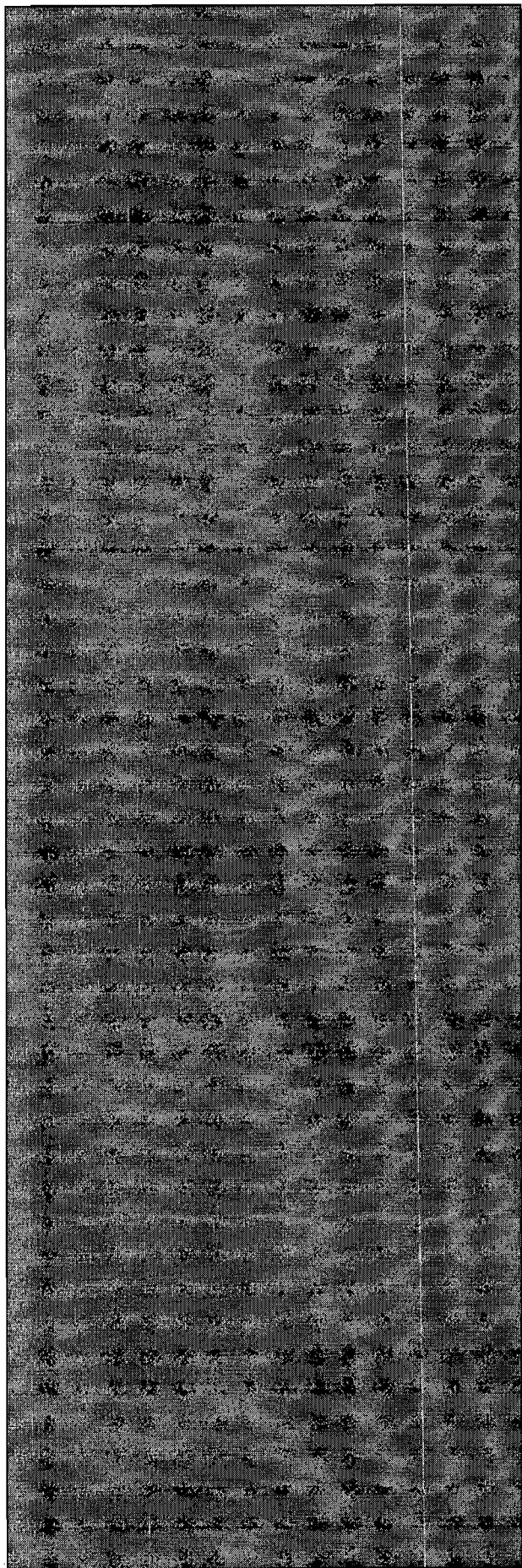






administrative law hearings before reaching the courts. In the 1994-95 school year, 1,170 parents requested the trial-like hearings to settle special education disagreements with districts. In 1997-98, the number had jumped to 1,700.

Glenn Fait, director of the California Special Education Hearing Office, said about two-thirds of parents now retain lawyers for the hearings. Thirty percent of the cases are brought over autistic students, whose numbers have exploded in recent years and for whom services can be costly.

Alex Baghdassarian turned to an attorney when the Glendale Unified School District failed to approve services he said his daughter needed.

Karine, 4, is mentally retarded and has delayed motor skills. A district official said she was bound by confidentiality rules not to discuss Karine's case.

A lawyer himself, Baghdassarian said he knew he required a legal specialist to ensure that Karine received physical and speech therapy and one-on-one instruction.

"I'm in business litigation, and I don't pretend to understand all the ramifications of the special education law and the state and federal regulations," the Glendale resident said.

A Nightmare for School Districts

School districts have been legally required for two decades to provide a parent-approved individualized education plan tailored to meet the needs of a student with disabilities.

If a public school lacks the services, the district must pay for the child to attend a private school approved by the state.

"The law makes a special ed student's education based on their parents' consent," said schools lawyer Diana McDonough. "If you think about that concept for just a little bit, you realize how fundamentally contrary it is to public education."

For school districts, the increase in litigation and threats of litigation has been a nightmare. If a district loses a legal fight with a parent, the district must pay the parent's attorney fees, which can run into hundreds of thousands of dollars.

In addition, the government does not fully reimburse districts for the cost of mandated services. On average, a district spends 2 1/2 times as much on a special education student as on a general education student.

A state legislator has estimated that nearly \$1 billion is taken from general education coffers in California to pay for mandated special education services for about 640,000 qualifying students.

"There used to be a stigma to being in special education, so parents were reluctant to have their children evaluated," said Ronald Wenkart, general counsel to the Orange County Department of Education. "Now parents are pushing to have their children be declared disabled so they have all kinds of services."

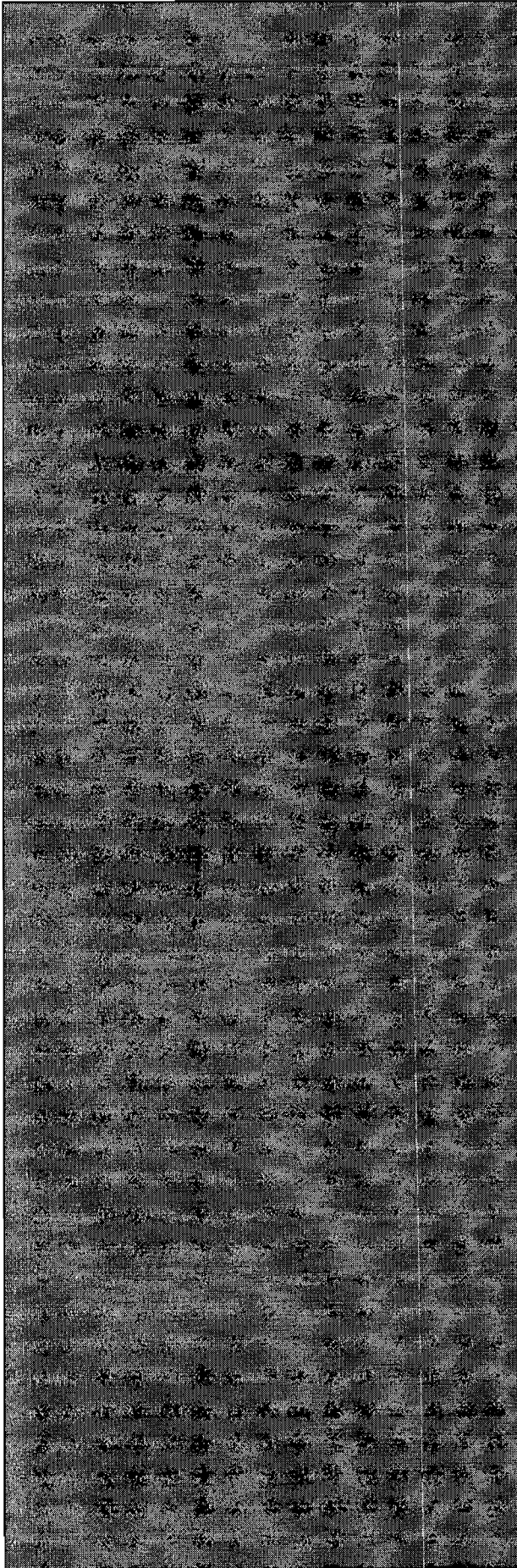
School district lawyers note that special education status entitles students to additional time on standardized testing and free tutoring.

"Parents want anything they think can give their kids an edge," Wenkart said.

The disputes occasionally turn ugly. A Lakewood father who had fought Orange County school officials over the educational plan for his disabled son eventually took two school officials hostage last November before he was shot and killed by police.

In San Bernardino County, parent David Child, frustrated with the San Bernardino City Unified School District's handling of his disabled son, filed complaints against the district with federal and state agencies. The district eventually persuaded a court to slap Child with a restraining order to keep him off school grounds.

Twenty-five years ago, children who were mentally



retarded or afflicted with obvious and severe handicaps were often placed in special schools or institutions where learning was limited. Some remained at home.

Children with learning disabilities were labeled slow, and they often succeeded only if their parents had the wherewithal to hire private tutors.

That all changed with congressional passage of the 1975 law that eventually became known as the Individuals With Disabilities Education Act. It requires public schools to provide the disabled with an "appropriate" education. Congress reauthorized the law two years ago, and new regulations followed.

Vincent Madden, a special education assessment manager for the California Department of Education, concedes that schools still fail to serve special needs children well.

"For the most part, teachers and other staff at local schools are underprepared to deal with students with disabilities," he said.

Dr. Herbert Schreier, head of psychiatry at Children's Hospital in Oakland, said many parents are aghast at the resistance of school districts to provide services their children require.

"Lawyers are desperately needed, because the schools are a disaster area," he said. "We see inner-city kids [with severe learning disabilities] in third grade, and no one has even picked it up."

Several families in the private Bay Area practice of Dr. Deborah Sedberry have retained lawyers because school districts are failing to provide promised services or even assessments, the developmental pediatrician said.

District officials sometimes misrepresent to parents what the law allows in an attempt to hold down costs, Sedberry said. Children are entitled to special education if their ability, measured by an intelligence test, is significantly higher than their performance and they have an identified processing disorder, or if they are diagnosed with any of a variety of disabilities, such as autism, named in the federal law.

After a Bay Area school district finally agreed to assess one of Sedberry's patients for a suspected learning disability, the principal summoned the child's mother to his office, Sedberry said. By law, districts generally must test a child at a parent's request.

"We are going to do this for your child," the principal told her, according to Sedberry. "But we don't want you telling other parents you can get this." The assessment revealed that the girl had learning disabilities, the doctor said.

Tricia Crane, a Santa Monica resident, said she finally withdrew her son, Rhys, 7, from his neighborhood public school last year because the district refused to put him in a special class for children with learning disabilities.

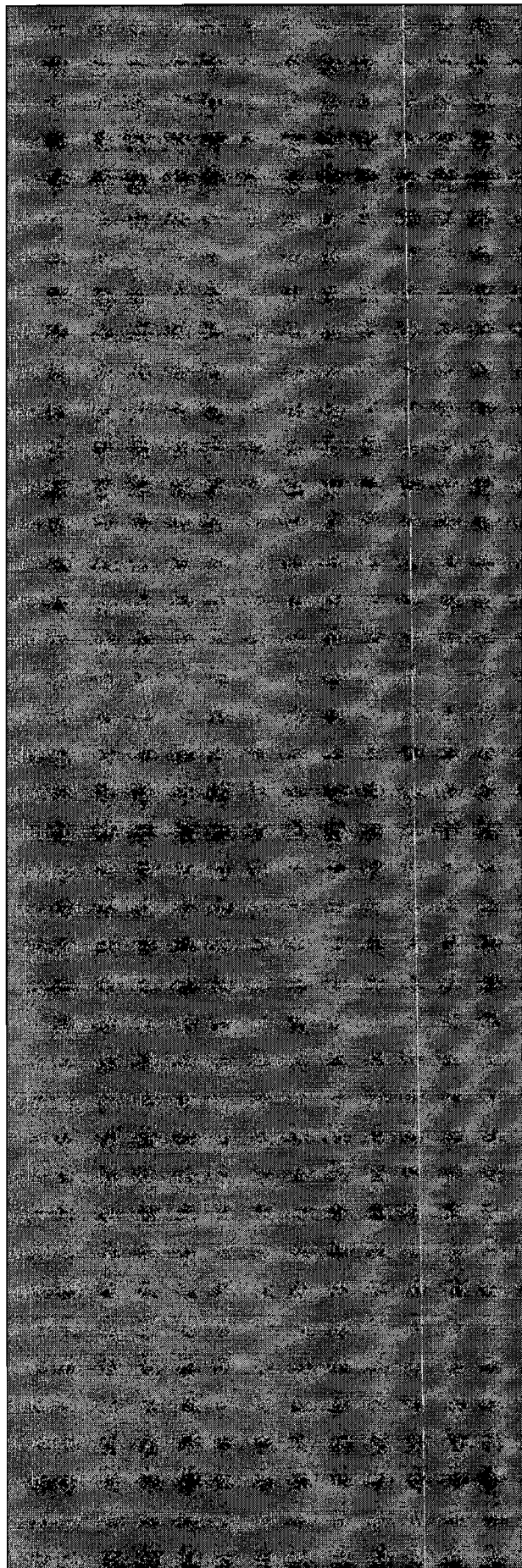
Rhys has multiple learning disabilities, including an auditory processing difficulty. Crane and her husband, a film producer, had spent thousands of dollars on private tutoring, programs and an outside evaluation that she said uncovered numerous mistakes in the school district's assessment.

Only after she hired a lawyer did the school district become more accommodating, she said. With the lawyer present, the district quickly offered her the public school class and a special education therapy she had unsuccessfully begged for the year before, she said.

But the lawyer is attempting instead to get the district to pay the \$26,000 tuition for the private school where Crane said Rhys is now thriving. A district official failed to return telephone calls about the case.

"When people say, 'Why did you end up calling a lawyer?' well, it's an accumulation of insults and condescension from school officials to the very people who know the children the best, their parents," Crane said.

She retained Sherman Oaks lawyer Valerie Vanaman, who



has represented disabled children for more than two decades, first as a lawyer with the nonprofit Children's Defense Fund.

"If you probe deeply enough, the money may not be nearly as much an issue as the fear that if this really worked"--individualized education plans developed with parents--"then we are going to have all these other parents clamoring for the same thing for their children, and not inappropriately so," Vanaman said.

Exodus of Teachers From the Field

The law's growing demands on special education have triggered an exodus of professionals from the field, with the teacher shortage particularly acute for special education instructors, according to state education officials.

Many of the early pioneers in special education have left the field, and special education administrators increasingly have backgrounds in finance rather than education.

One Bay Area teacher left special education last spring because half of her time was spent on paperwork documenting decisions and meetings and in often uncomfortable encounters with parents and their lawyers or advocates, said the teacher, who works in an urban district and agreed to be interviewed only on the condition that her name not be used.

She complained that her district regularly "caves in" to parental demands for fear of expensive litigation. And parents, she said, have learned to "shop around" for a diagnosis that will ensure that their child receives the most services under the law.

"The mother tells me, 'I want my kid to go to this private school,'" said the teacher. "She saw this doctor four or five years ago, starts the kid back in therapy and then the doctor writes a report saying the kid should go to that particular private school" at district expense.

Patty Arvin, a Solano County special education teacher for 22 years, said she has been threatened and intimidated by parents and their lawyers.

"The way I see it," she said, "is they are grieving the loss of a normal child they thought they might have, and they are in a system where there is not enough money. . . . It has become us against them."

Under a recent U.S. Supreme Court decision, school districts must perform medical services when students require them. Arvin said she has fed a student through a tube in his stomach, suctioned tracheae, given children oxygen and administered various kinds of medicine.

In her classroom, she and aides change 18 to 24 diapers a day. "So I am not teaching very much," Arvin said.

Parents of special education students sometimes retain lawyers to protect their children from school suspensions. A special education student whose misbehavior is caused by his disability cannot be disciplined as readily or as severely in California as a general education student.

Orange County's Wenkart said affluent parents of children with "criminal behavior problems" are increasingly pushing to have their children in special education rather than in juvenile detention.

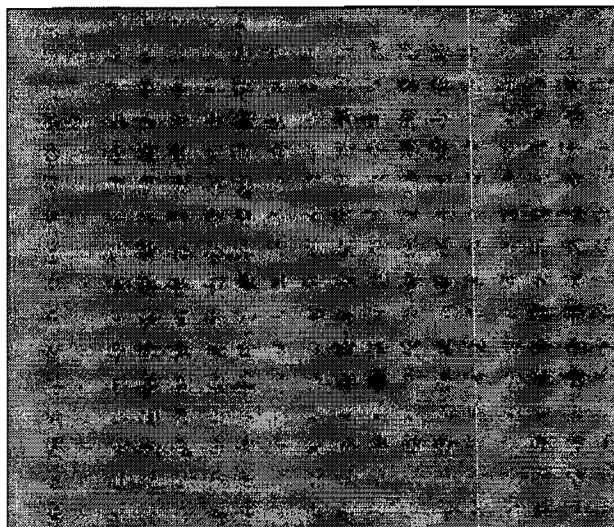
"They say the kids need to be in residential school programs for behavioral modification that cost from \$10,000 to \$100,000 a year," the school lawyer said. "We see a lot of that."

The state's hearing office has twice refused to allow Orange County school officials to transfer two learning-disabled boys to other schools, Wenkart said.

One boy had been sexually harassing another student, and the other had been selling drugs on campus, according to the school lawyer.

"They have really undermined the ability of school districts to maintain safety," he contended.

Sedberry sees the problem from the other side. The



developmental pediatrician said one of her patients has tics--he twitches violently on a frequent basis--and attention deficit disorder.

She cannot give him medicine for the attention problem, however, because it exacerbates his tics. His school has been disciplining him for behavior that stems from his attention problem, she said.

"Where do you draw the line?" she asked. "It is frustrating for me, frustrating for the family and frustrating for the district. I sympathize with them, because they have this boy who is being very disruptive, and it is hard for them to understand he can't control this."

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FUNDING SPECIAL EDUCATION

KEEPING THE PROMISE OF A FEDERAL, STATE AND LOCAL PARTNERSHIP

September, 1999

INTRODUCTION

In 1975 Congress enacted the Education for All Handicapped Children Act, now the Individuals with Disabilities Education Act (IDEA), to ensure equal educational opportunities for children with disabilities. To achieve this goal, the IDEA requires public schools to, among other things, provide disabled children with special education and related services. The federal government also made a commitment to pay for 40 percent of the cost of this special education mandate. That commitment was reaffirmed when the IDEA was reauthorized in 1997 and also when the House of Representatives, with the Senate concurring, passed a Concurrent Resolution (H. Con. Res. 84, May 1999) urging that the federal government meet its obligation to fund the IDEA.

Unfortunately, the federal government has failed to meet its commitment to fund a fair share of the costs of special education for disabled children. Over the years, federal appropriations have averaged only 8 percent of the national per pupil average expenditure, far less than the promised 40 percent. Even with increased funding in each of the last three years, the appropriation for this year was still less than 12 percent.

RISING COSTS OF SPECIAL EDUCATION

The costs of providing special education are increasing. Each year school districts spend 38 cents of each new tax dollar on special education (Economic Policy Institute, 1995). This trend will continue for a number of reasons – the total number of students served by IDEA is rising, health-related expenditures and the use of adaptive technology are areas of high cost increases, and court decisions are moving in the direction of increasing school district responsibilities under the IDEA. The National Center for Educational Statistics (NCES) has determined that, in the aggregate, the cost of special education is 2.1 times the cost of regular education.

IMPACT OF FEDERAL UNDER-FUNDING

The federal under-funding of the IDEA has a particularly harmful impact on California. California continues to experience one of the fastest growing student populations in the nation, and special education pupil counts have been growing about 1.5 times as fast as K-12 enrollment for the past decade.

In accordance with the IDEA, California schools currently provide special education and related services to more than 600,000 students. This amounts to about 11 percent of the state's total K-12 enrollment and is almost a third more than any other state in the nation. The cost of providing special education in California's public schools is approximately \$3.4 billion.

According to the California Department of Education, \$800 million of that cost is borne by local school agencies. California receives only about \$400 million from the federal government and the state covers the remaining cost of over \$2 billion.

Further exacerbating this situation, school agencies in California, unlike those in other states, do not have the authority to increase local revenues that could pay for the unfunded costs of the IDEA mandates. Therefore, to offset the costs of providing special education services, funding must be redirected from other programs.

THE NEED FOR FEDERAL ACTION

Federal support is crucial to addressing the needs of children with disabilities. Our public schools are striving to ensure that all students achieve high standards so that they may succeed in the 21st century. Schools are being held accountable for making sustained progress to meet those high standards. At the same time, schools face increasing challenges based on the number of children in poverty, teacher shortages, and the need to provide modern facilities and smaller class sizes. Meeting these challenges requires a true federal, state and local partnership, and a strong federal investment in public education.

Increased federal funding is necessary to assist states in meeting the obligation to provide special education to disabled students. Using NCES figures, the cost of implementing the IDEA this year was over \$39.4 billion. Based on this figure, the federal obligation of 40 percent would be nearly \$15.7 billion. Basic grant funding to local districts, however, is currently only about \$4.3 billion.

While Congress has increased appropriations over the last few years, these increases are wholly inadequate to reach the commitment of 40 percent funding. Last year, Congress increased IDEA funding by \$500 million. Even assuming special education costs never increase (though in fact we know these costs are rapidly increasing), at that rate it would take the federal government 22 years to reach full funding.

PROPOSAL

For the federal government to do its share to help the nearly six million children that receive special education pursuant to the IDEA, it must provide significant increases in funding over a number of years. Assuming a conservative five percent annual growth rate in special education costs, increasing funding by \$2.1 billion per year for the next 10 years would allow the federal government to fulfill the 40 percent commitment.

As a result of the booming economy there is a huge federal budget surplus this year. The President should use this opportunity to seek a significant increase for special education funding during the fall budget negotiations. Clearly, sufficient funds exist for a \$2.1 billion increase this year. This investment will start progress toward the federal goal of funding its fair share of the cost of implementing the IDEA. To continue this progress, we also urge the President to plan for a bold new investment in special education funding in his budget proposal that will be submitted early next year.

Increased funding for the IDEA should not come at the expense of the Administration's current education initiatives or existing federal programs. We recognize that this means advocating that Congress surpass existing budget spending caps. With a huge budget surplus and the leadership of both parties advocating support for public education as a top priority, the spending caps can and should be surpassed. This critical opportunity to invest in education must not be wasted.

CALIFORNIA SCHOOL BOARDS ASSOCIATION
Federal Special Education Meeting Participants
Monday, September 13, 1999



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