Marine Corps is the only service branch that offers special education attorneys, but only for Marines. They also have EFMP personnel who attend IEP Meetings and work in close collaboration with the attorneys. All service branches should be providing the same face-to-face legal support.

4) GAO investigate how Impact Aid funding is spent in public schools for military children with IEPs. The investigative report should cover the following areas.
   A. A recommended method for tracking how school districts use Impact Aid for IEPs
   B. A recommendation for which organization should permanently audit public school use of Impact Aid funding
   C. Benchmarks at both federal and state levels to ensure school districts meet IDEA standards prior to receipt of Impact Aid for military children with IEPs (e.g., results of ED investigations, number of due processes or complaints, etc.)
   D. A recommended means to withhold Impact Aid funding if a school district loses a due process or state complaint for not providing child a FAPE.
5) Receipt of DoD military impact aid is contingent upon providing FAPE to military children. School districts who lose a due process hearing involving a military child or are found to have violated special education law through a state complaint will lose DOD Impact Aid for the upcoming fiscal year.

- Currently there is no accountability or funding penalty for failing to provide a Free Appropriate Public Education to military children. Educational communities need an incentive to provide the minimum legal standards of special education.

6) DoD provide annual report to Congress on special education challenges facing military children, including due process filings and state complaints for the previous fiscal year, the results of any EFMP or special education surveys, and actions DoD is taking to assist military families with special education issues.

- Military parents have provided feedback to the services for years that they are struggling to have their children’s special education needs met to no avail. An annual report to Congress will allow lawmakers to understand the nature of these challenges and ensure improvements are occurring.