Chapter 7

How Special Education Policy Affects Districts

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When I started calling school districts to see if they would talk to me for this study, I mentioned to the secretary of one special education office that Congress would soon be looking to reform the Individuals with Disabilities Education Act (IDEA). “Oh great,” she said. “More forms.”

From the perspective of school districts, this casual perception of how the IDEA works is not far off the mark. In trying to make sure that special-needs children get an education, federal and state governments have created a massive procedural maze that frustrates teachers, parents, and administrators alike.

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Not long before the conference that preceded publication of this volume, I spoke with Dr. A. Andrea Witkowski, special education director for the Garden City Public Schools in Michigan. A team of federal and state compliance monitors had recently visited her district, as is typical every three years.[1]

What changes did the regulators request? New forms. Specifically, they required this district (and others in the county, Witkowski later discovered) to print new forms for the individualized education program (IEP) that all special education students receive.

The changes required did not seem likely to do much to improve education for these students; rather, they asked for changes in wording that might make it easier for regulators to determine compliance. For example, the old IEP form asked when a student was to be in general education classes and when a student was not. The new form had to ask when a student was to be in general education for academics and when a student was not to be in general education for academics, and when a student was to be in general education for nonacademic classes and when a student was not to be in general education for nonacademic classes.

Aside from the direct cost of having to print new forms (not insignificant in a district with little if any money to spare), are such changes anything more than a nuisance? The example serves to illustrate the extent to which federal and state laws addressing the education of special-needs children are focused on procedure and regulatory compliance. This focus may help ensure that

children with disabilities have access to education, but it is not likely to improve the quality of their education.

Some 6,000 rules govern special education in Michigan, according to one official who spoke with me. Special education offices at school districts are often little more than a few desks surrounded by walls of file cabinets storing files needed not only to organize the delivery of special education services, but also to prove, if need be, that the districts are following the rules.[2]

School districts in Michigan provide special education under a set of state laws that precede the federal ones and exceed the federal mandate of a "free appropriate public education" (FAPE). In Michigan, state law requires districts to educate students with disabilities to their "maximum potential." It is also a state where special education is more stringently regulated than it is in many other states.

There is an elephant in the room that no one is talking about, largely for fear of being accused of lacking commitment to educating the disabled. It is the rising cost of special education.

In both Michigan districts studied here (Troy School District and Garden City Public Schools), special education programs had generally good reputations beyond their compliance with laws. Administrators took pride in their programs, sincerely believing they did well by these children in terms of trying to make their school experiences productive and enjoyable. Both special education directors often referred to their district's special education students as "my kids."

But there are problems with special education as many school districts see it. The main ones? Too many rules, too many lawyers, and not enough money. Some argue that there is no real limit on what districts may be required to spend on special education, and that increasing costs are forcing them to dip further and further into their general education budgets. What may be even more pressing, though, is the sense that districts are able to do little more than hold a finger in the dike—that with the threat of increasing litigation a future deluge is all but certain. And although some districts may want Michigan and Washington to loosen their stringent regulations, they believe that doing away with the regulations could do away with what little protection they have from lawsuits.

There is also an elephant in the room that no one is talking about, largely for fear of being accused of lacking commitment to educating the disabled. It is the rising cost of special education. Even districts with healthy per-pupil funding say it requires them to make tradeoffs, as will be discussed below. But the arguments focus on who should pay what share—not on the fact that the law puts no real limits on what districts have to spend to fulfill a student's rights.

Two Michigan Districts in Brief

The Troy School District sits at the edge of wealthy Oakland County in what was, two decades ago, an outlying area. It's now home to a ritzy shopping mall, several major corporations, and brand-new subdivisions of increasingly large homes populated mostly by professionals, more

than 70 percent of whom have completed at least some college according to Census Bureau statistics. In 1997-98, the district had a K-12 enrollment of 12,047 and per-pupil funding of $7,996, well above the state average of $6,063, according to the Michigan Department of Education's *1999 Michigan School Report*. Just over 9 percent of its students are in special education, which cost the district $10.6 million last year, including transportation costs, a sum equaling approximately 15 percent of district spending, according to the Michigan Department of Education.

The Garden City Public Schools cover a middle- to working-class bedroom community in Wayne County. The bungalows and small ranch homes are average-priced, typically less than $150,000. Just one in three Garden City residents has continued his education past high school. The school district's funding for its 5,412 students stood at $6,145 last year. Just over 20 percent of Garden City's students are in special education, although that high share is partly due to its Burger School, the largest public-school autism program in the nation. (It enrolls students from all over Wayne County). If the district had a more typical number of autistic children, it would still have about 16 percent of its students in special education, higher than the state average of 12 percent. For Garden City, special education costs amounted to about $16 million last year, including transportation, or close to 40 percent of all its spending. The funds for the Burger School alone amount to approximately $10 million of that, all of which is paid for by the county. Not counting those expenses, special education takes up 15 percent of the budget.

Referral to Special Education

For all their differences, the ways that the districts identify and place students in special education are much the same. In fact, ask the director of special education in any school district how students are identified for special education, and you are likely to get the same answer. The law sets out a clear set of steps from which districts deviate at their legal peril.

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The procedure goes as follows: When a student is referred as potentially in need of special education, the district has ten school days to get a parent's okay to test the student to see whether the child has a disability. Within 30 school days, the district has to convene a Multidisciplinary Evaluation Team (MET), whose members are defined by Michigan law based on the suspected disability. The MET conducts the tests and any observations needed to determine whether the child is eligible for special services.

Once the test results are in, within that same 30 days (more if the district and parents agree), the district will convene an IEP team whose members are also defined by law. They include (at minimum) the student's parent(s), regular teacher, a special education teacher, a representative of the district, and any specialists based on the possible nature of the disability—for example, a speech pathologist, if the disability seems to be speech- and language-impaired. At least one member of the MET shows up at the initial IEP meeting to present that team's report. They decide

whether the tests and observations were properly conducted, look at what the preponderance of evidence points to, and make a determination on eligibility.

If a child is certified for special education, the IEP team will discuss what services are needed; the state provides a form with a checklist of things to discuss. Once eligibility for specific services is determined, those services have to start within 15 school days. Such services include academic assistance as well as transportation, physical therapy, speech therapy, psychological counseling, occupational therapy, social work and services, and technological aids.

What does vary between these two districts is what happens before a referral to special education is ever made. The law states that, to get special education services, a student must need those services to overcome his or her disabilities. Differing emphasis on whether students are perceived to need special education services, therefore, can play a big role in how many students are eventually certified for the program.

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By the time children reach school age, those with more severe mental impairments, obvious physical disabilities, and speech and language impairments are usually already in special education. Since the passage of its own special education law in 1971, four years before the federal legislation was passed, Michigan has required its districts to serve special-needs children from birth. In both of these districts, such children are usually brought to the attention of the district by a parent, often on the advice of a doctor or social worker.

School-age children are nearly always referred for evaluation by a teacher, primarily because they are struggling to keep up. Some critics of Michigan's special education law point out that, taken literally, it requires districts to give special education services to anyone not living up to his or her potential, even if that student is doing okay. In neither of these districts did that question arise. Special education was seen as a service for those who were well behind their peers. "If a student wasn't struggling, you'd never recognize there was a problem," said Dr. Lawrence Selaty, director of special education in the Troy School District.

Persistent behavior problems might also trigger a referral. In one elementary school, a child born to a crack-addicted mother was in the process of being evaluated for emotional impairment due to uncontrollable behavior.

Resources Outside of Special Education

What happens before a referral ever takes place depends a lot on what resources a district has to devote to remedial help outside of special ed education.

In Troy, that means a fairly substantial intervention. Initially the district encourages general education teachers to try to adapt their instruction informally to the learning style of the student in question. Partly for that purpose, the district has about a dozen teacher consultants that general education teachers can call on for help. The district also has a Reading Recovery program—an expensive one-on-one tutoring program—for struggling readers. "Our focus is on the general ed classroom," Selaty said. That focus has kept unnecessary—and costly—evaluations to a minimum. More than four in five students who are referred for testing are eventually certified for special education, a high percentage. However, using special education as a last resort after many options are tried is an approach that can frustrate parents of children who are eventually certified for special education. One mother of a learning-disabled child said her child entered first grade unable to read and failed to make progress in reading for a whole year before being certified. She felt that valuable time had been lost in addressing her child's needs.

> ***"It used to be there was more of a stigma [to being classified as needing special education services]," said a district special education director. "Now, if this is the way you get help [for learning disabilities], then this is what you do," she said.***

Garden City has fewer such resources for extra help outside of special education. In the past, many struggling students would have gotten one-on-one help through the federal Title I program for districts with a high share of poor students. Prior to 1994, that program required schools to pull students out of class for extra help, so the district could show that Title I funds were only being used to help eligible students. In 1994, however, Congress changed the law to permit districts the flexibility to use Title I funds to help pay for schoolwide improvement programs. Garden City embraced the schoolwide approach.

That change has sent special education referrals in Garden City Schools soaring, noted Dr. Witkowski, the district's director of special education, even though the rate at which students are actually certified isn't increasing any faster than in the state as a whole. Because of the Title I changes, the district doesn't have funds to pay for the one-on-one reading help that some students need. As a result, teachers may seek to place students needing special attention in reading in special education, where such help is still available.

Neither district reported much resistance from parents when it came to certifying children for special education. When parents did resist, neither district seemed likely to fight them. When a problem was severe enough the parents would eventually agree to the certification, district officials said. Ironically, the district often has more trouble certifying students for more serious and obvious disabilities than for lesser learning disabilities. "It used to be there was more of a stigma," Witkowski said. "Now, if this is the way you get help [for learning disabilities], then this is what you do," she said.

In fact, some teachers pointed out that they believed that some parents were trying to "work the system" in favor of their child, wanting the child to be identified with a mild disability that would garner some accommodations and extra help, but little or no stigma.

Much of the nationwide growth in the special education population has come in the category of specific learning disabilities—one of the twelve categories that Michigan requires districts to identify—and the Garden City and Troy school districts show no exception to that trend.[3] Both report steady, slow increases in the learning-disabled population over the past 15 years.

"Learning disabled" is also the special education category open to the most interpretation. For its other categories, Michigan leaves little discretion in terms of how to classify students. For example, a student is supposed to be classified as educable mentally impaired when his score on an intelligence test is two to three standard deviations below the mean, and when he scores within the lowest six percentiles on standardized tests of reading and math.

The goals listed on a student's IEP are also supposed to be determined individually. In reality, they typically follow recommendations from Michigan's outcome guides, developed by teams of special education experts for the state.

With learning disabilities, however, the state's definition leaves some flexibility to local districts. A student has to show a "severe discrepancy" between his ability on an intelligence test and his score on an achievement test, among other factors. Local districts can define "severe" as they see fit.

Both the Troy and Garden City school districts cast a wide net when it comes to this definition, using a 15-point, or one-standard-deviation, gap between scores on intelligence and achievement tests. And in Troy, such a wide gap is not a necessary condition if other evidence suggests special education is needed. In Garden City, Dr. Witkowski recently looked at the test scores of each student with learning disabilities (LD) to see whether requiring a larger point gap would reduce the size of that category of the special education population. She found that every one of the district's LD students had at least a 20- or 25- point (one-and-a-half to two standard deviations) gap in at least one academic area.

Public insistence on higher academic standards has led to the elimination of nonacademic tracks in both districts over the past two decades. And both districts point to that development as a major factor in the increasing LD population—especially at the high-school level—over that same period. "There used to be things like general math that kids who were not headed for college would take," Witkowski said. "Now that's gone—the lowest math class we have in high school is an algebra/geometry class—but the kids are not gone. They don't have options like general math or auto shop so they're in special ed. It's the only game in town to get out of a strictly academic curriculum," she said.

As the district has made its general education more difficult over the past decade, Selaty points out, referrals and certifications for learning disabilities have increased steadily. "You'll see more students who aren't making it as the curriculum becomes more difficult," he said, "so you'll have more being referred."

From IEP to the Classroom

Once a student is certified for special ed, the IEP team takes over, planning long- and short-term goals for the student and delineating the services needed to meet them. As its name suggests, the IEP is determined on an individual basis, in theory without regard to cost or what's actually available in the district.

In reality, what the law requires will usually translate into services that look very much the same from district to district, even though the curricula that is used may differ. For school-age children with disabilities like speech and language impediments or mild learning disabilities, a child will almost always be placed in a general education classroom and be pulled out for special help in a resource room. Children with severe disabilities will be placed in a special class or program, and they may be "pulled in" to a general ed class (most often art or physical education) or a lunch period for mainstreaming.

> ***Like the federal IDEA, Michigan's special education law emphasizes inclusion, or placing the student in the "least restrictive environment" in which he or she can benefit educationally.***

The goals listed on a student's IEP are also supposed to be determined individually. In reality, they typically follow recommendations from Michigan's outcome guides, developed by teams of special education experts for the state. These guides outline in detail what students of different disabilities and grade levels should be expected to accomplish in academics and other life skills. For example, the "Special Education Program Outcomes Guide: Educable Mental Impairment" lists six different categories of expected outcomes—academics, social competence, community integration, personal growth and health and fitness, vocational integration, and domestic living environment. (For educable mentally impaired (EMI) students, even the "academic" goals primarily relate to daily living.) Each category has subcategories—19 in all—each with a detailed list of "selected educational considerations" for a given grade level.

For example, the academic category lists three subcategories:

- to "communicate effectively through oral language";
- to "integrate the use of print material into daily living"; and
- to "respond productively to mathematical problems encountered in daily living."

Some of educational goals for EMI students that are listed under the subcategory concerning the use of print materials are as follows:

- students exiting third grade should "have the skills to write a letter";
- students exiting fifth grade should "have the skills to read at 2.5 grade level";
- students exiting eighth grade should "have the skills to complete simple forms requesting

basic personal data and answers to questions that are familiar"; and

- students exiting twelfth grade should "have the skills to read and respond in a written manner to application forms, health forms, surveys, school forms, legal contracts etc."

On a student's IEP, then, the goals typically follow these state-level templates, with some changes based on the student's individual case.

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Determining Placement

Like the federal IDEA, Michigan's special education law emphasizes inclusion, or placing the student in the "least restrictive environment" in which he or she can benefit educationally. IEP teams are supposed to keep children in general education classes unless they can't be taught there even with supplementary aids and services, and those teams are supposed to see that disabled children are educated to "the maximum extent appropriate" with the nondisabled. To the greatest extent possible, the law requires IEP teams to keep children as close as possible to home, ideally in the school they would go to if they weren't disabled. The only caveat mentioned is that the IEP team is supposed to consider the potential harm to the students or quality of services they get when placing them in "the least restrictive environment."

That means just about every school—in these districts, at least—has either a resource room or a room for basic programs. It's a bureaucratic distinction—the difference is the amount of time students can spend in them under Michigan regulations. A resource room is for students who spend less than half the school day in special education, and who need at most two instructional areas taught by the resource room teacher. "Basic program" rooms can take students for up to the full day. (Those are also the rooms often used by each district's traveling coterie of special education personnel, including teacher consultants, assorted therapists, and counselors.)

Not all elementary and middle schools have special education classes because each school does not necessarily have enough students to justify its own class for each category. The district typically assigns those classes to whatever schools have extra space. (Michigan regulations stipulate minimum square footage for each type of special class.) This means many students in special classes are transported—often at very high cost—somewhere other than their neighborhood school. The Troy School District's superintendent, Janet Jopke, said that special education students in that district are transported to at least 31 different sites around the county, at a minimum cost of $22 per hour, per bus.

A speech- and language-impaired student might be pulled out for an hour per day of therapy. Balancing the need for the individualized attention of "pull-out" classes with the need to not miss too much of general education classes is a constant challenge. In elementary school, most administrators try to schedule pull-out services during science or social studies, although in many

cases the time for therapy is the time an itinerant teacher can be at the school.

For example, say an elementary school student has a learning disability that interferes with math skills. If his normal class would spend an hour per day on math, the student's IEP might call for 5 hours per week of special education math assistance. High schools can offer separate special education classes in different subjects like science or government.

In both districts, special education students who spend most of their time in general education can graduate with a regular diploma. They offer a separate diploma or certificate for those with more severe disabilities who are taught almost entirely in special education.

Inclusion

The worry that too many special education students, especially those with minor learning disabilities, were missing too much of the general education curriculum has led to changes in laws that mandate a focus on inclusion. That focus is often expressed in the saying, "Special ed should be a service, not a place." Both districts are following the law's focus on inclusion. No administrator I spoke to raised any doubts about the merits of that focus. As a practical matter, however, inclusion is adding to the demand for greater spending from parents and teachers. The law's focus has created an expectation on the part of parents that their children can be mainstreamed no matter the cost. And general education teachers—especially those at the elementary level—want more help in the classroom as they contend with special education paperwork and attempt to individualize instruction in classes of 20-30 students. In theory, the accommodations that enable inclusion are supposed to focus on the delivery of the curriculum, not the content itself. Examples might be acquiring computer technology that allows a visually impaired student to take notes or arranging for an LD student to sit in the front of the class. In practice, however, many accommodations are beginning to change what gets taught.

Inclusion requires that general education teachers play an increasingly active role in IEP meetings and in the extensive paperwork associated with special education.

For Garden City students in the autism program, "mainstreaming" rarely means inclusion in a general education class because the program is housed in its own building. A large part of this education program, however, focuses on getting students comfortable with operating in the world outside of school. That includes things like trips to the grocery store and other community experiences. In some cases, however, a high IQ autistic student might return to his or her home school district each afternoon for some academic classes.

Troy students in the district's program for the trainable mentally impaired spend the better part of their days in a special class within the district's schools. In their case, mainstreaming typically means joining general education students for a gym class or lunch period.

The mainstreaming of physically impaired students also appears to be relatively straightforward. "It used to be that a child with cerebral palsy would get sent off to a center somewhere,"

Witkowski said. "Now the ability to walk is not a criterion you need to be in the regular school. We just get the student an amigo, an elevator, and maybe a health aide."

Questions tend to arise with respect to inclusion when general education teachers have a special education student who can't keep up with the rest of the class. In more limited circumstances, general education teachers worry about coping with special education students with behavior problems. Even in Troy, which has a relatively large staff of teacher consultants to help general education teachers adapt their classes to special ed students, the push for inclusion has proven to be easier said than done.

Increasingly, as special education students spend more time in general education classes, general education teachers are asking for additional aides to help them manage their classes.

"It's one of the areas where I get the most questions," said Ruth Augustine, president of the Troy Education Association. "Teachers don't always feel they have the help or training they need, and they're worried about what their liabilities are." She cited one example of a high-school special education student whose behavioral difficulties included wandering off between classes; the student was once found off school grounds in the middle of a busy street. Teachers worried that they were not able to prevent such occurrences and still pay attention to their other duties, and that they could be held liable if something happened.

Inclusion also requires that general education teachers have to play an increasingly active role in IEP meetings and in the extensive paperwork associated with special education. In Troy, the union unsuccessfully filed a grievance against the district to try to prevent IEP meetings from taking up teachers' planning periods. Having a special education student in a general education class means the teacher needs to spend even more time on planning in order to individualize instruction, and on documentation of progress or problems. That extra work appears to be creating pressure from teachers for the district to hire more instructional aides and contributing to a sense that classes need to be smaller.

Instructional, or teacher's, aides are one of the rapidly growing categories of paraprofessionals in demand to help provide special education services. Another is the category of health aides.

The requirements for an instructional aide are fairly low. An aide to teachers of students with severe mental impairments must have a high school diploma and some postsecondary training either in a community college or daycare center. The state sets no standards beyond a high school diploma for instructional aides in LD classrooms. For a long time, aides were most often deployed in special education classes or resource rooms to help the special education teachers handle a larger class. For example, a special class for severely mentally impaired (SMI) students can have 12 students with one teacher and two instructional aides, or up to 15 students with a teacher and three instructional aides. Increasingly, as special education students spend more time in general education classes, general education teachers are asking for additional aides to help them manage their classes. Aides might help attend to students when the class is doing group work, prompt a student to take notes at important parts, and so on.

"All the parents want aides" for their children, one Troy teacher told me, a sentiment that was echoed by many of the parents and teachers with whom I spoke. "To me, full inclusion means that my child will be in a regular classroom with a [paraprofessional] to help him," one mother of a learning-disabled child said. "But I would never ask for that because then they'd have to do it for everybody."

A district's reluctance to assign aides to special-needs students concerns more than cost, although the cost of one instructional aide for each student would overwhelm even the healthiest district balance sheet. "We have a real concern that kids will become dependent on the aides," one special education teacher said. Another added that the promise of one-on-one attention from an aide may not work as well as extra help in a special education class given the fact that aides typically do not have much training in helping students deal specifically with their disabilities.

The focus on inclusion is not only changing the way the general education classroom works, it is creating two important pressures on school districts: the potential for rising costs due to the demand for paraprofessionals, and the potential for conflict with parents as to the degree to which inclusion can be attained.

Districts set their own standards for health aides, who attend to the physical needs of disabled students, such as helping them go to the bathroom. The number of aides in this category has increased sharply in recent years because courts have expanded the definition of services deemed educationally necessary to include attending to such physical needs. For instance, the Supreme Court's 1999 decision *Cedar Rapids Community School District v. Garret F.*[4] expanded the definition to include nursing care.

Teacher Training

In both districts, new teachers receive training in how to create "differentiated" instruction, so that special-needs children can be educated alongside the average and the gifted. In-service training is also directed to these areas.

In Troy, teachers are trained in the SAALE model (Systematic Approach for Adapting the Learning Environment), created by Dr. Judy Wood of Virginia Commonwealth University. Carried to its farthest, that model would make special education a thing of the past for all but youngsters with severe disabilities. For example, in *Adapting Instruction to Accommodate Students in Inclusive Settings* (3rd edition),[5] Wood presents alternatives to writing book reports for struggling students. Some include illustrating a book jacket, writing to the author, or writing and performing rap songs about the book.

Even sincere proponents of inclusion and the adaptive classroom expressed doubts that adapting instruction can always be done without watering down the curriculum. "This is a question I ask myself every day," one teacher—and parent of a gifted student—said. Another teacher implied that the adaptive classroom did not always work the way it was intended for special-needs students either; that they were simply not expected to do the same work. "We're told it doesn't

matter if Jimmy can't take the test in social studies, that it's okay for him to benefit just by being there."

Districts also sense that the expectations of parents for full inclusion are rising faster than the districts' ability to include special-needs students, in some cases rising well beyond what the districts think is appropriate. The mandate for "least restrictive environment" and the ideology surrounding inclusion have created an impression for some parents that pull-out services are second best. In fact, they are often exactly what is needed. "Sometimes these kids really just need some one-on-one attention," Witkowski said.

In one situation in Troy, the parents of an autistic child insisted that their child attend a general education class because they felt their child functioned well enough academically to keep up. The situation turned out to be disruptive for the whole class, and it was not helpful for the child in question. Halfway through the year, the district hired an instructional aide to do what one teacher described as "babysitting" the student, making sure the student followed directions and otherwise regulating the child's interactions with other students. This year, the child was placed in a special class.

"Districts are now in a terribly untenable position. They cannot ignore or take lightly physical or other aggressive behavior," but the current law provides them little recourse in situations involving special education students, says a Detroit law partner.

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Discipline and IDEA 1997

Neither district reported specific incidents in which a special education student committed an act that administrators felt should be punished but could not be due to the restrictions on discipline under the IDEA. If such an event were to happen, however, neither district seemed to feel that recent changes to the law, intended to enable administrators to discipline special education students more easily, would make much difference.

A suspension, being sent home from school, or a forced trip to the principal's office can constitute a change in placement for a special ed student, and, therefore, districts are required to figure out whether a student's actions are the result of his disability. Officially, the district may not "change the placement" for more than 10 days without an order from a hearing officer. (In the past, it took a federal court injunction.) Informally, such "changes in placement" seem to happen with parental consent. One teacher told me that an elementary school special education student with a fairly severe mental impairment was sent home for the day after hitting a teacher, not so much as a punishment but as a way to diffuse the situation. No committee was convened to determine whether the offense stemmed from the nature of the student's disability because the

parent agreed it was best for everyone to take the child out of school for the day.

If a student's offense does allow for disciplinary action, the law provides that disciplined special education students be provided the same educational services as they were getting before, but in an "alternative" setting. Exactly what constitutes such an "alternative" setting was not clear to special education administrators or, for that matter, to the county-level regulators who monitor them or the lawyers who defend districts in court.

"We're really flying blind here," said Greg Gwisdalla, director of special education for the Oakland Intermediate School District (OISD), which oversees all of Oakland County's local school districts including Troy. He said that he didn't know what such an alternative setting would actually look like, as there has been little case law to define it. Troy School District's Lawrence Selaty went a step farther: "That kind of setting simply does not exist in Oakland County," he said. OISD officials were also worried that the issues surrounding discipline of emotionally impaired students, in particular, were making its local districts reluctant to sponsor programs for them.

"In the real, everyday world for a school district, you can't write this stuff in books and have it work," said Beverly Burns, a partner at the Detroit law firm of Miller, Canfield, Paddock and Stone. "Districts are now in a terribly untenable position. They cannot ignore or take lightly physical or other aggressive behavior," she said, but the current law provides them little recourse in situations involving special education students.

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Spending on Special Education

Funds for special education come from federal, state, and local sources.

State funds. First a word on how school funding operates in Michigan. Since the 1994 passage of Proposition A, all funds for a school district's operating expenditures come from the state. Local governments turn their property taxes for education over to the state, which then redistributes those and other funds in a way that aims to equalize funding among districts over time. The state now bars local districts such as Troy and Garden City from raising local funds for school operating expenses.

For each of its students, a local district gets a "foundation allowance" from the state. On top of that, districts also get a "special education foundation allowance." The latter amount is derived by multiplying the regular foundation allowance by the full-time equivalent of special education pupils—and then multiplying the result by 28.6 percent, the state's court-mandated share of special education costs (the court case that established this share will be discussed in greater detail below). For Troy School District, that special education foundation allowance amounted to $1.98 million in 1999-2000. In Garden City, it was $3.65 million. In addition to this per-pupil funding, districts submit to the state a gigantic expense report for special education, listing

nearly everything they spend on special education (except for capital outlays). The state pays back 28.6 percent of these costs, and 70 percent of special education transportation costs. For Troy School District, that amounted to $1.38 million in 1999-2000, and in Garden City the amount was $1.1 million.

Federal IDEA funds. Federal funds come in part from grants under Part B of the IDEA, and they take a circuitous route to get to districts like Troy and Garden City. The federal government hands IDEA funds over to the Michigan state government, which then disburses the funds to countywide school districts, called Intermediate School Districts (ISDs) or Regional Educational Service Associations (RESAs). These countywide districts (Troy belongs to the Oakland ISD and Garden City to the Wayne County RESA) exist in part to allow local districts to join together to provide special education programs for students with low-incidence disabilities. The ISDs and RESAs distribute IDEA grants as they see fit. In the Wayne RESA, Part B grants are combined with other federal and county funds to reimburse local districts directly for their programs for low-incidence disabilities. In the Oakland ISD, federal funds are distributed on a per-capita basis, amounting to about $500,000 for the Troy School District.

As courts have expanded the services that districts are required to fund, districts have become very aggressive in seeking out Medicaid payments to cover some special education expenses.

Federal Medicaid funds. Since 1988, districts have been able to get reimbursed from Medicaid—the federal health care program for the poor—for some special education expenses. The ISDs and RESAs submit expenses to the Michigan Department of Community Health, which submits the expenses to the federal Health Care Financing Administration (HCFA). The HCFA then reimburses the state, which reimburses the districts. An example of something that Medicaid would cover might be physical therapy or a health aide for a Medicaid-eligible student.

As courts have expanded the services that districts are required to fund, districts have become very aggressive in seeking out Medicaid payments. Medicaid now spends some $2.3 billion in school-related expenses, an amount that has risen more than five-fold in the past five years, according to an April 2000 General Accounting Office report.[6] The report also criticized school districts for charging Medicaid millions of dollars too much, and for paying accounting firms a contingency fee. In the wake of this report, the U.S. Department of Health and Human Services simply refused many reimbursement claims. What's more, the federal government launched a fraud investigation of Michigan school officials, on grounds that the state used money intended for districts improperly and that school officials accepted what amounted to bribes from accounting firms for their business. As of this writing, no charges have been filed, but $103 million in Medicaid funds to the state have been frozen. The stop in Medicaid reimbursements has thrown the Troy School District's budget into deficit. It had budgeted for about $350,000 in Medicaid expenses, but only received about half. The district dipped into its rainy-day fund to make up the shortfall.

County funds. As mentioned above, Michigan's local school districts can no longer levy taxes

for school operating expenses. But the countywide ISDs and RESAs may still do so for special education expenses, a funding source that both the Oakland ISD and the Wayne RESA tap. The Oakland ISD uses some of that money to fund its own programs—one for autistic students and one for hearing-impaired preschoolers and toddlers. After those programs are paid for, it distributes the rest to local districts on a head-count basis, amounting to about $2.85 million for the Troy School District. Oakland's local districts then contract with each other for services to benefit students with low-incidence disabilities.

In most districts, half or more of special education students are learning disabled. So even a fairly low per-student cost of additional educational services can add up to a huge sum.

The Wayne RESA pools its local tax money with federal funds to pay directly for regional "center programs" for low-incidence disabilities, such as Garden City's Burger School. Yet in Wayne County, these funds do not always cover the entire cost of all of the center programs. In that case, the RESA bills local districts for the balance, based on the number of disabled students they have. Local districts pay for these so-called charge-backs however they can—with rainy-day funds or program cuts. The level of recent charge-backs is the main reason why the Garden City Public School's budget lurches in and out of deficit from year to year. It has to cover the cost of charge-backs with spending cuts in other areas.

The problem of charge-backs sending local districts' budgets into deficit was the main reason why Oakland ISD began providing funds on a more predictable head-count basis three years ago. Before 1997, its funding mechanism was much the same as that still used in Wayne County. Oakland ISD officials also believed that funding center programs directly was skewing school officials' placement decisions. Because it was essentially free to send students to those center programs, many students were not being served in their home district when they could have been.

High—and Rising—Costs

It is close to impossible to know how much it costs to educate any given special-needs student because a precise figure would depend on knowing the exact blend of services provided for in the student's IEP. But a recent study by the Michigan Department of Education made some estimates of the average cost in 1996-97 of educating students with different disabilities.[7] Researchers estimated that the cost of educating students full-time in special education classes ranged from $6,646 for the pre-primary impaired (a category for children from birth to age three with developmental delays that do not fall into one of the other categories) to $46,987 for a visually impaired student. For the learning disabled, full-time placement in a special class costs an average of $15,423. For students with speech and language impediments, who spend all day in a regular classroom but then receive speech therapy, the average cost was $1,911 above what was spent in a regular classroom. Learning-disabled students needing only the services of a teacher consultant cost $5,576 on average above what was spent on students in a regular classroom.

In short, even the costs of educating students with low-incidence disabilities can be astronomical.

As courts continue to expand what is considered educationally necessary, as in *Garret F.*, districts expect those costs to go even higher. But in most districts, half or more of special education students are learning disabled. So even a fairly low per-student cost of additional educational services can add up to a huge sum. With the push for inclusion and the corresponding demand for more paraprofessionals, smaller classes, and improved classroom technology, those costs are also expected to rise.

Many districts nationwide, including the two studied here, believe one of the biggest problems associated with special education is lack of adequate funding from state and federal governments to help meet rising costs.

The day I spoke with the superintendent of Troy School District, the transportation managers had just informed her that they needed three new buses with lifts to handle special education pupils. And the parents of one student with an auditory processing problem were appealing the results of a due process hearing to federal court, trying to get a full-time transliterator so their child could go to a general education class instead of a special program.

Even the seemingly trivial changes in IEP forms requested by regulators can create major pressure for new spending, Garden City Public Schools director of special education Witkowski pointed out. One recent change to the IEP forms added a box that the IEP team has to check once it has informed the parent that some students with disabilities may have the school year extended to as many as 230 days. The old form had no mention of the availability of an extended year, which is intended to prevent students with severe impairments from regressing over the summer. On the basis of tests administered to Garden City's special education students, Witkowski estimates that about a third of special education students need such help. But now that mention of an extended school year is on everyone's form, parents of students with fairly mild learning disabilities—who were not part of the group targeted by this policy—are asking for what amounts to year-round tutoring.

There are few ways that districts can contain costs. "Without all the 'guidelines,' I think we could get a lot more bang for our buck," Witkowski said. Extensive and sometimes conflicting regulations from federal and state governments can stifle innovation. For example, changes to the IDEA allow districts to use special education funds in a way that might also benefit students up to age nine who are not certified for special education. And Witkowski thinks it would be more efficient, without being less effective, for each school to have a speech teacher and a reading teacher to help any student. Yet state rules governing class size and caseload restrictions on special education teachers mean that such efforts would have to come on top of the special education services that already exist, not instead of them, making it too costly. Michigan does permit districts to apply for waivers to these regulations under certain circumstances; as a practical matter, however, parent committees and teachers' unions prevent these waivers for anything other than short-term issues.

Unfunded Mandate

According to research by the Michigan Association of School Administrators, special education costs grew at a 9 percent compounded annual rate during the 1990s, while overall school revenues grew at just a 3 percent rate. Many districts nationwide, including the two studied here, believe one of the biggest problems associated with special education is lack of adequate funding from state and federal governments to help meet rising costs. This so-called unfunded mandate, districts say, forces them to shortchange their general education programs because they are bound by the courts to fund special education fully, even as general education enjoys no such legal protection. "At the start of the year, my programs will be fully staffed and fully funded because they have to be," Witkowski said. "My kids will get bus service, although their brothers and sisters (who are not in a special education program) may not."

The issue of cost is not just one of underfunding. From the perspective of school districts, increasing litigation of special education claims threatens what little ability they have to control costs.

The tradeoffs resulting from high special education costs and the ostensible lack of state funding are the subject of the Durant litigation in Michigan—a two-decades-long series of lawsuits brought by school districts against the state to force it to devote more funds to special education.

"This is a very severe problem," said Dennis Pollard, an attorney who is representing the school districts. "School districts can only absorb these costs for so long, and then they don't have any choice but to start cutting off general programs." Both Garden City and Troy have joined nearly 200 other Michigan school districts in the third round of Durant litigation, which seeks at least $460 million from the state.

The Durant lawsuits stem from the 1979 Headlee Amendment to the Michigan Constitution, which bars the state from imposing unfunded mandates. For all mandates in existence at the time the amendment passed, including special education, the state's required contribution was to be fixed at its 1979 level. This is why Michigan is now required to pay 28.6 percent of districts' special education costs and 70 percent of special education transportation costs.

The school districts won the first round of the lawsuits after 17 years, during which the state unsuccessfully argued that it was not liable for a higher share of special education costs because special education was ultimately a federal mandate. Both sides claimed victory in the second round, when the courts awarded no new funding to the school districts but told the state that special education monies had to be kept in a separate funding stream. In the current (third) dispute, districts are suing on two grounds: (1) first, that the state has raided other education funds to pay for its share of special education costs; (2) second, that the state actually owes even more than 28.6 percent. In the years since the Headlee Amendment passed, districts argue, the state imposed new regulations on special education—such as stricter class-size limitations—for which it should bear the full cost.

The state denies that it is raiding other education funds to pay for its special education

obligations, pointing to a huge increase in education spending throughout recent years.

The issue that paying for special education may mean shortchanging general education is hardly confined to Michigan. In fact, economist Richard Rothstein has argued in a series of studies for the Economic Policy Institute that this has been a national trend. In a detailed look at nine school district budgets from 1967-1996, Rothstein found that overall spending rose substantially. Even so, the amount going to general education barely budged. The share of the districts' budgets going to general education fell from 80 percent in 1967 to 58.5 percent in 1991, and then to 56.8 percent in 1996. By contrast, the share going to special education rose from 3.6 percent of school budgets in 1967, to 17.8 percent in 1991 and 19 percent in 1996.[8]

> ***Districts often feel that it's better to accommodate parents than face the uncertainty of a due process hearing.***

Full Funding?

As school districts hold out hope for "full funding" of special education, taxpayers might have a different view. In reality, the dollars for special education come from taxpayers, no matter which level of government does the taxing. From their perspective, the actual costs of special education might be the more salient issue. "Full funding" from state and federal governments is important to local school districts because it allows them to get more money without having to ask local taxpayers for it. And in Michigan, now that districts can't raise taxes, "full funding" from the state government may well be the only way they can get more money at all—especially wealthy districts where the state equalization formula is producing only meager year-to-year increases.

Litigation

The issue of cost is not just one of underfunding. From the perspective of school districts, increasing litigation of special education claims threatens what little ability they have to control costs. Litigation is also a cost in its own right for school districts—not only in cases that reach administrative hearings or federal court, but also in terms of what districts feel they must do to avoid legal challenge.

Lawsuits and other challenges to local special education services are hardly new. But these school districts report that the number of parent-initiated hearings and eventual court cases is on the rise. (To appeal an IEP decision, parents may first request a local due process hearing. Then the losing party may appeal to a hearing at the state level. After that, an appeal can go to court, most likely federal.)

In the Troy School District, there have been eight hearings since the start of 1995, only one of which the district initiated. By contrast, in the 15 years from 1979-1994, the district faced just three hearings, illustrating the extent to which litigiousness is on the rise. In the district-initiated case, the district successfully challenged a parent's continuing requests for independent testing to confirm the results of the district's tests. "Every time we had to test the child, it cost us a few thousand dollars a pop," director of special education Lawrence Selaty said. "Just to double check our results. They never found anything we hadn't."

In the Garden City Public Schools, there has been only one due process hearing in 15 years. "When you look at the big picture, it's just not worth a fight so you cave," Witkowski said. "This morning I was in an IEP meeting with the parent of an autistic four-year-old who's not ready for a full day at school. Only the parent can't find a baby-sitter who can deal with an autistic child. So if push comes to shove, I'll just put the child in a class for a full day, three days a week." Witkowski emphasized that the conflicts that lead parents to seek hearings are in many cases "good" ones, meaning that parents have a legitimate difference of opinion with the district.

"I know a lot of people who threaten [to use] lawyers to get what they want," one parent told me. A special education teacher pointed out a growing sense that IEP teams are becoming more and more likely to defer to parents. "I've sat in these meetings when a parent brings in an advocate and an attorney," he said. "Pretty quickly there's a shift from what's educationally sound to what's politically sound."

Districts often feel that it's better to accommodate parents than face the uncertainty of a due process hearing. When matters go to a hearing, each party puts forth two or three names of potential hearing officers that they would consider acceptable. If there's any overlap, then that will be the hearing officer. If, as is more likely, no names overlap, the state Department of Education appoints one at random. That process, Selaty says, is a major source of the uncertainty. "It can be a real crapshoot," he said. "There are some that tend to think parents are unreasonable, and others that think all school districts are evil."

"The best defense to any claim is very careful attention to procedure," said Detroit attorney Beverly Burns. "There was a time when those things weren't as important as long as the intent and the result were there, but today you had better follow procedure rigidly, or your program could be derailed down the road."

And then there are the costs of the hearings themselves. Districts bear all of the administrative costs—the fees of the hearing officer, their own attorney fees, and the cost of substitutes for any school personnel needed in the hearing, as well as the other side's attorney fees if they lose. One parent came to the Garden City district wanting a different curriculum for a dyslexic child from the one provided by the district. "If we had fought that, it could easily cost us $50,000 if we lost," Witkowski said.

So for any individual case, the cost of yielding is usually lower than the cost of fighting. As Selaty puts it, "There's a saying: Do you want to be wrong for $10,000 or right for $100,000?" Yet the cost of acceding to demands eventually adds up in a way that threatens to break a district's bank.

Networking among parents is also fueling demands for the simple reason that parents are becoming more aware of what the district has done in other cases.

Districts perceive that many of the information sources parents are turning to—in particular on

the Internet—are helping to create a more contentious atmosphere between parents and administrators. "I go to these workshops myself, and I look at the websites. They are all set up in an adversarial mode," Selaty said. "We have this medical model for problems," he continued. "If you have a broken arm, you go to the doctor, get an X-ray, and get it set. With a lot of these disorders, though, you're dealing with things that are never really going to go away. But there's this concept that we can fix it, that we have the cure and just don't want to pay for it."

> ***The same procedures that shield districts from litigation can also act as a ceiling on the efforts of school districts to provide special education.***

The IDEA lets attorneys for parents recoup their fees if they win a case, and Selaty thinks that fact is fueling much of the litigation. The potential for an attorney to be awarded fees has created an industry of lawyers urging parents to challenge districts, he believes.

"It is just too easy to bring a lawsuit," Selaty said, noting that the one change he believes would make the biggest difference in the IDEA would be to do away with awarding attorney fees to the successful party. "It's getting to the point where every disagreement turns into a bad divorce case," he said. "If someone sends us a positive letter, we save it just in case."

Michigan's law requiring districts to educate special-needs students to their "maximum potential" sets a more substantive rather than procedural standard than the IDEA, which requires a "free appropriate public education." Yet that does not change the fact that both court battles and due process hearings tend to focus on procedure in Michigan as elsewhere. In theory, there is little that cannot be said to contribute to a child's "maximum potential." But courts and hearing officers generally do not try to reinvent an education program from the ground up, and parents usually have to find a procedural misstep on the part of a district in order to get a hearing at all.

"The best defense to any claim is very careful attention to procedure," said Detroit attorney Beverly Burns. "There was a time when those things weren't as important as long as the intent and the result were there, but today you had better follow procedure rigidly, or your program could be derailed down the road." Increasingly, that means having teachers who are trained in special education law and willing to document just about every detail of a student's educational progress. "Teachers aren't going into special education anymore because they don't get to work with kids," Witkowski said. "They study all these years, and then they get a Ph.D. in paperwork."

Attention to procedure is also clearly what federal and state regulators want to see, as evidenced by the example cited above in which regulators asked for additions to IEP forms. "When you tell them, 'come on, use your common sense; we are doing this,' they'll say 'well, no, not exactly,'" Witkowski said. Dealing with county monitors is somewhat easier, she finds. "They know these kids, and they know what we're trying to do," she said. "The system really breaks apart in terms of monitoring because (federal and state regulators) don't have a clue what we do on a daily basis, and it's not something you can put on paper."

The state has also urged districts to survey parents about special education. Yet the questions it

wanted districts to ask were almost exclusively focused on procedure. For example, the state wanted to know whether districts informed parents of their upcoming IEP meetings. Only one question of 11 had anything to do with substantive matters, and that asked for an overall grade for special education programs.

> ***Several basic, but important, questions have never been clearly answered by the legislators who mandate special education or by the administrators who implement the program.***

In short, litigation and regulation burden school districts tremendously. Yet districts find that the burdens of procedure are in fact their most reliable defense in court.

Does Special Education Work?

Administrators in both districts studied here were proud of their special education programs. Their complaints had mostly to do with cost pressures and what they viewed as obstacles to putting their programs into effect or improving them.

Both districts have good reputations for special education. In the Troy School District, for example, at least some special education students will go on to higher education. As a minimum requirement for graduation with a special education diploma, the district also requires students to have at least ten weeks of successful employment experience. This means that even students with fairly severe mental impairments leave the district with letters of recommendation for employment, surely an important sign of success.

"The number of people in Wayne County who make complaints about special education is well below a half of one percent," Witkowski said. "I would think that would be proof in the pudding that we are doing a good job." In terms of officially lodged complaints, this is true enough, and neither district has run afoul of the law. These, however, are better measures of compliance with procedure than of results.

It is not hard to see how the same procedures that shield districts from litigation can also act as a ceiling on the efforts of school districts to provide special education. "It can be easy for districts to lose sight of what they're really there for," said Detroit law partner Beverly Burns.

Currently, there is little the public can do to measure the success of special education. Success is currently measured by how well students meet their IEP goals; however, the nature of the goals themselves are sometimes vague and unmeasurable. For example, one IEP that I saw belonging to an LD student said that he was to "develop self-editing skills." There is no absolute way to determine when this goal has been achieved. The other problem with measuring the success of special education is that IEP goals are confidential. Not only is the public barred from knowing anything about an individual student's IEP, but the "individual" nature of the IEP makes it hard to render any aggregate judgment on the system as a whole.

Several basic, but important, questions have never been clearly answered by the legislators who mandate special education or by the administrators who implement the program:

- **Who should and who should not be expected to master the general education curriculum?** For some students, the answer to this is fairly obvious—for example, the

student whose disabilities are largely physical, or the student whose mental impairments are quite severe. Yet the largest group of special education students, the learning disabled, exists somewhere in the middle. The 1997 amendments to the IDEA that mandate "access to" and "progress in" the general curriculum seem to imply that these students might be expected to master it, but they stop short of actually saying so. In neither district is it clear how many current special education students might be expected to do this, and how many of those achieve it.

- **In what cases can special education students be expected to leave special education?** In the districts studied here, only students in the speech and language category (which make up about a fifth of special education students statewide) would normally be expected to leave special education after therapy. That the overwhelming majority does so is seen as a sign of success. In neither district is the failure of other students to leave the special education system in significant numbers seen as a sign of failure.

- **Is the growing need for special education the result of failure on the part of the schools themselves?** Both districts seemed to be trying to improve early reading instruction in part as a way to reduce future special education referrals. But I detected no sense on the part of special education administrators or teachers that the students currently in special education were there for any reason other than true impairment, nor any inclination that students may have been sent to special education because of poor teaching methods in general education.

Including students with disabilities in Michigan's testing regime will at the very least provide everyone—parents, students, teachers, and districts—clearer information about what is actually being achieved in special education, particularly as it relates to the general curriculum.

Answers to these questions might well provide concrete evidence that these districts do have quality special education programs. But at this point, it is hard for the observer to say. The advent of the testing regime mandated in the 1997 IDEA amendments may help change this.

In Michigan, the new testing regime will be fully implemented by the end of the 2001-2002 school year, although parts are being put into place this year. According to the law, IEP teams will determine whether a student is capable of taking the statewide tests known as the Michigan Educational Assessment Program (MEAP) either with or without accommodations. If an IEP team determines that a student should not take the MEAP tests at all, it must outline how the student will be tested. The state is developing alternate assessments that districts can use.

The State Board of Education in 1998 created four levels of performance expectations for students with disabilities: full independence, functional independence, supported independence, and participation. IEP teams will use these in deciding whether and which alternate assessments are to be used. (These levels cross categories; therefore, autism-impaired students, for example, might be found at any of these levels).

The state test proposals clearly anticipate that any student who can be expected to achieve full independence in life (for example, LD students and those with physical disabilities) will take the MEAP tests. Districts will have to include in their reporting of test scores to the state and the public the scores of any student who receives at least half of his or her English or reading instruction in general education.

For the other three levels of performance expectations, the state is developing alternate assessments. The proposals anticipate that these will be used for students with moderate to severe cognitive deficits, with educable mental impairment being the least severe condition that might qualify for one of the alternate tests. These students amount to about 15 percent of the special education population. The assessments themselves will cover the full range of goals—academic to life skills—that are set out for these students in Michigan's outcome guides. They will likely include extensive teacher observations in place of more traditional test questions.

This testing is an important first step in informing the public—and parents—about the actual performance of special education students. As such, it may eventually help improve special education. And with access to information about how special education students are doing, the public may begin to discern answers to some of the questions outlined above.

If school districts could say to parents, "This is our program; take it or leave it," and parents could, in fact, leave it, a measure of peace might be attained.

Still, people looking to use this data to judge a district on its special education programs may be disappointed. The number of students taking alternate tests in a given district may be so small that it would violate their privacy rights for the district to report the results to the public. (This information will be available on a statewide basis). Nor is it clear whether the public will have any access to data about students who take the MEAP but who get less than half of their English or reading instruction in a general education class.

Including students with disabilities in Michigan's testing regime will at the very least provide everyone—parents, students, teachers, and districts—clearer information about what is actually being achieved in special education, particularly as it relates to the general curriculum. More information may prove a valuable weapon with which to demand improvements.

Recommendations

Rising costs and greater inclusion are creating important dilemmas for school districts. In particular, less-wealthy districts often have to meet an increase in special education costs with a decrease in spending elsewhere. In some cases, including a disabled student in a general education classroom can impact the education of the rest of the class, such as when an autistic child's behavior disrupted a kindergarten class for half a year.

Districts have little room to weigh such considerations when making decisions about individual special education programs. This fact creates the potential for unlimited demands on a special education program, whereas real-world resources are limited.

From the perspective of school districts, "full funding" of special education from state and federal governments is an obvious solution to the cost dilemma. Not only would it ease districts' budgeting squeeze, but it would do so without their having to convince local taxpayers to pay higher taxes.

From the taxpayers' perspective, however, the level of government that does the taxing to pay for special education doesn't make much difference. Rather, it is the total cost that is at issue. Without addressing the underlying cause of the problem—the fact that districts can not refuse to pay for a given special education program on grounds that it is too expensive—it is unlikely that schools will be able to rein in special education costs.

If policy makers tackle some of the hard questions surrounding special education, they might get beyond access and compliance—and improve quality.

Likewise, making it marginally harder for parents to sue school districts—by eliminating payments of attorney fees under the IDEA—might marginally ease the pressures that districts face. Once again, though, this would fail to address the underlying sources of conflict.

The law currently binds parents to the district in which they live, and the school district to all students who live there. When parents want something and the district says no—or vice versa—someone either has to capitulate or initiate legal action for the conflict to be resolved. This is not a recipe for peace. Strengthening the role of parental choice might provide a way out. Currently, parental choice for a special education placement is subject to veto power on the part of school districts. And district programs are subject to potentially endless negotiation and new demands. If school districts could say to parents, "This is our program; take it or leave it," and parents could, in fact, leave it, a measure of peace might be attained. This, however, would also depend on whether school districts could expect funding that reflected the actual cost of education in order to ensure that they had the means to provide quality programs.

The new testing regime for special education students provides a clear opportunity not only to improve special education, but to do so in a way that eases some of the obstacles faced by school districts. By using information from new testing regimes, Washington might grant states waivers from regulations in exchange for proven results. Likewise, states with more stringent regulations than the federal government requires, such as Michigan, could do the same with their districts.

In the two districts studied here, one thing I did not see was much innovation or experimentation. Any new program had to come on top of what already existed and also conform to regulations, which means it would add significant costs and probably end up looking a lot like what was already being done. Trading regulations and compliance for results would make it possible to foster much more innovation.

The providers of special education programs face many tradeoffs and obstacles to doing their job well. Existing laws serve mainly to guarantee access to public schools and assure procedural

rights. If policymakers tackle some of the hard questions surrounding special education, they might get beyond access and compliance—and improve quality.

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[1] The interviews and visits on which this report is based were conducted in person and by phone between August 2000 and October 2000. The author wishes to thank the administrators, parents, and teachers who agreed to be interviewed. Any conclusions drawn from their valuable input, however, are the author's alone.

[2] Just before this volume went to press, the state of Michigan proposed substantial changes to its rules governing special education. The proposals are intended to align Michigan's regulations with the federal government's, as well as give districts some flexibility with class sizes, teacher caseloads, and the determining of IEPs. At this writing, the proposals are still in a public comment period, which has generated a great deal of controversy among parent groups. They have yet to be adopted.

[3] The others categories, in order of their statewide incidence, are speech and language impaired (23.7 percent), emotionally impaired (8.5 percent), educable mentally impaired (8.5 percent), physically and otherwise health impaired (6.6 percent), trainable mentally impaired (2.6 percent), autistic impaired (1.9 percent), hearing impaired (1.8 percent), severely multiply impaired (1.8 percent), preprimary impaired (1.6 percent), severely mentally impaired (0.7 percent), and visually impaired (0.5 percent). The learning disabled make up 42 percent of Michigan's special education population.

[4] 19 S.Ct. 992 (1997).

[5] Judy W. Wood, *Adapting Instruction to Accommodate Students in Inclusive Settings*, 3rd. ed. (Upper Saddle River, NJ: Prentice Hall, 1997).

[6] See U.S. General Accounting Office, *Medicaid in Schools: Improper Payments Demand Improvements in HCFA Oversight* (Washington, DC: General Accounting Office, 2000).

[7] See Michigan Department of Education, *Comparison of Regular Education and Special Education Costs for the 1994-95 School Year* (Lansing, MI: Michigan Department of Education, 1997).

[8] See Richard Rothstein, *Where's the Money Going: Changes in the Level and Composition of Education Spending, 1967-91* (Washington, DC: Economic Policy Institute, 1995); Richard Rothstein, *Where's the Money Going: Changes in the Level and Composition of Education Spending, 1991-96* (Washington, DC: Economic Policy Institute, 1997).