JOHN F. DEAN, Ed.D.
County Superintendent of Schools

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May 1, 2000

Bruce Reed
Domestic Policy Council
1600 Pennsylvania Ave., NW
Washington, DC 20500

00-251

Re: H.R. 3435 - Federal Funding of Special Education and the Orange County Grand Jury

Dear Mr. Reed:

This office represents school districts in Orange County. The school districts in Orange County are very concerned about the failure of the federal government to fund special education at the forty percent (40%) level. In California, there is a one billion dollar annual deficit which requires a transfer of funds from regular education to special education. A copy of Assembly Joint Resolution No. 12 adopted by the California Legislature discussing the $1 billion deficit is enclosed.

On April 12, 2000, the Orange County Grand Jury issued a report entitled, "The Disabling of Public Education in Orange County." I have enclosed a copy of this report for your review.

The report (page 5) shows the growth of the special education program and its increasing encroachment on regular education. In Orange County, the encroachment is approaching $71 million dollars. If the federal government had funded special education at the 40% level, Orange County alone would receive an additional $71 million dollars (California would receive an additional $1.8 billion dollars) and Orange County could hire an additional 1,420 educators at a cost of $50,000.00 each.

The Orange County Grand Jury found that the federal government's lack of promised funding has denied $71 million worth of programs and services to public school children in Orange County and that the problem continues to escalate both in terms of the number of students affected and the monetary encroachment on the general budgets of the twenty-seven (27) school districts in Orange County. The circumstances outlined in the Orange County Grand Jury's report are occurring in school districts throughout California and across the nation. If Congress does not increase federal funding to the 40% level, any federal or state educational reforms will be doomed to failure since money appropriated for educational reform will have to be transferred to special education.

Your support of legislation to increase the level of federal funding to 40% for special education over a ten year period is crucial to solving this problem.

Thank you for your support.

Sincerely,

Ronald D. Wenkart

Ronald D. Wenkart
General Counsel

RDW:sd
Enclosures

Assembly Joint Resolution No. 12

RESOLUTION CHAPTER 76

Assembly Joint Resolution No. 12—Relative to special education funding.

[Filed with Secretary of State August 19, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AJR 12, Lempert. Special education: federal funding.

This measure would memorialize the President and Congress of the United States to provide the full federal share of funding for special education programs to the states so that California and other states will not be required to take funding from other vital state and local programs to fund this underfunded federal mandate.

WHEREAS, The Congress of the United States enacted the Education for All Handicapped Children Act of 1975 (P.L. 94-142), now known as the Individuals with Disabilities Education Act (IDEA), to ensure that all children with disabilities in the United States have available to them a free and appropriate public education that emphasizes special education and related services designed to meet their unique needs, to assure that the rights of children with disabilities and their parents or guardians are protected, to assist states and localities to provide for the education of all children with disabilities, and to assess and assure the effectiveness of efforts to educate children with disabilities; and

WHEREAS, Since 1975, federal law has authorized appropriation levels for grants to states under the IDEA at 40 percent of the average per-pupil expenditure in public elementary and secondary schools in the United States; and

WHEREAS, Congress continued the 40-percent funding authority in Public Law 105-17, the Individuals with Disabilities Education Act Amendments of 1997; and

WHEREAS, Congress has never appropriated funds equivalent to the authorized level, has never exceeded the 15-percent level, and has usually only appropriated funding at about the 8-percent level; and

WHEREAS, The California Master Plan for Special Education was approved for statewide implementation in 1980 on the basis of the anticipated federal commitment to fund special education programs at the federally authorized level; and

WHEREAS, The Governor's Budget for the 1999–2000 fiscal year proposes $2.2 billion in General Fund support for the state's share of funding for special education programs; and

WHEREAS, The State of California anticipates receiving pproximately $410,500,000 in federal special education funds under 'art B of IDEA for the 1999–2000 school year, even though the ederally authorized level of funding would provide over $1.8 billion nnually to California; and

WHEREAS, Local educational agencies in California are required o pay for the underfunded federal mandates for special education rograms, at a statewide total cost approaching $1 billion annually, om regular education program money, thereby reducing the unding that is available for other education programs; and

WHEREAS, The decision of the Supreme Court of the United tates in the case of Cedar Rapids Community Sch. Dist. v. Garret F. (1999) 143 L.Ed 2d 154), has had the effect of creating an additional andate for providing specialized health care , and will significantly crease the costs associated with providing special education ervices; and

WHEREAS, Whether or not California participates in the IDEA rant program, the state has to meet the requirements of Section 504 f the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 701) and its nplementing regulations (34 C.F.R. 104), which prohibit recipients f federal financial assistance, including educational institutions, om discriminating on the basis of disability, yet no federal funds are vailable under that act for state grants; and

WHEREAS, California is committed to providing a free and ppropriate public education to children and youth with disabilities, order to meet their unique needs; and

WHEREAS, The California Legislature is extremely concerned at, since 1978, Congress has not provided states with the full nount of financial assistance necessary to achieve its goal of nsuring children and youth with disabilities equal protection of the ws; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, intly, That the Legislature respectfully memorializes the President d Congress of the United States to provide the full 40-percent deral share of funding for special education programs so that alifornia and other states participating in these critical programs ill not be required to take funding from other vital state and local ograms in order to fund this underfunded federal mandate; and be further

Resolved, That the Chief Clerk of the Assembly transmit copies of is resolution to the President and Vice President of the United ates, to the Speaker of the House of Representatives, to the Majority eader of the Senate, to the Chair of the Senate Committee on udget, to the Chair of the House Committee on the Budget, to the enate Committee on Appropriations, to the Chair of the House ommittee on Appropriations, to each Senator and Representative from California in the Congress of the United States, and to the United States Secretary of Education.

O

ORANGE COUNTY GRAND JURY
700 CIVIC CENTER DRIVE WEST • SANTA ANA, CALIFORNIA 92701 • 714/834-3320
FAX 714/834-5555

April 6, 2000

John F. Dean, Ed.D.
County Superintendent
Orange County Department of Education
200 Kalmus Drive
P. O. Box 9050
Costa Mesa, CA 92628-8050

Dear Dr. Dean:

Attached is a copy of the 1999–2000 Orange County Grand Jury report "The Disabling of Public Education in Orange County." Pursuant to *Penal Code* 933.05(f), a copy of the report is being provided to you two working days prior to its public release. Please note that "No officer, agency, department, or governing body of a public agency shall disclose any contents of the report *prior to the public release of the final report.*" Emphasis added. (Public release date—April 12, 2000)

It is requested that you provide a response to **each** of the findings and recommendations of this report directed to your office in compliance with *Penal Code* 933.05(a) and (b), copy attached. For each Grand Jury recommendation, be sure to describe the implementation status, as well as provide a schedule for future implementation.

It is requested the response to the recommendations be mailed to C. Robert Jameson, Presiding Judge of the Superior Court, 700 Civic Center Drive West, Santa Ana, CA 92701, with a separate copy mailed to the Orange County Grand Jury, 700 Civic Center Drive West, Santa Ana, CA 92701, no later than 60 days after the public release date (April 12, 2000) in compliance with *Penal Code* 933, copy attached. The due date then is June 12, 2000.

SUPT. OFFICE

APR 06 2000

Should additional time for responding to this report be necessary for further analysis, *Penal Code* 933.05(b)(3) permits an extension of time up to six months from the public release date. Such extensions should be advised in writing, with the information required in *Penal Code* 933.05(b)(3), to the Presiding Judge of the Superior Court, with a separate copy of the request to the Grand Jury (address above).

Very truly yours,

1999-2000 ORANGE COUNTY GRAND JURY

Philip S. Inglee, Foreman

PSI:cd

Attachments
Grand Jury Report
Penal Code §933, §933.05

§ 933. Findings and recommendations; copies of final report; comment of governing bodies, elective officers, or agency heads; definition

(a) Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report.

(b) One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the county clerk and remain on file in the office of the county clerk. The county clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.

(c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

(d) As used in this section "agency" includes a department. *(Added by Stats.1961, c. 1284, p. 3064, § 1. Amended by Stats. 1963, c. 674, p. 1678, § 1; Stats.1974, c. 393, p. 977, § 6; Stats.1974, c. 1396, p. 3054, § 3; Stats.1977, c. 107, p. 539, § 6; Stats.1977, c. 187, p. 709, § 1; Stats.1980, c. 543, p. 1499, § 1; Stats.1981, c. 203, p. 1126, § 1; Stats.1982, c. 1408, p. 5365, § 5; Stats.1985, c. 221, § 1, urgency, eff. July 12, 1985; Stats.1987, c. 690, § 1; Stats.1988, c. 1297, § 5; Stats.1997, c. 443 (A.B.829), § 4; Stats.1998, c. 230 (A.B.1907), § 2.)*

§ 933.05. Responses to findings

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decisionmaking authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

(d) A grand jury may request a subject person or entity to come before the grand jury for the purpose of reading and discussing the findings of the grand jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.

(e) During an investigation, the grand jury shall meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental.

(f) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report. *(Added by Stats.1996, c. 1170 (S.B.1457), § 1. Amended by Stats.1997, c. 443 (A.B.829), § 5.)*

THE DISABLING OF PUBLIC EDUCATION IN ORANGE COUNTY

SUMMARY

Almost 50,000 students in Orange County schools need to have special programs, services, and resources provided for them so that they can have the opportunity to lead high-quality lives as productive members of their community. These programs and services are mandated by the federal government in the *Education for All Handicapped Children Act of 1975* (PL94-142) and the *Individuals with Disabilities Education Act Amendments of 1997* (IDEA). At the time these laws were passed, the federal government promised to pay 40 percent of the costs of special education. This is a promise that has been broken every year for the past 25 years even though our local school districts have consistently and faithfully been meeting their responsibilities to provide for our most needy students.

Too often, educators have been reluctant to emphasize the effect these unfulfilled promises have had on our local school budgets for fear of creating an adversarial relationship between the parents of regular-education students and those of students with disabilities. But the Grand Jury has found that this funding shortfall, which has now reached over $70 million per year in Orange County, affects all students and should be of concern to the whole community. There is a need for school districts to convince the federal government to live up to its promise.

The case for Congress to fully fund its fair share of the increasing costs of special education is more than an obligation to fund a federal mandate. It has a larger economic and social dimension as well. There is no doubt that public education is burdened with many complex challenges. Meeting these challenges demands a true federal, state, and local partnership and strong federal investment in the education of our neediest students. Anything less will continue to contribute to the disabling of public education in Orange County.

INTRODUCTION AND PURPOSE

Who has the responsibility to educate America's children? Is it the family? Local government? The state? The federal government? Or is it all of these? And once we've developed a satisfactory answer, how do we bring together the resources needed to deliver this education to our children? In other words, who is going to pay the bill?

These questions have long been debated, and that debate continues here in Orange County. Discussion can often become unusually intense when we attempt to determine the proper educational circumstances for our children with special needs. What is our responsibility to educate the disabled? Who should provide these exceptional services? How much is one child's schooling worth? Who should pay?

In 1975 the federal government examined the educational circumstances of children who were deemed to have special needs. Were these children receiving the proper attention to meet their special needs? Were they getting an equal education? The findings of the U. S. Congress at that time were:

- That the special education needs of the millions of handicapped children in the United States were not being fully met.
- That more than half of the handicapped children in the United States did not have full equality of opportunity and that one million were excluded entirely from the public school system.
- That state- and local-educational agencies had the responsibility to provide education for all handicapped children, but that financial resources were inadequate.
- That it was in the national interest that the federal government assist state and local efforts to provide programs to meet the educational needs of handicapped children in order to provide equal protection of the law.

As a result of these findings, Congress passed the *Education for All Handicapped Children Act of 1975*. The Act clearly stated that its purpose was to assure that all handicapped children receive a free public education with special programs and related services designed to meet their needs. Further, this legislation emphasized that the federal government has the responsibility to assist states and localities to provide for this education.

In order to provide this assistance to local school districts, Congress at that time was to start its share of the funding at 5 percent of the costs needed to provide these special programs. This funding was to increase each year, so that by 1982 and thereafter, the federal grant would be at 40 percent. The federal government has never lived up to this promise.

In 1994 the *Sense of Congress* report stated that "the federal government has established many educational programs but failed to provide adequate funding for such programs. For example, one such program provides education to our Nation's disabled students and was established with a promise of 40 percent federal funding but currently receives only 8 percent federal funding."

In 1997 the U.S. Congress passed the *Individuals with Disabilities Education Act Amendments of 1997* (IDEA). At that time the allotment was designated for children with disabilities, ages three through 21, who receive special education and related services. Again, the federal share was listed as 40 percent of the excess per pupil expenditures in public elementary and secondary schools in the United States.

So it was that in 1975 the federal government mandated that school districts across the country provide special education programs and related services to all children identified with special needs. At that same time the government also promised to pay 40 percent of the excess costs of providing these programs and services, but has never come close to fulfilling this promise.

According to school officials throughout Orange County, the result of this unfulfilled and under-funded promise by the federal government is that public schools are currently faced with glaring deficits. The only way to make up these deficits is to take monies from regular education. In fact, as school superintendents throughout Orange County would agree, the negative impact of this federal underfunding has reached the point where it has a disabling effect on the programs and services for all students.

The purpose of this investigative study by the Orange County Grand Jury is to:

Determine the extent to which this unfulfilled federal promise has disabled the education of all public school students in Orange County.

- Spotlight procedures Orange County school districts have been forced to use to make up for this underfunding.
- Examine methods and procedures that might be used by a coalition of Orange County school personnel to convince the federal government to adhere to its 1975 promise to provide 40 percent of the excess costs needed to provide special education programs and related services.

METHOD OF STUDY

The 1999–2000 Orange County Grand Jury recognizes that public education is a major component of a free and democratic society. While our schools are striving to institute innovative programs to meet many dramatic challenges, there also continues to exist the recognition that all students, including those with special needs, must be prepared to achieve high standards to succeed in the 21st century. Every American child is entitled to a free and appropriate education.

With this in mind, the Grand Jury decided to study the extent to which a true federal, state, and local partnership exists in Orange County, and whether or not such a partnership is providing for the educational needs of all students. In order to effectuate this study the Grand Jury:

- Reviewed the legislation.
- Reviewed recent literature.
- Interviewed personnel from the Orange County Department of Education.
- Interviewed personnel of selected school districts throughout Orange County.
- Interviewed personnel of selected Special Education Local Plan Areas (SELPAs)

BACKGROUND

Throughout the 20th century, American society has increasingly asked public schools not only to teach students to read, write, and compute, but also to take care of the many nutritional, psychological, and social needs of children. While attempting to meet these challenges, there has been a developing recognition that there exists an ever-larger population of children who have difficulty in learning, for one reason or another. These children are classified as having special needs.

UNFULFILLED PROMISES

Prior to the 1970s there were countless thousands of learning-disabled students who were being left out of the mainstream of America's public education. In 1975 the Congress of the United States recognized that the educational needs of these children with learning disabilities must be addressed. Programs in public schools were not designed to meet their unique circumstances. As a result, it was extremely difficult for most of these atypical students to find success in school. With the enactment of the *Education for All Handicapped Children Act* of 1975, the federal government mandated that all handicapped children have available to them a free, appropriate, public education, which emphasizes special education and related services designed to meet their unique needs.

Thus, in 1975 the federal government assumed a shared responsibility with the states and local districts. PL94-142 stated that by September 30, 1982, and for each fiscal year thereafter, the federal government would assume its shared responsibility by paying to local school districts no less than 40 percent of the excess costs required to deliver special education and related services to handicapped children.

In 1994 the federal government's commitment to share in the funding of special programs for America's handicapped children at the 40 percent level was reaffirmed. A legislative evaluation report, *Sense of Congress*, found that:

- In order to increase America's standard of living, our country must increase its productivity by improving the educational level of our workforce.
- There is a substantial shortage of resources that are needed to meet the realization of high standards for all students.
- States and local school districts are finding it increasingly difficult to meet ever-higher educational standards and will not be able to fund needed changes without help from the federal government.
- The federal government has failed to provide adequately for America's neediest students by not fulfilling its 1975 promise of 40 percent funding of the excess costs of providing the mandated and necessary programs and services.

In 1997 Congress again defined its responsibility to the special-needs children of America with the passage of the *Individuals with Disabilities Education Act* (IDEA), and again affirmed the 40 percent level of funding.

Finally, as part of its budget-approval process in July 1999, Congress reiterated its responsibility to provide 40 percent of the funding for the special programs and services needed by disabled students. It further noted that local school districts currently receive only about 8 percent federal funding to help cover the costs of special education. In fact, from 1982 through 1998 this funding level never exceeded 9.9 percent. It was also emphasized that this funding shortfall was becoming increasingly burdensome to school districts across the country as they attempted to provide adequate programs and services to all students. Then Congress continued, "...the federal government should provide states and local school districts with adequate resources as promised by IDEA through the reallocation of non-education funds."

A GROWING PROBLEM

The federal government's unfulfilled promises have had a huge impact on the education of all public school students across the country, and Orange County is no exception. In fact, it is the opinion of one local school district official that, of all the issues needed to improve America's education, the single most important one is for the federal government to keep its promise of paying 40 percent of the costs of special education.

Certainly, one of the reasons that this issue is becoming an ever-larger problem is that the population of students with special needs is growing. For this current school year, it is estimated that there are over six million children in our nation's public schools that are identified as needing special education assistance. Table 1 shows how the special education numbers have grown in Orange County during a most recent six-year period:

TABLE 1

Year	Special Ed Students	Total K-12 Enrollment	% Spec Ed Students
1993	36,244	402,264	9.01%
1994	38,320	412,249	9.30%
1995	39,610	424,864	9.32%
1996	41,529	442,913	9.38%
1997	43,831	458,355	9.56%
1998	45,574	471,412	9.67%

For the same period, from 1993 to 1998, general K-12 enrollment in Orange County increased by 17%, while the number of students receiving special education increased by 26%.

Much of the reason that the special education population is expanding in relation to the general school population is the expansion of what is becoming known as the disabled universe. More and more the federal government and court systems nationwide are recognizing that certain differences for some children need to be classified as disabling.

A good example of this trend is a relatively new classification for special education, i.e., Oppositional Defiant Disorder (ODD). At one time a student who was identified as ODD might merely have been recognized as being a behavior problem. Currently, that same student is determined to have a handicapping condition and, therefore, is in need of special programs and related services.

This expansion of the special education population is also impacted by the rising rate of a variety of disabling conditions. For instance, the number of autistic children in California has greatly increased during the last decade. Autism is a severe disorder in which children seem isolated from the world around them. There is a broad spectrum of symptoms, but autism is marked by poor language skills and an inability to handle social situations.

In April 1999 California's Department of Developmental Services released a study that showed that there has been a 210 percent increase in the number of identified autistic children during the last ten years. During the same period, enrollment of children in our public schools with other disorders, such as cerebral palsy and epilepsy, has increased at a rate consistent with the state's population growth—about 30 to 40 percent.

AN EXPENSIVE PROBLEM

With the expansion of the special education population comes the increase in the costs to provide these programs and services. As the Grand Jury investigated these circumstances it discovered that:

- In Orange County it currently costs approximately $5,000 each year to educate one student in the regular program. On average, it costs $6,800 more—or, $11,800—to educate a special education student annually. This means that special education is about 2.36 times the cost of regular education.
- In Orange County, on average, about 21 percent of the necessary costs needed to provide for a special education student are unfunded by either the federal government or the state.
- About 20 percent of all instructional monies are spent on special education, even though the population of these students is only about 10 percent of all students.
- In one Orange County school district, total special-education expenditures went from $15.1 million in 1994 to $29.6 million in 1999...a 96 percent increase in just five years.
- In one instance in Orange County, annual special education costs are $251,000 for just one student.

Another important impact on the spiraling costs of special education occurred on March 3, 1999. On that date the United States Supreme Court, in *Cedar Rapids vs. Garret F.*, ruled that school districts should be responsible for the medical needs of disabled students in addition to providing for their educational needs. Garret Frey, an Iowa teenager with normal intelligence and no learning problems, was left paralyzed from the neck down by an accident a decade ago. As a result, Garret needs full-time medical assistance at school. The Supreme Court determined that it is the responsibility of the Cedar Rapids School District to pay for these extra services. The result of this decision has been a shifting of the funding responsibility for these expensive medical services from private insurance companies and state health-care agencies onto already overburdened public school districts. The decision is expected to greatly increase education costs in the future in order to cover what had traditionally been considered medical services.

THE ENCROACHMENT PROBLEM

It is generally accepted that the special programs and related services delivered to handicapped children are needed and appropriate. The original federal law providing educational rights and guarantees to disabled students occurred in the mid-1970s, at a time when reform was necessary. Public Law 94-142 opened the doors of public schools to hundreds of thousands of disabled students. Yet, the Grand Jury's investigation has shown that the federal government has not fulfilled its promise to fund 40 percent of the costs for special education.

If the federal government has not delivered the monies it promised, how have local school districts met these costs? They have been forced to take the necessary funds from the regular education program. During the last 25 years, for every dollar needed to fund the excess costs of special education, the federal government has provided only eight cents. Of course, this means that the other 32 cents must be taken away from the regular education program that serves all students. Consequently, the federal government's unfulfilled promises have led to an encroachment into the funding of the regular programs for all students.

How severe is this encroachment? The Grand Jury studied six representative school districts across the County. Table 2 shows the extent to which special education encroaches upon the general fund of these districts for only one school year, 1998–1999.

TABLE 2

GENERAL-FUND ENCROACHMENT DUE TO SPECIAL EDUCATION

District	Total Number of Students	Amount
Capistrano Unified	42,440	$9,490,997
Cypress Elementary	4,614	121,755
Garden Grove Unified	45,881	11,073,165
Huntington Beach Union High	13,290	1,383,736
Irvine Unified	23,015	5,234,788
Saddleback Valley Unified	32,962	5,249,742
All Orange County Districts	455,940	$70,986,685

Obviously, should the federal government ever live up to its promises and fund special education at the 40 percent level, the encroachment monies could be reinserted into the districts' general funds, thereby allowing the local school board to reallocate dollars for much-needed expenditures on educational reforms. These would include teacher training, music and art-education programs, library books, software and media materials, computers, extra-curricular activities—such as athletic experiences and field trips, and the purchase of more books and supplies. In fact, one school district estimates that every classroom in grades 4-12 could be reduced by five students if encroachment-monies not needed for special education could be reintroduced into its general fund.

The current financial circumstances of one local school district provides another example of how this encroachment problem can have a negative impact on the availability of education programs and services for all students. The district needed to take millions of dollars from its regular education program in order to fund special education. At the same time that it was forced by the federal government into using a larger portion of regular-education funds, it needed to ask its citizens for about the same amount of additional monies to:

- Keep from increasing class size by three additional students in grades 4 through 12.
- Retain science-specialist positions in grades 4 through 6, thus insuring high-quality hands-on science instruction for all elementary students.
- Retain the elementary school art and music programs.
- Retain appropriate levels of playground supervision.

RECENT EVENTS

During the past 15 months, there have been a number of hopeful signs that indicate that more attention is finally being focused on this critical issue of federal underfunding for special education. For instance:

- Several major California newspapers are beginning to focus on the extent to which this problem is disabling local public education. On March 12, 1999, The **Sacramento Bee** profiled the *Deadbeat Feds*. The **Los Angeles Times** did the same on September 21, 1999.
- Once again, in its *Sense of Congress* of July 1999, the federal government recognized its 1975/1997 promises and noted that monies must be found "through the reallocation of non-education funds."
- On May 9, 1999, the House of Representatives overwhelmingly (413-2) approved *Concurrent Resolution #84* urging Congress to make IDEA a top-funding priority for its 106th session, i.e., fully fund its share of special education expenses.
- In August 1999 the California state legislature approved *Joint Resolution Chapter #76* urging Congress to live up to its 1975/1997 promises.
- In July, and then again in September 1999, a contingent of Orange County educators and parents traveled to Washington, D.C., to lobby that the federal government assume its fair share of the growing costs of special education.
- In November 1999 Congress passed, and the President signed, an omnibus appropriations bill that included an increase of $702 million for special education. This raises the federal government's share of the cost of special education from 8 percent to approximately 13 percent—still far short of the promised 40 percent—but a step in the right direction.

- On November 12, 1999, television station KCET broadcast *Special Education*, which was part of their regular **Life and Times** programming. The presenters aptly summarized the problem of the lack of federal funding for special education.
- The National School Boards Association has proposed a ten-year plan in which Congress would increase funding for special education each year for a ten-year period until the 40 percent level was reached. It would require Congress to increase special education funding by $2.1 billion per year for ten years.
- In February 2000 Representative Matthew G. Martinez (D-Monterey Park, CA) introduced legislation, *IDEA Full Funding Act of 2000* (HR3545), into the House of Representatives that would require the federal government to fulfill its 25-year-old pledge to pay its promised share for special education. This legislation would require Congress to increase special education funding by $2 billion a year until it reaches the 40 percent goal by the year 2010. The extra money would come from the federal budget surplus.
- On Friday, March 24, 2000, the **Los Angeles Times** published a commentary entitled *A Lesson in Keeping Promises Already Made to Schools*. The authors, Diane Ravitch and Tom Loveless, are senior fellows at the Brookings Institution. The commentary details the federal government's underfunding of special education. It notes that in the heat of this election year candidates will likely bid for votes by promising an abundance of new federal education programs. The authors conclude with an emphasis of their main point by stating:

  > *...there is a lesson that any schoolchild should recognize and every government should honor: You should keep the promises you have already made before you make any new ones.*

All of these events indicate that there is hope that the negative impact of the federal government's unfulfilled promises on Orange County's public school children will become ever more apparent. Yet, even more needs to be done at the local level to convince the federal government to keep its promises and solve the encroachment problem. As a result of this study, the Grand Jury concludes that the County's students should not be denied over $70 million worth of educational programs and services each year. Continued underfunding can mean only one thing: escalation of the disabling of public education in Orange County.

FINDINGS

In accordance with *California Penal Code* Sections 933 and 933.05, responses are required to all findings. The 1999–2000 Orange County Grand Jury has arrived at the following findings:

1. The federal government's lack of promised funding for special education during the last 25 years means that over $70 million worth of programs and services are denied all public school children in Orange County each year. This problem continues to escalate

both in terms of the number of students affected and the monetary encroachment on the general budgets of the 27 school districts across the County.

A response to Finding 1 is required from the **Orange County Superintendent of Schools.**

2. While the Orange County Department of Education and some school districts have done some lobbying of the federal government to increase funding for special education, this effort has not been coordinated among all school districts in Orange County.

A response to Finding 2 is required from the **Orange County Superintendent of Schools.**

RECOMMENDATIONS

In accordance with *California Penal Code* Sections 933 and 933.05, each recommendation must be responded to by the government entity to which it is addressed. These responses are submitted to the Presiding Judge of the Superior Court. Based on the findings, the 1999–2000 Orange County Grand Jury recommends that:

1. All Orange County school districts should develop a plan to insure that parents, staff, and the general public are informed of the federal government's history of underfunding special education and the extent to which it negatively impacts the education of all students. This plan should include procedures that encourage parents, staff, and interested community members to insist that the federal government budget its promised funding.

A response to Recommendation 1 is requested from the school districts of **Anaheim City, Anaheim Union High, Brea-Olinda Unified, Buena Park, Capistrano Unified, Centralia, Cypress, Fountain Valley, Fullerton Joint Union High, Fullerton, Garden Grove Unified, Huntington Beach City, Huntington Beach Union High, Irvine Unified, La Habra City, Laguna Beach Unified, Los Alamitos Unified, Lowell Joint, Magnolia, Newport-Mesa Unified, Ocean View, Orange Unified, Placentia-Yorba Linda Unified, Saddleback Valley Unified, Santa Ana Unified, Savanna, Tustin Unified,** and **Westminster.**

2. The Orange County Superintendent of Schools should develop a plan to more forcefully insist that the federal government fully fund its promised 40 percent of the cost of special education. All school districts in Orange County should be included and encouraged to be actively involved in this plan.

A response to Recommendation 2 is required from the **Orange County Superintendent of Schools.**