

Prepared Statement  
of  
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Regarding  
EFMP and Special Education Challenges  
for  
Military Families  
Before the  
House Armed Services Committee  
Military Personnel Subcommittee

February 5, 2020

Ms. Chairwoman, Congressman Kelly, and distinguished members of the Subcommittee, thank you for the opportunity to discuss the Exceptional Family Member Program (EFMP) and the special education challenges our military families face. It has been almost eight years since the last convening of a Hearing to address issues impacting our military families impacted by disabilities. Sadly, the same issues exist and, in some cases, have increased in severity and frequency.

Thank you for your willingness to take the next step from awareness to action and to do the right thing to support our most vulnerable military families. Tens of thousands of servicemembers need EFMP every day. Many more will need it in the future as families face unexpected medical challenges. Unfortunately, the EFMP system is clearly broken. Due to the lack of EFMP standardization among the service branches, lack of effective resources, and lack of accountability and transparency of Impact Aid funds designed to assist them, our military families and children are suffering, which in turn, is severely impacting military readiness and retention. Military-connected children with disabilities who depend on special education services are caught in systems that operate with impunity because no reasonable enforcement mechanisms exist.

## **Introduction**

I am a proud Navy Spouse of 25 years. My husband, Cassidy, is a Captain in the Navy and commands the forward-deployed USS Mount Whitney based overseas in Italy. My two children, Marisa and Chace, and I are not able to move due to our EFMP status. My husband and I both graduated with engineering degrees from the University of Texas at Austin and shortly afterwards, Cassidy embarked on his Naval career. We married after he was “winged” as a Naval Aviator and have moved together nine times, including both coasts and overseas assignments, not including four additional geobachelor assignments. Cassidy deployed 12 times on 7 ships and will soon command an aircraft carrier. Early on in his career, I managed to find employment as an engineer, first in private industry and then as a civilian engineer with the Department of the Navy.

Life changed dramatically when my daughter Marisa was born prematurely at 27 weeks in 2003 at 2 lbs 3 oz. My daughter suffered a Grade 4 brain bleed and other complications while living her first 8 months in the hospital, resulting in over 21 diagnosed disabilities including cerebral palsy, right hemiplegia, hearing loss, ADHD, OCD, and anxiety. Despite these disabilities and the originally dire prognoses from a myriad of medical specialists, Marisa has beaten the odds and is a bright student of average intelligence. Also, with the hard-won supports and services now in place, she can participate in her private school's volleyball team and

has the opportunity to achieve a standard diploma. However, her current educational and medical situation was only possible by spending hundreds of thousands of dollars out of pocket, in addition to devoting full-time efforts and focus on being Marisa's caregiver and advocate.

## **EFMP**

Despite the challenges of having a medically complex child, my husband has managed to continue to serve this great country, but it has taken an incredible toll on our family, emotionally and financially. Our situation is not unique to EFMP families.

EFMP is still perceived as a detriment to a military family. Although mandated by the services, many service members are hesitant to admit their family members have issues that warrant EFMP registration for fear of promotion challenges or not being assigned to career-enhancing locations. The entire EFMP process seems like an afterthought to detailing assignments. These issues are not unique to the Navy. Air Force Lt Col Oregon noted in a CNAS article,

**“There is a lack of oversight, standardization of services, and responsibility at the installation level. With multiple offices in charge of different portions of EFMP, MTF organizations that manage important tasks – like ensuring needed medical and educational services are available prior to orders being issues – lack standardization between installations and the military services. This results in decreased support for EFMP families, delays in service, and extended timelines to process enrollments and assignments. Close coordination among MTF medical staff, EFMP family support, and assignment personnel is essential but inconsistent.”<sup>1</sup>**

Although approved for a location that should support a medically complex child, many families complain of not having timely access to critical medical appointments and services, lengthy waitlists for those services, lack of providers and never-ending waitlists for Respite Care. Military families also report inadequate support for EFMP adults and those retiring. Throw in a change of regional Tricare providers every couple of years we have to spend hundreds of hours on the phone trying to clear claims or referrals that should have easily transferred. Even Tricare contract changes in participating pharmacies makes our lives increasingly difficult when our children depend on multiple medications. There is no program ownership or “the buck stops here” with EFMP management...no one person is in charge. There is also no standardization between services,

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<sup>1</sup> <https://www.cnas.org/publications/commentary/helping-special-needs-families-and-improving-military-readiness>

resulting in a lack of accountability for ensuring mandates are being met. These problems infiltrate all facets of EFMP, especially on Joint bases, which are becoming more common, causing even more confusion and frustration for our families. These issues are well documented, even within the Pentagon. Former Director of the Office of Special Needs, Dr. Ed Tyner noted

**"Each service does have [its] own culture and sometimes that is a big factor," he said.**

**"Everybody was in agreement that this [EFMP standardization] is something that should happen, but I have to tell you we did go through some rough times... It was never contentious; it was just like 'I don't know if we can do that... We've probably had over 800 meetings trying to hammer out some issues," he said. "When I first started this I thought, 'Oh good, we could do this in a couple years, this will be easy.' It's been a real learning experience for me with how many road blocks you have to work around."**<sup>2</sup>

There has been some improvement in this past decade within EFMP that have supported our families. Approved Applied Behavioral Analysis (ABA) therapy has significantly improved many of our children's lives. Some families have had positive experiences with EFMP if they are able to extensively research their next duty station and lean on online peer groups to get the information they need for a smoother transition.

The inception of the Respite Program, which is available in varying degrees for all service branches, is a lifesaver for our family. After 7 months on a waitlist, we finally got a coveted slot which includes 40 hours of respite care per month, which offers much-needed relief to the burdened caregivers. We were lucky as most families are waitlisted for longer, often for years. The Navy Respite Care Program is the single reason why my husband is still in the Navy. For many military families, there is no other way to receive respite care because many states, such as Maryland, have different eligibility requirements for their Medicaid Waivers. I implore the other service branches to offer a full 40 hours of Respite Care per month like the Navy, work with community leaders to ensure there are plenty of providers available in EFMP-centric duty stations and commit to increasing funding for this very important service.

The Marine Corps is the golden standard for EFMP. They designed and developed an efficient program from the top down when a senior leader said "Fix it" about a decade ago. Their EFMP not only takes care of Marine Corps families with a well-integrated and well-coordinated model, with robust case management and special education attorneys on staff, but they also provide quality feedback in accordance with US Code

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<sup>2</sup> <https://www.military.com/daily-news/2015/11/11/pentagons-special-needs-program-to-take-years-longer.html>

1781c. Although some may say it is easier for the Marine Corps to reform due to its smaller size, it serves as a blue ribbon program for the other service branches to replicate. They did not use the phrase “It is hard” as an excuse to change EFMP. With buy-in from the DoD Leadership, EFMP can be fixed across the services. Let’s not reinvent the wheel. We simply need to use what has been working for our Marine Corps families.

### **EFMP – Educational**

Military children with special needs have been experiencing education challenges at an alarming rate.<sup>3,4</sup>

Despite federal and state regulations in place to protect students with special needs, including the 2017 *Endrew F. v. Douglas County School District*, the unique aspects of military life, such as frequent moves, lead to significant educational deficiencies for these vulnerable children. The inconsistent delivery of special education and lack of public school accountability has caused special education to fall well below the legal standards, known as Free Appropriate Public Education (FAPE). The lost instruction and insurmountable challenges for parents create undue burdens on military families and their children with special needs, significantly decreasing military readiness and retention.

Cassidy and I never dreamed about the challenges we would have with a school district. It is difficult to imagine that a public institution would consistently violate the law. It is contrary to our military experience, where service members follow the rules and laws and there are checks and balances in place, to include the Office of the Inspector General (IG). We also never imagined we would be forced to fight alone due to the lack of support from the EFMP program.

### **Marisa’s story**

The legal battle for Marisa’s education against Virginia Beach City Public Schools (VBCPS) started in 2014 when we moved on military orders from Fairfax County to Virginia Beach, VA. I want to stress that we had several positive experiences in public schools in several states, where Individualized Education Program (IEP) Teams collaborated with us and truly cared to support our daughter’s education.

Upon arriving to Virginia Beach for a third time, we immediately noticed a stark difference. In the first 30 days, goals and services were taken away from Marisa’s IEP. We didn't realize the implications at first, but the

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<sup>3</sup> <https://www.wrightslaw.com/blog/tag/military-families/>

<sup>4</sup> <https://www.sandiegouniontribune.com/news/education/story/2019-10-05/expensive-legal-fights-ensue-when-families-say-theyre-not-getting-the-right-special-education-services>

school continued a pattern of minimizing our daughter's disabilities and telling us that everything was "fine." This is common for many EFMP families to be gaslighted. The child receives artificially inflated grades to placate the parents. The concerns of observant parents who advocate for their child are discounted because the schools know they can "wait us out" because we will receive orders again before we can attempt to force the school district to follow the law. When we insisted on appropriate education for our daughter, meetings became hostile, not collaborative, and worse, the school district was not following her IEP. Imagine how hard this was for Marisa. She regressed socially and academically, failing all benchmark testing, yet was placed on the A/B Honor Roll and received a Student of the Month award.

My "gut" was telling me something was not right. To make matters worse, Cassidy was out-of-state for training for 22 months. Meanwhile, school officials kept asking when we were transferring out on military orders, likely following the same pattern military families all across the US have experienced, school districts refusing to provide the legal minimums of special education because they know it is difficult for the parents to fight a school district and military families will likely get military orders and no longer be a burden on the school. Stressed and exhausted, I finally reached out for help. I called the EFMP program. The case manager told me that they could not advocate for families and to try to contact the Parent Liaison at the school district. The case manager also recommended that I contact the Virginia Department of Education (VDOE). I did both. Although sympathetic, both were not able to help me. The IEP meetings became more contentious and less collaborative. Later, I realized that the Parent Liaison was employed by the school district.

We reached into our small savings to pay for a special education advocate as conditions got worse for Marisa and I felt bullied at IEP meetings. Marisa wanted desperately to keep up with the other students but it took her a long time to access the restroom. Out of fear of missing instruction, and frustration that no one would assist her, she avoided using the restroom all day and would hurry to the restroom as soon as she returned home from school. We knew her IEP not being implemented when we saw unfinished classwork and unmodified homework in her backpack. Everything took her longer due to her known physical disabilities and other disabilities we were about to discover. We brought these issues up in meetings so we could help her access the education like her peers. After another contentious meeting, our new advocate confirmed our suspicions that the school was violating federal law.

The process is challenging and frustrating for EFMP families. When a family knows an IEP is not being implemented, how do you hold a school accountable? When EFMP says they cannot advocate and an Education Department (ED) state office says that their hands are tied, what do you do? Webinars and volumes of information available online through Military OneSource (or the internet) do not hold any weight in an IEP meeting. You could be waving the Wrightslaw book in the air quoting the Individuals with Disabilities Education Act (IDEA) law and it won't help you when a school district “interprets” it another way. EFMP families are often put in difficult decisions about their children’s right to an appropriate education, whether it be acknowledging a disability or a proper placement.

We reached out to the local Navy JAG for legal assistance. Their office stated that special education was not one of the tiers that they cover. They do make referrals to the Pro Bono Project, however, it was only for E-6 and below and there was no guarantee that the Pro Bono Project would accept the referral. Although the Marine Corps has two disability law attorneys on staff for their EFMP families, none of the other branches employ attorneys. It is notable to state that Special Education law is considered a “boutique” specialty due the complexity of IDEA. A general attorney cannot be hired to represent a family special education case.

At this point, we borrowed money from family to hire a special education attorney, a military spouse herself with a child with special needs, who lived three hours away since there were no special education attorneys in southeastern Virginia. Plus, we knew that we were in a unique position by having access to the large amount of money it takes to pay for representation by a special education attorney. Typically, the only military personnel that make enough money to afford a lawyer are servicemembers with at least 4 years as a non-commissioned or commissioned officer, approximately the top 15% of all military personnel.<sup>5</sup>

Impact Aid funding is distributed to public school districts serving our military children (Section 7003(b)). Separate Impact Aid funding is allocated for military children with IEPs (Section 7003 (d)). Those two pots of money make up the majority of Impact Aid funding to school districts. There is also a third pot of funding for severely disabled military children that schools can apply for that covers expenses such as private tuition or related services (SD Form 816).

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<sup>5</sup> <https://download.militaryonesource.mil/12038/MOS/Reports/2018-demographics-report.pdf>

VBCPS received \$1.4 million of a Congressional \$5 million add to support Children with Severe Disabilities in Impact Aid funds and has access to taxpayer-funded city attorneys. In fact, VBCPS received additional payments for military-connected children with disabilities in FY19, increasing from \$680,000 to \$2 million (see attachment A). How these Impact Aid funds are used is not tracked, reported or audited after being incorporated into school district's General Education Fund. There is no system in place to verify the funds are used as they are intended. However, in VBCPS, the General Education Fund is first utilized to pay in advance for annual cooperative agreements with the City Attorney's office<sup>6</sup>, enabling the school district to use taxpayer dollars to fight parents who are simply advocating for the minimum level of education for their children.

After several more IEP Meetings with our attorney in attendance, we pulled our daughter and placed her in a private school for kids with learning differences, a decision that changed my daughter's life for the better, even though she had to repeat 5<sup>th</sup> grade due to her regression in public school. Again, this is not a feasible financial option for a large majority of EFMP families. When there are IEP issues, most military families will move and live apart from the active duty service member, pull their child to homeschool, or simply give up and accept the substandard education. There are few families who can afford private school. It is also not a given that private schools will accept children with special education needs. We kept working with the school district for another year by attending a total of 16 IEP Meetings, several of which my husband phoned in from an aircraft carrier on a combat deployment in the Arabian Gulf. When presented yet again with an inappropriate IEP, we had no choice but to file for due process. It was the most stressful and emotional time in our family's life, especially because the legal deck is stacked against parents.

We won our first due process hearing in 2016. The Hearing Officer ordered 1) Marisa to be officially placed at the private school providing FAPE and 2) that the public school pay past and future costs of the private school since the public school failed to provide FAPE. Sadly, the emotional relief was short-lived and the school district appealed to the federal district court. During that time, the school district did not follow the Hearing Officer's **mandatory** orders. That trend has continued for several years: we win legal decisions, even at the Fourth Circuit Court level, the school district fails to comply and acknowledge the stay-put decision, fails to make financial payments, requiring more legal action. Although they have yet to follow the law, the

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<sup>6</sup> <https://www.vbschools.com/common/pages/DisplayFile.aspx?itemId=21510213>, page 5.



school district suffers no penalties. VBCPS took the due process rights outlined in the IDEA and have been using them as a weapon against my family.

Three days after Christmas, in 2018, the school district sued my daughter to get her back in public school. We are the only family the school district has ever sued. To us, this was blatant reprisal.

My husband, again away for training, had only one week to spend at home before leaving for a 15-month overseas deployment. Instead of spending it at home with us, he spent it in a 5-day due process hearing - which almost didn't happen because the school district refused to consider a hearing date he could attend. We were forced to invoke the Servicemembers Civil Relief Act to move the hearing date. This is just one of many examples of distasteful and unethical actions by the school district. In the hearing, Marisa testified for the second time in her life, very stressful events that, combined with the school district refusing to support her education and suing her, caused aggravated spikes in her anxiety. In the end, we won, again. Even though the school district did not appeal this latest decision, they are, once again, not following legal orders. We filed a complaint with VDOE in an effort to get them to comply with the previous legal case. We won that case too. We are now 6-0 in legal decisions. However, the school district did not comply with VDOE orders. Despite PBS, Stars and Stripes, and local news stations covering our story, our legal battle still has no end in sight. This level of harassment is undoubtedly intended to deter other EFMP families from advocating for their children.

This whole process for an appropriate education has been a huge financial and emotional burden on our single-income family with husband forward-deployed for the majority of the time. There has been no help available from School Liaison Officers (SLO), EFMP, or any other DoD program. Regulatory efforts by the VDOE fall of deaf ears at the school district because there is no effective enforcement of VDOE legal decision, no penalties of any kind. Plus, VBCPS has "deep pockets" of taxpayer money to prolong the harassment; currently, over \$600,000 of taxpayer money has been spent in their fight to bring Marisa back into the public system. Consider all that could be funded instead with those dollars. My husband's readiness has been impacted significantly and it will literally take years of therapy for my daughter to heal from this trauma that the school district created (see attachment B). No family should ever go through what we have gone through for an appropriate education for their child.

Most importantly, this story is not just about Marisa. It's about the tens of thousands of similarly-situated military students in EFMP whose parents do not have the ability to fight. If, after spending over \$220,000 in legal expenses out of our own pockets and winning all legal decisions, we are still suffering from the school district failing to adhere to the law and legal orders, how can an enlisted service member even begin to fight? Ironically, while our uniformed service members are fighting to support and defend the Constitution, the school districts are not providing even the minimum education for their children, forcing their spouses to fight for education that is already mandated by law. We are too burdened, too tired, too spent on deployments, and too broke to obtain the resources we need. Since IDEA allows autonomy for each state and school district to determine how it will carry out the law, our military-connected kids, who move on average 6-9 times during their K-12 years, are highly vulnerable to the corrupted special education system. School districts and states can get away with arguing that just because it happens to one student, doesn't mean that it happens to others. It shouldn't happen to any child. IDEA does not take into account a category of students like highly mobile, military-connected students. That is why we need data (Milsped2020) and legislation policy (**PROMISE Act**) to universally address these challenges for all EFMP families.

### **EFMP – Systemic Issues**

It is widely recognized that the EFMP program is broken. There is a lack of general knowledge from EFMP Coordinators of what is mandated by law. Last year, I had to send the EFMP case manager language from US Code 1781c that mandates service plans because she was not educated on the subject. Even so, she still told that the service plans were only completed “by request.” Finally, we received a service plan only after my repeated insistence (see attachment C). It was riddled with outdated and ineffective resources. However, it was the best the case manager could do at that time.

We are not alone. Families, even the most determined, need help. EFMP needs educated and energetic coordinators. Our children's health and well-being literally depend on it. It would have been incredibly helpful to have an EFMP case manager attend an IEP meeting with me when my husband was deployed (like Marine case managers do). Or offer personalized advice when I was frustrated and stressed. When military families like the Reardon Family are frustrated with inadequate services offered at the schools for dyslexia or even the acknowledgement of dyslexia as a disability, the EFMP program should help them fight for an IEP and those necessary services. When our military families like the Penhale Family who have children with Autism are bullied to accept a non-appropriate placement for their child, the EFMP program should help

them fight for an appropriate placement instead of what happens now: the family is forced to homeschool. When our military families like the McCarley Family have a child with Down syndrome and are told that he is not allowed to be educated in the same classroom as his peers, the EFMP program should help fight this discrimination and secure an appropriate placement and his basic educational rights. These are military families across all service branches that are already taxed with fighting for a family member with extensive special needs. Fear of reprisal and dealing with these types of struggles are the primary reasons many EFMP families cannot effectively organize or sustain advocacy. Granted, some EFMP programs and locations are better than others, but all fall short of supporting our exceptional children so that they can become productive members of our society. And the incredible stress that our families experience impact the servicemember's readiness and safety every single day. Even while deployed overseas and executing daily combat operations on the USS Harry S. Truman, Cassidy's biggest concern, and worry, was how his daughter was being treated by the public school system back in the US.

## **2018 IG Complaint**

There have been a few studies to try to look into EFMP issues, with most of them lacking any significant data on special education challenges. The most complete study to date to investigate military families and the EFMP program was the 2018 GAO Report GAO-18-348<sup>7</sup>, which recommended assessing and monitoring DoD support for EFMP families and develop common performance metrics between the services for assignment coordination.

In the summer of 2018, over 30 families (including mine) petitioned the DoD Inspector General to investigate and correct the multiple discrepancies detailed in the GAO Report, related to DoD's implementation of 10 U.S.C. § 1781c, "*Office of Special Needs*"<sup>8</sup> (OSN) and DoD Instruction 1315.19, "*The Exceptional Family Member Program (EFMP)*"<sup>9</sup>. This GAO report, as well as previous GAO reports, other IG complaints and DoD findings from the last decade, consistently illustrate DoD's non-compliance with congressionally mandated support of military families impacted by special needs.

Our story stands out based on the extreme measures a public-school district has gone through to avoid following federal law and harass a military family with a severely disabled child. However, the DoD IG Complaint confirmed that our story is not unique among EFMP families.

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<sup>7</sup> <https://www.gao.gov/products/GAO-18-348>.

<sup>8</sup> Created by the National Defense Authorization Act for Fiscal Year 2010, Pub. L. No.111-84, § 563, 123 Stat. 2190, 2304 (2009). Amended in 2011 and 2016.

<sup>9</sup><https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/131519p.pdf>

School districts are eager to receive Impact Aid. In the San Diego Unified School District, the administration will actually threaten students with detention if their parents refuse to sign the Impact Aid federal card. VBCPS, a school district highly recognized as a military-friendly school district, received \$10,679,220 in Impact Aid in 2016/17, Impact Aid money is still so valued by the administration that parents are denied parent-teacher conferences in the new school year unless the parent brings a signed impact aid federal card to the meeting.

School districts have become brazen in dismantling or rejecting new family IEPs because they do not want to allocate resources to provide an appropriate special education (e.g., student 4 in attachment D). In other cases, such as the DeBlock's, a school district will sue a military child with a complicated IEP shortly after they arrive to the new duty station. Moreover, military families are at a disadvantage in trying to effect change in the local school district and community. Since military families typically move every 2 to 3 years, the school districts do not have to take military parents seriously. Additionally, many military members are not able to vote for school board members due to having a legal residence out of state. If the family is lucky enough to be a resident of the state, it is unlikely they will live there long enough to participate in a complete school board election cycle of between 2 to 4 years. School boards know this and can discount concerns without sacrificing votes. Since they operate independent of any other government organizations, and with no effective enforcement of the regulatory oversight by the ED, school boards often consider themselves a form of government that operates with "legal autonomy."<sup>10</sup>

Interestingly, two weeks ago, Military One Source sent an email stating that legal assistance was available for all service branches. That was not the answer I received when I asked during an OSN Webinar. I was informed that only the Marine Corps EFMP program allowed for advocacy and retained special education attorneys. When the Navy was questioned about their surveying, we discovered that one was sent in 2017. I am unsure of the scope of the survey. None of my many friends in the EFMP program ever saw the survey. My family, with two EFMP members, did not receive one either, which brings us back to accountability. When asked about the survey, the Navy representative stated that there were no specific questions on special education but the survey did ask if EFMP families were satisfied with the EFMP Program in general. The

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<sup>10</sup> "School Board Operating Budget FY 2014-2015" by Virginia Beach City Public Schools, page 51, [https://www.vbschools.com/UserFiles/Servers/Server\\_78010/File/About%20Us/Our%20Leadership/Our%20Departments/Budget/op\\_budget\\_2015.pdf](https://www.vbschools.com/UserFiles/Servers/Server_78010/File/About%20Us/Our%20Leadership/Our%20Departments/Budget/op_budget_2015.pdf)

results were half and half. The main takeaway is if you don't ask the right questions, you don't get the right answers - you cannot know if there are problems. EFMP program management allows checking a box of having “surveyed” families, even though the survey seems intentionally designed to avoid feedback that could drive action and truly help our families.

## Legislative Answers

Students with special needs are often seen as a burden on society and on the educational system. When school districts do not follow the law, it brings irreparable damage to the student in the form of emotional trauma, lost learning, and increased gaps in development. We have proven that it is very difficult to hold a school district accountable and comparable services, as outlined in IDEA, is often unattainable for military families moving from state to state or even district to district. Receiving schools can withhold comparable services with impunity because no reasonable enforcement mechanism exists. IDEA is to be enforced by states upon receipt of federal funds but the State's EDs lack effective ways to force compliance. Special education law may not be simple, but that is not an excuse for inaction from leadership. It is no wonder that very few military service organizations have tried to improve special education for our most vulnerable children, much less fix it. They have too many stakeholders to please. But we military families have only one stakeholder: our children with disabilities, and they need your urgent help.

Despite the fact that U.S Supreme Court rulings on the *Board of Education of the Hendrick Hudson Central School District v. Rowley* and *Endrew F. v. Douglas County School District* were considered huge wins for parents and advocates, there is still no specific legislation to support military-connected students. Military students are a highly-mobile population and due to their unique circumstances, their educational needs are not addressed in IDEA alone. Additionally, even though it is widely known that IDEA is underfunded, providing a FAPE is not intended to be contingent on available funding.

**“The U.S. Department of Education says even if schools have budget concerns, that doesn't change their legal obligations to your child . . . Under IDEA, special education services depend on the needs of the student, not on money.”<sup>11</sup>**

To be clear, military families with children with special needs are not advocating for a *high quality* or even *good quality* of education for their children. We are simply asking for the minimum education mandated by IDEA.

## NDAAs 2020

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<sup>11</sup><https://www.understood.org/en/school-learning/your-childs-rights/if-losing-services/10-smart-responses-for-when-the-school-cuts-or-denies-services>

Recognizing the lack of data on military families and special education, a few of us worked with Congressional leaders to insert the following language in the NDAA 2020.

**“The Committee is concerned that many families participating in the EFMP program are not provided with consistent educational opportunities throughout each Permanent Change of Station (PCS) move. The Committee is concerned that each PCS is disruptive to the educational plans for the child, as the services provided to special needs children can vastly differ between states and school systems, and that each PCS is disproportionately more difficult for EFMP families, who may need more time to make better educational choices. The Committee is also concerned the Department of Defense and Services lack the common performance measures and metrics to assess assignment coordination and family support.”**

The Committee tasks the Secretary of Defense with studying this issue and completing a report by February of 2020. This study was designed to fulfill the requirements of US Code 1781C, which directs DoD to “identify gaps in services...for military families with special needs” and provide recommendations for legislative action to congressional defense committees. Historically, DoD has not met these mandates. We need to demand that this will be a robust, thorough investigation into EFMP and special education compared to the 2012 DoD Study. We all agree that accurate data is needed.

### **Milsped2020**

Despite the service branches’ attempts to satisfy their obligation to survey EFMP on a triennial basis (US Code 1781c), there has been no significant data collection or surveying of EFMP families on their educational experience. Parents’ voices have been silenced by reprisal from school districts. In the second half of 2019, there was finally an authentic effort to truly “survey” EFMP parents. Our group of 4 military spouses, comprised of Shannon DeBlock, Grace Kim, Kaci McCarley and me, founded the Partners in PROMISE (Protect the Rights Of Military children In Special Education) to bring awareness to special education challenges for our military families. The Partners in PROMISE created the **Military Special Education 2020 Survey (MilSped2020)** (see attachment D), a grassroots advocacy effort to collect feedback from military families across all service branches with children who depend on special education services. Some families contacted us to let us know that they still refused to take the survey for fear of reprisal, but over 200 families from across the different service branches responded because they knew they could trust other military families, who would protect their identities to prevent reprisal from the school districts, which has become common for any family who speaks out publicly about a school district’s failure to provide FAPE.

## **PROMISE Act**

Upon the request of the Congressional Military Families Caucus, after a successful Summit in October 2019 that featured our Special Education Reform panel, the Partners in PROMISE drafted proposed legislation named the **PROMISE Act** (see attachment E). This legislation is designed to impose a minimum standard for military students whose unique circumstances are not addressed by IDEA alone, as schools have used it as a weapon against military students in special education rather than it was intended, to provide a FAPE. In many cases, including mine, when the school district used the due process rights outlined in IDEA as a weapon against our children, we military families have nowhere to turn for support.

Through 12 initiatives of re-regulation and directives, the **PROMISE Act** provides safeguards for military families with children with special needs, provides accountability and transparency of taxpayer dollars, and further supports military families forced to pursue legal action to ensure their child receives a FAPE. The legislation, sponsored by Congresswoman McMorris Rodgers and Congressman Bishop, is currently in Legislative Counsel. We understand that several of the proposed initiatives will make various organizations uncomfortable when talking about Impact Aid Funding. We anticipate their focus will be on simply advocating for more school funding. However, it must be emphasized that EFMP challenges will not be solved by increased funding alone. Oversight, accountability, and integrity of services have to accompany the funding. As highly mobile military families, we dearly love our teachers, our schools, and our communities. We all agree that more funding will help our exceptional students. However, our focus is on accountability, transparency, and integrity of spending any funds specifically allocated to support military-connected students with disabilities. Years ago, the formula for Impact Aid funds for children with IEPs was adjusted and more funds were funneled to EFMP-centric base locations. Ironically, the Milsped2020 survey results showed that the school districts that benefited most from those increased Impact Aid funds are now among the worst offenders for FAPE violations. We do not believe throwing more Impact Aid funds at these school districts is the single, correct answer. There needs to be accountability and transparency on what those funds are being used for and the **PROMISE Act** addresses that.

Additionally, within the **PROMISE Act**, we have included provisions for an external entity to collect data versus self-reporting from public school districts to ensure reliability and transparency. For example, a Virginia Department of Education (VDOE) Systemic state complaint was filed against Virginia Beach City Public Schools in 2018 for FAPE violations (see attachment F). The findings, which included grave concerns

for military families, stated that the school district was in systemic non-compliance with developing and implementing secondary IEP goals and transition services, which is mandated by IDEA. Interestingly, VDOE requires public school districts annually to self-report on state-wide benchmarks for special education per IDEA. For the 2017-2018 school year, VBCPS self-reported 100% compliance with secondary IEP goals and transition services.<sup>12</sup> Similarly, Fairfax County Public Schools self-reported to VDOE for years zero incidents of restraint and seclusion when in reality, numerous students were regularly subjected to seclusion and restraint.<sup>13</sup> Self-reporting cannot be trusted. We need checks and balances.

### **Navy Model**

Although in early stages, the Navy Mid-Atlantic Region (NMRA) is making a significant attempt to improve EFMP through actionable items and deadlines to provide educational support to our military families. Using the successful Marine Corps model as its guide, the Navy is looking into boosting support at all levels to include a pilot program for positioning special education attorneys on both coasts, working with state officials to standardize IEP forms and leading working groups to address known concerns. We hope the Army and Air Force would join the Navy in these worthwhile endeavors.

### **Conclusion**

Any military family member, at any time, is one life-changing event away from needing the services of EFMP. Nearly all military members know someone in EFMP. Yet EFMP is a broken system that needs standardization, more effective resources across all service branches, and accountability. In its current state, it is not supporting our most vulnerable families. The resulting problems are negatively impacting military readiness and retention. We are tired of hearing the lip service that “EFMP is hard.” Are we going to come back to the table in eight years, recognize no significant improvement, and talk about these very same issues again?

I am attaching family stories regarding EFMP experiences to this written statement (see attachment G). Many are anonymous due to fear of retaliation. I am in awe of how brave and strong these families are as they face significant challenges everyday. Their challenges could be as simple as having an IEP for executive

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<sup>12</sup>[http://www.doe.virginia.gov/special\\_ed/reports\\_plans\\_stats/special\\_ed\\_performance/division/2017-2018/spp-app/virginiabeac\\_h.pdf](http://www.doe.virginia.gov/special_ed/reports_plans_stats/special_ed_performance/division/2017-2018/spp-app/virginiabeac_h.pdf)

<sup>13</sup>[https://www.washingtonpost.com/local/education/fairfax-school-district-launches-review-of-seclusion-and-restraint-policies/2019/03/20/f8c880ca-475c-11e9-90f0-0ccfeec87a61\\_story.html](https://www.washingtonpost.com/local/education/fairfax-school-district-launches-review-of-seclusion-and-restraint-policies/2019/03/20/f8c880ca-475c-11e9-90f0-0ccfeec87a61_story.html)



functioning goals. Other challenges could be life-threatening such as being trained to handle a trach tube change or ensuring the safety of a non-verbal child on the autism spectrum. All of these military families deserve support, medically and educationally, so they can in turn, support their service member while executing his or her military mission on behalf of our nation.

Thank you for the opportunity to address the broken EFMP process. Let's fix this. With a proper functioning EFMP, as it was intended to be, our exceptional military children will be prepared for further education, employment and independent living - productive members of our great country. Let's do the right thing for military-connected children and support those who give the most to our country by ensuring their children receive an appropriate education. They are worth fighting for.

**Michelle Norman**

**2019 AFI Navy Spouse of the Year**

**Executive Board, Partners in PROMISE**

**Co-founder, Parents for FAPE**