

IMPROVING CARE FOR THE ARMY'S YOUNGEST DEPENDENTS

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Service members can't focus on the mission when they have concerns about a family member's health or education needs.¹

I. Introduction

At the end of 2023, as part of the Army's previous "People First" strategy, the Army touted efforts to increase spouse employment opportunities, streamline moving processes, increase childcare availability, add parental leave entitlements, encourage economic stability through pay raises, improve infrastructure, and support health among the force.² However, increased support for military Families with special

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¹ See Press Release, DEP'T OF DEF., *New Defense Department Policy Standardizes Exceptional Family Member Program Across the Services* (June 23, 2023), <https://www.defense.gov/News/Releases/Release/Article/3437493/new-defense-department-policy-standardizes-exceptional-family-member-program-ac/>.

² Christopher Hurd, *Year in Review: Army's Quality of Life Changes Place People First*, U.S. ARMY NEWS SERVICE (Dec. 6, 2023), https://www.army.mil/article/272178/year_in_review_armys_quality_of_life_changes_place_people_first.

needs is notably lacking from the Army's highlighted achievements during the 2023 calendar year.³ In highlighting the Department of Defense's (DoD's) policy to support Families, Secretary of Defense Lloyd Austin remarked that "[the DoD] is deeply committed to ensuring that family members with exceptional needs have access to superb care, support, and expertise."⁴ This care should specifically address the needs of young children with disabilities.

Congress has recognized the need to support Families of children with special needs for many years, finding that for children from birth through the age of three, "there is an urgent and substantial need . . . to enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay, and to recognize the significant brain development that occurs during a child's first [three] years of life[.]"⁵ Moreover, in April 2023, President Biden issued an executive order, noting that "[e]arly care and education give young children a strong start in life," and "[a]ccess to . . . care is also critical to our national security because it helps ensure the recruitment, readiness, and retention of our military [S]ervice members."⁶ Given the expressly affirmed importance of special education by leaders and policymakers at all levels, the DoD and the Army should increase services and legal support for children with special needs, specifically those under the age of three.

Historical developments in special education law demonstrate Congress's intent to support children with disabilities. Congress promulgated what is now the Individuals with Disabilities Education Act (IDEA) in 1975, a significant statutory advancement to protect the educational rights of children with disabilities.⁷ The protections established in the IDEA were specifically extended by Congress in 1991 and 1994 to children attending schools on a military installation in the United States and overseas, placing responsibility on the Department of

³ *Id.*

⁴ Memorandum from Sec'y of Def. to Senior Pentagon Leadership, Commanders of the Combatant Commands & Def. Agency and Dep't of Def. Field Activities, subject: Strengthening Our Support to Service Members and Their Families 3 (22 Mar. 2023) [hereinafter Strengthening Our Support Memo].

⁵ 20 U.S.C. § 1431(a)(1).

⁶ Exec. Order No. 14,095, 88 Fed. Reg. 24669, § 1 (Apr. 18, 2023).

⁷ See Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, 89 Stat. 773 (amended 1991); see also Individuals with Disabilities Education Act Amendments of 1991, Pub. L. No. 102-119, 105 Stat. 587, § 1 (renaming the Education for All Handicapped Children Act of 1975 the Individuals with Disabilities Education Act).

Defense (DoD) to ensure special education needs were met in certain instances.⁸ In 2009, Congress established the Office of Community Support for Military Families with Special Needs to “enhance and improve [DoD] support around the world for military families with special needs.”⁹ Since then, Congress has mandated improvements to the DoD’s support of Families with special needs annually through the National Defense Authorization Act (NDAA) and continued prioritizing efforts to support special education through annual authorizations.¹⁰ In response to congressional oversight and highlighting issues related to Families with special needs, the DoD has taken significant steps to advance its services and support for dependents with disabilities.¹¹ Recent improvements include mandating the standardization of Exceptional Family Member Programs (EFMPs)¹² across the military services; requiring medical

⁸ See, e.g., Individuals with Disabilities Education Act Amendments of 1991, Pub. L. No. 102-119, 105 Stat. 605, § 24 (amending the Defense Dependents Education Act of 1978 to require IDEA implementation overseas); National Defense Authorization Act for Fiscal Year 1995, Pub. L. No. 103-337, § 351, 108 Stat. 2663, 2727 (1994) (authorizing special education and early intervention on military installations within the United States).

⁹ National Defense Authorization Act for Fiscal Year 2010, Pub. L. No. 111-84, § 563(a)(1), 123 Stat. 2190, 2304 (2009).

¹⁰ See, e.g., *id.*; Ike Skelton National Defense Authorization Act for Fiscal Year 2011, Pub. L. No. 111-383, §§ 582, 582(c), 124 Stat. 4137, 4226 (enhancing “community support for military families with special needs” and authorizing secretaries of the military departments to “establish or support centers on or in the vicinity of military installations under the jurisdiction of such Secretary to coordinate and provide medical and educational services for children with special needs of members of the Armed Forces who are assigned to such installations”); National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, § 574, 125 Stat. 1298, 1427–1428 (2011) (appointing the Director of the Office of Community Support for Military Families with Special Needs to the DoD Military Family Readiness Council); National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, § 714, 126 Stat. 1632, 1803 (expanding evaluation of Tricare Program effectiveness to include “dependents of members on active duty with severe disabilities and chronic health care needs”); Carl Levin and Howard P. ‘Buck’ McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, § 624(a)(1), 128 Stat. 3292, 3403 (2014) (adding survivor benefit plan annuities for special needs trusts); National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, § 578, 130 Stat. 2000, 2144 (2016) (requiring evaluation and reporting on the effectiveness of Exceptional Family Member Programs across the military departments).

¹¹ See Press Release, *supra* note 1 (detailing improvements and standardization for the Exceptional Family Member Program (EFMP) in the areas of identification and enrollment, assignment coordination, Family support, disenrollment, and respite care).

¹² The EFMP model is to “work[] in concert with other military and civilian agencies, provid[ing] a comprehensive, coordinated, multiagency approach for community support,

coordination and documentation for enrollment in the program; ensuring branches use the same criteria to evaluate assignments for Service members who have dependents with special needs and communicating assignment issues; mandating annual contact with Family support providers; providing transparency and guidance for removal from the EFMP; and standardizing, and in some cases increasing, eligibility for respite care.¹³ However, the DoD continues to struggle in many areas to ensure support for Families with special needs.¹⁴ One of the areas most lacking support for individuals and Families with special needs is ensuring care for children with disabilities from birth through the age of three.

Many hurdles for family members receiving special needs care occur within the first few years of life.¹⁵ The laws that govern early intervention services (EIS) and care for children with disabilities under the age of three are complex and vary significantly from State to State.¹⁶ Nevertheless, within each State, there is one statewide standard for eligibility and provision of EIS.¹⁷ Despite the complexity of current laws and support,

housing, medical, educational, and personnel services to Families with special needs.” U.S. DEP’T OF ARMY, REG. 608-75, EXCEPTIONAL FAMILY MEMBER PROGRAM para. 1-6 (27 Jan. 2017) [hereinafter AR 608-75]. The military requires Families to enroll in the EFMP to assist in tracking special needs for the Family and the support required. *Id.* paras. 1-7(a), 1-9.

¹³ Press Release, *supra* note 1.

¹⁴ INSPECTOR GEN., U.S. DEP’T OF DEF., NO. DODIG-2023-102, AUDIT OF THE DoD EXCEPTIONAL FAMILY MEMBER PROGRAM 10–15 (AUG. 1, 2023) (detailing the need for establishing and standardizing performance metrics and data repositories); *see also* 2023 Update: EFMP Standardization, PARTNERS IN PROMISE (June 27, 2023), <https://thepromiseact.org/2023-update-efmp-standardization/> (finding that the DoD’s recent update to the EFMP policy is “underwhelming” and “still fails to address the intersections of EFMP and special education”).

¹⁵ *See* CTR. ON THE DEVELOPING CHILD AT HARVARD UNIV., THE FOUNDATIONS OF LIFELONG HEALTH ARE BUILT IN EARLY CHILDHOOD 5 (2010) (finding that “[e]arly childhood is a time of rapid development in the brain and many of the body’s biological systems that are critical to sound health. When these systems are being constructed early in life, a child’s experiences and environments have powerful influences on both their immediate development and subsequent functioning”).

¹⁶ *See* U.S. GOV’T ACCOUNTABILITY OFF., GAO-24-106019, SPECIAL EDUCATION: ADDITIONAL DATA COULD HELP EARLY INTERVENTION PROGRAMS REACH MORE ELIGIBLE INFANTS AND TODDLERS app. II (2023) [hereinafter GAO-24-106019], <https://www.gao.gov/products/gao-24-106019> (listing the varying standards for EIS eligibility by jurisdiction).

¹⁷ *Id.*; *see also* 20 U.S.C. § 1400(d)(2) (stating the purpose of the Individuals with Disabilities in Education Act to “assist States in the implementation of a statewide,

there is no standard eligibility or application of EIS for military Families and their dependents, who are left to navigate a new EIS program for eligibility and related services each time a Service member moves to a new duty location.¹⁸ Based on current DoD policy limitations, Family members with disabilities under the age of three are limited in receiving early intervention, and the DoD should resolve discrepancies in the policy to expand services for this demographic. Regardless of how the DoD resolves gaps in current policies and regulations, the Army should continue expanding legal support and expertise for Families with special needs.

Part II of this article begins by briefly examining the history of the IDEA and the applicability and implementation of regulations for special education services across the DoD. Part III then evaluates the justification for increasing services and legal support regarding disabilities identified before a child's third birthday. Next, Part IV addresses statutory and regulatory gaps related to early intervention within the military and how the DoD should resolve those gaps. Part V discusses the Fiscal Year 2021 (FY21) National Defense Authorization Act (NDAA) mandate to provide special education-trained attorneys across the DoD and the Army's subsequent actions to satisfy that mandate. Lastly, before concluding, Part VI proposes an expansion of the Army's legal expertise beyond the limited requirements of the NDAA mandate to advise units and organizations more effectively.

II. Background on Special Education Law in the Military

Legal protections in education for children with disabilities, including military dependents, have evolved significantly over the past 50 years in the United States. In September 1973, Congress passed the Rehabilitation Act of 1973, intending to eliminate widespread discrimination against

comprehensive, coordinated, multidisciplinary, interagency system of early intervention services").

¹⁸ While the DoD has a policy for providing EIS to dependents, such programs only exist for those at an installation with a DoD Education Activity school on their installation. See U.S. DEP'T OF DEF., INSTR. 1342.12, PROVISION OF EARLY INTERVENTION AND SPECIAL EDUCATION SERVICES TO ELIGIBLE DoD DEPENDENTS para. 4(a) (June 17, 2015) [hereinafter DoDI 1342.12]. See also *EDIS Locations: CONUS & Territory*, DEFENSE MEDIA ACTIVITY, <https://www.edis.army.mil/EDIS-Locations/Maps/> (last visited Apr. 13, 2025).

individuals with disabilities.¹⁹ Amendments to the Act, subsequently codified in Title 29, United States Code, Chapter 16, Section 504, decree that “[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance”²⁰ Specifically, the Rehabilitation Act of 1973 provided protections against discrimination by school districts.²¹ As this article focuses on increasing support for children under the age of three, it will not specifically address protections afforded to school-age children under the Rehabilitation Act of 1973, Section 504. However, it is helpful to note that this Act ignited educational protections for children with disabilities.²² Only two years later, President Gerald Ford signed the Education for All Handicapped Children Act into law as Public Law 94-142, later renamed the Individuals with Disabilities in Education Act (IDEA), to ensure access to education and improved outcomes for children with disabilities.²³ This section will review the purpose and protections of the IDEA, its applicability to the DoD, and the current implementation of the IDEA within the Army.

¹⁹ Rehabilitation Act of 1973, Pub. L. 93-112, § 2, 87 Stat. 357 (amended 2022) (recognizing the need for disabled individuals to have independence and self-sufficiency and recognizing that the affected population was previously underserved and neglected); see also *Rehabilitation Act 50: Advancing Access and Equity—Then, Now and Next*, U.S. DEP’T OF EDUC. (Sept. 21, 2023), <https://sites.ed.gov/osers/2023/09/celebrating-the-50th-anniversary-of-the-rehabilitation-act-of-1973/> (detailing the purpose, policy, and principles of the Rehabilitation Act of 1973 on the fiftieth anniversary of its enactment).

²⁰ 29 U.S.C. § 794(a).

²¹ See 29 U.S.C. § 794(b)(2)(B) (prohibiting discrimination by “a local educational agency . . . system of career and technical education, or other school system”).

²² See generally *Frequently Asked Questions: Disability Discrimination, General FAQs About Disability Discrimination*, U.S. DEP’T OF EDUC. (Jan. 17, 2025) <https://www.ed.gov/laws-and-policy/civil-rights-laws/disability-discrimination/frequently-asked-questions-disability-discrimination>.

²³ Presidential Statement on Signing the Education for All Handicapped Children Act of 1975, 2 PUB. PAPERS 707 (Dec. 2, 1975).

A. Purpose and Protections of the Individuals with Disabilities in Education Act

The primary purposes of the IDEA, building on previous legislation,²⁴ are:

(1)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; . . . (2) to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families; (3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities . . . ; and (4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.²⁵

The IDEA encourages a “whole-school approach” to address the learning and behavioral needs of children without having to “label children as disabled.”²⁶ Overall, the IDEA comprises three main sections: Part A provides general definitions and applicability; Part B provides requirements for the education of school-aged children; and Part C provides the requirements to support special education services for children between birth and a child’s third birthday.²⁷ Congress enacted the IDEA to codify the rights of children with disabilities and their parents and

²⁴ See 20 U.S.C. § 1400(c)(3) (noting that “[s]ince the enactment and implementation of the Education for All Handicapped Children Act of 1975, this chapter has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public education [(FAPE)] and in improving educational results for children with disabilities”); see also 20 U.S.C. § 1400(c)(4) (acknowledging that “the implementation of this chapter has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities”).

²⁵ 20 U.S.C. § 1400(d).

²⁶ 20 U.S.C. § 1400(c)(5)(F).

²⁷ See generally 20 U.S.C. ch. 33.

assist States in the implementation of services for those families. In addition to funding educational services provided to the children, the IDEA seeks to support parents and educators to achieve maximum success.²⁸ The majority of support provided to children with disabilities occurs during the school-age years, from the time they reach the age of three until they turn 21 years of age.

One of the hallmarks of the IDEA, as identified in Part B, is that, between the ages of three and 21, children with disabilities must have the opportunity to receive “a free appropriate public education [(FAPE)] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living[.]”²⁹ The established goal for States receiving funds through the IDEA is to provide a “full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal.”³⁰ In support of these goals, the IDEA requires that each child have an individualized education program (IEP) detailing the child’s specific needs and how the school plans to meet those needs.³¹ If successful, a child

²⁸ 20 U.S.C. § 1400(d)(3) (aiming “to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services”).

²⁹ 20 U.S.C. § 1400(d)(1)(A). A FAPE includes “special education and related services . . . provided at public expense, under public supervision and direction, and without charge[.]” that meet State educational standards at a preschool, elementary, or secondary school, and the requirements of an individualized education plan (IEP). 20 U.S.C. § 1401(9).

³⁰ 20 U.S.C. § 1412(a)(2).

³¹ 20 U.S.C. § 1412(a)(4). IEPs are established in accordance with 20 U.S.C. § 1414(d) to assess a child’s disability and the impact of that disability on a child’s education. 20 U.S.C. § 1414(d)(1)(A)(i). In establishing an IEP, the program determines “measurable annual goals, including academic and functional goals,” to meet that child’s educational needs and make progress in the general education program. 20 U.S.C. § 1414(d)(1)(A)(i)(II). An IEP may include a requirement for the school to provide related services, including:

transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling,

will “be involved in and make progress in the general education curriculum[.]”³² However, the need to establish the support required to reach these goals often begins even before a child reaches the age of three.

Another hallmark of the IDEA, as detailed in Part C of the IDEA, is the provision of EIS to infants and toddlers with disabilities.³³ The goal of EIS, similar to the requirements for children receiving special education through implementing an IEP, is to provide “statewide, comprehensive, coordinated, multidisciplinary, interagency” services.³⁴ Congress found that EIS would minimize developmental delays, reduce societal costs, maximize independent living, and enhance the capacity of parents and States to support infants and toddlers with disabilities.³⁵ Recognizing the significance and benefits of early intervention in development, Congress included provisions within Part C of the IDEA for financial assistance to the States to ensure the identification of needs and provision of services to children with disabilities from birth until their third birthday.³⁶ Similar to the provisions for support of a school-aged child, States are encouraged and supported in identifying disabilities before a child’s third birthday and supporting those children and families through the provision of EIS.³⁷ Through the IDEA, states are encouraged to “expand opportunities for

orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

20 U.S.C. § 1401(26)(A).

³² 20 U.S.C. § 1414(d)(A)(i)(II)(aa).

³³ 20 U.S.C. § 1400(d)(2).

³⁴ 20 U.S.C. § 1431(b)(1); *see also* 20 U.S.C. § 1412 (a)(11–12) (noting the requirements for states to conduct interagency coordination for school-age services).

³⁵ 20 U.S.C. § 1431(a).

³⁶ *See* 20 U.S.C. § 1431(b); *see also* 20 U.S.C. § 1432(5) (defining “infant or toddler with a disability” as a child “under 3 years of age who needs early intervention services” based on developmental delays, physical or mental diagnoses, or at-risk infants and toddlers).

³⁷ Early intervention services (EIS) include direct intervention services by a provider, including, but not limited to, physical therapy, occupational therapy, speech therapy, or special instruction. 20 U.S.C. § 1432(4)(E). EIS is designed to support the family and also includes “family training, counseling, and home visits” and “social work services[.]” which, in most instances, means a provider will come to the home and work with the family to implement therapy techniques and encourage maximum development for the child. *Id.* *See also Sec. 303.13 Early Intervention Services*, DEP’T OF EDUC. (May 2, 2017), <https://sites.ed.gov/idea/regs/c/a/303.13>.

children under three years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.”³⁸ In determining the Federal, State, and other agency requirements, it is essential to understand the applicability of the IDEA across the United States.

The IDEA contains limitations in both time and geography. With regard to timing, the IDEA requires periodic re-authorization by Congress.³⁹ From a geographic perspective, the IDEA applied only to the

³⁸ 20 U.S.C. § 1431(b)(4). Under this subchapter, EIS includes:

developmental services that— (A) are provided under public supervision; (B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees; (C) are designed to meet the developmental needs of an infant or toddler with a disability, as identified by the individualized family service plan team . . . (D) meet the standards of the State in which the services are provided, including the requirements of this subchapter; (E) include— [family training, counseling, and home visits; special instruction; speech-language pathology and audiology services, and sign language and cued language services; occupational therapy; physical therapy; psychological services; service coordination services; medical services only for diagnostic or evaluation purposes; early identification, screening, and assessment services; health services necessary to enable the infant or toddler to benefit from the other early intervention services; social work services; vision services; assistive technology devices and assistive technology services; and transportation and related costs that are necessary to enable an infant or toddler and the infant’s or toddler’s family to receive another service described in this paragraph; (F) are provided by qualified personnel[] . . .; (G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and (H) are provided in conformity with an individualized family service plan adopted in accordance with section 1436 of this title.

20 U.S.C. § 1432(4).

³⁹ Ralph M. Gerstein & Lois Gerstein, *Parents' or Student's Proof in Action for Educational Services or Tuition Reimbursement Under the Special Education Laws*, 93 AM. JUR. PROOF OF FACTS 3d 1 §4 (2007) (database updated Sept. 2023). The last re-authorization of IDEA occurred in November 2004, with an amendment to IDEA in 2015 through Public Law 114-95, Every Student Succeeds Act. *About IDEA*, U.S. DEP'T OF EDUC., <https://sites.ed.gov/idea/about-idea> (last visited June 12, 2025).

50 States, outlying areas, and freely associated States at its inception.⁴⁰ However, when Congress reauthorized the legislation in 1991, the updates provided specific requirements for the DoD to meet various statutory provisions related to special education.⁴¹ Specifically, Congress amended Section 1409(c) of the Defense Dependents' Education Act of 1978, applying the IDEA to all schools operated by the Department of Defense overseas and requiring the DoD to provide comparable early intervention services to eligible infants and toddlers overseas.⁴² In 1994, Congress amended Chapter 108 of Title 10, United States Code, to authorize DoD domestic dependent elementary and secondary schools (DDESS) to provide early intervention services and special education.⁴³ To satisfy its statutory obligations, the DoD has since taken numerous steps to ensure compliance with the IDEA requirements.

B. Applicability of the Individuals with Disabilities in Education Act to the Department of Defense

The DoD most recently published DoD Instruction 1342.12 (DoDI 1342.12) on June 17, 2015, implementing the DoD policy to provide early intervention and special education services for eligible DoD dependents.⁴⁴ DoDI 1342.12 provides overarching guidance and policy regarding

⁴⁰ See, e.g., 20 U.S.C. § 1411(a)(1) (authorizing “grants to States, outlying areas, and freely associated States”); 20 U.S.C. § 1443(a)(1) (identifying the allocation of funds available to outlying areas and freely associated states for EIS implementation). Under the definitions in Part A, outlying areas include “the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.” 20 U.S.C. § 1401(22).

⁴¹ Individuals with Disabilities Education Act Amendments of 1991, Pub. L. No. 102-119, 105 Stat. 605, § 24 (amending the Defense Dependents Education Act of 1978). The amendment also expanded applicability to the Secretary of the Interior to provide services for Indian tribes and programs affiliated with the Bureau of Indian Affairs. See, e.g., 20 U.S.C. § 1411(a)(1) (authorizing grants to states, outlying areas, freely associated states, and the Secretary of the Interior); 20 U.S.C. § 1443(b) (noting the availability of funds to the Secretary of the Interior for tribes, tribal organizations, or consortia in implementing EIS). “The term ‘Indian tribe’ means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation” 20 U.S.C. § 1401(13).

⁴² Individuals with Disabilities Education Act Amendments of 1991, Pub. L. No. 102-119, 105 Stat. 605, § 24.

⁴³ National Defense Authorization Act for Fiscal Year 1995, Pub. L. No. 103-337, § 351, 108 Stat. 2727 (1994).

⁴⁴ DoDI 1342.12, *supra* note 18.

implementing the IDEA within the DoD Education Activity (DoDEA) Schools and providing early intervention and related services on DoD installations, with specific implementing instructions separately detailed in DoD Manual 1342.12 (DoDM 1342.12).⁴⁵

1. School-Aged Implementation

Overall, the IDEA implementation within the DoDEA intends to mirror the implementation in any state-provided schooling and ensure that DoD dependents receive the same educational guarantees. The DoD implements similar responsibilities and programs within the DoD to ensure school-age children receive a FAPE, as detailed in Enclosure 4 of DoDM 1342.12.⁴⁶ The manual authorizes referral for evaluation by either a parent or teacher.⁴⁷ The manual also requires “child-find activities to locate, identify, and screen all children who are entitled to enroll in DDESS or in [DoDEA schools overseas] . . . who may require special education and related services.”⁴⁸ The school then conducts an assessment and evaluation of the child’s educational needs, followed by an eligibility determination and the development of an IEP based on the standards outlined in the IDEA, with many of the same procedural safeguards.⁴⁹ The DoD takes a similar approach to ensure that special education services and

⁴⁵ U.S. DEP’T OF DEF., MANUAL 1342.12, IMPLEMENTATION EARLY INTERVENTION AND SPECIAL EDUCATION SERVICES TO ELIGIBLE DoD DEPENDENTS (June 17, 2015) [hereinafter DoDM 1342.12]. Department of Defense Education Activity (DoDEA) schools also include schools operated under the oversight of DoDEA, including Domestic Dependent Elementary and Secondary Schools (DDESS) and Department of Defense Dependent Schools (DoDDS). *See id.* para. 2(a)(3).

⁴⁶ *See id.* at encl. 4; *see also id.* at encl. 2, para. 3(b) (requiring the Director, DoDEA, to ensure “a [FAPE] and procedural safeguards in accordance with Reference (b), the IDEA and [DoDM 1342.12] to children with disabilities who are entitled to enroll in DoDEA schools”)

⁴⁷ *Id.* at encl. 4, paras. 4–5.

⁴⁸ *Id.* at encl. 4, para. 2(a)(1).

⁴⁹ *Id.* at encl. 4, paras. 6–8. DoDM 1342.12 requires education with non-disabled children to the maximum extent appropriate and requires schools to provide services in the least restrictive environment. *See id.* at encl. 4, para. 10. The manual also provides protections for the student concerning the provision of services in an extended school year. *See id.* at encl. 4, para. 11. DoDM 1342.12 also places specific limitations on discipline administration for children with disabilities, with specific procedural safeguards for parents concerning disciplinary actions. *See id.* at encl. 4, para 12.

protections are available to children and Families receiving early intervention services on eligible DoD installations.

2. *Infant and Toddler Implementation*

Department of Defense Manual 1342.12 recognizes the “urgent and substantial need” to provide early intervention services in accordance with the IDEA and details requirements for providing those services in Enclosure 3.⁵⁰ Under implementing regulations and the IDEA, the Secretaries of the Military Departments must “[e]stablish educational and developmental intervention services (EDIS) to ensure infants and toddlers with disabilities are identified and provided [early intervention services] where appropriate”⁵¹ The manual requires Military Departments to implement, at a minimum, geographic child-find and public awareness programs related to the provision of early intervention services and authorizes referral of infants and toddlers to EDIS with parental consent and, in some limited circumstances, without consent.⁵² The EDIS program is responsible for screening children after referral and determining whether an assessment and evaluation are necessary.⁵³ Children who meet the screening criteria are assessed and evaluated by a multidisciplinary team

⁵⁰ *Id.* at encl. 3, para. 1.

⁵¹ DoDI 1342.12, *supra* note 18, at encl. 2, para. 4(a).

⁵² DoDM 1342.12, *supra* note 45, at encl. 3, para. 2. Referrals to Educational and Developmental Intervention Services (EDIS) do not require parental consent when an infant or toddler under three years of age is involved in a substantiated case of child abuse, involved in a substantiated case of child neglect, affected by illegal substance abuse, or experiencing withdrawal symptoms from prenatal drug exposure. DoDM 1342.12, *supra* note 45, at para. 2(b). Child-find is defined as:

[a]n outreach program used by DoDEA, the Military Departments, and the other DoD Components to locate, identify, and evaluate children from birth to age 21, inclusive, who may require EIS or special education and related services. All children who are eligible to attend a DoD school under sections 921-932 of Reference (b) or Reference (c) fall within the scope of the DoD child-find responsibilities. Child-find activities include the dissemination of information to Service members, DoD employees, and parents of students eligible to enroll in DoDEA schools; the identification and screening of children; and the use of referral procedures.

DoDI 1342.12, *supra* note 18, at glossary, part II.

⁵³ DoDM 1342.12, *supra* note 45, at encl. 3, para. 2(e).

to determine the child's level of functioning in cognitive development, physical development, communication development, social or emotional development, and adaptive development to identify the services required to address the child's needs in those areas.⁵⁴ In the event a child requires services, EDIS develops an individualized Family service plan (IFSP) detailing the developmental levels, the Family's resources, priorities, and concerns, measurable desired results or outcomes, the specific early intervention services necessary, and the natural environments in which services will be provided, among other details.⁵⁵ While the DoD has taken measures to ensure early intervention services, similar to the aims of providing special education services to school-age children, other considerations may impact whether the DoD may provide services at a given installation.

3. *Jurisdictional Limitations*

In some instances, Families living on a military installation may depend on the DoD to provide EIS based on jurisdictional limitations. States have obligations and funding under the IDEA to provide services to individuals living within the State.⁵⁶ However, while the clear language of the IDEA explicitly requires States to provide special education services to "Indian infants and toddlers with disabilities . . . residing on a reservation geographically located in the State," the statute is silent regarding State obligations to provide similar services for Families residing on federal military installations.⁵⁷ Nothing in the IDEA prohibits States from providing such services to Families residing on a military installation geographically located in the State.⁵⁸ However, because services on a military installation are not explicitly required, a Service

⁵⁴ DoDM 1342.12, *supra* note 45, at encl. 3, para. 3.

⁵⁵ DoDM 1342.12, *supra* note 45, at encl. 3, para. 6. Based on the language of the IDEA, there are also procedural safeguards, similar to those for children on an IEP, in place for parents of an infant or toddler eligible for early intervention services. *See* DoDM 1342.12, *supra* note 45, at encl. 3, para. 9.

⁵⁶ 20 U.S.C. § 1434(1) (requiring state assurances that EIS are "available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities . . . residing on a reservation geographically located in the State, infants and toddlers who are homeless children . . . and infants and toddlers with disabilities who are wards of the State").

⁵⁷ *Id.*

⁵⁸ *Id.*

member residing on a federal installation may not benefit from state legislation regarding special education services on the installation.⁵⁹

A state may not be obligated to provide the same services depending on the type of legislative jurisdiction applicable to that installation.⁶⁰ The Army outlines and defines the four types of federal legislative jurisdiction in Army Regulation 405-20, each potentially impacting the provision of special education services on military bases.⁶¹ In instances of exclusive federal legislative jurisdiction, responsibility may fall solely on the federal government to provide special education services for Families that live in installation housing.⁶² In this example, a child who is two years old and lives on an exclusive jurisdiction military installation may not be eligible to receive EIS through the state because they live on a federal installation, and the military is then authorized, but not required, to provide such

⁵⁹ U.S. DEP'T OF ARMY, REG. 405-20, FEDERAL LEGISLATIVE JURISDICTION para. 4(a) (21 Feb. 1974) [hereinafter AR 405-20].

⁶⁰ See 20 U.S.C. § 1434 (requiring a statewide system of services for individuals in the state, but not explicitly requiring services for individuals residing on federal property within the state).

⁶¹ AR 405-20, *supra* note 59, para. 3. The four types of jurisdiction are exclusive legislative jurisdiction, concurrent legislative jurisdiction, partial legislative jurisdiction, and proprietary interest. *Id.* Under exclusive federal legislative jurisdiction, Congress provides all legislation, the Federal Government provides all law enforcement, and the state has no obligation to provide governmental services such as sewage, trash removal, or road maintenance. *Id.* at para. 4(a).

In some States residents on areas under exclusive legislative jurisdiction may be denied many of the important rights and privileges of a citizen of the State concerned, such as the right to vote and to have access to State courts. The language of the State statutes generally governs the remaining degree of State obligation where exclusive Federal legislative jurisdiction exists over an area.

Id. Under concurrent legislative jurisdiction, state and federal laws apply, and both entities may punish criminal conduct; most often, the state reserves the right to tax residents, and the state exercises regulatory powers when not impeding federal functions. *Id.* para. 4(b). With partial legislative jurisdiction, the state enacts, executes, and enforces laws reserved by the state as if the Federal Government has no jurisdiction. *Id.* para. 4(c). In contrast, the federal government enacts, executes, and enforces laws granted without reservation by the state to the federal government as if under exclusive federal legislative jurisdiction. *Id.* In some instances of partial legislative jurisdiction, the state may reserve concurrent jurisdiction over certain powers. *Id.*

⁶² See *id.* at para. 4(a) (noting that the language of state statutes will dictate state obligations in areas of exclusive federal jurisdiction).

services.⁶³ However, when concurrent jurisdiction, partial jurisdiction, or a proprietary interest exists, the state and federal government may be responsible for providing special education services.⁶⁴

Since AR 405-20 was implemented in 1974, the Department of the Army policy has been to obtain only proprietary interest in acquired land, rather than exclusive, concurrent, or partial jurisdiction.⁶⁵ When only a proprietary interest exists, “[t]he United States exercises no legislative jurisdiction. The Federal Government has only the same rights in the land as does any other landowner.”⁶⁶ However, it is still important to understand the federal government’s responsibility to provide special education services on land previously purchased. The federal government last developed an inventory of installations possessing exclusive federal jurisdiction in 1962, so each installation must be evaluated on a case-by-case basis.⁶⁷ In instances of exclusive federal jurisdiction, states cannot enforce or execute legislation on an installation, exacerbating the burden on the military to provide special education services.⁶⁸

⁶³ See 10 U.S.C. § 2164(a) (granting authority to provide educational programs when state programs are not available); *see also, e.g.*, 10 U.S.C. § 2164(f)(B) (granting substantive and procedural rights to infants and toddlers with disabilities); 10 U.S.C. § 2164(b) (providing guiding factors to determine whether to establish a DoDEA school, including: “(A) The extent to which such dependents are eligible for free public education in the local area adjacent to the military installation[; and] (B) [t]he extent to which the local educational agency is able to provide an appropriate educational program for such dependents[.]” but failing to address any criteria to determine whether appropriate EIS are provided and available).

⁶⁴ See AR 405-20, *supra* note 59, para. 4(b) (stating that “[t]he regulatory powers of the State may be exercised [in a concurrent jurisdiction area], but not in such a manner as to interfere with Federal functions”).

⁶⁵ *Id.* para. 5.

⁶⁶ *Id.* para. 4(d).

⁶⁷ JONATHAN M. GAFFNEY & MAINON A. SCHWARTZ, CONG. RSCH. SERV., R47291, POTENTIAL ENFORCEMENT OF STATE ABORTION LAWS ON FEDERAL PROPERTY 2 (2022) (citing GEN. SERVS. ADMIN., INVENTORY REPORT ON JURISDICTIONAL STATUS OF FEDERAL AREAS WITHIN THE STATES AS OF JUNE 30, 1962 (1964), <https://publiclandjurisdiction.com/wp-content/uploads/2020/01/JURISD1.pdf>).

⁶⁸ AR 405-20, *supra* note 59, para. 4(a); *see also* Individuals with Disabilities Education Act Amendments of 1991, Pub. L. No. 102-119, 105 Stat. 605, § 24 (recognizing the need for special education services provided by the Federal Government for military dependents).

C. Current Implementation of the Individuals with Disabilities in Education Act within the Army

Department of Defense Instruction 1342.12 mandates that the Army provide special education services and early intervention.⁶⁹ The IDEA is implemented on Army installations by two leading agencies: for school-aged children with special needs, the DoDEA is responsible for providing special education and related services;⁷⁰ for children under the age of three, EDIS programs are managed and operated by the military treatment facilities (MTFs) and provide EIS.⁷¹

1. School-Aged Implementation

Department of Defense Instruction 1342.12 requires the DoDEA to provide special education services within the Army. DoDEA follows these guidelines at each Army installation and is “committed to promoting inclusive education, which is defined as the participation of all students, including those with disabilities, limited English proficiency, identified gifts and talents, and other special needs in the general education program, as appropriate.”⁷² For students transferring into a DoDEA school, the Military Interstate Compact enables and guarantees that the school will continue to implement any previous IEPs until it conducts a new evaluation and subsequently establishes a new IEP.⁷³ Due to the DoD’s oversight and responsibility for the special education implementation of school-aged children, the Army focuses less on providing services and more on supporting Families navigating the school systems.

The responsibility to manage and oversee special education in DoDEA schools is at the DoD level, and the Army supports implementation with school liaison officers and other support, as needed, from the Installation

⁶⁹ DoDI 1342.12, *supra* note 18, paras. 1(a)(1), 1(a)(3).

⁷⁰ *See id.* encl. 2, para. 3.

⁷¹ *See id.* para. 4 (placing EDIS responsibility on Secretaries of the Military Departments); *see also* U.S. ARMY MEDICAL COMMAND, REG. 40-53, EDUCATIONAL AND DEVELOPMENTAL INTERVENTION SERVICES: EARLY INTERVENTION SERVICES para 1-9(a) (31 Jan. 2014) [hereinafter MEDCOM REG. 40-53] [note that access to this regulation requires a DoD Common Access Card].

⁷² *Information for Parents*, DEP’T OF EDUC., <https://www.dodea.edu/education/student-services/special-education/information-parents> (last visited June 12, 2025).

⁷³ U.S. DEP’T OF DEF., INSTR. 1342.29, INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN encl. 4, para. 2(b)(3)(a) (Jan. 31, 2017).

or Garrison Command.⁷⁴ School liaison officers assist parents in navigating resources for their children, including providing “information about the local educational options and enrollment processes” as well as answering questions regarding special education.⁷⁵ While this support model is also present for infant and toddler implementation of the IDEA, the Army has increased responsibilities in ensuring it provides EIS for military Families on an installation.

2. *Infant and Toddler Implementation*

Department of Defense Instruction 1342.12 and the related manual provide only general guidance to the military departments regarding EIS, which the military departments implement through additional service-specific regulations.⁷⁶ Department of Defense Instruction 1342.12 requires that military departments “[p]rovide EIS to infants and toddlers with disabilities and their families, and related services to children with disabilities as required by [the] Instruction at the same priority that medical care is provided to active duty military members.”⁷⁷ While no Army Regulation specifically addresses special education services, the Army Medical Command published Medical Command Regulation 40-53 (MEDCOM Reg. 40-53), which defines requirements and instructs commands on implementing EIS.⁷⁸

⁷⁴ School liaison officers are part of an installation morale, welfare, and recreation (MWR) program. U.S. DEP’T OF ARMY, REG. 215-1, FEDERAL LEGISLATIVE JURISDICTION para. 8-15(a)(1) (24 Sept. 2010). MWR services fall under the management and supervision of the Garrison Commander. *Id.* para. 2-4(b).

⁷⁵ *When do I Need and SLO*, ARMY MWR, <https://www.armymwr.com/School-support/commanders-1/when-do-i-need-slo> (last visited Apr. 13, 2025).

⁷⁶ See DoDI 1342.12, *supra* note 18, encl. 2, paras. 3(b), 4(a) (noting that the Director, DoDEA, is responsible for evaluating special education needs and providing a FAPE for eligible children, while Secretaries of the Military Departments are individually responsible for establishing programs and providing EIS where appropriate). There are no service-specific regulations for special education because the DoD provides all school-age services, which are regulated by DoDM 1342.12. See *generally id.* para. 2(a)(3) (applying the policies and requirements to “[a]ll schools operated under the oversight of the [DoDEA] . . .”).

⁷⁷ *Id.* encl. 2, para. 4(e).

⁷⁸ See *generally* MEDCOM REG. 40-53, *supra* note 71. DoDI 1342.12 requires Secretaries of the Military Departments to establish “educational and developmental intervention services (EDIS) to ensure infants and toddlers with disabilities are identified and provided EIS where appropriate . . .” DoDI 1342.12, *supra* note 18, encl. 2 at para. 4(a).

Through the Army model, the MTF provides EIS as the lead agent, working with other community agencies to ensure Families obtain necessary services.⁷⁹ Specifically, the Army EIS program intends to provide “early childhood special education and educationally related allied health services pursuant to IDEA . . .” providing services in “the child’s natural environment—including homes, schools, day care facilities, or other settings where young children typically spend their time.”⁸⁰ Ultimately, MEDCOM Reg. 40-53 places responsibility on the MTF Commanders to ensure installations correctly implement DoDI 1342.12 and provide EIS.⁸¹

While the MTF Commander takes responsibility for implementing EIS on military installations, it is clear from MEDCOM Reg. 40-53 that several other entities must be involved. At a minimum, the regulation contemplates potential mediation, with mediators not employed by the MTF, to resolve disputes in the EIS provision.⁸² MEDCOM Reg. 40-53 also encourages the MTF to coordinate and incentivize parent training, partnership activities, and support groups with the installation Child Youth School & Services organization or other local support groups.⁸³ In order to achieve these ends, the regulation contemplates using memorandums of agreement or understanding between various organizations and entities engaging in partnering activities.⁸⁴ The provision of EIS on an installation requires complex coordination; whether an entity is on or off the installation, there appear to be significant occasions for friction both for the installation and Families.⁸⁵ Navigating these services can be time-

⁷⁹ MEDCOM REG. 40-53, *supra* note 71, para. 2-1 (noting that the military treatment Facility (MTF) will take the lead but coordinate with other organizations, including Army Community Services and Child Development Services).

⁸⁰ *Id.* para. 2-2.

⁸¹ *Id.* para. 1-9(c). While installation MTFs theoretically monitor and implement services, the EDIS website currently lists only nine locations within the continental United States that coordinate the provision of EIS for eligible military dependents. See *EDIS Locations: CONUS & Territory*, DEFENSE MEDIA ACTIVITY, <https://www.edis.army.mil/EDIS-Locations/Maps/> (last visited Apr. 13, 2025).

⁸² MEDCOM REG. 40-53, *supra* note 71, at para. 4-1(b).

⁸³ *Id.* at para. 4-2(a). The regulation also suggests coordinating with spouse associations and morale, welfare, and recreation (MWR) programs to subsidize activities and events for affected populations. *Id.* para. 4-2(b).

⁸⁴ *Id.* para. 4-3(a).

⁸⁵ Appendix G outlines a detailed process for dispute resolution to resolve inevitable friction in the execution of services, encouraging mediation but with an opportunity for

consuming and stressful, ultimately detracting from the purpose of the IDEA and the Army mission.

III. Importance of Legal Support for Individuals Providing Care and Education for Infants and Toddlers with Disabilities

Improving care and legal support for infants and toddlers with disabilities is critical to support Army quality of life initiatives.⁸⁶ First, it is essential to note that efforts to support military Families enrolled in EFMP are necessary steps toward improving early intervention outcomes for children. Additionally, increased support for children with Special needs directly aligns with the Army's recruiting and retention efforts.⁸⁷ Lastly, increased support for Families with special needs ensures that the Army's recent increased childcare needs align with increased support for EFMP Families.

A. Early Intervention Improves Outcomes for Children and Society

Some of the most significant impacts of increased support, including legal support, for early intervention are the impacts on a child's development and decreased burdens on society. The DoD must remain committed to lessening these burdens. As stated by Congress in the findings of the IDEA:

[T]here is an urgent and substantial need [] to enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay, and to

legal hearings requiring the calling of witnesses, evidence presentation, and argument. *Id.* at app. G. While the legal support may come from outside of the installation administrative law office, it is crucial for advising attorneys to understand the complexity of providing EIS.

⁸⁶ See *Who We Are: The Army's Vision and Strategy*, U.S. ARMY, <https://www.army.mil/about/> (last visited Apr. 13, 2025). "Recognizing that our Soldiers, Civilians and families should have the best quality of life possible, the Army is reviewing the full range of its care, support, and enrichment programs, with an initial focus upon: housing and barracks, healthcare, childcare, spouse employment and permanent change of station moves." *Id.*

⁸⁷ See *Family Life*, U.S. ARMY, <https://www.goarmy.com/army-life/family-living.html> (last visited June 12, 2025) (highlighting the benefits for Family members and care placed on Families by the Army).

recognize the significant brain development that occurs during a child's first 3 years of life; [and . . .] to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age[.]⁸⁸

Overall, a child's early experiences may have lifelong impacts on their development and function.⁸⁹ While many specific outcomes for a child are difficult to measure due to the disparity in disabilities upon entrance into early intervention,⁹⁰ participating families report perceived improved outcomes.⁹¹ Beyond direct, measurable benefits for the children these

⁸⁸ 20 U.S.C. § 1431(a)(1–2). The need to enhance development and lessen burdens were two among five key findings, the others of which include:

(3) to maximize the potential for individuals with disabilities to live independently in society; (4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities; and (5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, particularly minority, low-income, inner city, and rural children, and infants and toddlers in foster care.

20 U.S.C. § 1431(a)(3–5).

⁸⁹ See CTR. ON THE DEVELOPING CHILD AT HARVARD UNIV., *supra* note 15.

⁹⁰ See KATHLEEN HEBBELER ET AL., EARLY INTERVENTION FOR INFANTS AND TODDLERS WITH DISABILITIES AND THEIR FAMILIES: PARTICIPANTS, SERVICES, AND OUTCOMES 3-14 to 3-15 (2007) (following from a 10-year evaluation of participants in early intervention, “the strongest predictors of health status at 36 months were health status at [early intervention] entry. . . .”); see also *id.* at 3-15 to 3-24 (evaluating outcomes in overall health and functioning of vision, hearing, use of limbs, and communication).

⁹¹ *Id.* at 3-15 (“76% of families indicated that [early intervention] had a lot of impact [on their child], with another 20% indicating some impact, and only 4% indicating no impact.”). Another study evaluating the outcomes of EIS on families found that:

parents perceived many positive family outcomes at the end of early intervention. Most reported that their family was better off as a result of the help and information received. Parents felt competent in their parenting role as well as in their ability to work with professionals and advocate for services. . . . Most were hopeful about the future and expected that their child's life situation and that of their family would be excellent or very good.

programs serve, there are significant societal benefits from promoting and supporting EIS programs.

Data suggests there are many socioeconomic benefits achieved by supporting early intervention,⁹² even without considering the potential impacts of disability, increased lifelong academic success, improved behavior and emotions, improved health, and lessened burdens on the welfare and labor systems stem from early intervention.⁹³ One study of early intervention benefits determined that “the estimates of benefits per child served, net of program costs, range from about \$1,400 per child to nearly \$240,000 per child.”⁹⁴ In addition to the direct benefits to children and subsequent societal benefits, increasing legal support for EFMP Families directly supports the Army’s strategic goals.

B. Supporting the Army’s Retention and Readiness Efforts

The Army has faced significant recruiting shortfalls in the past year, and supporting Army Families will help encourage recruitment and retention moving forward.⁹⁵ Before 2021, the Army had no formal survey process or data to understand why Soldiers were leaving the military.⁹⁶ However, since the launch of the Department of the Army Career Engagement Survey (DACES) in 2021, issues related to Family support

Donald B. Bailey, Jr, et al., *Thirty-Six-Month Outcomes for Families of Children Who Have Disabilities and Participated in Early Intervention* 116 PEDIATRICS 1346, 1351 (2005).

⁹² See GAO-24-106019, *supra* note 16, at 30 (finding that “[p]roviding early intervention through support and services is not only required by IDEA, but is also widely recognized as cost effective”).

⁹³ See RAND LABOR AND POPULATION, PROVEN BENEFITS OF EARLY CHILDHOOD INTERVENTIONS, RB-9145-PNC 2 (2005) (citing findings that early intervention provided benefits in “cognition and academic achievement, behavioral and emotional competencies, educational progression and attainment, child maltreatment, health, delinquency and crime, social welfare program use, and labor market success”).

⁹⁴ *Id.* at 3.

⁹⁵ See David Vergun, *DOD Addresses Recruiting Shortfall Challenges*, U.S. DEP’T OF DEF. (Dec. 13, 2023) <https://www.defense.gov/News/News-Stories/Article/Article/3616786/dod-addresses-recruiting-shortfall-challenges/> (noting that “during fiscal year 2023, the military services collectively missed recruiting goals by about 41,000 recruits”).

⁹⁶ U.S. Army Public Affairs, *New Survey Examines Why Soldiers Decide to Stay in or Leave the Army*, U.S. ARMY (Nov. 19, 2021), https://www.army.mil/article/252098/new_survey_examines_why_soldiers_decide_to_stay_in_or_leave_the_army.

have been an annual driving factor in voluntary separations.⁹⁷ It is also significant that for the enlisted population surveyed in the 2023 DACES, 29.4 percent of the enlisted Soldiers cited “resources available to help care for my family” as one of the top ten reasons to stay in the military.⁹⁸ The FY21 NDAA and subsequent issuances by the military reflect the desire to support Families to support retention and future recruiting.⁹⁹

⁹⁷ See, e.g., Loryana L. Vie et al., U.S. DEP’T OF THE ARMY, FIRST ANNUAL REPORT: DEPARTMENT OF THE ARMY CAREER ENGAGEMENT SURVEY 10 (2021) [hereinafter 2021 DACES Report] (concluding that “the most cited reasons for considering leaving the Army centered on the various ways Army service impacts [Service members’] relationships and Families”); Loryana L. Vie & Adam D. Lathrop, U.S. DEP’T OF THE ARMY, SECOND ANNUAL REPORT: DEPARTMENT OF THE ARMY CAREER ENGAGEMENT SURVEY 19 fig.1 (2022) (highlighting the “Top ‘Extremely Important’ Reasons to Leave the Army” which included: “1. Effects of deployments on Family or personal relationships[;] 2. Impact of Army life on significant other’s career plans and goals[;] 3. Impact of military service on my Family’s well-being[;] 4. The degree of stability or predictability of Army life[;] and] 5. Impact of Army life on Family plans for children”); Loryana L. Vie et al., U.S. DEP’T OF THE ARMY, THIRD ANNUAL REPORT: DEPARTMENT OF THE ARMY CAREER ENGAGEMENT SURVEY 9 (2023) [hereinafter 2023 DACES Report] (finding that “five of the top six ‘Extremely Important’ reasons to leave the Army center on family”).

⁹⁸ See 2023 DACES REPORT, *supra* note 97, at 32 app. B tbl.B4. When considering the importance of statistics related to enlisted Soldiers, it is critical to understand that as of October 2022, enlisted Soldiers comprised 356,440 out of 463,083 active component Army Soldiers. Army DCS, G1 (DAPE-PRS), Army Component Demographics, at slide 1 (Oct. 31, 2022) (PowerPoint presentation) (on file with author); see also *id.* at 45 (noting that “30 out of 35 [Service members enrolled in EFMP] (86%) reported that the Army’s ability to provide resources to help care for their Family was a positive influence (i.e., a ‘Somewhat’ or ‘Extremely Important’ reason to STAY in the Army) and that the Army’s ability to address their Family’s EFMP needs influenced their response”); Cf. Anne Marshall-Chalmers, *U.S. Military Kids with Autism Lack Treatment Under Tricare*, THE WAR HORSE (Oct. 19, 2023), <https://thewarhorse.org/us-military-kids-with-autism-lack-treatment-under-tricare/> (detailing how for many Families, a lack of resources for their child’s special education or medical needs may lead to voluntary separation from the service).

⁹⁹ Specifically, the Senate Armed Services Committee Executive Summary of the Fiscal Year 2021 National Defense Authorization Act (FY21 NDAA) cites:

The committee’s top priority is, and always has been, supporting the more than 2.1 million men and women who bravely serve our nation in our Armed Forces. They, along with military families and the civilian workforce, are the backbone of America’s national security. The [FY21] NDAA prioritizes their health and wellbeing — ensuring our troops have the resources, equipment, and training needed to succeed in their missions. The bill recognizes that family readiness

Recognizing the increased need to support Families, the Army is working to increase the availability of child care, and increasing services and legal support to Families enrolled in EFMP will support these efforts.

C. Matching Child Care Needs

The proposed expansion of legal support matches the military's increased availability of childcare programs for Service members and their Families in recent years. As supported by President Biden's 2023 Executive Order, "[w]hile the Congress must make significant new investments to give families in this country more breathing room when it comes to care, executive departments and agencies (agencies) must do what they can within their existing authorities to boost the supply of high-quality early care and education" ¹⁰⁰ The call for significant improvements and oversight of the EFMP across the military departments came in addition to the FY21 NDAA provisions for additional research into childcare availability and capacity across the services. ¹⁰¹ Recognizing the continued importance of ensuring EFMP support, particularly in the child development centers (CDCs), Congress has most recently established a pilot program to hire special needs inclusion coordinators at select CDCs to: "(1) coordinate intervention and inclusion services at the center; (2) provide direct classroom support; and (3) provide guidance and assistance relating to the increased complexity of working with the

strengthens our force overall, and advocates for military spouses and children.

STAFF OF S. ARMED SERVS. COMM., 116TH CONG., EXEC. SUMMARY ON THE FISCAL YEAR 2021 NAT'L DEF. AUTHORIZATION ACT 2 (2021). *See also Strengthening Our Support Memo*, *supra* note 4.

¹⁰⁰ Exec. Order No. 14,095, 88 Fed. Reg. 24669 sec. 1 (Apr. 18, 2023).

¹⁰¹ *See* William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, § 585(b), 134 Stat. 3388, 3654-55 (requiring the Secretaries of the Military Departments to submit reports to Congress on the department's five installations "experiencing the most extreme imbalance between demand for child care and availability of child care"). Following calls for action, Congress subsequently approved the military to build 14 new CDCs at various installations. Karen Jowers, *Congress Approves Construction of 14 More Military Child Care Centers*, MILITARY TIMES (Dec. 16, 2022), <https://www.militarytimes.com/news/pentagon-congress/2022/12/17/congress-approves-construction-of-14-more-military-child-care-centers/>.

behaviors of children with special needs.”¹⁰² While these efforts to increase the availability and quality of child care are laudable, these increases, and the proposed expansions of legal support, will be negligible unless the DoD and the Army take steps to address issues regarding the eligibility and availability of EIS for military Families.

IV. Eligibility Issues Within the Department of Defense and the Army

Generally speaking, special education and related services on a military installation are only present when an installation operates a DoDEA school. Currently, 317 military installations exist in 48 states and the District of Columbia across the contiguous United States.¹⁰³ However, since the transfer of most DoDEA schools to local education agencies in the early 1970s,¹⁰⁴ the DoDEA operates schools in only seven of those states.¹⁰⁵ The intent of transferring schools was to provide additional care for military dependents by the states.¹⁰⁶ Nevertheless, the push to transition responsibility for education back to the states has inadvertently created barriers to the smooth and efficient delivery of EIS for military dependents. To resolve this issue, the DoD and Army should interpret current statutory language to require MTFs to provide EIS for all

¹⁰² James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, § 576(c), 136 Stat. 2395, 2605 (2022).

¹⁰³ See *Military Installations*, MILITARY ONE SOURCE, <https://installations.militaryone.source.mil/view-all> (last visited June 13, 2025) (noting that the website, while an official DoD website, does not list every installation but only those approved by the military departments).

¹⁰⁴ See RICHARD K. WRIGHT, A REVIEW OF DEPARTMENT OF DEFENSE EDUCATION ACTIVITY (DoDEA) SCHOOLS I-1 through I-2 (Institute for Def. Analyses, Vol. 1 2000) (citations omitted); see also *id.* at A-2 through A-3.

¹⁰⁵ *DoDEA Schools Worldwide*, DEP'T OF DEF. EDUC. ACTIVITY, <https://www.dodea.edu/about/about-dodea/dodea-schools-worldwide> (last visited June 12, 2025). The DoD also operates schools in all overseas locations, as required. *Id.*; see also 20 U.S.C. §§ 921–932.

¹⁰⁶ See WRIGHT, *supra* note 104, at A-I (noting that the DoD transferred schools to state local education agencies due to “(a) pressure from the U.S. Department of Education on states and localities to acknowledge responsibility for the education of military dependents; (b) population growth near installations; and (c) the integration of the public schools”); see also *DoDEA's 75 Year History*, DEP'T OF DEF. EDUC. ACTIVITY, <https://www.dodea.edu/about/about-dodea/dodeas-75-year-history> (last visited June 12, 2025) (noting that in 1985, Public Law 99-176 required the Secretary of Defense to submit a plan to transfer all Section 6 schools to the local education agencies, which the DoD subsequently submitted in 1986).

dependents living on an installation and provide EIS at each installation where the military operates a CDC.

A. Statutory and Regulatory Gaps Related to Early Intervention Services

While current statutory language requires an analysis of whether a state can provide comparable educational services for military dependents, no such requirement exists to evaluate the provision of EIS. The DoD's current authority to establish and operate schools for DoD Dependents is codified in 10 U.S.C. 2164, which states:

If the Secretary of Defense makes a determination that appropriate educational programs are not available through a local educational agency for dependents of members of the armed forces and dependents of civilian employees of the Federal Government residing on a military installation in the United States (including territories, commonwealths, and possessions of the United States), the Secretary may enter into arrangements to provide for the elementary or secondary education of the dependents of such members of the armed forces and, to the extent authorized in subsection (c), the dependents of such civilian employees.¹⁰⁷

The statute grants infants and toddlers with disabilities "all substantive rights, protections, and procedural safeguards" available under IDEA, but nothing within the statute discusses the responsibility to provide EIS or the criteria that should dictate the provision of EIS on a military installation.¹⁰⁸ Despite this gap in the statutory language, the DoD addresses the provision of EIS through its implementing policies and regulations.

¹⁰⁷ 10 U.S.C. § 2164(a)(1). *But cf.* 20 U.S.C. § 927(c) (authorizing and requiring the DoD to provide developmental pre-school programs to eligible dependents when not otherwise available for dependents overseas, without discretion).

¹⁰⁸ 10 U.S.C. § 2164(f)(B); *see also* 10 U.S.C. § 2164(b) (providing guiding factors to determine whether to establish a DoDEA school, including: "(A) The extent to which such dependents are eligible for free public education in the local area adjacent to the military installation[; and] (B) The extent to which the local educational agency is able to provide an appropriate educational program for such dependents[.]" but failing to address any criteria to determine whether appropriate EIS are provided and available).

Specifically, DoDI 1342.12 notes that: “It is DoD policy that [i]nfants and toddlers with disabilities and their families who (but for the children’s age) would be entitled to enroll in a DoDEA school in accordance with sections 921-932 of [20 U.S.C. 921-932] or [10 U.S.C. 2164] shall be provided EIS.”¹⁰⁹ In most instances, eligibility to attend a DoDEA school depends on whether a dependent resides on or off a government installation with a DoDEA school.¹¹⁰ Overseas eligibility to attend a DoD school specifically includes children of officers and employees of the United States overseas, children of employees of certain contractors overseas, and other children when “the Secretary determines that enrollment of such children is in the national interest.”¹¹¹ Within the United States, eligibility to attend a DoDEA school is limited to a “dependent of a Federal employee residing in permanent living quarters on a military installation at any time during the school year . . .” and dependents of “a United States Customs Service employee who resides in Puerto Rico, but not on a military installation. . .” with few exceptions.¹¹² While the DoDI links the provision of EIS to dependents who “would be entitled to enroll in a DoDEA school[,]” the instruction does not address whether the entitlement to EIS depends explicitly on the availability of a DoDEA school or simply the eligibility to attend.¹¹³

When read literally, the military provides EIS only in the nine states and territories of the United States and in overseas locations where DoDEA schools currently operate.¹¹⁴ Mirroring the availability of DoDEA

¹⁰⁹ DoDI 1342.12, *supra* note 18, at para. 4(a).

¹¹⁰ U.S. DEP’T OF DEF. EDUC. ACTIVITY, ADMIN. INSTR. 1344.01, ELIGIBILITY AND ENROLLMENT REQUIREMENTS FOR DoDEA SCHOOLS para. 4(1)(a) (Jan. 19, 2023) [hereinafter DoDEA AI 1344.01].

¹¹¹ 20 U.S.C. § 923(d)(1).

¹¹² 10 U.S.C. § 2164(c). *But see, e.g.*, 10 U.S.C. § 2164(c)(B) (providing exceptions for “a dependent of a United States Customs Service employee who resides in Puerto Rico, but not on a military installation . . . in accordance with the same rules as apply to a dependent of a Federal employee residing in permanent living quarters on a military installation”); 10 U.S.C. § 2164(a)(3) (allowing the Secretary of Defense to grant eligibility to enroll in a DoDEA school even though a dependent does not reside on a military installation when: “the dependents reside in temporary housing . . . (I) because of the unavailability of adequate permanent living quarters on the military installation to which the member is assigned; or (II) while the member is wounded, ill, or injured”).

¹¹³ DoDI 1342.12, *supra* note 18, para. 4(a). *Contra*, DoDI 1342.12, *supra* note 18, para. 2 (stating the Instruction “[a]pplies to infants and toddlers with disabilities and to children with disabilities who are eligible, *in accordance with this Instruction*, to receive EIS or special education and related services from the DoD”) (emphasis added).

¹¹⁴ DEP’T OF DEF. EDUC. ACTIVITY, *supra* note 105.

schools, currently: “EDIS programs exist at eight Army installations in the contiguous United States, one in Puerto Rico, and eight overseas military communities (scattered throughout four European countries and Korea).”¹¹⁵ Such a reading of the DODI directly contradicts the purpose and spirit of the IDEA to ensure the development and potential of infants and toddlers with disabilities.¹¹⁶ Additionally, such a limited and literal reading of the DODI would create inconsistencies in other applications throughout the Instruction.¹¹⁷ With the limited availability of DoDEA

¹¹⁵ *Educational & Developmental Intervention Services*, DEFENSE MEDIA ACTIVITY, <https://www.edis.army.mil/About/> (last visited June 12, 2025).

¹¹⁶ See 20 U.S.C. § 1400(d).

There is an urgent and substantial need to: (1) Enhance the development of infants and toddlers with disabilities to minimize their potential for developmental delay and to recognize the significant brain development that occurs during a child’s first 3 years of life. (2) Reduce educational costs by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age. (3) Maximize the potential for individuals with disabilities to live independently. (4) Enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities.

DoDM 1342.12, *supra* note 45, encl. 3, para. 1(a).

¹¹⁷ A literal interpretation carried over into even the next paragraph of the Instruction would eliminate the requirement for the DoD to “engage in child-find activities for all children age birth to 21, inclusive” at installations that do not possess a DoDEA-operated school. DoDI 1342.12, *supra* note 18, at para. 4(b). The glossary definition supports a restrictive interpretation, defining the child-find as:

An outreach program used by DoDEA, the Military Departments, and the other DoD Components to locate, identify, and evaluate children from birth to age 21, inclusive, who may require EIS or special education and related services. All children who are eligible to attend a DoD school under sections 921-932 of Reference (b) or Reference (c) fall within the scope of the DoD child-find responsibilities. Child-find activities include the dissemination of information to Service members, DoD employees, and parents of students eligible to enroll in DoDEA schools; the identification and screening of children; and the use of referral procedures.

Id. at 9. However, the Instruction does not define eligibility. *Id.* at 9–12. A restrictive interpretation also appears to contradict the requirement for the Assistant Secretary of Defense for Manpower and Reserve Affairs to develop a “DoD-Wide comprehensive child-find system” without reference to DoDEA school locations or eligibility. *Id.* at encl. 2, para. 1(d).

schools, despite an expanding availability of child care on military installations, the DoDI should not be read literally. Instead, the DoDI should be adjusted and interpreted to require the provision of EIS when a DoD dependent resides on a military installation and meets the relevant disability or developmental delay eligibility requirements.

B. Recommended Adjustments to the Provision of Early Intervention Services

To support compliance with the IDEA, the DoD should adjust the language of DoDI 1342.12, and the Army could interpret DoDI 1342.12 to require EIS and EDIS programs at all installations.¹¹⁸ The terms “eligibility” or “entitlement” should be defined and evaluated based on whether an individual meets the disability or developmental eligibility requirements to start services and whether the individual would be eligible or entitled to attend a DoDEA school if offered at that installation.¹¹⁹ The proposed eligibility expansion would replace the current definition of eligibility in the DoDI, which is more directly a requirement of “availability” and whether an individual lives in one of the nine states and territories within the United States that operate DoDEA schools.¹²⁰ By

¹¹⁸ A significant shift from the nine Army installations currently operating EDIS programs. DEFENSE MEDIA ACTIVITY, *supra* note 115.

¹¹⁹ DoDI 1342.12, *supra* note 18, at glossary. The Instruction defines infants and toddlers with disabilities as:

Children from birth up to 3 years of age, inclusive, who need EIS because[they] are experiencing developmental delays as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: cognitive development, physical development including vision and hearing, communication development, social or emotional development, adaptive development; or [they] have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

Id. at 10.

¹²⁰ DoDEA AI 1344.01, *supra* note 110, para. 4(1)(a) (establishing eligibility for “Dependent students of members of the U.S. Armed Forces serving on active duty and full-time DoD civilian employees residing in permanent living quarters on a military installation in the Contiguous U.S. [] if the installation is served by DoDEA schools in accordance with Section 2164 of Title 10, United States Code”) (emphasis added). The

adjusting the eligibility requirements, the DoD will better operate within the intent of the IDEA by linking EIS to the least restrictive environment, integrating the process for referrals and the provision of EIS, and ensuring that military dependents receive special education care when residing on a military installation.

1. Link the Provision of Early Intervention Services to the Least Restrictive Environment

While it is logical for the DoD to only provide school-age special education services at the DoD schools, the same thought process does not apply when designing early intervention programs. The IDEA entitles school-age children to a FAPE provided in the least restrictive environment, which is most often a classroom or school setting.¹²¹ While early intervention also requires providers to serve children in their least restrictive environment, the definition varies significantly from the definition of a least restrictive environment for a school-aged child.¹²² On a military installation, the least restrictive environment for a dependent from birth through the age of three is likely either in the installation housing area where the child resides with their Family or in the CDC, where the child attends daycare or preschool programming. First, the DoD should provide EIS for all eligible children who reside on base to ensure there is no gap in services when the state is otherwise unwilling or unable to provide services based on the jurisdiction of the installation. Second,

exceptions to this Instruction include other limited military dependents who live in temporary housing because of the unavailability of on-post housing, the Service member is wounded, ill, or injured. *Id.* para. 4(1)(b). Other exceptions exist for dependents of certain deceased Service members and students of foreign armed forces who live on a military installation. *Id.* paras. 4(1)(c–d). The Instruction also authorizes enrollment for “[d]ependent students of West Point Athletic Association contract employees who reside on the military installation” and virtual enrollment for students returning from an overseas location where they were previously enrolled in a DoDEA school. *Id.* para. 4.2.

¹²¹ 20 U.S.C. § 1412(a)(5) (establishing the least restrictive environment requirement, in which disabled children “are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes . . . cannot be achieved satisfactorily”).

¹²² 20 U.S.C. § 1432(4)(G) (defining early intervention services that “to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate”).

the DoD should consider expanding eligibility for any child enrolled in the installation CDC to ensure all children receive EIS in the least restrictive environment. Lastly, the DoD should consider providing EIS to all eligible military dependents, regardless of where they live or receive care.

Extending EIS to eligible children residing on a military installation is a logical application of the IDEA, Part C requirements to military installations. Under the IDEA, “it is in the national interest that the Federal Government have a supporting role in assisting state and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.”¹²³ In March 2023, Secretary of Defense Lloyd Austin noted that the “Department [of Defense] is deeply committed to ensuring that family members with exceptional needs have access to superb care, support, and expertise.”¹²⁴ Ensuring EIS for eligible dependents on military installations is one of the first steps to fulfill this commitment.

The next logical application of the IDEA, Part C, to the military is providing EIS to eligible children attending daycare on the installation. While many Families choose not to live on a military installation, there is often a significant shortage of military housing, or of quality housing, which drives their decision to do so.¹²⁵ Additionally, beginning in 1996, the government started privatizing the majority of military housing areas, so “residing in government quarters” is likely not the most suitable

¹²³ 20 U.S.C. § 1400(c)(6).

¹²⁴ *Strengthening Our Support Memo*, *supra* note 4, at 3.

¹²⁵ See, e.g., Karen Jowers, *Gaps in Military Housing Improvements Lead to Frustration, Confusion*, MILITARY TIMES (Apr. 15, 2023), <https://www.militarytimes.com/news/your-military/2023/04/15/gaps-in-military-housing-improvements-lead-to-frustration-confusion/> (reporting anguish by Service members with the execution of the privatized housing projects and updates to protect tenants); Paul J. Selva, *When it Comes to Housing, We are Failing Military Families*, SEATTLE TIMES (May 8, 2023), <https://www.seattletimes.com/opinion/when-it-comes-to-housing-we-are-failing-military-families/> (suggesting that 70 percent of military Families do not live on a military installation due to a lack of available housing); Francis Torres, *Answering FAQs on Housing America's Military Families*, BIPARTISAN POLICY CTR. (Mar. 24, 2023), <https://bipartisanpolicy.org/blog/faqs-housing-military-families/> (documenting concerns among military Families with long waitlists for housing and poor quality of homes on installations); Letter from Elizabeth Warren & Thomas Tillis, U.S. Senators, to Lloyd Austin, Secretary of Defense (Oct. 6, 2023), <https://www.warren.senate.gov/imo/media/doc/2023.10.04%20Letter%20to%20DoD%20on%20EFMP.pdf> (voicing concerns about the inadequacy and quality of housing for Service members and their Families who require housing accommodations for a disability).

criterion for consideration.¹²⁶ The DoD should instead establish eligibility criteria based on a child's enrollment in a daycare program on an installation. The eligibility to enroll in a CDC mirrors the eligibility to attend a DoDEA school in many aspects, except for the requirement to live on an installation.¹²⁷ In a time when there is a housing shortage on installations but a significant push to provide childcare on installations, the DoD should focus on providing EIS within those facilities.¹²⁸

Ideally, the DoD could expand EIS eligibility even further to all military Families with a disabled child. According to 10 U.S.C. Section 2164(a), the Secretary of Defense may provide elementary and secondary education when "appropriate educational programs are not available" for Service members living on an installation.¹²⁹ The statute authorizes the Secretary of Defense to allow dependents of Service members to attend DoD educational programming when installation housing is unavailable and "the circumstances of such living arrangements justify extending the enrollment authority to include the dependents."¹³⁰ Thus, if state EIS programs are unavailable or inadequate, the military could provide services to eligible dependents. It is arguable, from recent Government Accountability Office (GAO) data, that most states are under-supported and understaffed in their EIS programs; this could allow the military to potentially fill the gap in services for eligible dependents rather than rely on the states to provide services.¹³¹ However, there may still be challenges associated with such an expansion.

¹²⁶ See U.S. GOV'T ACCOUNTABILITY OFF., GAO-22-105866, PRIVATIZED MILITARY HOUSING: UPDATE ON DoD'S EFFORTS TO ADDRESS OVERSIGHT CHALLENGES 3–4 (2022), <https://www.gao.gov/assets/gao-22-105866.pdf> (noting that "[a]s of March 2022, 14 private housing companies own and operate 78 privatized family housing projects—34 for the Army, 31 for the Air Force, and 13 for the Navy and the Marine Corps").

¹²⁷ See U.S. DEP'T OF DEF., INSTR. 6060.02, CHILD DEVELOPMENT PROGRAMS (CDPs) para. 4(d) (C2, Sept. 1, 2020); see also William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116–283, § 589C, 134 Stat. 3659 (establishing a pilot program to expand DoDEA eligibility to military Families living off-post).

¹²⁸ See sources cited *supra* note 125 (noting the shortfall of available housing on military installations).

¹²⁹ 10 U.S.C. § 2164(a).

¹³⁰ 10 U.S.C. § 2164(a)(3)(B)(ii).

¹³¹ GAO-24-106019, *supra* note 16, at 14–15 (citing "Officials from the Infant and Toddler Coordinators Association. . . noting that *all* states have described provider shortages as an enduring challenge for providing early intervention services to eligible children" (emphasis added)).

Expanding EIS to military Families who do not live on an installation may pose challenges to providing EIS in the least restrictive environment. For example, depending on how far from an installation a Family lives, whether by choice or due to housing shortages, an EIS provider would either need to travel to provide services or have the Family transport the child to the installation to receive services. Either option poses logistical challenges for the Family and the EDIS provider.¹³² Due to the limited number of EDIS providers and the number of Service members who currently live outside of an installation,¹³³ providing services outside of a military installation is likely an untenable goal. However, irrespective of the level or amount of EIS expansion by the DoD, the expansion for any category of military Families will provide better integration of medical care and referrals related to EIS.

2. Integrate Referrals and Provision of Services

Although early intervention does not include medical services,¹³⁴ primary care providers are crucial to successful referrals, diagnoses, and evaluations for children receiving EIS. Active-duty Service members must enroll in Tricare Prime and receive care from their local MTF when available.¹³⁵ While Service members are not required to enroll dependents in Tricare, there may be significant cost barriers to retaining alternative

¹³² President Biden stated in his April 2023 Executive Order, “Military families consistently cite access to high-quality child care as an impediment to military spouse employment and family economic security. Difficulty accessing care also poses a challenge for both spouses—and, as data shows, particularly for women in dual military couples—to continuing their service if they have caregiving responsibilities.” Exec. Order No. 14,095, 88 Fed. Reg. 24669 sec. 1 (Apr. 18, 2023). Managing transportation to and from child care or the home for these appointments would likely only exacerbate these challenges. Additionally, with Army EDIS providers currently only serving “eight installations in the contiguous United States,” expansion to all installations would require a significant expansion of EDIS personnel to support any expanded EIS eligibility. *EDIS About*, DEFENSE MEDIA ACTIVITY, <https://www.edis.army.mil/About/> (last visited June 12, 2025).

¹³³ See ANDREW TILGHMAN, CONG. RSCH. SERV., R47728, MILITARY HOUSING 2 (2023) (citing data provided by the Office of the Assistant Secretary of Defense for Legislative Affairs to CRS, August 28, 2023, on file with the CRS) (finding that approximately 58 percent of all Service members live in community housing outside of a military installation).

¹³⁴ See 20 U.S.C. § 1432(4)(E)(viii) (defining EIS to include medical services *only for diagnostic or evaluation services*) (emphasis added).

¹³⁵ TRICARE, <https://www.tricare.mil/prime> (last visited June 12, 2025).

medical insurance.¹³⁶ Thus, primary care providers at an MTF are often responsible for making referrals to EDIS or a state EIS program when they suspect a child is eligible for services.¹³⁷ Delays in primary care appointments or referrals to early intervention can hinder a child's entrance into the appropriate program.¹³⁸ Alongside referral responsibilities, primary care providers may also play a significant role in supporting a child's IFSP as part of the interdisciplinary team.¹³⁹ Primary care providers are just one of many individuals who ensure children receive the services they need to succeed.

3. Ensure that Children Receiving Care on an Installation Receive Special Education Services

The final and most important reason for increasing the DoD's provision of EIS is to ensure that military dependents receive the early intervention and related services they need from birth through the age of three. For military Families living on an installation that operates a DoDEA school, the MTF commander, through the EDIS program manager, is ultimately responsible for providing EIS.¹⁴⁰ However, as previously discussed, there are no EDIS programs on installations without DoDEA schools, despite the fact that multiple CDCs may operate on those installations.¹⁴¹ The purpose of EDIS is to provide a seamless provision of

¹³⁶ Les Masterson, *How Much Does Health Insurance Cost in 2025?*, FORBES (Mar. 10, 2025, 1:33pm), <https://www.forbes.com/advisor/health-insurance/how-much-does-health-insurance-cost/> (providing an estimated cost of health insurance between \$445-505 per month in the United States, for an individual between the ages of 21-30 years old).

¹³⁷ See DoDI 1342.12, *supra* note 18, at 11 (including pediatric clinics in the definition of a primary referral source); Bailey, *supra* note 91, at 1346 (noting the role of pediatricians in identifying and referring children with disabilities for early intervention) (citing American Academy of Pediatrics Committee on Children with Disabilities, *The Pediatrician's Role in the Development and Implementation of an [IEP] and/or an Individual Family Service Plan (IFSP)*, 104 PEDIATRICS 124, 124-27 (1999)).

¹³⁸ See DoDM 1342.12, *supra* note 45, encl. 3, para. 6(b) (requiring the initial IFSP meeting to be convened no later than 45 days after a child's referral for EIS); *see also* 20 U.S.C. § 1436(c) (requiring the IFSP to be developed "within a reasonable time after the assessment . . . is completed").

¹³⁹ Bailey, *supra* note 91, at 1351 (concluding there is a need to integrate pediatricians into early intervention, particularly for children with disabilities).

¹⁴⁰ See MEDCOM REG. 40-53, *supra* note 71, para. 1-9(c).

¹⁴¹ See sources cited *supra* note 115 (noting that only nine Army installations in the United States/Territories currently provide EDIS services).

EIS, but on installations without a DoDEA school, parents are left to their own devices to manage the coordination of services with the state and other agencies on the installation.¹⁴² Failing to provide service coordination can negatively impact children and Families receiving EIS.

Limiting access to EDIS to installations with a DoDEA school can impact a child's eligibility for early intervention and increase stress for Families. In its 2023 report on early intervention programs within the United States, the GAO evaluated the eligibility standards of all 50 states, outlying areas, and freely associated states.¹⁴³ In addition to identifying that almost all states have different eligibility standards, the GAO noted that many states have significant staffing shortages in their early intervention programs, making it difficult for children to receive services.¹⁴⁴ Expanding EDIS and EIS eligibility within the military would provide a unified standard for dependents, regardless of their living or childcare situation, when they move from one duty location to the next.¹⁴⁵ Moreover, providing one standard across the military and one organization to coordinate services will relieve additional burdens on Service members and Families related to finding and coordinating care.¹⁴⁶

¹⁴² See MEDCOM REG. 40-53, *supra* note 71, para. 4-3.

Although the MTF remains the lead agent for EIS, the overall program should be community based. The mission and structure for many of the required program components already exist within other agencies in the community (for example, ACS, Child and Youth Services (CYS), and so forth). The EDIS programs will not duplicate already existing programs and services on the installation or in the civilian community that are available to EDIS-enrolled Families at little or no cost. However, EDIS will work in collaboration with these agencies to ensure a seamless system of services for children and Families eligible for EDIS.

Id.

¹⁴³ GAO-24-106019, *supra* note 16, at app. II (listing the varying standards for EIS eligibility by jurisdiction).

¹⁴⁴ *Id.* at 12–15.

¹⁴⁵ Under the proposed expansion of eligibility, all dependents would fall under the applicability of DoDI 1342.12 and receive EIS if eligible based solely on their developmental delays or disabilities. DoDI 1342.12, *supra* note 18, para. 2(b); *see also id.* at glossary.

¹⁴⁶ Michael J. Guralnick, *Why Early Intervention Works: A Systems Perspective*, 24 INFANTS & YOUNG CHILDREN 6, 18 (2011).

The only logical reason to link EIS provision to whether an installation also provides a DoDEA school is to ease the transition between EIS and school-age special education according to an IEP, but this reasoning ignores the reality of the military. While some children may no longer require special education services by the time they reach the age of three, many will need to transfer to a pre-school or pre-kindergarten program.¹⁴⁷ Keeping a child in the same system (for example, transferring a DoD IFSP to a DoD IEP or transferring a state IFSP to a state IEP) may make the transfer easier and enable a smoother records transition.¹⁴⁸ However, this argument improperly assumes that a child will remain in the same location at the time they are eligible to transfer to an IEP, a minuscule likelihood for military children.¹⁴⁹

A stronger argument against expanding EIS is that dependent children with disabilities may then be eligible to receive services from both the state and the DoD, duplicating efforts and costs. For example, if the DoD expanded services to all Service members, or even those who use the CDC, a Service member who lives off post would then be eligible to receive EIS from the state because they live in community housing outside of an installation, and also receive EIS through the DoD. For those dependents,

Even when professional help is obtained by parents as their child's developmental problems become apparent, the recommendations that follow can be complex, confusing, and even contradictory. Without question, recruiting and organizing professionals can often be an overwhelming task even for the most conscientious of parents, and service coordination continues to be a major challenge in the EI field. All of this is made far more difficult for the many children at risk and those with established disabilities who face more frequent and certainly more complex health issues than children without these vulnerabilities. Indeed, parental adjustment to ensure the health of vulnerable children and their safety is a constant challenge, easily stressing the entire system of family patterns of interaction.

Id. (citations omitted).

¹⁴⁷ 20 U.S.C. § 1435(c); *see also* 20 U.S.C. § 1436(d)(7–8).

¹⁴⁸ 20 U.S.C. § 1436(d)(7–8) (noting that the statewide system must include plans in the IFSP to transition to pre-school). The DoD provides additional guidance on transitioning between an IFSP and an IEP within the DoDEA. *See* DoDM 1342.12, *supra* note 45, at encl. 3, para. 7.

¹⁴⁹ U.S. GOV'T ACCOUNTABILITY OFF., GAO-22-105015, DoD PROGRAMS AND SERVICES FOR MILITARY-DEPENDENT STUDENTS WITH DISABILITIES 1 (2018) [hereinafter GAO-22-105015], <https://www.gao.gov/products/gao-22-105015> (noting that the average military child will transfer schools nine times before graduation from high school).

it would mean potentially twice the early intervention programming but subsequent costs incurred by both the state and DoD.¹⁵⁰ On the other hand, despite the potential duplication of efforts to support infants and toddlers, there are many benefits to providing this option for military Families. Many states have a sliding fee for individuals to receive EIS, and expanding eligibility would enable Service members to choose to receive EIS from the DoD at no cost.¹⁵¹ Expanding eligibility for EIS could also reduce interruptions in care and improve record management when a Service member transfers to a new duty station and has the option to continue EIS with the DoD.

Overall, there are significant benefits to expanding eligibility for EIS for military children, including supporting the intent and spirit of the IDEA, integrating the referral process, and ensuring military children receive services. The DoD ought to adjust its interpretation and the language of the DODI to maximize eligibility for dependents from birth through the age of three. Regardless of whether the policies, regulations, and interpretations change, the Army can take additional action now to improve legal support to Service members and Families enrolled in EFMP.

V. The Mandate to Provide Special Education Attorneys

As part of a larger requirement for the DoD to improve the EFMP, the FY21 NDAA specifically mandated the implementation of special education-trained attorneys at each installation.¹⁵² The impetus for this mandate stems from years of frustration among DoD Families concerning implementing the military EFMPs across the Services.¹⁵³ In 2018, the

¹⁵⁰ See 20 U.S.C. § 1431(b)(2) (noting that the policy is to provide “financial assistance to the States” to establish and implement EIS programs and help “facilitate the coordination of payment for early intervention services” but implying it does not cover the costs of the program in its entirety).

¹⁵¹ See 20 U.S.C. § 1432(4)(B) (defining early intervention services “provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees”).

¹⁵² William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116–283, § 582(b)(7), 134 Stat. 3653.

¹⁵³ See, e.g., Jennifer Barnhill, *Military Spouses Take EFMP Concerns to Congress*, MILITARY FAMILIES MAG. (Feb. 11, 2020), <https://militaryfamilies.com/military-news/military-spouses-take-efmp-concerns-to-Congress/> (explaining that military spouses turn to EFMP when their children do not receive adequate special education because, at the

GAO conducted a study to review services plans, which document the support required for Families with an EFMP-enrolled Family Member.¹⁵⁴ The study focused on support provided to Families with special needs as they navigated relocation to another installation and found that:

DOD's most recent annual reports to Congress do not indicate the extent to which each Service provides services plans or allocates sufficient resources for family support providers. According to GAO's analysis, the Military Services have developed relatively few services plans, and there is wide variation in the number of family support providers employed, which raises questions about potential gaps in services for families with special needs[.]¹⁵⁵

For example, while the Army had 43,109 Family members enrolled in the EFMP at the time of the study, only 5,004 service plans had been created for those Families.¹⁵⁶ Comparatively, while the Navy had 17,533 eligible Family members enrolled in the EFMP, only 31 service plans were created.¹⁵⁷ In recognizing the need to increase support for Families entitled

time the article was published, legal services were only available in a limited amount for Families of Marines); *Exceptional Family Member Program—Are The Military Services Really Taking Care Of Family Members?: Hearing Before the Subcomm. on Mil. Pers. of the H. Comm. on the Armed Forces*, 116th Cong. 59 (2020) (detailing frustrations from Congresspersons and Family members on the efficacy and support of the EFMP).

¹⁵⁴ U.S. GOV'T ACCOUNTABILITY OFF., GAO-18-348, MILITARY PERSONNEL: DoD SHOULD IMPROVE ITS OVERSIGHT OF THE EXCEPTIONAL FAMILY MEMBER PROGRAM 3-7 (2018), <https://www.gao.gov/assets/gao-18-348.pdf>.

A services plan describes the necessary services and support for a family with special needs, as well as documents and tracks progress toward meeting related goals. It also helps families identify family support services and plan for the continuity of these services during the relocation process by providing a record for the gaining installation. According to DOD, the most effective plan will meet its service goals and identify resources and information for the family.

Id. at 5 n.13.

¹⁵⁵ *Id.* at GAO Highlights.

¹⁵⁶ *Id.* at 12 tbl.3.

¹⁵⁷ *Id.*

to such services, among others, Congress implemented a requirement for attorneys trained in special education across the military departments.

A. The Mandate Two-Step

Section 582(b)(7) of the FY21 NDAA enacts:

[a] requirement that the Secretary of each military department provide legal services by an attorney, trained in education law, at each military installation— (A) the Secretary determines is a primary receiving installation for military families with special needs; and (B) in a State that the Secretary determines has historically not supported families enrolled in the EFMP.¹⁵⁸

While the mandate appears to require a plethora of attorneys trained in special education, the Secretaries of the military departments must evaluate these two criteria before the requirement is effective.

The first question is whether an installation is a “primary receiving installation for military families with special needs” in accordance with the mandate.¹⁵⁹ However, there are no accompanying definitions or standards for the Secretaries of the Military Departments to make this determination.¹⁶⁰ Also lacking definition or standardization in the mandate is whether the severity or degree of disability of a Family member impacts an installation’s status. The 2018 GAO report provides a starting point, having determined how many installations from the departments have Family members enrolled in EFMP.¹⁶¹ However, the military should conduct additional research to outline the number of individuals at each

¹⁵⁸ William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116–283, § 582(b)(7), 134 Stat. 3653.

¹⁵⁹ William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116–283, § 582(b)(7)(A), 134 Stat. 3653.

¹⁶⁰ A 2022 GAO study found that the DoD Impact Aid for Children with Severe Disabilities program provided funding to civilian school districts when those districts served at least two military-connected students with “extensive mental, physical and/or behavioral impairment, or a combination of multiple impairments, likely to be permanent in nature and greatly compromising an individual’s ability to function independently in the community, perform self-care, and obtain employment.” GAO-22-105015, *supra* note 149, at 8 (citing the DoD Impact Aid for Children with Severe Disabilities program application).

¹⁶¹ GAO-18-348, *supra* note 154, at tbl.3.

specific installation. Moreover, assessments may be impacted or impractical based on the fluid nature of service in the military.¹⁶² While one installation may or may not be a “primary receiving installation for military families with special needs” during one calendar year, that status may change from yearly based on personnel moves and separations from the military.¹⁶³ Lastly, it may be important to consider whether the military should give additional weight to an installation based on whether it contains primarily operational units or training and force-generating units.¹⁶⁴ However, again, classifying the installation status is only the first step in determining whether an attorney trained in special education is required.

The second aspect for the Secretaries of the military departments to consider is whether the state concerned has historically supported Families enrolled in the EFMP.¹⁶⁵ Similar to the classification of installations, there is no definition or standardization of how Secretaries of the military departments should evaluate states regarding their support for EFMP Families. The 2021 GAO report on school options for military Families briefly addresses the availability of non-DoD schools near military installations, but the data does not begin to provide an analysis of whether a given state supports EFMP Families.¹⁶⁶ Additionally, it is essential to recognize that EFMP encompasses all military dependents and may

¹⁶² See GAO-22-105015, *supra* note 149, at 1 (citing U.S. Gov’t Accountability Off. GAO-21-80, K-12 Education: U.S. Military Families Generally Have the Same Schooling Options as Other Families and Consider Multiple Factors When Selecting Schools (2021), [hereinafter GAO-21-80] <https://www.gao.gov/products/gao-21-80>).

¹⁶³ GAO-22-105015, *supra* note 149, at 1.

¹⁶⁴ See STAFF OF S. ARMED SERVS. COMM., 116TH CONG., EXEC. SUMMARY ON THE FISCAL YEAR 2021 NAT’L DEF. AUTHORIZATION ACT 2 (2021) (recognizing that “family readiness strengthens our force overall” and “[reemphasizing] a focus on training to ensure our serve members can conduct their missions safely”). The executive summary implies an understanding that Soldiers are more focused on the mission when their Families are taken care of. However, the summary does not prioritize any particular mission over another. *Id.* at 2, 15.

¹⁶⁵ William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116–283, § 582(b)(7)(B), 134 Stat. 3653.

¹⁶⁶ GAO-21-80, *supra* note 162, at 22–25. Although the 2021 GAO report on schooling options for military Families mentions private school choice programs, it only briefly mentions the impact of enrollment on special education services and how those choices may impact state support. *Id.* at 14. Additionally, while the 2018 GAO report on EFMP oversight by the DoD provides data for the number of exceptional Family members by installation, it does not provide any additional information or context on state-related support available. *Id.* at app. II.

include individuals who are not yet in school or have completed all schooling, so reviewing school-related data alone may not be sufficient.¹⁶⁷ Lastly, as discussed previously, there may be jurisdictional limitations on a state's ability to provide support services for a Family enrolled in EFMP, depending on the specific location.¹⁶⁸ Once an installation is designated a "primary receiving installation for military families with special needs[.]" and the Secretary of the military department determines the state has historically not supported Families enrolled in EFMP in that state, the military department must provide an attorney trained in special education to support that installation.¹⁶⁹

B. The Army Application

Although the FY21 NDAA mandate to provide additional expertise concerning special education law gives weight to its importance, the Army Judge Advocate Generals Corps (JAGC) began taking measures in 2020 to expand its attorneys' special education law expertise.¹⁷⁰ Acknowledging the importance of supporting clients in this legal practice area, the Army Judge Advocate Legal Service established a policy to maintain an attorney trained in special education law at every

¹⁶⁷ AR 608-75, *supra* note 12, para. 1-9(b) (noting that one purpose of the EFMP is: "[t]o assess, document, and code the special education and medical needs of eligible Family members in all locations, and forward these coded needs to the military personnel agencies in [accordance with the regulation] for consideration during the assignment process").

¹⁶⁸ See AR 405-20, *supra* note 59, para. 4(a) (explaining state obligations and limitations in an area of exclusive federal legislative jurisdiction).

¹⁶⁹ It is important to note that nothing in the FY21 NDAA restricts a military department from providing special education attorneys without meeting these criteria. See William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283, § 582(b)(7), 134 Stat. 3653.

¹⁷⁰ See Devon L. Suits, *Special Education Legal Support Now Available to EFMP Families*, U.S. ARMY (Aug. 20, 2020), https://www.army.mil/article/238337/special_education_legal_support_now_available_to_efmp_families (noting that over 140 attorneys, paralegals, and EFMP providers across the Armed Services completed an online training course hosted by William & Mary Law School, including 40 Army legal practitioners). This article discusses only Army actions taken to train attorneys in special education law; the Air Force, Navy, and Marine Corps have also taken significant steps to increase their services' expertise in special education law. See GAO-22-105015, *supra* note 149, at 15-18 (explaining that all of the services have contracted with William and Mary Law School Special Education Advocacy Clinic, and the Air Force, Navy, and Marine Corps have all hired civilian attorneys to provide specific expertise to their respective legal assistance clients on special education and disability law).

installation.¹⁷¹ At a minimum, the policy states that an attorney at each installation legal assistance office will “provide legal counseling on education subjects, including, but not limited to document review with respect to individual education plans, and plans pursuant to 10 U.S.C. [Section] 794 (504 plans).”¹⁷² As the Army continues to develop its special education legal programming, the JAGC strives to support attorneys by establishing increased training opportunities and information repositories, but largely underdeveloped legal support related to EIS remains.

In order to provide the legal expertise needed at each installation, the JAGC currently offers several training opportunities. One option is an online, self-paced introduction to special education advocacy course.¹⁷³ This course is open to any member of the JAGC but requires a Judge Advocate General University account to enroll and gain access to the materials.¹⁷⁴ Topics covered during the introduction to special education advocacy course include: overviews of the IDEA, Section 504, Family Educational Rights and Privacy Act (FERPA);¹⁷⁵ eligibility; disabilities; evaluations; Section 504 of the 1973 Rehabilitation Act; IEPs and meetings; IEPs and FAPE; least restrictive environment; related services; transportation; functional behavior assessments; discipline; manifestation determination review; bullying; transition planning; extended school year; special education and COVID;¹⁷⁶ conflict resolution; remedies; and

¹⁷¹ Memorandum from Dir. of Soldier and Family Legal Services to Judge Advocate Legal Service Legal Assistance Practitioners et al., subject: Legal Assistance Services Related to Education Law (28 Jan. 2021).

¹⁷² *Id.* para. 3.

¹⁷³ *Introduction to Special Education Advocacy (ISEA) Course*, JAGU, https://jagu.llc.army.mil/webapps/blackboard/execute/announcement?method=search&context=course_entry&course_id=1390_1&handle=announcements_entry&mode=view (last visited Jan. 11, 2024) (requiring course admission to access materials) [hereinafter ISEA Course]. As of the date of this paper, the course is broken into 21 lessons, with 48 videos and accompanying slides, as well as supporting resource documents for each lesson topic. *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ 20 U.S.C. § 1232(g). The Family Education Rights and Privacy Act (FERPA) governs the rights of parents “to inspect and review the education records maintained by the State educational agency on their children who are or have been in attendance at any school of an educational agency or institution that is subject to the provisions of [20 U.S.C. § 1232(g)]” and other access by all parties to educational records. *Id.*

¹⁷⁶ The lesson “special education and COVID” mainly addresses the significant procedural impacts and considerations of special education in an online or virtual learning environment. *Lesson 18: SPED & COVID – ISEA Course*, JAGU <https://jagu.llc.army.mil>

transferring schools.¹⁷⁷ Aside from the online programming, classes covering the basics of special education law were added to the JAGC's Officer Basic Course, starting in 2023, as part of the overview of legal assistance practice areas.¹⁷⁸ As of the 2024 Spring semester, graduate course students receive one hour of instruction related to special education law and could elect to receive two additional hours of class instruction on special education law, depending on the available elective classes during

/webapps/blackboard/content/listContent.jsp?course_id=_1390_1&content_id=_274372_1&mode=reset (last visited Jan. 11, 2024) (requiring course admission to access materials). Most schools returned to in-person learning following the end of the COVID-19 pandemic. See NAT'L CTR. FOR EDU. STATISTICS, U.S. EDUCATION IN THE TIME OF COVID 1 (2022) (noting that 98 percent of public schools planned to return to in-person learning for the 2021 fall semester). However, these topics are still helpful for military attorneys to understand, as remote learning still occurs. Natasha Singer, *Online Schools are Here to Stay, Even After the Pandemic*, N.Y. TIMES (Apr. 11, 2021), <https://www.nytimes.com/2021/04/11/technology/remote-learning-online-school.html>.

¹⁷⁷ *ISEA Course*, JAGU, https://jagu.llc.army.mil/webapps/blackboard/execute/announcement?method=search&context=course_entry&course_id=_1390_1&handle=announcements_entry&mode=view (last visited June 11, 2025) (requiring course admission to access materials). The Army does not have a special education law training contract with the William and Mary Law School, after the school temporarily discontinued its program. See *Special Education Advocacy Clinic*, WILLIAM AND MARY LAW SCHOOL, https://law.wm.edu/academics/programs/jd/electives/clinics/clinics_list/specialed/ (last visited June 8, 2025) (noting a "brief interlude in which the clinic was not offered" but that the clinic began again in the Fall 2023 semester). However, the materials available on the Army's online advocacy course largely mirror the topics and materials discussed in the William & Mary course. *Announcements – ISEA Course*, JAGU, https://jagu.llc.army.mil/webapps/blackboard/execute/announcement?method=search&context=course_entry&course_id=_1390_1&handle=announcements_entry&mode=view (last visited June 11, 2024) (requiring course admission to access materials).

¹⁷⁸ Interview with Major Amanda McMenamin, Professor, The Judge Advocate General's Legal Center and School, in Charlottesville, Va. (Mar. 15, 2024) [hereinafter Interview with Major McMenamin]. Active Duty, Reserve, and National Guard judge advocates must attend the officer basic course as part of their qualifications to practice law as an Army judge advocate. THE JUDGE ADVOC. GEN.'S LEGAL SERVICES, U.S. ARMY, MISC. PUB. 1-1, PERSONNEL POLICIES para. 7-2(b) (2023) [hereinafter JALS PUB 1-1]. During the officer basic course, students attend classes conducted over 55 training days and "stress[] military law in a law school environment." *Id.* While the course does not aim to provide expertise in any given area, students should be familiar with potential topics they will need to understand and the resources and sources of law they should consult when the issue presents itself. JUDGE ADVOCATE OFFICER BASIC COURSE, U.S. ARMY, STUDENT HANDBOOK 7 (14 Sept. 2023).

their attendance.¹⁷⁹ Lastly, the administrative law department at the Judge Advocate General's Legal Center and School teaches two hours of special education law during the annual Legal Assistance Course, which is open to attendance by Judge Advocates Legal Services (JALS) personnel in legal assistance billets across the Army.¹⁸⁰ In conjunction with these training opportunities, the JAGC also established a repository of military and state-specific resources for JALS personnel advising on special education.

The Introduction to Special Education Advocacy course webpage has links to various resources for practicing attorneys.¹⁸¹ General topic areas for resources include: jurisdiction-specific resources; templates; military-specific materials; external websites; training videos; legal assistance policy division guidance; disabilities and accommodations; and assistance beyond education.¹⁸² While the available information is not exhaustive, it provides a clear starting point for judge advocates navigating issues that arise concerning special education. Additionally, the JAGC is working within the organization to build and retain expertise, including hiring the

¹⁷⁹ See, e.g., THE JUDGE ADVOC. GEN.'S SCHOOL, U.S. ARMY, CIR. 351-6, JUDGE ADVOCATE OFFICER GRADUATE COURSE para. 7 (2023) [hereinafter TJAGSA CIR. 351-6] (detailing the course requirements for graduation from the graduate course); 72d Graduate Course, Electives Catalog (27 Oct. 2023) (providing course descriptions for each elective offered to students of the graduate course). Active Duty judge advocates, and some select Reserve and National Guard judge advocates, are required to attend the graduate course following promotion to the rank of major. JALS PUB 1-1, *supra* note 178, at para. 7-5(a). At the graduate course, students earn an ABA-reviewed Master of Laws degree in Military Law from the Judge Advocate Generals Legal Center and School. TJAGSA CIR. 351-6, *supra*, para. 15 (2023). One purpose of the course is to provide students with "[a] deeper knowledge of substantive law, legal systems and institutions, and the defense establishment, and a dedication to lifelong learning[.]" which supports expanding the course to include instruction in the area of special education. TJAGSA CIR. 351-6, *supra*, para. 3(b)(2). See MAJ Amanda McMenamin, Family Law Hot Topics (Jan. 31, 2024) (PowerPoint presentation) (on file with author). Interview with Major McMenamin, *supra* note 178.

¹⁸⁰ Interview with Major McMenamin, *supra* note 178. It is important to note that the curriculum for each course changes based on the preferences and priorities of the faculty member responsible for training students on legal assistance and client services. *Id.* Although course materials discussing special education are currently offered, those lessons could be altered in future years. *Id.*

¹⁸¹ ISEA Course, JAGU, https://jagu.llc.army.mil/webapps/blackboard/execute/announcement?method=search&context=course_entry&course_id=_1390_1&handle=announcements_entry&mode=view (last visited Jan. 11, 2024) (requiring course admission to access materials).

¹⁸² *Id.*

first Army civilian attorney, an expert specializing in education law, to assist with complex cases involving Army Families.¹⁸³ Despite efforts to increase knowledge and resourcing for attorneys, there are notably no specific resources for Families with children under the age of three that require special education services under Part C of the IDEA.

The Army's efforts to provide special education-trained attorneys have been continuous; however, there are still gaps to fill, specifically when assessing efforts to support Families requiring EIS for their children.¹⁸⁴ One factor contributing to the lack of support for Families of children under the age of three may be the absence of evaluations on the efficacy of resources for that population.¹⁸⁵ Many DoD and GAO reports address the EFMP and support for special education for school-age children and the issues facing military Families of school-age children, but those reports do not address special education before the age of three.¹⁸⁶

¹⁸³ E-mail from Melissa Halsey, Chief, Legal Assistance Policy Division, to Legal Assistance Policy Division Personnel et al. (Dec. 19, 2023, 08:46 EST) (on file with author). As of 2024, the Army had approximately 57,777 exceptional Family members. E-mail from Jennifer Young, Special Education Policy Advisor, Legal Assistance Policy Division, to Author (Mar. 11, 2024, 13:29 EST) (on file with author). Compared to 34,885 in the Air Force, 9,150 in the Marine Corps, and 17,533 in the Navy. GAO-18-348, *supra* note 154, at 12 tbl.3. Comparatively, while the Air Force has one civilian attorney serving as the EFMP legal assistance coordinator, the Marine Corps has four civilian special education attorneys at various locations who specialize in disability-related law, and the Navy has two attorneys specializing in special education law. GAO-22-105015, *supra* note 149, at 16–18.

¹⁸⁴ The DoD Office of Special Needs provides information on EIS resources through its online platform, *Military One Source*, and recommends contacting the EFMP Family support provider on the military installation for additional information. *Education & Employment: Early Intervention Services*, MILITARY ONE SOURCE, <https://www.militaryonesource.mil/benefits/early-intervention-services/> (last visited Feb. 13, 2024). The website provides a brief overview of EIS and how EIS can help children, and the site directs individuals to either request services through the EDIS program at the MTF or through the state's EIS program, depending on whether they live on an installation with a DoDEA school. *Id.* The website also provides a link to assist individuals in finding their state's EIS program contacts. *Education Directory for Children with Special Needs*, MILITARY ONE SOURCE, <https://efmpeducationdirectory.militaryonesource.mil/early-intervention-directory> (last visited Feb. 13, 2024).

¹⁸⁵ See generally, e.g., GAO-18-348, *supra* note 154; GAO-22-105015, *supra* note 149; GAO-21-80, *supra* note 162.

¹⁸⁶ See generally, e.g., GAO-18-348, *supra* note 154; GAO-22-105015, *supra* note 149; GAO-21-80, *supra* note 162. But see Exec. Order No. 14,095, 88 Fed. Reg. 24669 sec. 4(a)(iv) (Apr. 18, 2023) (requiring updates under the order to “identify and disseminate evidence-based practices for serving children with disabilities and their families in high-quality early childhood education programs, including Head Start”).

The GAO's most recent report on data collection enabling early intervention programs to reach more infants and toddlers did not address program efficacy on military installations or within the DoD.¹⁸⁷ Similarly, while organizations such as the American Bar Association Standing Committee on Legal Assistance for Military Personnel have provided training and materials on special education and the military, early intervention services are practically missing from the training.¹⁸⁸ Another reason for the lack of data and resources regarding special education needs before the age of three may be the DoD's limited oversight and involvement in the execution of EIS programs.¹⁸⁹ Unlike special education and related services that the DoDEA schools provide, the military departments individually manage EIS programs.¹⁹⁰ For the Army, providing EIS, tracking, and accountability are the sole responsibilities of the MTFs and regional coordinators, which leaves significant opportunities for disparate treatment based on the installation providing services.¹⁹¹ Regardless of the source, the Army must take action to expand

¹⁸⁷ See generally GAO-24-106019, *supra* note 16 (assessing barriers and inequities in access to early intervention within the United States, but notably lacking any assessment or data collection related to services provided by the Department of Defense).

¹⁸⁸ See Cheri Belkowitz, Sharon J. Ackah, Christina Jones, Brianna Crews & Brenda M. Shafer, *Special Education and the Law: A Military Perspective* (Apr. 6, 2022) (unpublished PowerPoint presentation) (on file with author); see also Grace E. Kim, Vickie M. O'Brien, COL (Ret.) Elizabeth L. Schuchs-Gopaul, *Educational Issues for Military Families with Special Needs* (Oct. 15, 2020) (unpublished PowerPoint presentation) (on file with author).

¹⁸⁹ While DoDI 1342.12 requires the Assistant Secretary of Defense for Health Affairs to provide standards for staffing, oversight, and measures for EIS program outcomes, no current DHA publications address these requirements. See *Defense Health Agency Publications Library*, DEFENSE HEALTH AGENCY, <https://www.health.mil/Reference-Center/DHA-Publications> (last visited Jan. 9, 2024); see also E-mail from Venus Thompson, Publication Systems Branch, Defense Health Agency, to Author. (Jan. 10, 2024, 12:45 EST) (on file with author).

¹⁹⁰ See generally, e.g., U.S. DEP'T OF NAVY, CHIEF, BUREAU OF MEDICINE AND SURGERY INSTR. 1755.1A CHANGE TRANSMITTAL 1, EDUCATIONAL AND DEVELOPMENTAL INTERVENTION SERVICES AND EARLY INTERVENTION SERVICES encl. 1 (11 Jan. 2023); U.S. DEP'T OF AIR FORCE, POL'Y DIR. 40-6, EDUCATIONAL AND DEVELOPMENTAL INTERVENTION SERVICES para. 3.1 (31 July 2018); U.S. MARINE CORPS, ORDER 1754.4C, EXCEPTIONAL FAMILY MEMBER PROGRAM ch. 3 (8 Oct. 2020); U.S. MARINE CORPS, ORDER 1755.3A, SCHOOL LIAISON PROGRAM para. 4(b)(4) (1 July 2021).

¹⁹¹ See MEDCOM REG 40-53, *supra* note 71, para. 1-9(c)(8)(f) (noting MTF commander responsibility to ensure EDIS program managers conduct self-assessments of DoD standards).

legal training and support concerning special education entitlements from birth through the age of three to close these support gaps.

VI. Proposed Expansion of Legal Training and Support

The statutory and regulatory guidance regarding EIS and special education make it clear that the Army must work to provide services to eligible dependents from birth through the age of 21.¹⁹² While the Army is well on its way to fulfilling these requirements for children eligible to attend DoDEA schools, efforts must recognize the necessity to support children from birth until they are eligible for special education under Part B of the IDEA.¹⁹³ Efforts to improve support should include expanding training for legal assistance attorneys and adding special education training for commanders. Beyond educating and training attorneys and commanders, the Army should increase its efforts to ensure Families enrolled in EFMP know and understand their rights related to special education services.

A. Expanded Legal Training and Support for Legal Assistance Attorneys

While the current training and resources for legal assistance attorneys sufficiently prepare them to advise Families regarding special education needs for school-aged children, those materials should address the relevant rights of children under the age of three. At a minimum, the JAGC should consider expanding training to include modules related to early intervention and increasing attorney expertise within the Army.

Using the existing JAGU platform, the introduction to special education advocacy course could easily be adjusted to include training on EIS.¹⁹⁴ Specifically, EIS modules should cover topics such as:

¹⁹² See 10 U.S.C. § 2164(f) (confirming that all children eligible to enroll in a DDESS retain their substantive and procedural rights related to special education and EIS); *see also* 20 U.S.C. § 927(c) (requiring DoDEA schools overseas to provide services for eligible toddlers, infants, and children in compliance with Part B and Part C of the IDEA).

¹⁹³ See 20 U.S.C. § 1435 (establishing requirements for providing EIS funded through the IDEA); *see also* DoDI 1342.12, *supra* note 18, para. 4(a) (establishing DoD policy to provide EIS for eligible infants and toddlers).

¹⁹⁴ *ISEA Course*, JAGU, <https://jagu.llc.army.mil/webapps/blackboard/execute/>

identification and screening; evaluations; eligibility; IFSP development and implementation; least restrictive environment; related services; transportation; and the transition from receiving EIS to receiving special education through an IEP.¹⁹⁵ Although some topics appear to overlap with the existing modules, it is vital to understand the differences between the definitions and services provided pursuant to an IFSP versus those provided pursuant to an IEP.¹⁹⁶ In addition to expanding training topics, the Army should consider expanding the expertise of its attorneys.

As of 2023, approximately 57,777 Family members are enrolled in EFMP, and the Army should hire additional subject matter experts in disability and special education law to actively support this population.¹⁹⁷ Hiring additional attorneys would support the burden of ensuring Families understand their legal rights and entitlements related to EIS or special education.¹⁹⁸ Perhaps more importantly, additional attorneys could assist in the event a school or EIS provider violated those rights, preparing for and representing Families in administrative complaints, mediation, or due process hearings.¹⁹⁹ Acknowledging that personnel resources are often limited, hiring additional attorneys with expertise in special education law

announcement?method=search&context=course_entry&course_id=_1390_1&handle=announcements_entry&mode=view (last visited June 11, 2025) (requiring course admission to access materials) (listing available special education lessons on the website which, in name, appear to mirror relevant topics related to EIS including: eligibility; evaluations; least restrictive environment; related services; transportation; and transition planning).

¹⁹⁵ These topics align with the main procedures discussed in DoDM 1342.12. *See generally* DoDM 1342.12, *supra* note 45, at encl. 3.

¹⁹⁶ Early intervention services are established and prescribed in Part C of the IDEA, while Part B prescribes special education services, which have varying requirements and burdens on the state. *Compare* 20 U.S.C. ch. 33, subch. II, *with* 20 U.S.C. ch. 33, subch. III.

¹⁹⁷ E-mail from Jennifer Young, Special Education Policy Advisor, Legal Assistance Policy Division, to Author (Mar. 11, 2024, 13:29 EST) (on file with author). These numbers are up from the reported 43,109 Family members enrolled in EFMP in 2018. GAO-18-348, *supra* note 154, at 12 tbl.3.

¹⁹⁸ While all 57,777 potential EFMP clients will unlikely need assistance at once, a 1:57,777 expert-attorney ratio may be untenable for the JAGC long-term. *See generally* U.S. DEP'T OF ARMY, REG. 27-26, RULES OF PROFESSIONAL CONDUCT FOR LAWYERS comment 2 to rule 1.3 (28 June 2018) [hereinafter AR 27-26] (stating that "[a] lawyer's workload should be managed by both lawyer and supervisor so that each matter can be handled competently").

¹⁹⁹ *See* DoDM 1342.12, *supra* note 45, at encl. 6 paras. 4(h–i); *see also id.* at encl. 6, para. 5(e) (holding that representation by counsel is authorized for due process hearings, although at each party's own expense).

may help alleviate burdens on installation legal assistance offices to understand these processes.²⁰⁰

Nevertheless, there may be some concerns with increasing the number of attorneys in the JAGC. Congress mandated creating and staffing the Office of Special Trial Counsel as part of the NDAA for Fiscal Year 2022.²⁰¹ To meet this requirement, the JAGC is already obligated to expand personnel billets.²⁰² In an age where there is a fight for personnel,²⁰³ it may be impractical to seek additional attorney billets for special education. In the alternative, the JAGC should find ways to improve training and provide opportunities to build expertise related to special education and early intervention among judge advocates. Aside from efforts to obtain additional expertise in the field, the Army should continue advancing its support to Families enrolled in the EFMP by training administrative law attorneys on issues related to early intervention and special education.

²⁰⁰ See Vergun, *supra* note 95; see also Exec. Order No. 14,095, 88 Fed. Reg. 24669 sec. 1 (Apr. 18, 2023) (finding that “Military families consistently cite access to high-quality child care as an impediment to military spouse employment and family economic security. Difficulty accessing care also poses a challenge for both spouses—and, as data shows, particularly for women in dual military couples—to continuing their service if they have caregiving responsibilities”).

²⁰¹ National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, § 531, 135 Stat. 1541, 1692 (2021).

²⁰² See Memorandum from Sec’y of Army to Gen. Counsel, Dep’t of Def., subject: Fiscal Year 2022 National Defense Authorization Action (FY22 NDAA), Section 539F(a)(1) Brief – Office of the Special Trial Counsel (7 Feb. 2022) (establishing a need for increased personnel resources to adequately resource the Office of the Special Trial Counsel).

²⁰³ See Vergun, *supra* note 95. It is also important to note that these increases in allocations for JAGC personnel are occurring when Congress has reduced the end strength authorization for the Army. See, e.g., National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, § 401(1), 135 Stat. 1673 (authorizing an end strength of 485,000 for fiscal year 2022); James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, § 401(1), 136 Stat. 2551 (authorizing an end strength of 452,000 for fiscal year 2023); National Defense Authorization Act for Fiscal Year 2024, H.R. 2670-100, § 401(1) (2023) (authorizing an end strength of 445,000 for fiscal year 2024).

B. Expanded Legal Training for Administrative Law Attorneys and Commanders

While legal assistance attorneys must prepare to advise Service members and their Families on special education issues, administrative law attorneys must prepare to advise commanders and other installation entities on their legal obligations related to special education. While it is imperative that Families have access to trained attorneys when consulting on special education and early intervention, the command may resolve many issues or problem areas if the attorneys advising the command and installation contribute to the process.²⁰⁴ Potential expansion areas include requiring administrative law offices to train attorneys on special education law and establishing training for commanders and staff involved in the screening, evaluation, and provision of EIS and special education services.

In order to advise on any matter, judge advocates must be competent in their legal knowledge of the issue.²⁰⁵ At a minimum, it would be helpful for administrative law attorneys to go through the same online training course required for legal assistance attorneys.²⁰⁶ Understanding these modules may assist judge advocates in advising entities on the installation and assisting the Defense Office of Hearings and Appeals in the event of an investigation or complaint.²⁰⁷ In addition to legal training for the attorneys, the Army must train commanders on requirements related to special education.

Commanders have limited formal opportunities for legal education, but addressing special education obligations should be added to the

²⁰⁴ DoDI 1342.12 requires secretaries of the military departments to “[t]rain command personnel to fully understand their legal obligations to ensure compliance with and provide the services required by this Instruction.” See DoDI 1342.12, *supra* note 18, at encl 2, para. 4(h).

²⁰⁵ “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.” AR 27-26, *supra* note 198, at rule 1.1.

²⁰⁶ *ISEA Course*, JAGU, https://jagu.llc.army.mil/webapps/blackboard/execute/announcement?method=search&context=course_entry&course_id=_1390_1&handle=announcements_entry&mode=view (last visited June 11, 2025) (requiring course admission to access materials).

²⁰⁷ See DoDI 1342.12, *supra* note 18, at encl. 2 para. 4(f) (requiring the secretaries of the military departments to “[p]rovide counsel . . . or request counsel from the Defense Office of Hearings and Appeals . . . to represent the Military Department in impartial due process hearings and administrative appeals . . . for infants and toddlers birth up to 3 years of age, inclusive, with disabilities who are eligible for EIS”).

training curriculum for garrison and MTF commanders.²⁰⁸ Garrison commanders need to understand their role in supporting EIS on an installation. Since providers conduct EIS in the least restrictive environment, such as a home or daycare, garrison commanders may also encounter issues related to provider access to an installation, housing issues, or issues at a CDC that they must address and appropriately resolve.²⁰⁹ Concurrently, MTF commanders play a critical role in supervising the screening, evaluation, and implementation of EIS, and they should understand the key players within their organization and the resources required to execute all requirements.²¹⁰ Beyond educating and training attorneys and commanders, the Army should also increase its efforts to ensure Families enrolled in EFMP understand their rights related to special education services.

²⁰⁸ Battalion and brigade commanders attend the Senior Officer Legal Orientation course at the Judge Advocate General's Legal Center and School in Charlottesville, VA. The course is a week-long course designed to orient future commanders to the various legal issues they may face during their command and provide a baseline understanding of expectations and available support from the legal channels. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-21-338, MILITARY TRAINING: THE SERVICES NEED TO ENSURE THAT ALL COMMANDERS ARE PREPARED FOR THEIR LEGAL RESPONSIBILITIES 20–29 (2021), <https://www.gao.gov/products/gao-21-338>; *see also* Interview with Major McMenamin, *supra* note 178.

²⁰⁹ *See, e.g.*, U.S. DEP'T OF DEF., DoD MANUAL 5200.08, 3 PHYSICAL SECURITY PROGRAM: ACCESS TO DoD INSTALLATIONS MANUAL sec. 3 (2 Jan. 2019) (outlining installation access requirements and multiple instances where an installation commander may have discretion to allow access or credentialing); INSPECTOR GEN., U.S. DEP'T OF DEF., NO. DODIG-2022-004, EVALUATION OF THE DEPARTMENT OF DEFENSE'S IMPLEMENTATION OF OVERSIGHT PROVISIONS OF PRIVATIZED MILITARY HOUSING 6 (2021) (finding that in the Department of the Army, "[the] Garrison Commander serves as the Secretary of the Army's local representative to the landlords. The Garrison Commander assists with landlord and tenant disputes that the Property Manager or Garrison Housing Manager cannot resolve. The Garrison Commander also maintains order and discipline, health, safety, security, and protection of the project."); U.S. DEP'T OF ARMY, REG. 608-10, CHILD DEVELOPMENT SERVICES para. 2-3(a) (11 May 2017) [hereinafter AR 608-10] (noting that "[garrison] commanders are responsible for the management and operational supervision of all programs and services within CDS delivery systems.>").

²¹⁰ *See* MEDCOM REG. 40-53, *supra* note 71, para. 1-9(c) (detailing the responsibilities of MTF commanders, including ensuring full compliance with DoDI 1342.12 and MEDCOM REG. 40-53, allocating resources, staffing, ensuring appropriate prioritization of evaluations, handling medical privileges, and appointing and supervising EDIS managers).

C. Expanded Outreach to Families Enrolled in the Exceptional Family Member Program

An important area of expansion for the Army's special education efforts is increasing outreach and engagement with eligible EFMP Families. Despite the large number of Families enrolled in EFMP²¹¹ and the availability of special education-trained attorneys in legal assistance offices,²¹² the Army received less than 200 referrals for special education-related issues from 2020 to 2023.²¹³ While the EDIS program is responsible for drafting agreements and coordinating services with community agencies on and off the installation, additional opportunities for legal programming may be helpful in spreading awareness.²¹⁴ For example, installations should consider adding required briefings to all Service members with a Family member enrolled in EFMP during installation in-processing.²¹⁵ Another opportunity to reinforce the availability of resources is when a Family member is referred to, or enrolled in, EFMP.²¹⁶ In order to reach more Families, MTF commanders could require providers to refer Families to legal assistance for a consultation or initial brief on resources simultaneous with enrolling the Family member in EFMP.²¹⁷ To ensure legal support for Family members

²¹¹ E-mail from Jennifer Young, Special Education Policy Advisor, Legal Assistance Policy Division, to Author (Mar. 11, 2024, 13:29 EST) (on file with author).

²¹² Suits, *supra* note 170. This paper discusses only Army actions taken to train attorneys in special education law; the Air Force, Navy, and Marine Corps have also taken significant steps to also increase their service's expertise in special education law; see GAO-22-105015, *supra* note 149, at 15–18 (citing that all of the services have contracted with William and Mary Law School Special Education Advocacy Clinic, and the Air Force, Navy, and Marine Corps have all hired civilian attorneys to provide specific expertise to their respective legal assistance clients on special education and disability law).

²¹³ E-mail from Melissa Halsey, Chief, Legal Assistance Policy Division, to Legal Assistance Policy Division Personnel et al. (Dec. 19, 2023, 08:46 EST) (on file with author).

²¹⁴ MEDCOM REG. 40-53, *supra* note 71, para. 4-3(a).

²¹⁵ Service members are required to in-process at each installation upon their arrival. U.S. DEP'T OF ARMY, REG. 600-8-101, PERSONNEL READINESS PROCESSING para. 2-1 (6 Mar. 2018). Part of a Service member's in-processing includes an "appropriate welcome orientation[.]" which often involves briefs from different services and resources on the installation. *Id.* at 2-1(a).

²¹⁶ See AR 608-75, *supra* note 12, para. 3-1(a) (detailing current steps required by the EFMP case coordinator and physicians during enrollment).

²¹⁷ *Id.*

and guarantee they are aware of their rights to legal support, the Army should require program coordinators and managers to notify Family members of available legal assistance services at the start of the IFSP process or prior to a meeting with a multidisciplinary inclusive action team.²¹⁸ These recommended efforts would increase support for Families enrolled in EFMP, an essential precursor to improving care for infants and toddlers with disabilities.

VII. Conclusion

The DoD must expand eligibility for EIS, at a minimum, to all military dependents living on an installation and consider expanding eligibility to all military dependents in general. In the absence of such changes, the Army must continue its efforts to expand legal support for Families with special needs. While efforts to improve education and support for individuals with disabilities have evolved over the past several decades,²¹⁹ the military ought to do more. The need for continuous improvement is evident, given recent attention towards special education services for military dependents by the President, Congress, and senior DoD officials.²²⁰ One of the most important aspects of these recent efforts has been advancing legal services for Families enrolled in the EFMP.²²¹ And despite the broad language of the FY21 NDAA,²²² the Army has made significant efforts to improve legal support to Families enrolled in the EFMP.²²³ However, efforts to support children with disabilities from birth through the age of three are still lacking. While the statutes on special

²¹⁸ See AR 608-10, *supra* note 209, para. 4-2(a)(4) (detailing requirements for a Special Needs Resource Team (SNRT)); *see also* U.S. DEP'T OF ARMY, DIR. 2015-44, UPDATED POLICY FOR ARMY CHILD, YOUTH, AND SCHOOL SERVICES PROGRAMS encl., para. 10 (14 Dec. 2015) (changing the term SNRT to "Multidisciplinary Inclusion Action Team").

²¹⁹ *See generally, e.g.*, 20 U.S.C. §§ 1400–1444.

²²⁰ *See, e.g.*, Exec. Order No. 14,095, 88 Fed. Reg. 24669 (Apr. 18, 2023) (recognizing the impacts of care on Families); James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, § 576, 136 Stat. 2605 (establishing special needs coordinators in child development centers); *Strengthening Our Support Memo*, *supra* note 4 (prioritizing support to EFMP Families for the DoD).

²²¹ William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116–283, § 582, 134 Stat. 3653.

²²² *Id.*

²²³ *See* Legal Assistance Services Related to Education Law Memo, *supra* note 171 (mandating special education law as a practice area for legal assistance attorneys).

education authorize the DoD to provide EIS for infants and toddlers with disabilities, current policies limit services to a minority of eligible dependents.

Ensuring special education support for military dependents from birth through the age of three must be an essential tenant of the Army's quality of life initiatives.²²⁴ First and foremost, ensuring children receive EIS provides significant long-term benefits for both the child and society at large, and the DoD should seek to limit the impact a parent's service in the military has on whether a child receives these benefits.²²⁵ Next, in an era where the military is struggling to recruit and retain personnel, it is critical to understand that ensuring care for these dependents could positively impact whether an individual joins or stays in the military.²²⁶ Additionally, the growing need for quality childcare in the military supports the argument that there is a growing need to ensure that special education supports, specifically EIS, are in place to support those Families.²²⁷ In the fight for people, the DoD must seek to provide this beneficial support for Service members and their Families.²²⁸

The DoD must resolve gaps in special education policies to maximize EIS for eligible military dependents. The DoD currently provides EIS for dependents living on a military installation that operates a DoDEA school, but this limits the DoD provision of EIS to only a small subgroup of military Families.²²⁹ Instead, the DoD should authorize and provide EIS for all military Families living on an installation, and the DoD should consider expanding EIS to include all military Families who have an infant or toddler with a disability. Actions speak louder than words, and while the DoD has clearly stated its overarching policy to support military Families, the DoD must ensure that all policies, instructions, and manuals align with this goal.

²²⁴ See sources cited *supra* note 86.

²²⁵ CTR. ON THE DEVELOPING CHILD AT HARVARD UNIV., *supra* note 15.

²²⁶ See 2023 DACES REPORT, *supra* note 97.

²²⁷ See Exec. Order No. 14,095, 88 Fed. Reg. 24669 sec. 1 (Apr. 18, 2023) (noting that "Congress must provide the transformative investments necessary to increase access to high-quality child care—including preschool and Head Start—and long-term care services, as well as high-quality, well-paying jobs that reflect the value the care workforce provides to families and communities").

²²⁸ RAND LABOR AND POPULATION, *supra* note 93, at 3 (2005) (estimating the net benefit to society when EIS was provided to children ranged from approximately \$1,400 to \$240,000 per child).

²²⁹ See sources cited *supra* note 115 (noting that EDIS services are only available at 9 Army installations within the United States and its Territories).

Regardless of whether the DoD ultimately adjusts its policy for EIS, there are actions the Army can take now to increase support and care for military children with special needs. Army Families need legal support to understand their rights and protections related to EIS, and the Army must expand training for legal assistance attorneys to cover topics related to early intervention. Similarly, commanders and their legal advisors must understand the requirements for early intervention and how to properly implement EIS on an installation. Thus, the Army must expand training to commanders and administrative law attorneys. Lastly, the Army should coordinate and expand outreach efforts early in the diagnosis to reach as many Families as possible.

Military Families are often seen as the “backbone” of the military, supporting Service members as they answer the Nation’s call to serve.²³⁰ It is vital to ensure that DoD and Army policies and regulations support even the youngest Family members in return.

²³⁰ See AMY MILLIKAN BELL, ET AL., ARMY PUBLIC HEALTH COMMAND, HEALTH OF THE ARMY FAMILY 70 (2021) (citing military spouses as the backbone of the Armed Forces); see also Congressman Sanford D. Bishop Jr., Opinion, *Supporting the Backbone of Our Military*, HOUSE.GOV, (Sept. 17, 2014), <https://bishop.house.gov/media-center/op-ed/supporting-the-backbone-of-our-military>) (stating that “the strength of our military is drawn from the resilience of their families”). “We have an all-volunteer force—and it continues only because of generations of Americans who see the honor, dignity, and patriotism of [military service]. How can we hope to keep our military strong if we don’t give our families, survivors, and caregivers what they need to survive?” Jill Biden, First Lady, Remarks by First Lady Jill Biden for the Next Phase of Joining Forces in Virtual White House Event, WHITE HOUSE (Apr. 7, 2021), <https://bidenwhitehouse.archives.gov/briefing-room/speeches-remarks/2021/04/07/remarks-by-first-lady-jill-biden-for-the-next-phase-of-joining-forces-in-virtual-white-house-event/>.