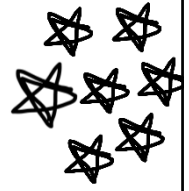


**WE HAVE SIX UNFILLED VACANCIES FOR
SPECIAL EDUCATION STAFF:**

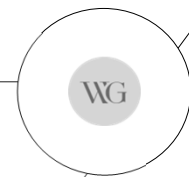


ADDRESSING EDUCATOR SHORTAGES

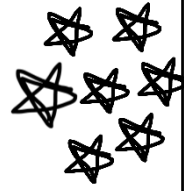
Paula Maddox Roalson
HOUSTON OFFICE

WALSH GALLEGOS
KYLE ROBINSON & ROALSON P.C.

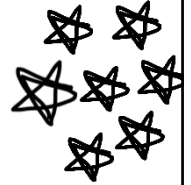
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You're Not Alone



Statistics



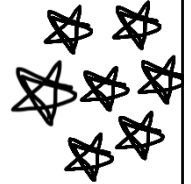
- Special education enrollment has continued to increase – to a record high of 7.5 million students. That’s 15% of all school students.
- 74% of elementary and middle schools and 66% of high schools report difficulty finding fully certified teachers to fill special ed teaching vacancies at the beginning of the 2024-2025 school year (National Center for Education Statistics)
- The issue is so prevalent, the U.S. Commission on Civil Rights just held a briefing to hear from officials, educators, researchers, and others impacted.



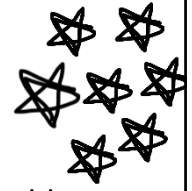
See, Heasley, S. "Civil Rights Commission to Examine Special Ed Teacher Shortages," November 11, 2024



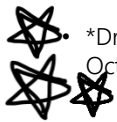
Why?



What is Causing the Shortage?



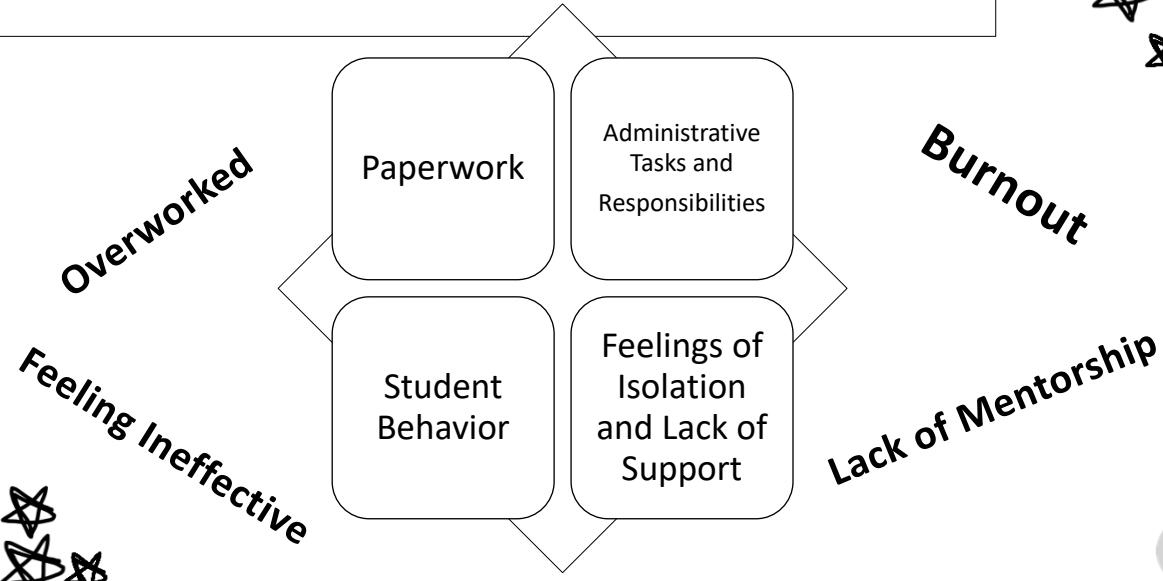
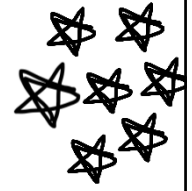
- There always have been challenges filling open special education positions. It has gotten harder since the pandemic.*
- Fewer students elect education as a major and teaching as a profession.
- It is estimated that half of special educators leave the profession within five years.



*Dr. Kimber Wilkerson, Professor of Special Education, University of Wisconsin-Madison, "The Conversation," October 21, 2024



Anecdotal



Anonymously Anecdotal

Overworked

Feeling Ineffective



- ICS feels like standing and watching another teacher provide instruction...
- Admin blame things like paperwork or “having to work with the tough kids” and felt it was out of their hands...
- Being seen as “less than” a gen ed teacher ... no curriculum/supplies, no consideration in scheduling ...
- Unrealistic expectations “somehow we think the IEP is a magic pile of papers that’s going to make [students] start responding better...”
- Having to “gatekeeper” the referral process (MTSS)
- Higher needs and not enough resources

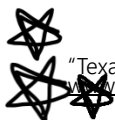
Burnout

Lack of Mentorship



Is This Only Special Educators?

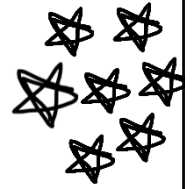
- Nope. There is a national shortage of teachers.
- How are schools addressing the shortage of teachers, generally?
 - Texas enacted legislation in 2015 that “created a pathway for public schools to hire more teacher without formal classroom training, one goal was to make the profession more attractive to individuals from different paths who could offer hands-on learning to students.”
 - “Some school administrators made it clear they intended to place these so-called uncertified teachers in positions where they could leverage their fields of expertise and keep them away from core areas like math, reading, and special education ...”
 - That was pre-pandemic. Now schools are “hiring uncertified teachers—some to provide instruction in core subjects—at an extraordinary pace.”



“Texas Schools are Hiring More Teachers Without Traditional Training, They hope the state will pay to prepare them”
[the74million.org](https://www.the74million.org)



More Statistics

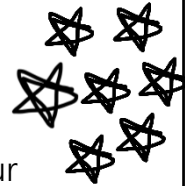


- In the 2023-2024 school year, almost 40% of new hires across Texas were uncertified.
- Most new hires (60%) in charter schools were uncertified.
- Source: Texas Education Agency, Credit: Elijah Nicholson-Messmer; "Texas Schools are Hiring More Teachers Without Traditional Training, They hope the state will pay to prepare them." www.the74million.org



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The Impact on Schools and Students



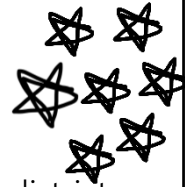
- A Texas Tech University study "highlighted that kids lose three to four months of learning when they have a new teacher who is both uncertified and lacks experience working in a public school."
- The hope is that the state will set aside funds to provide for uncertified instructors to receive training and support in the classroom.
- BUT "The ask come at a time when schools are already starved for a cash infusion. Many districts ... are having to spend more money than they are earning, largely because of the state's rising cost of living and a half-decade of no increases to their base-level funding."



Source: Texas Education Agency, Credit: Elijah Nicholson-Messmer; "Texas Schools are Hiring More Teachers Without Traditional Training, They hope the state will pay to prepare them." www.the74million.org

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The Impact on Special Education Students



"Melanie Lenover says her daughter's special education plan with the district guarantees her a dedicated, one-on-one aide. But the district is in the throes of a special education staffing crisis. In the fall, without an aide, Emma had to stop school. As a result, she missed out on the dance and art classes she loves and regressed on her communication device."

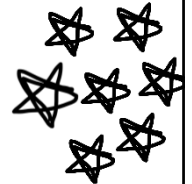
"...what's happening in Del Norte (CA) is extreme. Which is why the Lenovers and five other families are suing the school district, as well as state education leadership, with help from the Disability Rights Education and Defense Fund."



Cory Turner, "Why children with disabilities are missing school and losing skills," HEARD ON MORNING EDITION, NPR (May 15, 2024). www.npr.org

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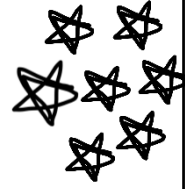
"So, could we "DOI" our way out of this in special education and hope for the best?"



- Nope.
- Federal law and the Department of Education won't allow it. (OSEP 2022)
- Expect changes under the new administration
- Expect changes in the 2025 Texas Legislative Session
- Don't expect changes regarding high quality expectations for special educators



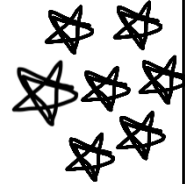
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Looking for Qualified Staff



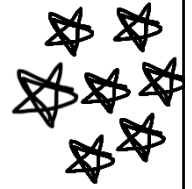
Who Can Serve as a Special Education Teacher?



- ESSA and IDEA mandate requirements for special education teachers
 - Each school district must provide assurances that all teachers and paraprofessionals working in a program supported with funds under the act meet applicable state certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification
 - To meet IDEA requirements, special education teachers teaching at elementary, middle or secondary school must:
 - Have obtained state certification as a sped teacher
 - Have not had sped certification or licensure requirements waived on an emergency/temporary/provisional basis
 - Hold at least a bachelor's degree



Student v. D.C. Public Schools (SEA DC 2020)

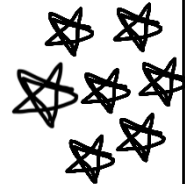


"There is ample testimony that School A was inappropriate for the Student, particularly from Teacher B, who testified that School A staff were not properly trained on how to address the Student's extreme behaviors. Teacher B explained that the Student needed his/her behaviors to be documented and that little or no documentation was compiled by school staff. Teacher B indicated that the Student spent most of his/her time on an iPad or the teacher's phone, instead of working. Indeed, Witness F, during her testimony, admitted that she is not a certified teacher and did not clearly explain how she implemented behavioral interventions in the Student's IEPs and BIPs. Instead, Teacher F admitted that she gave the Student an iPad or phone when the Student misbehaved, to calm him/her down. Teacher B, who testified without rebuttal that she is considered to be a "highly effective" teacher, also indicated that the school did not have an appropriate de-escalation room and instead placed the Student in a space that was not private when s/he needed time alone."



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What about Related Services Personnel and Paraprofessionals?

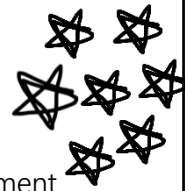


- The IDEA requires that all qualifications established by the SEA:
 - are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;
 - ensure that related services personnel who deliver services in their discipline or profession meet the requirements of clause (i) and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
 - allow paraprofessionals and assistants who are **appropriately trained and supervised**, in accordance with State law, regulation, or written policy, in meeting the requirements of this subchapter to be used to assist in the provision of special education and related services under this subchapter to children with disabilities.



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State Requirements

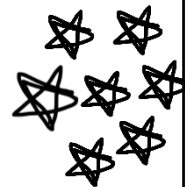


- In implementing this section, a State shall adopt a policy that includes a requirement that local educational agencies in the State take measurable steps to recruit, hire, train, and retain personnel who meet the applicable requirements described in this paragraph to provide special education and related services under this subchapter to children with disabilities.
- The ESSA specifies a number of suggested strategies for recruitment and retention. They include providing support for teachers, high quality professional development efforts, establishing residency programs, creating educator preparation academies, training on prevention and recognition of child abuse, incorporating career and technical education content into academic instructional practices, supporting and developing efforts to train teachers.



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What if We *Still* Can't Find Certified Educators Meeting Qualification Requirements?

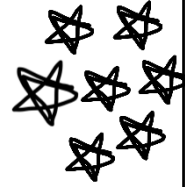


- In 2022, the Office of Special Education Programs (OSEP) issued a Memorandum to State Directors of Special Education
- "OSEP ... recognizes that States are facing many challenges caused by the COVID-19 pandemic, including the impact it has had on exacerbating the shortage of special education teachers and related services providers across the country."
- "...it is critical to ensure that State educational agencies (SEAs) fully understand the IDEA requirements related to personnel qualifications and alternate certifications and are aware of available resources to support their efforts to meet them."
- But you must still comply with the law regarding personnel qualifications; educator shortages will not excuse failure to comply. Schools cannot waive IDEA personnel qualification requirements – not even on an emergency, temporary or provisional basis.



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What about equitable/proportionate share services?



- The IDEA Part B regulations at 34 CFR 300.138 (a) clarify that personnel providing equitable services required by the IDEA to children enrolled in private schools by their parents must meet the same standards as personnel providing services in the public schools.

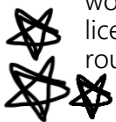


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Do All Teachers Have Requirements under the ESSA to Students with Disabilities?

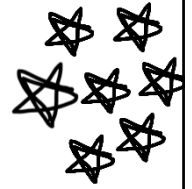


- LEAs are to develop programs and activities that increase the ability of teachers to effectively teach children with disabilities, including children with significant cognitive disabilities. These programs and activities may include the use of multi-tier systems of support and positive behavioral intervention and supports so that children with disabilities can meet the challenging state academic standards.
- In-service training should be provided to instruct school personnel in (1) the techniques and supports needed to help educators understand when and how to refer students with or at-risk of mental illness; and (2) forming partnerships between school-based mental health programs and public or private mental health organizations.
- ESSA requires that each LEA shall provide assurances that all teachers and paraprofessionals working in a program supported with funds under the act meet applicable state certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification. [No more HQ requirements from NCLB]



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What Does Texas Require?



- IDEA controls special education personnel requirements
- Texas Education Code 21.003
 - A person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit ...
 - Except as otherwise provided by this subsection, a person may not be employed by a school district as an audiologist, occupational therapist, physical therapist, physician, nurse, school psychologist, associate school psychologist, licensed professional counselor, marriage and family therapist, social worker, or speech language pathologist unless the person is licensed by the state agency that licenses that profession and may perform specific services within those professions for a school district only if the person holds the appropriate credential from the appropriate state agency.

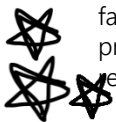


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Notice



- Federal Law
 - A school that receives (ESEA) federal funds shall ... provide to each individual parent of a child who is a student in such school, with respect to such student, timely notice that the student has been assigned, or has been taught for four or more consecutive weeks by, a teacher who does not meet applicable state certification or licensure requirements at the grade level and subject area in which the teacher has been assigned.
- State Law
 - If a district assigns an inappropriately certified or uncertified teacher (as defined below) to the same classroom for more than 30 consecutive instructional days during the same school year, it shall provide written notice of the assignment to the parents or guardians of each student in that classroom.
 - A superintendent shall provide the notice not later than the 30th instructional day after the date of the assignment of the inappropriately certified or uncertified teacher. A district shall make a good-faith effort to ensure that the notice is provided in a bilingual form to any parent or guardian whose primary language is not English. A district shall retain a copy of the notice and make information relating to teacher certification available to the public on request.



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Student v. La Joya ISD (SEA TX 2023)



- Student received special education instruction from a substitute teacher, who was not the teacher of record of the student's class
- "An individual who is hired to substitute for a teacher is not considered the teacher of record and is not required to meet the requirements of 'highly qualified'"
- "A school district must provide written notice to the parent/guardian of an assigned inappropriately certified teacher ... if the assignment is for more than 30 consecutive instructional days."
- Student did not receive 30 consecutive days of instruction from the sub. "Therefore, no notification was required to Parent from the District. The District nonetheless proposed compensatory services to all students in the class ..."

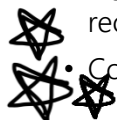


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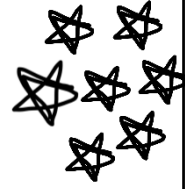
What Do We Do If We Have Uncertified Teachers in the Classroom?



- Ensure that the District is implementing all strategies to recruit and retain qualified personnel.
- Be able to prove the District's efforts
 - Budget/Salary Increases
 - Recruitment Efforts
 - Training Efforts
- Mitigate risk by program reorganization where possible
- Rotation of related services personnel to ensure each student receives some level of service
- Develop compensatory education services via the ARD process for students not receiving services from qualified personnel
- Contact the school attorney



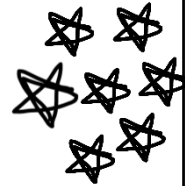
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Where Do We Go from Here?



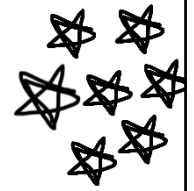
Council for Exceptional Children



- Special Education Legislative Summit 2024 Issue Brief: Educator Shortages
- “Through targeted recruitment, enhanced support, and training, increased funding, and policy reform, the impact of the special education personnel shortage can be mitigated, creating a more equitable, inclusive educator system for all students.”
- “Elevating the profession and changing the perception of a special educator is essential. Collaborative and actionable strategies from policymakers, educational institutions, and communities are imperative to resolve this ongoing challenge.”



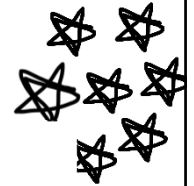
Council for Exceptional Children



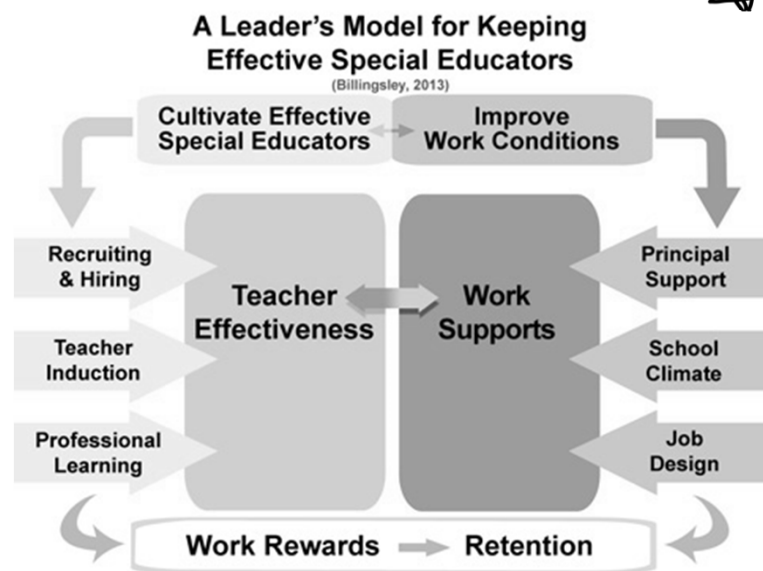
- Attract | Prepare | Retain
- Members of Congress are Urged to:
 - Cosponsor S. 1341/H.R. 2992, the *Educators for America Act*
 - Cosponsor S. 3681/H.R. 4550, the *Preparing and Retaining All (PARA) Educators Act*
 - Cosponsor S. 2605, the *Supporting Teaching and Learning through Better Data Act*



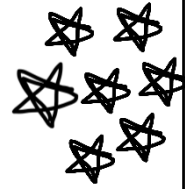
The Research on Special Ed Teacher Retention



- IRIS Peabody Center: "Teacher Retention: Reducing the Attrition of Special Educators"
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<https://iris.peabody.vanderbilt.edu/module/tchr-ret/cwrap/>



IRIS References & Resources



- <https://iris.peabody.vanderbilt.edu/module/tchr-ret/cresource/resources/p09/>



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