First-grader Jesslyn Stalvey works on an iPad in a special education classroom at Clinch County Elementary School in Homerville, Ga. Paraprofessional Vicky Henderson, right, strongly supports the use of educational technology for special education students. —Melissa Golden for Education Week

Decades of Progress, Challenges Under Federal Special Education Law

Schools see four decades of increased services, inclusion—and red tape

By Christina A. Samuels

Forty years ago, by overwhelming margins, both houses of Congress decided that children with disabilities could no longer be allowed to languish in classrooms that did not meet their needs—if they were even allowed through the schoolhouse doors at all.

Goaded by dogged advocacy work at the state and local levels and more than two dozen state court decisions, lawmakers—in a landmark piece of legislation signed Nov. 29, 1975—agreed that schools must identify students with disabilities, provide them a free and appropriate education, and adhere to a process that protected their rights.

But right from the start, concerns about money and about red tape, from the White House down to school administrators, bedeviled the law that would come to be known as the Individuals with Disabilities Education Act.

Those concerns persist today.

The law remade the country's education system for an often-vulnerable, once-overlooked population. More than 6 million students now are served under the law, and each is guaranteed an individualized education program. The law enshrines the right of all children, no matter their special need, to receive a public education. And the federal government, while still funding only a portion of the educational bill for those students, still provided $11.5 billion in special education aid to the states in the most recent fiscal year.

Still, as IDEA enters its fifth decade, the U.S. Department of Education is revamping its monitoring regime to focus on student results and not just compliance with federal special education rules. Some federal lawmakers in both parties also are trying to funnel more money to special education, although Congress is not in a spending mood.

Revision Overdue

But the law itself is six years overdue for a reauthorization. Many advocates and school officials continue to push for changes that might simplify or strengthen the provisions of the IDEA, even while recognizing how unlikely it will be to draw all the different interested parties together to enact revisions.

"Everyone is so focused on whether civil rights are in place, we're walking on eggshells making sure we're not doing something wrong," said Donna Ryan, the superintendent of the 1,400-student Clinch County, Ga., district. She began her career as a special education teacher and
Forty Years of Changes
Since it was instituted in 1975, the landmark federal law mandating specialized services and access to education for students with disabilities has transformed the landscape for millions of students. Here are some examples of the impact of that law, originally known as the Education for All Handicapped Children Act:

Enrollment
In the 1976-77 school year, about 3.7 million students were covered under the law that would become the Individuals with Disabilities Education Act. Thirty-five percent had a speech or language impairment, and 21 percent had a specific learning disability. Over time, lawmakers have added more disabling conditions to the law. And, while learning disabilities and speech and language impairments remain the largest categories, the categories of autism and "other health impairments" are growing the fastest. In the 2012-13 school year, there were about 6.4 million students with disabilities, approximately 498,000 of whom had autism. That represents 263 percent growth based on the count 10 years prior. About 779,000 students were in the category of "other health impaired," a 93 percent increase from 10 years prior.

Inclusion
A 1966 congressional committee report described a dire educational situation for children with disabilities: Only about a third of the estimated 5.5 million children and youth with disabilities at the time were receiving an adequate education. The rest were excluded from school or waiting to age out of the system. The inclusion situation is earned her doctorate in educating students with exceptionalities. "We're losing out on thinking about what's right for the kids."

Judith Gran, a co-founder of the Council of Parent Attorneys and Advocates, which supports people with disabilities and their families, says her fantasy would be to replace the IDEA with something simpler and less bureaucratic. Right now, she believes education plans are crafted around trying to get a child to fit into a predetermined framework based on what schools are willing to offer.

"People talk about how the procedures are meant to protect parents, and of course they are," said Gran, who was the former director of disability projects for the Public Interest Law Center of Philadelphia. "But school districts use them to protect their interests, too."

Storm Clouds
When Congress passed Public Law 94-142—then known as the Education for All Handicapped Children Act—it knew that the cost per student would be sizable, about twice the cost of educating a student without a disability. At that time, lawmakers estimated that there were around 5.5 million children and youths ages 3 to 21 with disabilities, half of whom were receiving inappropriate schooling or none at all.

So in the law, Congress said that by 1982 the federal government would pay for 40 percent of the "excess costs" that are currently borne by the states.

President Gerald R. Ford dashed cold water on that notion in his ambivalent signing statement.

"The funding levels proposed in this bill will simply not be possible if federal expenditures are to be brought under control and a balanced budget achieved over the next few years," Ford wrote.

Indeed, the federal contribution never met that threshold. Later amendments to the law changed the 40 percent figure to a maximum funding goal, rather than a requirement. For fiscal 2015, federal funding represents about 16 percent of the overall cost of educating students with disabilities.

Fighting for "full funding" of IDEA has been a banner waved by nearly every education group.

But what gets less attention are some other financial provisions written into the law, such as how the special education funding formula parcels money out to
much improved, according to the most recent report delivered to Congress by the office of special education programs. About 5 percent of students in 2012 were educated outside of a regular school. About 62 percent of students with disabilities were in regular classrooms for 80 percent or more of the day.

**Due Process and Protections**

The IDEA and its predecessor built in provisions to protect the right of a student with disabilities to a public education. Parents, students, and educators are to jointly draft a student’s individualized education program—a signature feature of the law—and disagreements over an IEP can be resolved through due process. But lawmakers also added provisions for mediation, based on districts’ and states’ concerns about expensive litigation. About 17,000 due process complaints were filed in 2011-12, the office of special education programs told federal lawmakers. About three-fourths of them were resolved without a hearing; 13 percent went to a due process hearing and resulted in a decision; 12 percent were pending when the report was submitted to lawmakers.

**Identifying Students**

The federal special education law requires that schools serve all students with disabilities and make efforts to identify those students as well. This process, known as “child find,” applies to students from birth through age 21, whether they are enrolled in public or private schools. In 2004, the IDEA was changed so that school districts must provide services to students who attend private schools within the district’s boundaries, even if the student lives in another school district. In the 1997 version of the law, districts were required to offer services only to the students who lived within their own boundaries.

**Diagnostic Issues**

When the special education law was first signed, lawmakers tried to stave off much improved, according to the most recent report delivered to Congress by the office of special education programs. About 5 percent of students in 2012 were educated outside of a regular school. About 62 percent of students with disabilities were in regular classrooms for 80 percent or more of the day.

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**Diagnostic Issues**

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overidentification by saying that no more than 12 percent of all students could be diagnosed as having a disability, and no more than a sixth of those children could be categorized as having a learning disability. Concerns about misidentification persist, however. One major element of the 2004 reauthorization of IDEA aimed at addressing that allows states to use an instructional method called response to intervention, where students are first screened for areas of concern, given increasingly intensive instruction in problem areas, and monitored for academic progress.

Funding

In 1975, policymakers believed that a student in special education cost districts about twice as much to educate as a general education student, a rule of thumb still in use. In the original law, Congress set a path for the federal government to pay 40 percent of the average annual per-pupil expenditure in the country by 1982. Except for a multiyear boost under 2009’s federal stimulus law, the government’s contribution has never approached that level; in fiscal year 2015, its contribution amounted to about 16 percent of the estimated costs of educating students with disabilities, or about $11.5 billion. The remaining funds come from the states and from school districts.

SOURCES: U.S. Department of Education, Education Week

Hacking through some of IDEA's red tape is also a perennial concern. Ryan, who moved to take a leadership position at Georgia's rural Clinch district after a career spent in suburban Atlanta, said that her current community embraces all of its students, including those with special educational needs.

"We're being so prescriptive on how we should manage these kids, if they'd just let us teach them," she said.

But IDEA has brought about a dramatic shift in expectations. The individualized education programs, or IEPs, that Ryan wrote at the start of her career were full of short-term goals. Now they are focused on connecting children with the general education curriculum.

Judy Hackett, the superintendent of the Northwest Suburban Special Education Organization, which supports eight school districts in suburban Chicago, also said that special education is growing increasingly advanced.

"If there's one thing that's imperative, it's a future focus—what the jobs are, what are the skills, what are the ways we can get to a more sophisticated way of aligning interventions to student needs," Hackett said. "I think we have a ways to go on that area."

Federal officials have critiqued their own oversight of states and schools, saying that it encouraged states to check off boxes related to deadlines and procedures, without connecting those measures to student performance. A new monitoring system the department is calling "results-driven accountability" is requiring states to create goals for themselves that are directly linked to student learning.

Melody Musgrove, the director of the office of special education programs at the Education Department, said states are now, with federal guidance, creating plans for how to tackle their specific issues.

This process is new, and states are still learning it. But Musgrove said that, ultimately, districts and states will see that the federal government is interested in just how well students with disabilities are performing academically.

"We've shifted the balance. It's not just about compliance," Musgrove said.

Cultural Shift

As policymakers continue to wrestle with the law's provisions, others are also looking at a future IDEA that is built on a cultural shift that sees people with disabilities as worthy of respect and
Muskrove said that inclusiveness is still a problem—not inclusion as a program or a placement, but a clear sense that all students are welcome.

"We still have a long way to go," she said. "And I still think the expectations are... not nearly has high as they should be."

Rud Turnbull, the founder of the Beach Center on Disability at the University of Kansas and one of the nation's foremost advocates of the rights of people with disabilities, said that sense of welcoming and value is the hallmark of an "ethical community" that he believes schools should work to build.

Turnbull has been working in the disability advocacy field since before the law's passage, and plans to be in Washington for an upcoming anniversary commemoration sponsored by the Education Department.

Turnbull said that the special education law was not imposed on states by an overbearing federal government. Even before the law passed, judges across the country were affirming the rights of students with disabilities to participate in school on constitutional grounds. One of those cases, *Mills v. the District of Columbia Board of Education*, decided by the U.S. District Court for the District of Columbia in 1972, said that such a right existed regardless of a jurisdiction's financial capabilities.

The regulatory scheme of the IDEA was also necessary, Turnbull said, because at the time the law was passed, states generally did not have those kinds of statutes already on the books. In addition to what the IDEA has done for children with disabilities, it has also exported initiatives prompted by the law to general education, he said. The instructional method called response to intervention, for example, gives children an opportunity for intensive instruction without needing a disability category. Universal design for learning requires that curriculum materials be accessible for all.

But the IDEA's evolution, Turnbull believes, must go beyond rules and regulations.

"We need to imagine for people with disabilities the same lives that those of us without disabilities want to lead," Turnbull said.
Milestones: The Individuals With Disabilities Education Act

The law that became the IDEA, passed in 1975 as Public Law 94-142, efforts that have continued since its passage.