

# SPECIAL EDUCATION REFORM 2002: WHERE TO BEGIN?

by Don Soifer

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## Executive Summary

As Congress undertakes reauthorization of the federal Individuals with Disabilities Education Act (IDEA), it faces what many observers predict will be a highly contentious process with little consensus beyond a determination to increase federal funding levels. Even identifying the relevant questions promises controversy. This paper explores the need for reform of federal special education program, suggesting policy recommendations across a range of areas, including:

- \$ Identifying trends in the explosive growth in the number of students identified for special education;
- \$ Improving educational progress to increase the graduation rate among special education students, and so that students successfully exit special education classes earlier in their education;
- \$ Addressing federal regulations that prevent school officials from disciplining special education students for dangerous or serious infractions, and
- \$ Confronting runaway costs, including those associated with litigation.

Details follow.

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Today, 12 percent of U.S. schoolchildren participate in special education. This represents a 35 percent increase over the past decade, an increase evident across many individual categories of students.

Such dramatic growth is certainly a leading factor, but not the only factor, in a not-so-coincidental, explosive rise in special education costs. Total spending per special education student more than doubled between 1968 and 2000, from \$5,961 to \$12,474 (in 2000 dollars), according to a report issued last month by the Special Education Expenditure Project for the U.S. Department of Education.

That report also found that total regular and special education expenditures for that 12 percent of students represented nearly 22 percent of all elementary and secondary spending. Some recent estimates have pegged the total cost of special education programs at \$40 billion annually. Federal funding for these programs under the Individuals with Disabilities Education Act (IDEA) has increased 225 percent since 1995.

Nonetheless, when National Research Council scholars recently sought to answer the question, “Is placement in special education a benefit or a risk?” the conclusion they ultimately reached, that “the data that would allow us to answer . . . adequately do not exist,” should offer little comfort to parents, policymakers or educators.

Congressional debate over funding for special education programs has provided some of the most contentious and acrimonious moments of the current session, and even threatened to derail the bipartisan “No Child Left Behind” education plan. With Congress currently in the early stages of reauthorizing IDEA, lawmakers must decide whether to undertake substantial reform of the massive

federal package, or simply rubberstamp it, at what most observers predict will be a significantly higher level of funding.

### **Who's Special Now?**

Boys are much more likely to be placed in special education than girls. The largest category of disability, learning disabled, includes half of all special education students and is composed of 70 percent boys. Of those students labeled emotionally disturbed, 80 percent are boys, as are 60 percent of those deemed mentally retarded.

Among the developments that have contributed substantially to the growth in special education enrollment, particularly in the past decade, are two involving pre-school children and two new categories of disability. First, the U.S. Department of Education in 1991 declared that children diagnosed with attention deficit disorder (ADD) and attention deficit hyperactivity disorder (ADHD) would now qualify for participation under IDEA. The number of children diagnosed with these conditions has multiplied over this period, with concentrations varying widely from state to state. This, in turn, has contributed to a significant increase in prescriptions for behavior-altering drugs like Ritalin, a powerful stimulant listed on Schedule II of the Controlled Substances Act. Between 1991 and 1999, domestic sales of Ritalin increased 500 percent.

A second trend in the spread of special education is the growing designation of children two years old or younger for special education. Between 1988 and 1997, this group grew nearly six-fold, to 197,000, according to the U.S. Department of Education. Most of these children received services in their homes.

### **Achievement, Not Just Compliance**

Representative Michael Castle (R-DE), Chairman of the House Education Reform Subcommittee, offered an indication of his reform priorities in a speech given earlier this year. "We need to focus on achievement, not just compliance" he said. "While parents can receive a due process hearing if their child does not receive services, they have little recourse if he or she isn't meeting his or her education goals."

Such a shift in focus, from the current emphasis on process to one of outcome and results, would embody a crucial new set of policy priorities for special education, where educational progress often loses out to bureaucratic procedure. Increased accountability for results was the centerpiece of "No Child Left Behind," embraced by a strong bipartisan coalition of these same lawmakers. It could also prove a powerful pillar of reform for IDEA.

In Congressional testimony last October, Secretary of Education Rod Paige suggested that approximately one-half of special education students are placed there in error because "our system fails to teach many children fundamental skills like reading and then inappropriately identifies some of them as having disabilities."

Many students are already falling behind when they are first placed in special education classes. Whether they are so placed because they are truly disabled or because their schools have simply failed to teach them to read, the sad truth is that most special education students never catch up. Nationwide, only 1 in 4 special education students exit these programs with standard high school diplomas, according to the U.S. Department of Education. This in turn causes enormous difficulties as they make the transition to adult life. Among secondary school students with disabilities, 75 percent of African-American students, as compared to 47 percent of white students, are unemployed two years out of school, the House Education Committee reported last September.

Placement of students into special education varies widely from state to state and from school district to school district. As demonstrated in the 2002 National Research Council report, this often leads to disproportionate over-representation of certain minorities, most commonly African-American and Hispanic students, in special education programs, within certain states and categories of disability

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Nationally, the total special education population in public schools bears a marked resemblance to the racial composition of U.S. public schools

as a whole. But this is not true of each different category of disability. African-American students are 1.6 times as likely to be classified as emotionally disturbed as white students, and more than twice as likely to be deemed mentally retarded. The only categories where white students are similarly overrepresented are for orthopedic impairment and “other health impairment,” two of the smallest categories of disability.

### **But Do They Ever Return?**

In February, the President’s Commission on Excellence in Special Education held hearings in Houston, where they also visited the public schools to evaluate those programs. “I might as well have been asking about Outer Mongolia as to ask about exit from special education,” declared Commissioner Steve Bartlett. “There’s no measurement of ‘What is your exit percentage?’ or ‘What is your exit length of time?’”

When a team of Stanford, Amherst and University of Texas researchers examined Texas public elementary school special education programs in 2000, their findings seemed to underscore the Commissioner’s concerns. For students between grades 4 and 7 across all categories of disability, entry rates into special education exceeded exit rates at all grade levels for the first two study years (1994-95 and 1995-96). Finally in the third study year, exit rates slightly surpassed entrance rates by 1.4 percent between grades 5 and 6 and by 1.8 percent between grades 6 and 7.

### **Alleviating Paperwork Burdens**

The final regulations for the Individuals with Disabilities Education Act span 230 pages of the *Federal Register*. The regulations lay out rigid, process-intensive requirements for schools to follow for all disabled children. Many special education teachers complain that they spend so much time

completing paperwork that their effectiveness as educators becomes seriously compromised. Maryland's State Director for Special Education Dr. Carol Ann Baglin, offered a grim description of the day-to-day problems the regulations pose for teachers. "Paperwork is extremely burdensome," she said, "and teachers don't feel they have enough contact hours with children to make a difference and to fully implement their Individualized Education Programs (IEPs). Because teachers are overloaded, it creates a problem of them leaving the field, resulting in a huge turnover rate."

### **Regulations Bar Schools From Disciplining Special Education Students**

Current IDEA regulations prohibit schools from expelling or suspending for any prolonged period of time a disabled student who commits a dangerous infraction, even one involving illegal drugs, guns, or other weapons, unless the school can first demonstrate that the violation is not a manifestation of the student's disability. Numerous Congressional proposals to amend this regulation, especially where guns or drugs are concerned, have fallen victim to the legislative gridlock of recent years.

"It is important," intoned Senator Jeff Sessions (R-AL) on the Senate floor a year ago, "perhaps even more than the money we are spending, that we consider trusting those educators who have given their lives to special education children and are trained to teach them, and trusting them to handle these discipline problems in ways they think are appropriate."

### **Direct and Indirect Litigation Costs Can be Extreme**

A May 2000 report by the New Jersey School Boards Association found that out-of-district placements for special education students can often exceed \$200,000 per student. School districts that provide such expensive placements do so to avoid failing to comply with federal and state regulations. "Litigation or the threat of litigation has caused many students to provide services they believe are excessive to avoid protracted court battles," observed Representative Castle.

In addition, the role of parents in the decisionmaking process for their own special education students defined by federal Department of Education regulations are likely a contributing factor to such a litigious climate. IDEA regulations place ultimate authority for the education of special-education students with a designated IEP team, on which parents have a role. The team is responsible for nearly all important decisions, on a case-by-case basis, concerning a child's special education, ranging from whether a parent's decision to place their special-education child in a private school is appropriate to details like who pays the bill for related telephone calls. All decisions are made by team consensus, and no one individual member, including parents, has the authority to reject a decision.

If a parent disagrees with an IEP team's decision, he or she has no veto power, but may initiate an appeals process. With no guarantee that its outcome will satisfy their concerns,

parents often turn to threats of litigation. Not only does this only escalate costs, but it forces school

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officials to severely restrict direct communication between classroom teachers and those parents. Such a situation can be particularly detrimental when day-to-day monitoring of the effects of medications would make a difference in both home and school settings.

Such a counterproductive climate harms the ability of teachers and school officials to help children, contributes to skyrocketing special education costs, and channels resources away from other v students, and would therefore be a valuable subject for reform.

## **Conclusion**

At this writing, the House and Senate education committees are still in the early stages of their respective hearings schedules to assess the need for federal special education reform. The President's Commission on Excellence in Special Education is also moving ahead with its own proceedings and plans to issue its findings sometime this summer.

The above discussion suggests numerous areas where substantive reform would make a real difference in American special education. The current reauthorization of the Individuals with Disabilities Education Act presents a valuable opportunity for policymakers at the federal, state and local levels to reexamine the current system of special education, with an eye on bringing about such reform. It would certainly be an appropriate, and admirable, goal of such reforms to ensure that when future panels like the National Research Council's 2002 study group are asked whether placement in special education is a benefit or a risk, they will be able to provide a more confident, and confidence-inspiring, answer.

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