

## Chapter 2

# Time to Make Special Education “Special” Again

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### Introduction

Prior to the 1950’s, the federal government was not routinely involved in the education of children with special needs. A few federal laws had been passed providing direct educational benefits to persons with disabilities, mostly in the form of grants to states for residential asylums for the “deaf and dumb,” and “to promote education of the blind.” These laws, however, were in the tradition of providing residential arrangements for persons with serious disabilities, services that had existed since colonial times.

Without applicable federal law, how—and even whether—children with disabilities were to be educated within the public schools was left to the discretion of states and their local school districts. Although some public schools undoubtedly provided exceptional services to children with disabilities, others did not. Indeed, as recently as 1973, perhaps as many as one million students were denied enrollment in public schools solely on the basis of their disability.<sup>1</sup>

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This state of affairs changed dramatically in 1975 with passage of the Education of All Handicapped Children Act (EAHCA). Renamed the Individuals with Disabilities Education Act (IDEA) in 1990, this landmark legislation mandated that children with disabilities must receive a “free appropriate public education” (FAPE) in the “least restrictive environment” (LRE). Critical components of the law include requirements for an initial evaluation to determine eligibility for services and accommodations, individual education planning, the provision of individualized services, and procedural safeguards to ensure the active involvement of a child’s parents.

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Unfortunately, the IDEA also has had some unintended negative consequences. These include the creation of incentives to define an ever-increasing percentage of school-aged children as having disabilities, an enormous redirection of financial resources from regular education to special education, and, perhaps most importantly, the application of an accommodation philosophy to populations better served with prevention or intervention strategies.

## Background

In the first half of the 20th century, the federal government's involvement in education was minimal. Special education services in particular were limited to providing states with funds to help establish and run residential facilities for persons with serious disabilities.<sup>2</sup> With the passage of the National Defense Education Act (NDEA) of 1958, the federal government began to play a greater role in elementary and secondary education. Congress also began to provide support to universities to train leadership personnel in developing programs for children with mental retardation. In 1963, Congress expanded these efforts to include grants to train teachers and researchers in a wide range of disabilities. With the passage of these two pieces of legislation, the federal government began to encourage, but not require, the inclusion of children with disabilities in the public school setting.<sup>3</sup>

Absent such a federal mandate, no state had yet developed a comprehensive program for all children with disabilities. Although by 1973 some 45 states had passed laws providing for the education of children with disabilities, these were not inclusive, and many children continued to be shut out of American schools. Moreover, although school attendance was required for all children, individual children could be excused from that requirement by being classified as "uneducable" by their local school district. Many states did, in fact, turn children away. Many other children were inappropriately placed. Children who had average academic ability combined with physical handicaps, for example, were often placed in classes for children with mental retardation.

In the early 1970s, the federal courts, in response to litigation brought by parents of children with disabilities, began to rule that schools owed students equal protection under the law and could not discriminate against individual students on the basis of disability. In the landmark 1971 case of *Pennsylvania Association for Retarded Citizens v. Commonwealth of Pennsylvania*, a group of mentally retarded children had been denied access to school because they had not attained a mental age of five years as required by state law for school entry. The court ruled that school entry could not be denied to these children based upon mental incapacity but did not specify how such children should be educated once in school.

A year later in *Mills v. Board of Education of the District of Columbia*, the court ruled that school districts could not refuse to provide educational services to children with disabilities because of inadequate financial resources. Rather, the court asserted, schools were required to provide an appropriate educational experience for students with disabilities regardless of the costs involved, a legal principle later included in federal special education legislation.<sup>4</sup> As a result of these and other court rulings, pressure was mounting on the Congress to pass legislation clarifying schools' role in the provision of special education services and accommodations for students with disabilities.

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In 1973, Congress responded by passing the Rehabilitation Act, which stated, in part, that agencies accepting federal funds, including local schools, could not discriminate on the basis of disability. In essence, this meant that all children, including those with special needs, had a right to attend school. However, neither funding nor a process for monitoring compliance was included in the Act.

Subsequently, in 1975, Congress passed the EAHCA, requiring that all children must receive a free appropriate public education. Now renamed the IDEA, this landmark federal legislation included requirements for individual evaluation, eligibility determination, individual education planning, and the provision of individualized services.

It also authorized the amount of funding the federal government would contribute to special education based upon a percentage of the national average per-pupil expenditure (APPE) for all educational services provided to special education pupils. Specifically, the EAHCA authorized Congress to appropriate a sum equal to 5 percent of APPE in 1977, 10 percent in 1978, 20 percent in 1979, and 40 percent in 1980 and beyond. The actual level of funding appropriated by Congress, however, never exceeded 12.5 percent of the national APPE. Recently, bipartisan support has emerged in Congress to fully fund the IDEA, although the necessary financial resources have not yet been dedicated to accomplish this goal.

As required by the IDEA and its implementing regulations,<sup>5</sup> the special education system is predicated upon first classifying students into one or more federally defined disability categories. Once classified, students are then provided special education services and accommodations. Either parents or teachers can refer a child for an initial screening. This involves a team comprised of the child’s parents, his or her classroom teacher, a school administrator, and an education specialist.

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In this initial meeting, available standardized test scores and classroom performance are reviewed. If this screening suggests a significant problem, the team may refer the child for a comprehensive multi-disciplinary evaluation. Such an evaluation typically includes testing by an educator as well as a psychologist, and may also involve evaluations by specialists in speech and language, occupational therapy, and physical therapy. At a follow-up team meeting, reports from the various specialists are reviewed to determine whether the child meets the classification criteria in any of the 13 mandated special education categories.<sup>6</sup> If so, an individualized education program, or IEP, is developed reflecting, at least in theory, each child’s unique educational needs.

Those children who do not meet the district’s criteria for eligibility do not have to receive special education services or accommodations, even though they were initially referred because of school difficulty. As a result of this process, two distinct classes of students experiencing academic difficulty emerge: those classified as disabled who receive special education assistance, and those not classified who do not.

Between states there are differing systems for carrying out the federal mandate to identify, classify, and provide services for children with disabilities. Within states, and between school systems, there exists enormous variability regarding which students are found to be eligible for special education services. Generally, in wealthier suburban districts where parents have ready access to attorneys, advocates, and outside specialists, most referred children do qualify and receive services. However, in inner cities or rural areas where parents have less access to advocates, children with disabilities are more likely to be refused special education services.

During the eligibility determination process, parents may elect to procure and pay for an independent evaluation which the school must consider, or the parent may appeal to a hearing officer for the school to pay for a second evaluation. Parents may also appeal and request a different set of services or accommodations than the one offered by the school. This is quite different from the usual process that occurs when the parent of a child in a regular education program makes a service request.<sup>7</sup>

Currently, more than 10 percent of all school children in grades K-12 are in the special education system. Of these, approximately 90 percent have been classified as having relatively mild disabilities, such as a specific learning disability, speech and language delays, mild mental retardation, or an emotional disorder. Students in these categories are typically identified after they have attended school for some period of time in a standard regular education classroom. The remaining 10 percent of children in special education fall into categories reflecting a greater severity of disability, such as moderate to severe mental retardation, early infantile autism, sensory handicaps such as blindness or deafness, and severe physical and health impairments. Children with these latter disabilities typically are identified in infancy or during the preschool years and frequently require specialized assistance or nursing care in order to attend school.

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## **Problems with the Current System**

Although no one argues with the importance of providing a free appropriate public education for children with disabilities and few dispute the good it has done for so many disabled children, several problems have arisen since the passage of this landmark federal statute. These problems include an extraordinary growth in the percentage of children receiving special education; rapidly expanding costs of providing special education, often at the expense of regular education; and the application of an accommodation strategy to populations better served with a prevention or intervention model.

### **Growth in Special Education**

In 1999-2000, 6.1 million children ages 3-21 years were found eligible for special education services and accommodations, up from 3.7 million in 1976-77— an increase of 65 percent.

**Table 1: Number & Percentage of Children Served Under the IDEA, Part B, Ages 3-21**

School Year	Total No. of Children Served	Percentage Change in No. Served From Previous Year	Percentage of Children Served Under the IDEA, Part B *
1976-77	3,708,601	**	**
1977-78	3,777,286	1.8	**
1978-79	3,919,073	3.8	**
1979-80	4,036,219	3.0	5.7
1980-81	4,177,689	3.5	5.9
1981-82	4,233,282	1.3	6.0
1982-83	4,298,327	1.5	6.2
1983-84	4,341,399	1.0	6.3
1984-85	4,363,031	0.5	6.4
1985-86	4,370,244	0.2	6.4
1986-87	4,421,601	1.2	6.5
1987-88	4,485,702	1.4	6.6
1988-89	4,568,063	1.8	6.8
1989-90	4,675,619	2.4	6.9
1990-91	4,807,441	2.8	7.0
1991-92	4,986,043	3.7	7.2
1992-93	5,155,950	3.4	7.4
1993-94	5,373,077	4.2	7.66
1994-95	5,430,223	3.5	7.7
1995-96	5,627,544	3.6	7.83
1996-97	5,787,893	2.8	7.96
1997-98	5,972,341	3.2	8.11
1998-99	6,114,803	2.3	8.3
1999-2000	6,125,833	0.2	8.2

Percentage Change in Total No. of Children Served	
1980-81 to 1989-90	11.9
1990-91 to 1999-2000	27.4
1976-77 to 1999-2000	65.0

Sources: U.S. Department of Education, Office of Special Education Programs (OSEP), *21st Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act* (Washington, DC: U.S. Department of Education, 1999), Tables AA1 (1995-99) and 1.3 (1995); also earlier reports and updated tables.

\* Calculated based on data from U.S. Census Bureau, Current Population Reports, P25-1095, *Statistical Abstract of the United States: 1999*, Table 14. Percentages to two decimal places are official figures taken from the OSEP's *Annual Reports to Congress*.

(See Table 1.) The increasing number of children in special education is a function not only of the increase in overall student population, but also of growth in the proportion of students determined to need special education as well. Specifically, 12.8 percent of the student population in grades K-12 were receiving special education services and accommodations in 1997-1998, compared to 8.3 percent of the student population in 1976-77.<sup>8</sup>

There are several reasons why both the number and percentage of children identified as qualifying for special education under the IDEA have grown so rapidly over the past several decades. First, since passage of the EAHCA, both Congress and the U.S. Department of Education have responded to pressure from advocacy groups by expanding the definition of students eligible for special education. For example, children ages three to five are now eligible for services under the IDEA, as are children with autism and traumatic brain injuries. Furthermore, autism, once defined as a rare disorder affecting about 6 per 10,000 children, is now considered more common and children with mild autism, known as Asperger Disorder, are thought to number between 25 and 50 per 10,000 children.<sup>9</sup>

Even more significantly, in 1991 the U.S. Department of Education issued a “policy clarification” indicating that children diagnosed with attention deficit disorder (ADD) and attention deficit hyperactivity disorder (ADHD) may be eligible for special education services and accommodations under both the “other health impaired” category of the IDEA and Section 504 of the Rehabilitation Act. On March 12, 1999, the U.S. Department of Education codified this policy clarification into law when it published regulations which, among other things, revised the definition of the “other health impaired” disability category by adding both ADD and ADHD as qualifying conditions. Given the extraordinary increase in the number of children diagnosed in recent years as having ADD or ADHD,<sup>10</sup> the inclusion of these two diagnoses under “other health impaired” virtually assures continued growth in the number of students served through special education into the foreseeable future.

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Second, the number of children identified under a single category—“specific learning disability” or SLD—has increased exponentially over time. As shown in Table 2, 796,000 children in special education in 1976-77, or 22 percent of the total special education population, were identified as evidencing a specific learning disability. By 1997-98, that number had grown to 2,726,000, or 46 percent of the total number of students in special education. Indeed, in contrast to an extraordinary 233 percent growth since 1976-77 in the number of children diagnosed with SLDs, the number of children served in all other disability categories combined increased only 13 percent during the same time period.

Unfortunately, the SLD category is rife with controversy. In the 1975 law, SLD was defined as “a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen,

**Table 2: Children Ages 0 to 21 Years Old Served in Federally Supported Programs for the Disabled, by Type of Disability.**

Disability Category (#s in thousands)	1967-77		1980-81		1985-85		1990-91		1995-96		1997-98	
	Number Served	Percent Served	Number Served	Percent Served	Number Served	Percent Served	Number Served	Percent Served	Number Served	Percent Served	Number Served	Percent Served
1. Specific Learning Disability	796	21.6%	1,462	35.3%	1,862	43.1%	2,130	44.7%	2,579	44.7%	2,726	46.2%
2. Speech or Language Impairments	1,302	35.3%	1,168	28.2%	1,125	26.1%	985	20.7%	1,022	18.3%	1,059	17.9%
3. Mental Retardation	959	26.0%	829	20.0%	660	15.3%	534	11.2%	570	10.2%	589	10.0%
4. Serious Emotional Disturbance	283	7.7%	346	8.4%	375	8.7%	390	8.2%	438	7.9%	453	7.7%
5. Hearing Impairments	87	2.4%	79	1.9%	66	1.5%	58	1.2%	67	1.2%	69	1.2%
6. Orthopedic Impairments	87	2.4%	58	1.4%	57	1.3%	49	1.0%	63	1.1%	67	1.1%
7. Other Health Impairments	141	3.8%	98	2.4%	57	1.3%	55	1.2%	133	2.4%	190	3.2%
8. Visual Impairments	38	1.0%	31	0.7%	27	0.6%	23	0.5%	25	0.4%	25	0.4%
9. Multiple Disabilities	n/a	n/a	68	1.6%	86	2.0%	96	2.0%	93	1.7%	106	1.8%
10. Deafness-Blindness	n/a	n/a	3	0.1%	2	<0.05%	1	0.0%	1	<0.05%	1	<0.05%
11. Autism and Other	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	39	0.7%	54	0.9%
12. Preschool Disabled	n/a	n/a	n/a	n/a	n/a	n/a	441	9.3%	544	9.8%	564	9.6%
TOTALS	<b>3,692</b>		<b>4,142</b>		<b>4,317</b>		<b>4,761</b>		<b>5,573</b>		<b>5,904</b>	

Sources: U.S. Department of Education, Office of Special Education and Rehabilitative Services, *Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act* (Washington, DC: U.S. Department of Education, various years); National Center for Education Statistics, *Digest of Education Statistics, 1999*, Table 53 (Washington, DC: U.S. Department of Education, 2000); and unpublished tabulations.

think, speak, read, write, spell, or do mathematical calculations,” manifesting in a “severe discrepancy” between a student’s achievement in one or more subject areas and his or her intelligence, as usually measured by an IQ test. This federal definition notwithstanding, there

are no universally accepted validated tests or diagnostic criteria to determine the presence or absence of learning disabilities, nor is there a clear line of demarcation between students who have milder forms of SLDs and those who do not have SLDs.<sup>11</sup>

According to many experts, the lack of a clear definition of and objective diagnostic criteria for SLD makes it possible to diagnose almost any low- or under-achieving child as SLD. Indeed, Dr. James Ysseldyke, director of the National Center on Educational Outcomes at the University of Minnesota, asserts that over 80 percent of all school children in the United States could qualify as SLD under one definition or another.<sup>12</sup>

A third reason for the extraordinary growth in special education is the suspicion that some school districts place non-disabled but low-achieving students into special education classes in order to obtain state and federal funds that are available only after a child is identified as disabled under the IDEA. Although it is unlikely that children without any learning difficulties are being placed in special education, not every low-achieving child is also disabled. However, when services are provided to low-achieving but non-disabled students in regular education,

local school districts cannot claim reimbursement for the cost of these services even if they are exactly the same as services provided to students with disabilities. This funding structure provides enormous financial incentives for local school districts to over-identify low-achieving but non-disabled students as needing special education.<sup>13</sup>

The incentive to over-identify low-achieving children as disabled may be especially powerful in schools serving low-income populations. In cases where a child is under-achieving at school because of economic disadvantage, compensatory educational programs are supposed to be funded through Title I of the Elementary and Secondary Education Act (ESEA), not through the IDEA.<sup>14</sup> Indeed, economic disadvantage as a reason for under- or low-achievement is an explicit exclusionary criterion under the IDEA. However, because IDEA funds do not substitute for funding under Title I, students in low-income school districts who are also identified as disabled are effectively “double counted”—once for purposes of drawing down funds under Title I and a second time for purposes of reimbursement for special education services under the IDEA. In essence, low-income, low-achieving students can be “two-fers” when it comes to maximizing the procurement of federal and state funds. (See Box 1.)

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A fourth reason for the growth in special education may be recent education reform efforts aimed at holding schools more accountable for student outcomes. Until recently, students identified as receiving services under special education were not generally required to participate in statewide assessments.<sup>15</sup>

Given that merit raises, promotions, and bonuses for both principals and teachers often ride on the results of statewide exams, the temptation exists for local school districts to raise their scores artificially by excluding the participation of low-achieving, special education students in statewide assessments. Although the 1997 amendments to the IDEA were intended to prohibit this practice, three states that recently enjoyed large gains on national reading tests (Kentucky, Louisiana, and South Carolina) also evidenced large increases in the percentage of special education students excluded from taking the tests.<sup>16</sup>

A final reason for the growth in the number of children in special education comes from a surprising source: parents themselves. Not long ago, being in special education carried with it a certain amount of social stigma. Today, due in large part to the success of disability advocacy groups, there is much less stigma attached to special education. Indeed, what special education brings with it today is the possibility of such attractive accommodations and special programs as the assistance of a personal tutor, a lap-top computer, extra or even unlimited time on classroom tests and college entrance exams, a personal note taker, and immunity from severe discipline when the student violates behavior codes because of his or her disability.

The fact that being found eligible for special education brings with it entitlement to an array of often expensive services and accommodations may help explain why nearly one in three high school students is officially designated as disabled in affluent Greenwich, Connecticut.<sup>17</sup> It may also explain why clinicians in affluent communities frequently report an upsurge in parental requests for diagnostic evaluations, especially for SLDs and ADD, of high school juniors—just as high school students are preparing to take college entrance exams such as the SAT and ACT.

Indeed, while children from families with more than \$100,000 in annual income account for just 13 percent of the SAT test-taking population, they make up 27 percent of those who receive special accommodations when taking the SAT.<sup>18</sup>

In addition, an entire industry of professionals and paraprofessionals has arisen dedicated to identifying learning disabilities and assisting parents in obtaining mandated services. Educators and psychologists who provide private testing, attorneys who specialize in special education law, and parent advocates who help families negotiate the maze of special education services all thrive in affluent communities and are frequently the most forceful advocates for special education placement and accommodations.

### **Box 1: The Low-IQ, Low-Achieving Student**

Most regular and special education administrators recognize that one type of child is inadequately served by both systems: the child with a low IQ score, but not low enough to qualify him as mentally retarded. By the sixth grade, these children are often two to three years behind their peers academically and cannot keep up with the more complex work of middle and high school. However, they do not meet the criteria for a learning disability classification, which requires there be a significant discrepancy between achievement and intellectual ability, because both their IQ and achievement scores are low.

With luck, these students are passed on until they can be admitted to a high school-level vocational education program, where they often thrive for the first time in their academic careers. Some schools bend the classification rules and label these children as learning disabled or mentally retarded and, in doing so, create a reasonably successful program for them by combining traditional special education services with vocational training. Others are not so lucky. After repeated school failure and perhaps several grade retentions, they often choose to drop out of school as soon as it is legally permissible.

*Source:* W. Douglas Tynan and Roberta Latsha, “Minutes from Quarterly Joint Meeting on Coordination of Services of Central Susquehanna Special Educators and the Department of Pediatrics, Geisinger Medical Center, Danville, PA” (November, 1999).

### **Increasing Costs of Special Education**

A second, and related, unintended consequence of the IDEA is the skyrocketing cost of special education, often at the expense of regular education. (See Table 3.) According to the National School Boards Association, the per-pupil cost of special education is 2.1 times the cost of regular education. Considering that the average per-pupil expenditure in the United States is about \$6,200, the average cost for students in special education is \$6,200 x 2.1, or approximately \$13,000 annually.<sup>19</sup> Hence, the average excess cost of special education (the amount spent over and above the \$6,200 spent in regular education) is about \$6,800 per pupil. Because the IDEA covers 6.1 million children ages 3-21 years, the total cost of special education for these children is \$79.3 billion, which is \$41.5 billion more than the cost of regular education for this group of children.

**Table 3: IDEA, Part B, Section 611 Grants to States Program: Funds Appropriated (1977-99)**

	<b>IDEA, Part B</b>	
<b>Appropriation Year</b>	<b>Section 611 Grants to States</b>	<b>Per Child Allocation</b>
1977	\$251,770,000	\$71
1978	566,030,000	156
1979	804,000,000	215
1980	874,500,000	227
1981	874,500,000	219
1982	931,008,000	230
1983	1,017,900,000	248
1984	1,068,875,000	258
1985	1,135,145,000	272
1986	1,163,282,000	279
1987	1,338,000,000	316
1988	1,431,737,000	332
1989	1,475,449,000	336
1990	1,542,610,000	343
1991	1,854,186,000	400
1992	1,976,095,000	410
1993	2,052,728,000	411
1994	2,149,686,000	413
1995	2,322,915,000	418
1996	2,323,837,000	413
1997	3,790,213,633	535
1998	4,293,796,632	544
1999	4,310,700,000	545
2000	4,989,000,000	624

Sources: U.S. Department of Education, Office of Special Education Programs, *Twentieth Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act* (Washington, DC: U.S. Department of Education, 1998), Table III-2, p. III-43, and updated data; also information from Data

Under the IDEA, the federal government is supposed to pay 40 percent of the costs of special education. In reality, federal funding has never exceeded 12.5 percent of the costs of special education.<sup>20</sup> Today, Washington provides well over \$5 billion in total funding to local school districts, or about 12 percent of the costs of special education. On average, states pay 56 percent of the costs, with a range of 11 percent to 95 percent.<sup>21</sup> The remaining average 32 percent is paid for by local school districts. Thus, the IDEA is perhaps the largest unfunded federal mandate for education ever placed on state and local government.

Making matters worse, because special education, unlike regular education, is a federal

mandate, schools can be sued for not providing services that parents think their child deserves once he or she is identified as in need of special education. This has led some school districts to spend extraordinary sums on special education placements, services, and accommodations in order to avoid even more costly lawsuits.<sup>22</sup>

Indeed, special education is now the largest categorical program in public schools. The District of Columbia, for example, spends almost a third of its total education budget on the 10 percent of its students who are in special education.<sup>23</sup> Overall, the Economic Policy Institute estimates that each year special education absorbs 38 cents of every new tax dollar raised for the public schools.<sup>24</sup>

A particularly expensive result of qualifying a child for special education is the possibility that, in doing so, a public school may be obligating itself to pay for all or part of a child’s private school tuition. In fact, public school districts today pay for the private school tuition of more than 100,000 special education students at an estimated cost of \$2 billion annually and part of the cost of private school for an additional 66,000 special education students.<sup>25</sup> An extreme example of this is the case of one southern California school district that reportedly pays for a severely brain-injured boy to attend a specialized school in Massachusetts, flying his parents and sister out for regular visits, at a total annual cost of \$254,000.<sup>26</sup>

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The problem with escalating costs is that they may lead to a weakening of public support for special education. As ever-increasing numbers of children are determined eligible for ever more expensive special education placements, services, and accommodations, there may be a gradual erosion in the public’s confidence in the entire special education system.

Indeed, a recent Phi Delta Kappa/Gallup poll found that 65 percent of parents say that the extra attention paid by instructors and classroom assistants to disabled students comes at the expense of their own children.<sup>27</sup>

### ***Training for a Lifetime of Entitlement***

A third major problem with special education today is the application of an accommodation model to low- and under-achieving students who may benefit more from prevention, intervention, and compensatory strategies. When initially passed in 1975, the EAHCA was largely intended to ensure that students with significant physical and sensory disabilities were not denied a free appropriate public education. For these students, the appropriate intervention was, and remains, the provision of special accommodations such as access ramps for those using wheelchairs, books written in Braille for the blind, and sign language interpreters for the deaf to make public education accessible. There was no expectation that special education would, by itself, ameliorate the physical or sensory handicap, thereby making these special accommodations no longer necessary. It would be ludicrous, for example, to argue that a goal of special education ought to be to make deaf students hear or blind students see.

There are, however, certain subgroups of students with disabilities for which it is reasonable to expect that special education will help them overcome or compensate for their handicapping condition so that they no longer need special services or accommodations. Special education should, for example, work to ameliorate emotional and behavior disorders, so that students with these disorders no longer need alternative placements. Similarly, when working with students with SLDs, ADD, and ADHD, the goal should be to help these children learn self-directed compensatory strategies so that they can succeed without the aid of special services or accommodations. In other words, for many in special education the goal can—and should—be independence rather than a lifetime dependence on special accommodations, often at taxpayers' expense.

Unfortunately, special education has largely failed to help most special education students achieve such independence. Instead, most children determined to be in need of special education under the IDEA can expect to receive special education services and accommodations until they leave school. In fact, according to data collected in 1993 by the Department of Education from 16 states, only 1 to 12 percent of special education students over the age of 14 years are declassified each year.<sup>28</sup> Other developments, such as accommodations provided under the Americans with Disabilities Act, surely reinforce the tendency toward permanent accommodations for disabilities, even those that can be remediated.

**A focus on process not outcomes.** Contributing further to this problem is the fact that accountability within federal and state systems focuses on due process requirements and fiscal management rather than educational outcomes. Hence, local schools are told they are “doing it right” if they provide appropriate eligibility assessments, hold timely IEP meetings, provide parents with appropriate procedural safeguards, and draw down funds appropriately. Little attention is paid by federal accountability systems to whether students in special education are advancing in core subjects or acquiring the skills necessary for making special education and accommodations no longer necessary.

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There is even a question as to whether many of the accommodations typically provided to special education students are doing what proponents advocate. For an accommodation to be useful, it should demonstrate “differential advantage” for special education students. That is, the accommodation, whether it be giving extended time to complete a test, allowing students to have the instructions and test questions read aloud to them, or providing large print or Braille forms of the test, should improve the scores of students with disabilities above and beyond improvements that students without disabilities might achieve if they were provided with the same accommodation.

We know, for example, that the use of large print does give a differential advantage to students

with vision impairment. That is, if students with vision impairment and those without take the same large-print test, scores are comparable. If they take a standard small-print test, those with vision impairment do worse. The purpose of providing an accommodation is not simply to raise test scores, but to level the playing field so that students with and without disabilities have an equal opportunity to demonstrate their skills and knowledge.

Unfortunately, some accommodations routinely provided to special education students have not demonstrated such differential advantage. Take, for example, the provision of extra time to take tests. According to research by Lynn Fuchs and her colleagues at Vanderbilt University, giving more time on conventional math and reading tests does not help grade-school students with learning disabilities any more than it does non-learning disabled students, although it may provide a differential advantage on more complicated math tests that require extensive reading and writing.<sup>29</sup> Moreover, although studies by the College Board have found that providing extended time on the SATs increases the scores of students with learning disabilities by an average of 45 points on verbal and 38 points on math, no studies have yet been done to determine whether giving more time on the SATs satisfies the requirement for differential advantage.<sup>30</sup>

***What the provision of special accommodations does seem to accomplish is teaching students in special education that they are entitled to operate under a different set of rules than everyone else.***

Another way to determine whether an accommodation is appropriate is to examine its effects on the test’s predictive validity: for example, the extent to which an accommodation enhances or reduces the ability of the test either to predict an outcome or to measure the underlying ability it was designed to measure. One danger in providing accommodations to special education students is that in so doing the test may no longer validly assess the ability or skill it was designed to measure or predict the outcome it was designed to predict.<sup>31</sup> This seems to be the case for at least some accommodations routinely provided to special education students. Research has generally found, for example, that giving students with learning disabilities extra time on the SAT tends to predict greater college success than these students actually achieve.<sup>32</sup>

**Two sets of rules.** What the provision of special accommodations does seem to accomplish is teaching students in special education that they are entitled to operate under a different set of rules than everyone else. Nowhere is this more evident than in how school disciplinary rules are differentially applied to students in special education compared to those in regular education.

According to the “stay put” provisions of the IDEA, once placement in special education has begun it can only be changed by a child’s IEP committee. If the student’s parents do not consent to a change in placement and request a hearing, the student must “stay put” in the current placement until the hearing process is concluded. Suspensions that last longer than 10 days (or have the cumulative impact of more than 10 days) and expulsions are both considered changes in placement and hence are prohibited under the “stay put” provisions of the IDEA.

There are two exceptions to this. First, disciplinary sanctions of 10 days or less are not considered a change in placement and consequently are not subject to this restriction (although if the current suspension combined with earlier suspensions would total over 10 days, the student could not be suspended). Second, a school can propose disciplinary sanctions greater than 10 days or expulsions if it believes the misbehavior is not related to the disability. If, however, the parent disagrees and requests a hearing, the student must “stay put” in his or her current placement until the hearing is held.

The “stay put” provision can lead to a situation in which two students, one in regular education and the other in special education, both bring weapons or an illegal substance to school, yet only the student in regular education is suspended or expelled. It is true that a special education student can be suspended or expelled for weapons or drug violations if the behavior is unrelated to his or her disability. But it is very difficult to argue that such behavior is unrelated to a student’s disability if, for example, that student was diagnosed with an emotional or behavioral disorder.

This situation is not merely hypothetical. Several years ago, a group of six Fairfax County, Virginia, students brought a .357 magnum handgun onto school property. Five of the students were expelled. The sixth was not. The reason? He was classified as “learning disabled” with a specific weakness in “written language skills.” The special education student later bragged to teachers and students at the school that he was immune from expulsion.<sup>33</sup>

Unfortunately, this is not an isolated episode. In another case, also in Fairfax County, five gang members used a meat hook to assault another student. Only three of the perpetrators were expelled. The other two were special education students. When Virginia Governor George Allen tried to challenge the wisdom of using federal law to protect violent special education students, the Clinton administration threatened to pull millions of dollars in federal education dollars from the state.<sup>34</sup>

Due to these and other examples of problems arising from the “stay put” provision, in 1997 Congress passed amendments to the IDEA giving schools a little more latitude in disciplining violent special education students. For example, in situations involving a “substantial likelihood” of injury, a hearing officer may unilaterally place a student involved with weapons or drugs in an alternative educational setting. For this to occur, however, the school must show that it made reasonable efforts to minimize the risk of harm in the current placement, “including the use of supplementary aids and services.” Furthermore, if the recommendation is expulsion, the IEP team must conduct a review to determine whether the misconduct was a manifestation of the child’s disability. If so, no expulsion.

These qualifications continue to ensure that special education students will be treated differently in cases of serious violations of school rules compared to regular education students. Indeed, in

***Many students with disabilities who have grown used to special accommodations in primary and secondary schools are confronted with a harsher reality when they enter college or the workforce.***

April 1999, the National School Boards Association urged federal lawmakers to make further amendments to the IDEA to provide greater flexibility to suspend, expel, or reassign students whose misconduct jeopardizes safety or unreasonably disrupts classroom learning.<sup>35</sup>

**Losing sight of the “end game.”** The end result of special education’s focus on process rather than outcome, accommodations rather than prevention and intervention, and exceptions to disciplinary codes rather than uniform enforcement is encouragement for special education students to see their disability as rationale for a lifetime entitlement to special accommodations. Unfortunately, this expectation brings its own negative consequences. For example, although it is true that many colleges offer accommodations to students with disabilities under Section 504 of the Rehabilitation Act, the extensive supports of special education required under the IDEA generally do not apply to colleges and universities. Consequently, many students with disabilities who have grown used to special accommodations in primary and secondary schools are confronted with a harsher reality when they enter college or the workforce.

Take, for example, the case of *Bartlett v. New York Board of Law Examiners*. In this case, Marilyn Bartlett, a former special education student who had failed the New York bar exam several times, argued that she was entitled to unlimited time to take the bar exam because her reading disorder qualified her for special accommodations under the Americans with Disabilities Act. The U.S. Second Court of Appeals ruled that she was not entitled to unlimited time to take the bar exam because, as evidenced by the fact that her standardized reading test scores were in the average range, she had successfully compensated for her reading disability.<sup>36</sup>

What this and other cases illustrate (see Boxes 2 and 3) is that special education has largely lost sight of the appropriate “end game.” Special education laws were originally intended to integrate children with special needs into the mainstream of American life. Today, however, special education in far too many instances serves to separate, not integrate, through the use of special rules and procedures not available to non-disabled students. In these instances, special education has ceased to see its mission as teaching compensatory and coping skills so that students are empowered to participate fully in the mainstream of American society, and instead it seems focused on encouraging a sense of lifetime entitlement to special accommodations.

As Robert Sternberg, IBM Professor of Education at Yale, has pointed out, we could decide to offer special accommodations throughout the student’s life, but are we prepared to have professional note-takers for judges, attorneys, or physicians?<sup>37</sup> With the number of persons believed to have learning disabilities approaching 20 percent of the population, can society afford this canopy of protective services and accommodations? Even more importantly, by accommodating their weaknesses, we are ignoring their areas of intellectual strengths. As such, special education is training these students to work in fields that will be difficult for them rather than allowing them to discover the areas in which they may have special competence.

## **Box 2: Nicholas P. v. Andover Academy**

A particularly illustrative example of the way special education encourages dependence, rather than independence, is the case of Nicholas P. and the Phillips Academy in Andover, Massachusetts. Nicholas had scored 1410 on the SAT and was a National Merit Scholarship finalist, both accomplished without any special accommodations during testings. But because Nicholas had been in therapy and on medication for ADHD since he was five, the school provided him with extra time on some tests and opted him out of its third-year foreign language course, among other special accommodations.

When Nicholas began to fail at school, Phillips Academy told him to remove his stereo, telephone, and computer games from his dorm room. Nicholas refused, and his grades continued to decline. When the faculty voted 168-2 to require him to withdraw from school, he sued. His attorneys argued in a federal district court that the fact that he has ADHD made it not only unfair, but also illegal, for Andover to flunk him out. The school defended itself in court papers asserting, "Allowing students to pick and choose only the portions of a syllabus he finds interesting enough to read, and hand in written assignments (or not) when it suits him, would fundamentally alter, not to mention lower, the Academy's stringent academic requirements."

U.S. District Judge Edward F. Harrington, who heard the case, eventually ruled that Nicholas' problem was not ADHD, but laziness. His ruling blamed "a willful lack of effort on [Panagopoulos'] part, invariably excused by a parent who indulged his lack of discipline and who failed to support the school in its efforts to assist him to do his work."

*Source: "Americans with Bad Attitudes Act," The American Enterprise (May/June 1999): 10-11.*

Ultimately, then, the true victims are the students themselves. By teaching special education students that there are two standards—one for them and one for everyone else—they are being encouraged to rely upon special accommodations rather than being challenged to achieve at high levels. In so doing, we run the risk of failing to integrate those with special needs into the mainstream of American life, as we shunt them off into a different room in which different rules apply and standards are forever lowered.

## **Recommendations for Reform**

Reforming special education so that it is better targeted, more cost-efficient, and more effective in improving the educational outcomes of students with disabilities requires three things. First, policymakers should recognize that special education, as currently comprised, is really made up of three distinct subpopulations of students, each with very different educational needs. Second, change the funding structure for special education so that it rewards schools for improving the educational outcomes of students with disabilities and not just for identifying and serving them. Third, re-commit special education to helping students overcome their disabilities and to teaching coping and compensatory mechanisms,

### Box 3: Elizabeth Guckenberger, et al. v. Boston University

This case also tested the limits of the special accommodations that colleges and universities are required to make in response to demands from students with disabilities. This case involved a class action suit brought against Boston University (BU) by a group of students identified as having ADHD, ADD, and various learning disabilities. The group made three claims against BU. First, the University was establishing unreasonable criteria by which students would qualify as disabled. Second, BU failed to provide reasonable procedures for reviewing student requests for accommodations. Third, BU prohibited across the board course substitutions in the area of foreign languages and mathematics (for students claiming disabilities in those areas).

Prior to 1995, BU was considered to be a leader in providing services to students with learning disabilities. For example, in brochures distributed to high schools, BU advertised the availability of such services as note-taking assistance and extended time on examinations. Course substitutions were also routinely allowed for mathematics and foreign language so that a course on the “Anthropology of Money” could be substituted for a mathematics course, or a foreign culture course could be substituted for a foreign language class. As a result, the number of entering students self-identified with learning disabilities rose from 42 in 1990 to 429 in 1995.

Following an internal review of these policies in 1995, Jon Westling, then provost of the university, changed the criteria for disability to include current evaluations (less than three years old) by a doctoral-level specialist (previously a letter from any therapist would suffice). Westling also implemented a review of all supporting materials and announced that course substitutions would no longer be available to students with disabilities. These announcements caused great upheaval within the student body and resulted in several staff resignations in the Learning Disability Program. Guckenberger, a law student with a well-documented reading disability who had been provided the note-taking, test-taking, and reduced semester credit-hour accommodations throughout her years at BU and who did graduate, nevertheless sued the University because of the emotional problems caused by this upheaval in the Learning Disability Program.

The court’s ruling focused on three main points. First, the court ruled that whereas a master’s-level evaluator could diagnosis learning disabilities, BU could require that a doctoral-level provider make a diagnosis of ADD or ADHD. Second, it was unfair to require students like Guckenberger to go through policy changes after school entry without advance warning. Third, federal law does not require a university to modify its degree requirements by permitting course substitutions.

**Although the University did have to pay some modest sums to the students involved, the message from the court was clear that, even though accommodations necessary to complete course work, such as note-taking services, could be required, course work and scholarship requirements for a degree did not have to be altered. In essence, the court limited the amount of special accommodations that colleges and universities are required to make in response to the requests of students with disabilities.**

Sources: Robert J. Sternberg and Elena L. Grigorenko, *Our Labeled Children* (Reading, MA: Perseus Books, 1999); see also a series of articles on *Guckenberger v. Boston University* in the *Journal of Learning Disabilities* 32 (July/August 1999): 286-361.

whenever possible, rather than teaching such students to expect a lifetime of special accommodations and services.

### ***Disentangling Special Education Sub-populations***

The first step in special education reform is to recognize that the system currently serves three very distinct populations: (1) those with significant developmental disabilities and sensory and physical handicaps; (2) those with milder forms of neurological conditions, such as learning disabilities and ADD; and (3) those with conduct or behavioral problems.

**Children with significant sensory, cognitive, and physical disabilities.** The first group is comprised of students with a significant need for special education services and accommodations. This is the group for whom the original law was passed. These are children born with birth defects, serious sensory or physical disabilities, and significant cognitive delays. In the vast majority of such cases, these children will have been identified as disabled during infancy and preschool years, frequently by health-care professionals or early childhood education specialists, and they will already have begun receiving intervention services before they enter elementary school. For these children, there is no need for an elaborate identification process within the schools. Long before they enter kindergarten, we know who they are, and, to a large extent, we know their medical, rehabilitation, and educational needs.

***Within a system of classification designed to define the educational needs of children rather than merely provide a diagnosis of disabilities, emphasis would be placed on monitoring the progress for each child in a realistic fashion.***

The key to educating these students is to fund adequately appropriate accommodations (for instance, interpreters for the deaf, curb cuts for those in wheelchairs, books written in Braille for the blind, and so forth), while including them to the maximum extent possible in the education mainstream. To a very large extent, this is what special education currently provides these students. Nevertheless, certain changes can—and should—be made to enable special education to more effectively and efficiently serve these students.

Although these students currently are placed in several different categories under the IDEA, and often are labeled “multi-handicapped,” the official categories generally are not associated with different types of school placements. It is not unusual, for example, for a special education classroom at the elementary school level to include children categorized as autistic, speech and language delayed, and mentally retarded, all with the same teacher and classroom curriculum. Given the similarity in actual placement for these students, it would be more efficient to include them in one category, simply as children with significant special needs, rather than going through the current costly and time-consuming diagnostic and categorization process.<sup>38</sup>

Once a child is identified as having significant special needs, emphasis would then be placed on developing a functional curriculum for that child, including inclusion in the education mainstream to the maximum extent possible. Subcategories designed to help identify specific

needs and for tracking purposes would be used as descriptors of each child's needs, rather than as a quasi-diagnostic tool. Thus, a child born blind and deaf and thought to be mentally retarded would be classified as a child with significant special needs, with the subcategories of blindness, deafness, and mental retardation. In this way, children with milder versions of a particular disorder (for example, mild autism or Asperger Disorder) who can function quite well in a standard classroom with minimal levels of assistance are not confused with those having a more severe form of the same disorder who may need high levels of service.

Within a system of classification designed to define the educational needs of children rather than merely provide a diagnosis of disabilities, emphasis would be placed on monitoring the progress for each child in a realistic fashion. A functional analysis of each child's needs would be completed, and realistic, achievable, and measurable goals would be set forth in each child's IEP. Given that many children with significant special needs will require special services and accommodations even into adulthood, the focus of special education curricula for these students would be both the development of skills necessary for daily living and vocational

***Some early reading specialists assert that reading disabilities are the result not so much of neurological dysfunction as of how most schools currently teach reading.***

training.<sup>39</sup> Schools would be held accountable for failures to progress in targeted areas of the curriculum. Thus, for example, in the case of an autistic child who cannot communicate and fails to improve after a year in school, that lack of progress would be a signal for the school to change the curriculum approach or an opportunity for the parents to change schools.

A renewed emphasis on skill development may also affect where children receive their education. The 1997 amendments to the IDEA emphasized inclusion. Although this is often helpful, it should not be done at the expense of the child's overall progress. Thus, a deaf student in a small town that has difficulty hiring staff who are expert in sign

language may be more appropriately served by attending a residential school for deaf children for at least some period of time during which the student can become fluent in sign language. In many handicapping conditions, particularly disabilities affecting language development, there is a sensitive period for the development of specific skills, a window of opportunity for skill development that should not be missed. Many children with significant disabilities would benefit from intensive work for one or two years in a separate program, followed by more intensive efforts toward inclusion.<sup>40</sup>

Although comprising fewer than ten percent of all children in the special education system and less than one percent of all children in school,<sup>41</sup> students with significant developmental disabilities and sensory and physical handicapping conditions do have very special needs and are more expensive to educate. Indeed, it is these children who 30 years ago were largely excluded from the public schools. The right of these students to have access to a free appropriate public education must be maintained under any change to the current structure of special education services and accommodations.

**Children with neurological dysfunction.** The second, and by far the largest, group of students currently in special education is comprised of those with mild forms of neurological

dysfunction, such as mild mental retardation, learning disabilities, and ADD. The first question that needs to be addressed concerning this subgroup of special education students, especially given the emphasis under the 1997 IDEA amendments for inclusion of these students in the regular classroom, is what is so “special” about the special education they receive?

In many cases, the answer is not much, except for the fact that they are classified differently from their peers. In terms of the educational strategies most likely to enhance their educational outcomes, the majority of research finds that those strategies most effective with this group of students are the same strategies that are helpful to most students in regular education. This includes approaches such as frequent individualized monitoring and feedback, and intensive direct instruction. What this group of special education students needs is not so much different interventions but good teaching, albeit perhaps with greater consistency, intensity, and slower pacing than other students require.<sup>42</sup>

***We should re-construct regular education so as to maintain students with relatively mild disabilities more effectively in the regular classroom.***

Thus, rather than perpetuating the myth that students with relatively mild disabilities are receiving a different kind of instruction compared to non-disabled students, we should re-construct regular education so as to maintain these students more effectively in the regular classroom. Indeed, Robert Sternberg and Elena Grigorenko of the Yale Child Study Center, as well as G. Reid Lyon of the National Institutes of Health, assert that reading disabilities, the most common form of learning disability, are the result not so much of neurological dysfunction as of how most schools currently teach reading. If all schools were to teach phonological awareness, sound-symbol relationships, and reading comprehension, and did so effectively and early, most reading problems could be avoided, say these early reading specialists. For those relatively few children who develop reading problems despite this approach, the regular education teacher could implement in-class interventions, perhaps with the assistance of a reading specialist. In this way, reading problems would come to be perceived as a regular education function, rather than being referred to special education programs.<sup>43</sup>

This approach is in marked contrast to the current system which emphasizes identification rather than intervention and has curiously little involvement by the classroom teacher. If, for example, a child is falling behind in reading, under the current system a referral is made for testing his or her reading level and establishing an estimate of his or her IQ. A psychologist and a reading specialist typically do this evaluation, not the teacher who teaches the child each day. From the start, the process is largely disengaged from what goes on in the classroom.

An alternative model would involve a functional analysis of reading done by the teacher, perhaps with the help of a psychologist and reading specialist. Instead of being concerned with documenting an IQ-achievement discrepancy score, time would be spent analyzing the particular reading problem. By reviewing actual classroom reading samples, supplemented by some additional testing materials, factors involved in the reading process such as motivation, phonemic processing, vocabulary level, reading rate, and the ability to self-correct errors could be assessed in far less time and with far less expense than the current system of formal educational and IQ testing.<sup>44</sup>

Under this model, the classroom teacher would remain responsible for the child’s progress and would work along with reading specialists to construct in-classroom interventions to enhance the child’s reading ability. If, for example, a child was found to have a poor reading vocabulary, an intervention would be designed to increase his or her vocabulary, with an assessment to be done six weeks later to determine the child’s progress toward an expanded reading vocabulary. The emphasis in this model would be on helping the child develop, through active precision teaching, the skills and coping mechanisms necessary to achieve at higher levels in school. Progress would be gauged by regular academic outcome standards with the goal of empowering the student, not simply accommodating his or her disability.<sup>45</sup>

A similar approach could be used for children with ADD and ADHD. In a recently published large-scale treatment study of students with ADHD,<sup>46</sup> the best outcomes were found for those children who received a combination of relatively low doses of medication, a classroom behavior modification program, and behavioral family therapy to help parents better manage their child’s home behavior. Rather than being taught to rely on medication to manage their symptoms, the children in the combination treatment were systematically taught, both at home and in school, the skills necessary to maintain behavioral control even in the absence of medication. These results suggest that students with ADD and ADHD would benefit more if schools would structure their environments more clearly, with obvious rules and boundaries and clear consequences for good and bad behavior, rather than relying on medication alone to enhance educational outcomes.

***Effective treatment of behavioral disorders involves making these individuals strictly accountable for their behavior, insisting on compliance with requests and helping them learn to cope calmly with stressful situations.***

In such a revised setting, accommodations would be reviewed to make sure they are designed either to help the child develop compensatory skills or to allow the child to perform at a higher level. Thus, if we start by writing down homework assignments for a child who has difficulty remembering to write them himself, an appropriate education plan would include eventually having the child write down assignments himself. The goal of the curriculum, then, would be to teach compensatory skills, not an expectation for endless accommodations.

**Children with behavioral problems.** The third major sub-group of students currently receiving special education services and accommodations is comprised of those with conduct or behavioral problems. Students with these types of disorders, when seen in the mental health system, are usually diagnosed as having either oppositional defiant disorder or conduct disorder, characterized by refusals to comply with requests, emotional overreaction to stressful situations, and failure to take responsibility for their own actions.

Effective treatment of these disorders involves making these individuals strictly accountable for their behavior, insisting on compliance with requests and helping them learn to cope calmly with stressful situations.<sup>47</sup> Unfortunately, once these students are identified as in need of special education, many of the accommodations routinely provided them—and most especially a

lowered standard of acceptable behavior—actually work to undermine these desirable goals. This sets up these students for later failure as they frequently come to expect the same kinds of accommodations outside the school as well. Unfortunately for these students, systems external to the school, such as the criminal justice system and the job market, are far less accommodating to disruptive and non-compliant behavior.

An alternative approach would be to develop school- and system-wide interventions designed to reduce these problems overall, rather than classifying and then segregating individual students. For example, in a series of interventions carried out by the May Institute in New England, considerable improvement in behavior and reduction in behavior-related referrals for special education were achieved efficiently and economically. In one city, a school-wide program to reinforce compliance with rules resulted in a 40 percent drop in detentions. In a second, the need for special education placements was reduced almost three-fold after implementation of a positive reinforcement program for rules compliance at a cost of less than \$10 per year per child. A third school-wide intervention resulted in a 30 percent reduction in disciplinary referrals to the principal after a program incorporating positive reinforcement for compliance plus close monitoring of behavior was implemented at a cost of only \$30 per elementary school student.<sup>48</sup>

***In constructing a voucher program for special education, it must be recognized that students with disabilities usually are more expensive to educate than students without special needs.***

For those students who persist in defying rules despite such interventions, it is questionable whether they should be included within the framework of special education at all. It is a fine line between a psychiatric disorder that can be treated and criminal behavior that should be adjudicated, and the distinction is even more difficult in the high school years.

### **Reforming Special Education Funding**

Currently, schools draw down special education funds based on the number of students identified as having a qualifying disability under the IDEA. As noted earlier, this creates an incentive to identify low-achieving students. If the current system resulted in substantial improvements in educational outcomes for these students, there would be no necessity for reform. But evidence is mixed at best as to whether student performance is enhanced once they are placed in special education.<sup>49</sup>

One reform being advocated by some is a move to census-based funding for special education. Under such a scheme, funding for special education would be based not on the number of children identified as in need of special education, but on total student enrollment. Census-based funding has the advantage of providing schools with the flexibility to set up schoolwide interventions. (Although the 1997 amendments to the IDEA allowed some movement in this direction, identification and classification remain the focus of the system.) Critics, however, worry that census-based funding provides schools with little incentive to provide the more expensive accommodations and services needed by the severely disabled and that it does not necessarily result in better outcomes for students with disabilities.

Moreover, census-based funding does not take into account real differences that may exist across school districts in the percentage of students with severe disabilities requiring intensive special education services. This can happen, for example, when parents of children with severe disabilities move into a school district with greater proximity to a specialized medical facility, resulting in an over-representation of such students in that school district. Or a quirk of fate can cause an over-representation of students with severe disabilities in some school districts. For example, a small Pennsylvania school district of only 400 K-12 students includes a pair of severely autistic twins and a child with a severe head injury. Under census-based funding, such districts would be unfairly penalized financially.

One approach to deal with the issue of low-frequency, high-need children would be to have schools identify that relatively small group of children who have severe special needs, then let state governments help fund local programs for this population. Another approach would be to attach funding to students identified as in need of special education through the use of vouchers. Parents could use the voucher to pay for both the evaluation process and the specialized educational experience of their choice. This could be done either within, or independent of, a broader school voucher program.

***Special education seems to have lost sight of the appropriate end game.***

In constructing a voucher program for special education, it must be recognized that students with disabilities usually are more expensive to educate than students without special needs. Too often, voucher advocates have assumed that every student, regardless of educational needs, would receive vouchers of equivalent value. Without taking into account the fact that students with disabilities frequently cost more to educate successfully, students with disabilities might be placed at a

disadvantage relative to other students participating in a voucher program. The obvious solution is to tag the value of special education vouchers to the average estimated cost of teaching a student with a specified disability.

The use of vouchers also would help reduce the current adversarial nature of special education. By providing parents with choice at the outset, for example, there would be no need for an extensive appeals process. If a child were failing in regular education and an assessment needed to determine why, the parent would have the choice of having the evaluation done at school or by an independent expert who accepted vouchers. Parents could then seek schools that are most effective at teaching students with their child’s particular type of disability. Market pressure would be placed on education programs to produce positive results since parents could always move their child to a different program or provider the following year.

Parents should also be allowed to use special education vouchers to pay for the costs of vocational education programs, one of the more successful education interventions for high school students with disabilities. According to the National Longitudinal Transition Study of Special Education Students, students with mild disabilities who took a concentration of vocational courses were 40 percent more likely to be competitively employed after high school than their peers who did not take a concentration of vocational courses, and they earned an average of \$6,247 more annually. Those who took only survey courses in vocational interests still earned nearly \$4,000 more per year.<sup>50</sup> Yet vocational education is an under-utilized

intervention for many students in special education today.<sup>51</sup>

In addition to vouchers for individual students, federal and state special education grants to schools should be made contingent upon educational improvements by the subgroup of special education students with neurological dysfunctions as measured by independent tests. This contrasts sharply with current accountability mechanisms which are focused on process (for example, was an IEP developed, and were parents informed of their due process rights?), not outcomes (for example, did the child's academic skills improve?).

Absent a voucher system, one possibility for holding schools more accountable for outcomes is to base funding on the number of students who achieve the goals set forth in their IEPs. This, however, may simply result in the "dumbing down" of students' IEPs by setting very low educational goals. An alternative would be to use the current statewide assessment tests and differentiate the scores of students in regular education from the scores of students in special education. Under the assumption that the purpose of special education is to improve the academic performance of these students, schools would be held accountable for measurable gains over time in the special education population relative to those in regular education.

**Federal legislation ensuring that no student be left behind is an important principle. It is now time to ensure that this principle actually translates into better outcomes for students with special needs.**

### **Empowerment, not Entitlement**

Disaggregating the needs of the three major sub-populations currently in special education together with reform of the funding mechanism would go a long way toward improving the educational experience of students with disabilities. Both of these reforms, however, would ultimately prove inadequate if, at the same time, special education did not also reorient itself toward helping students compensate more effectively for their disabilities so that they can be better integrated into the mainstream of American life.

As discussed earlier, special education seems to have lost sight of the appropriate end game. Rather than viewing its mission as helping students with disabilities overcome, or at least effectively compensate for, their disabilities, special education has become a training ground for a sense of entitlement to a lifetime of accommodations. Unfortunately, students grown accustomed to special accommodations during schooling often find themselves at a distinct disadvantage later in life when employers are less likely—or able—to provide them with similar accommodations in the workplace.

We are not arguing that every disability is remediable, nor that every handicapping condition can be successfully compensated for. Rather, we argue that special education has over-generalized an accommodation model appropriate for students with severe physical, sensory, and cognitive disabilities to include students with behavioral disorders and milder forms of neurological dysfunction.

Instead, students with mild forms of neurological dysfunction, such as learning disabilities and ADD, should be taught how to effectively cope with their learning difficulties rather than

***A major overhaul of special education is needed to ensure that the original goal of offering an appropriate education to all children is reached.***

demanding special accommodations. Doing so will require better differentiation between effective accommodations and lowered standards. For example, although taking a tape recorder to class to assist in note-taking is an appropriate coping mechanism, demanding the substitution of a course in “The Anthropology of Money” for a mathematics course is not.

Even more importantly, schools should cease classifying students with conduct problems under the IDEA. What these students need is to learn better self-control. The key to teaching self-control is not lowering behavioral standards, but developing clear and consistent rules, reinforcing positive behavior, providing immediate consequences for rule infractions, and the teaching of cognitive strategies for coping

with high-stress situations. Indeed, in our desire to be compassionate with this population of students, we are inadvertently doing harm by teaching them that they are, in important ways, exempt from consequences that other students face when they misbehave. Moreover, as Abigail Thernstrom has argued elsewhere,<sup>52</sup> court decisions that multiply students’ rights and restrict the ability of schools to exercise disciplinary powers have resulted in increasing disorder in the schools—limiting the ability of both disabled and non-disabled students to benefit from their educational experience.

## Conclusion

Special education today is costly and, even worse, ineffective. The elaborate eligibility and classification systems set up in response to well-meaning federal legislation have not translated into improved outcomes for most students with special needs. Indeed, despite elaborately developed individual programs, over 90 percent of children in special education receive similar services.<sup>53</sup> Moreover, by focusing on weaknesses and accommodations, we have given these children unreasonable expectations of how the larger community will respond to their academic weaknesses. As a result, many special education students have a rude awakening in store for them when they arrive at college or enter the job market.

A major overhaul of special education is needed to ensure that the original goal of offering an appropriate education to all children is reached while at the same time ensuring that as many students as possible are integrated into the mainstream of American life. To accomplish this, we must first recognize that special education, as currently constructed, really serves three distinct groups of students: those with significant physical, sensory, and cognitive handicaps; those with milder forms of neurological dysfunction, such as SLD and ADD; and those with behavioral disorders.

A transformed special education system would continue to provide appropriate accommodations and special services to the first group designed, at least in part, to help integrate them as much as possible into regular education. For the second group of students, regular and special education would re-focus its efforts both to prevent academic problems through more effective

instructional strategies and to teach compensatory skills so that, in the long run, these students are no longer in need of special accommodations or services. The third group, students with behavioral disorders, would be excluded from special education per se, and instead benefit from system-wide programs focusing on clear rules, positive reinforcement for appropriate behavior, and effective limit setting, all designed to prevent conduct problems in the first place. School choice, preferably in the form of vouchers, would ensure that parental preferences are respected.

A reformed education system would take into account the differing needs of important subgroups of special education students; empower parents, not lawyers; and encourage the development of coping and compensatory strategies, not a lifetime of disability. Federal legislation ensuring that no student be left behind is an important principle. It is now time to ensure that this principle actually translates into better outcomes for students with special needs. In short, it is time to make special education "special" once again.

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- <sup>1</sup> U.S. Congress, Committee on Education and Labor, Select Subcommittee on Education, *Hearings*, 93rd Congress, 1st Session (1973).
  - <sup>2</sup> See Public Law 34-5 (February 16, 1857), "An Act to Establish the Columbian Institute for the Deaf and Dumb"; and Public Law 45-186 (March 3, 1879), "An Act to Promote the Education of the Blind."
  - <sup>3</sup> Public Law 85-804 (September 1958), "National Defense Education Act"; Public Law 85-926 (September 6, 1958), "An Act to Encourage the Expansion of Teaching in the Education of Mentally Retarded Children Through Grants to Institutions of Higher Learning and to State Educational Agencies."
  - <sup>4</sup> See Edwin W. Martin, Reed Martin, and Donna L. Terman, "The Legislative and Litigation History of Special Education," *The Future of Children* 6 (Spring 1996): 25-39.
  - <sup>5</sup> Procedural safeguards for the IDEA are delineated in the U.S. Code of Federal Regulations, Title 34, Subtitle B, Chapter III, Part 300.
  - <sup>6</sup> The 13 mandated special education categories are autism, deafness and blindness, developmental delay, emotional disturbance, hearing impairment, mental retardation, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment.
  - <sup>7</sup> See Daniel J. Reschly, "Identification and Assessment of Students with Disabilities," *The Future of Children* 6 (Spring 1996): 40-53.
  - <sup>8</sup> See U.S. Department of Education, Office of Special Education and Rehabilitative Services, *Annual Report to Congress on the Implementation of The Individuals with Disabilities Education Act*, (Washington, DC: U.S. Department of Education, various years); National Center for Education Statistics, Common Core of Data Survey, *Digest of Education Statistics, 1999* (Washington, DC: U.S. Department of Education, 2000), table 53; and unpublished tabulations.
  - <sup>9</sup> See Ami Klin and Fred Volkmar, "Asperger's Syndrome," in *Handbook of Autism and Pervasive Developmental Disabilities*, 2d ed., eds. Donald Cohen and Fred Volkmar (New York: John Wiley & Sons, 1997), 54-80.
  - <sup>10</sup> Between 1990 and 1993, the annual number of outpatient pediatric visits for ADHD increased from 1.7 million to 4.2 million. Moreover, production of methylphenidate, the most common pharmacological intervention for both ADD and ADHD, more than quadrupled during this same time period.
  - <sup>11</sup> Of particular concern is the difficulty distinguishing SLDs in reading, the most frequent form of which is often referred to as dyslexia, from low achievement in reading. Indeed, the National Institute of Child Health and Human Development consensus report on the subject concluded after reviewing all the relevant research on the

topic that it is impossible to clearly differentiate an SLD in reading from low achievement. Instead, these researchers concluded, “dyslexic children simply represent the lower portion of the continuum of reading capabilities.” Cited in Daniel J. Reschly, “Identification and Assessment of Students with Disabilities,” 45.

<sup>12</sup> Cited in Robert Worth, “The Scandal of Special Education,” *Washington Monthly* (June 1999): 34-38.

<sup>13</sup> In a March 19, 1995, interview with *The Sunday Star-Ledger*, then-New Jersey Education Commissioner Leo Klagholz was quoted as saying, “We spend the money every year, but we have no way of knowing whether the money we spend is actually going for the education of disabled children.” Klagholz concluded, “I’m not sure school officials actually sit around and say they can increase state aid by increasing the number of classified children. But the incentive is there and, sometimes, close calls can be justified on the grounds of the good they believe they are doing by increasing a district’s resources.” Robert T. Brown, “Klagholz Fears Schools Inflate Special Ed Need,” *The Sunday Star-Ledger*, 19 March 1995.

<sup>14</sup> Under the 1997 amendments to the IDEA, schools are now allowed to use special education funds to explore programs that are non-categorical, are coordinated with other federal and state funded programs within the school, and are part of an educational “whole” (Part B funds). However, schools still get special education funds based on the number of children identified as eligible under the IDEA. What the 1997 amendments allow is greater flexibility in *spending* the money. So, for example, if a school defines a resource classroom for reading as one that has fewer than ten students and there are six children identified as in need of special education, the school can include four additional children in that resource classroom who are poor readers but not identified as in need of special education under the IDEA. The school doesn’t receive any additional funds for the latter four students, however.

<sup>15</sup> A study conducted by the National Assessment of Educational Progress (NAEP), U.S. Department of Education, found that schools routinely tried to exclude low-achieving students from standardized exams by, for example, sending them on field trips, telling them to stay home, or simply encouraging them not to participate in the tests. Of the 27 states that routinely tracked how many students with disabilities participated in statewide assessments, only about half of the states tested special education students.

<sup>16</sup> See Andrea Tortora, “Omitting Special Ed Kids May Have Aided Scores,” *The Cincinnati Enquirer*, March 12, 1999.

<sup>17</sup> See Walter Olsen, “Under the ADA, We May All Be Disabled,” *Wall Street Journal*, May 17, 1999, sect. A, p. 27.

<sup>18</sup> See Michael Cardman, “SAT Accommodations Soar for Wealthy, White Males,” *Education Daily* 33, no. 10 (2000): 4.

<sup>19</sup> See “Special Education: Honoring the Federal Commitment,” as posted on the National School Boards Association website: <<[www.nsba.org/advocacy/issueupdates/idea.htm](http://www.nsba.org/advocacy/issueupdates/idea.htm)>>.

<sup>20</sup> See Donna L. Terman, Mary B. Larner, Carol S. Stevenson, and Richard E. Behrman, “Special Education for Students with Disabilities: Analysis and Recommendations,” *The Future of Children* 6 (Spring 1996): 12.

<sup>21</sup> See Thomas B. Parrish and Jay G. Chambers, “Financing Special Education,” *The Future of Children* 6 (Spring 1996): 121-138. Note these percentages are for 1987-88, the last year that states were required to report special education expenditures to the U.S. Department of Education. The last independent national special education cost study was based on 1985-86 data.

<sup>22</sup> In Montgomery County, Maryland, for example, the school system’s legal fees increased 240 percent between 1990 and 1995.

<sup>23</sup> See Robert Worth, “The Scandal of Special Education,” *Washington Monthly* (June 1999): 34-38.

<sup>24</sup> See Richard Rothstein and Karen Hawley Miles, *Where’s the Money Gone? Changes in the Level and Composition of Education Spending* (Washington, DC: Economic Policy Institute, 1995).

<sup>25</sup> In New Jersey, fully five percent of special education students attended private schools at taxpayers’ expense during the 1994-95 school year, with an additional seven percent having part of their private school costs paid for by the public school system. In Washington, D.C., private placements account for over a third of the District’s \$167 million special education budget, even though less than one-sixth of the District’s special education students attend private schools.

<sup>26</sup> See Worth, “The Scandal of Public Education.”

- <sup>27</sup> Cited in Jonathan Fox, "Sending Public School Students to Private Schools," *Policy Review* (January/February 1999): 25-29.
- <sup>28</sup> See U.S. Department of Education, Office of Special Education Programs, *Implementation of the Individuals with Disabilities Education Act: Seventeenth Annual Report to Congress* (Washington, DC: U.S. Department of Education, 1995), p. A-159, table AD1.
- <sup>29</sup> See *ibid.*; see also Lynn S. Fuchs, Susan B. Eaton, Carol Hamlett, and Kathy Karns, "Supplementing Teacher Judgements of Test Accommodations with Objective Data Sources," *School Psychology Review* (in press); and Lynn S. Fuchs, Douglas Fuchs, Susan B. Eaton, and Carol Hamlett, "Reading Test Accommodations for Students with Learning Disabilities: Using the Dynamic Assessment of Test Accommodations (DATA) to Supplement Teacher Judgements" (Peabody College of Vanderbilt University, unpublished manuscript).
- <sup>30</sup> See Wayne J. Camara, Tina Copeland, and Brian Rothschild, *Effects of Extended Time on the SAT I: Reasoning Test Core Growth for Students with Learning Disabilities*, College Board Report No. 98-7 (New York: College Board, 1998).
- <sup>31</sup> See Beth Azar, "Fairness a Challenge When Developing Special-Needs Tests," *APA Monitor* (December 1999): 31.
- <sup>32</sup> See Camara, Copeland, and Rothschild, *Effects of Extended Time on the SAT I*, 1; see also W. Willingham, M. Ragosta, R.E. Bennett, H. Braun, D.A. Rock, and D.E. Powers, *Testing Handicapped People*, (Boston, MA: Allyn & Bacon, 1988).
- <sup>33</sup> See Kenneth Smith, "Disabled Educators," *The Washington Times* (May 6, 1999), sect. A, p. 19.
- <sup>34</sup> See *ibid.*
- <sup>35</sup> Personal communication, 59th Annual Conference and Exposition, National School Boards Association, Alexandria, VA.
- <sup>36</sup> See Eli J. Lake, "Appeals Court to Revisit Key Learning Disorder Ruling," *Education Daily* 32, no. 122 (1999): 4.
- <sup>37</sup> See Robert J. Sternberg and E. L. Grigorenko, *Our Labeled Children* (Reading, MA: Perseus Books, 1999).
- <sup>38</sup> For further discussion, see Mark Wolery and James Schuster, "Instructional Methods with Students Who Have Significant Disabilities," *Journal of Special Education* 31 (1997): 61-79.
- <sup>39</sup> For further discussion, see Diane M. Browder, Timothy Minarovic, and Edward Grasso, *Functional Approaches to Low Incidence Populations: Functional and Noncategorical Identification and Intervention in Special Education* (Des Moines, IA: Iowa Department of Education, 1998).
- <sup>40</sup> See H. Goldstein and E. Hockeberger. "Significant Progress in Child Language Intervention: An 11-Year Retrospective," *Research in Developmental Disabilities* 12 (1991): 401-424.
- <sup>41</sup> See Browder, Minarovic, and Grasso, *Functional Approaches to Low Incidence Populations*.
- <sup>42</sup> See Terman, Larner, Stevenson, and Behrman, "Special Education for Students with Disabilities: Analysis and Recommendations," 4-24.
- <sup>43</sup> For further discussion, see G. Lyon Reid and Vinita Chhabra, "The Current State of Science and the Future of Specific Reading Disability," *Mental Retardation and Developmental Disabilities Research Review* 2 (1996): 2-9; and Sternberg and Grigorenko, *Our Labeled Children*.
- <sup>44</sup> See Sternberg and Grigorenko, *Our Labeled Children*.
- <sup>45</sup> See *ibid.*
- <sup>46</sup> See Peter Jensen and the MTA Cooperative Group, "A 14-Month Randomized Clinical Trial of Treatment Strategies for Attention-Deficit/Hyperactivity Disorder," *Archives of General Psychiatry* 56 (1999): 1073-1086.
- <sup>47</sup> See Alan E. Kazdin, *Treatment of Antisocial Behavior in Children and Adolescents* (Homewood, IL: Dorsey Press, 1985).
- <sup>48</sup> See Dennis Russo and Robert Putnam, *Implementing Effective Behavioral Strategies in Schools and School Systems* (paper presented at the 31st Annual Convention of the Association for the Advancement of Behavior Therapy, November 12, 1999, in Toronto, Ontario).
- <sup>49</sup> For further discussion of the effectiveness of special education, see Mark Kelman and Gillian Lester, *Jumping the Queue: An Inquiry into the Legal Treatment of Students with Learning Disabilities* (Cambridge, MA: Harvard

University Press, 1998); and Edwin W. Martin, "Learning Disabilities and Public Policy" in *Better Understanding Learning Disabilities: New Views from Research and Their Implications for Education and Public Policy*, eds. G. Reid Lyon, D.B. Gray, John F. Kavanaugh, and Norman A. Krasnegor (Baltimore, MD: Paul H. Brookes, 1993): 325-342; and M.C. Wang and E.T. Baker, "Mainstreaming Programs: Design Features and Effects," *Journal of Special Education* 19 (1986): 503-526.

- <sup>50</sup> See Mary M. Wagner and Jose Blackorby, "Transitions from High School to Work or College: How Special Education Students Fare," *The Future of Children* 6 (Spring 1996): 103-120.
- <sup>51</sup> See Lose Blackorby, "Participation in Vocational Education by Students with Disabilities," in *The Secondary School Programs of Students with Disabilities: A Report for the National Longitudinal Transition Study of Special Education Students*, ed. Mary M. Wagner (Menlo Park, CA: SRI International, 1993), 51-548.
- <sup>52</sup> See Abigail Thernstrom, "Courting Disorder in the Schools," *The Public Interest* 136 (Summer 1999): 18-34.
- <sup>53</sup> See S. Epps and G. Tindal, "The Effectiveness of Differential Programming in Serving Students with Mild Handicaps," *Handbook of Special Education: Research and Practice*, vol. 1 (Oxford: Pergamon Press, 1987), 213-248; Reschly, "Identification and Assessment of Students with Disabilities," 40-53; and M.C. Wang, M.C. Reynolds, and H.J. Walberg, eds., *Implementation of the Individuals with Disabilities Education Act: Seventeenth Annual Report to Congress* (Washington, D.C.: U.S. Department of Education, Office of Special Education Programs, 1995).