

New Directions in Special Education

Eliminating Ableism in Policy and Practice

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instruction before they take the MCAS to increase the likelihood that they will pass. Also, it may be necessary for some students to spend more than four years in high school or to participate in summer or after-school programs in order to meet the standards. It is important that students be directly involved in these decisions because they need to be aware of and take responsibility for the difficult work that may be required for them to meet the standards. However, as Katzman's research indicates, the students are motivated to stay in school and learn, and they understand the importance of standards. It is up to educators and parents to provide the opportunities that help ensure success.

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Policy

Over the past 30 years, the education of children with disabilities has drawn more federal oversight and regulation than any other area of K-12 education. Through the passage of Section 504 of the Rehabilitation Act and PL 94-142, now the Individuals with Disabilities Education Act (IDEA), Congress required that all children receive free and appropriate public education (FAPE) in the least restrictive environment (LRE) and backed up these regulations with strong due process protections. Over the years, Congress has extended the rights of children with disabilities to include early intervention and preschool services, as well as high school transition services. More recently, Congress has sought to include students with disabilities in school accountability systems through amendments to the IDEA in 1997 (IDEA 1997) and No Child Left Behind (NCLB). Policy, particularly federal policy, has an enormous influence on the education of these students and has been a major factor in improving the educational status of disabled students (Hehir & Gamm, 1999; President's Commission on Excellence in Special Education, 2002). Policy

has thus evolved over the years from expanding educational opportunities for students with disabilities to a series of provisions designed to improve their educational outcomes. Understanding how policy at the federal level interacts with state and local policy is essential in guiding efforts to improve education for students with disabilities for a number of reasons.

First, laws are not self-implementing; they need to be enforced. Therefore, advocates can use their knowledge to leverage better education for students. A major role that policy and regulations serve in this area is specifying what can and cannot be done at the school level. For instance, current law prohibits ending educational services for students expelled from school. Knowledge of this requirement may help an advocate obtain services for a child who has been expelled.

Policy also can encourage certain innovations by permitting certain uses of funds or by providing grants for specific purposes. School innovators can use such funding for school improvement activities. For instance, the IDEA allows the use of federal special education funds to support "schoolwide" school improvement efforts under NCLB. Though a comprehensive discussion of all policies related to the education of students with disabilities is beyond the scope of this book, this chapter will focus on those areas of policy most relevant to improving educational results, eliminating ableism, and implementing universal design. For those seeking a deeper understanding of the law, I would recommend going to the website of the Council for Exceptional Children (www.idealpractices.org).

Some major policy issues relevant to the main concepts covered in this book include the participation of students with disabilities in standards-based accountability systems; the role of state and federal governments in supporting better educational opportunities; the discipline of students with disabilities; issues involving the development of individualized education programs (IEPs) and the reduction of paperwork; and "treatment-resistant" models of disability determination. Policies in these areas are in a state of

flux, particularly as the 2004 reauthorization of the IDEA moves forward and regulations are finalized. This chapter, which presents an in-depth discussion of these issues, is organized around a set of policy positions that I believe will advance educational opportunities for students with disabilities. The following are important policy imperatives central to improving results for students with disability:

1. Support standards-based reform.

An important point to reiterate here is that the most damaging ableist assumption is the belief that disabled people are incapable. Therefore, the movement to include students with disabilities in standards-based reforms is promising and appears to be showing important results in some states (Ysseldyke et al., 2004). The standard for judging the efficacy of special education programs is rapidly moving from a process assessment (the implementation of procedural regulations) to one that includes outcome measures related to progress in the general education curriculum. The performance of students with disabilities on these tests is increasingly becoming a public issue that requires educators to examine their practices. Long-standing class-action litigations in Baltimore, Los Angeles, and the District of Columbia have been renegotiated with the parties involved to include requirements for the improved academic performance of students with disabilities (Sabel & Simon, 2004). The inclusion of students with disabilities in standards-based reform may be the most significant policy advance for these students since the passage of PL 94-142.

While it is true that standards-based reform is a promising policy development for students with disabilities, high-stakes testing that prevents students from being promoted or from receiving a diploma based on their performance on standardized tests is problematic. This is particularly true if we consider the concerns cited in the last chapter about basic access to the curriculum and about the construct validity of the tests. We run the risk of penalizing many children who have not had appropriate access to the curriculum.

Furthermore, many states are still working out the basic technical issues concerning accommodated testing for disabled students. Finally, some students may never be able to pass these tests due to the nature of their disability. No children with mental retardation will pass a high-content test. In a very real sense, some students with disabilities would have to become nondisabled in order to be promoted or graduate. This is ableism in the extreme. Thus, despite its promise, standards-based reform may ultimately reinforce current inequities if performance on high-stakes tests becomes the only means by which disabled students can demonstrate what they know and are able to do. It is important to note that disabled students are not the only group for whom high-stakes testing is being questioned (Heubert & Hauser, 1999). Other groups that have been poorly served by our educational systems, such as children from high-poverty backgrounds and children with limited English proficiency, may be equally harmed by these policies.

High-stakes consequences for students with disabilities may be an inappropriate policy at this time; nevertheless, school system accountability is crucial if standards-based reform is going to improve student performance. A central element of this accountability requires disaggregated data on the performance of disabled students on state assessments. Though this recommendation could be considered unnecessary due to NCLB's requirements to include children with disabilities in accountability systems, implementation of the law, and the U.S. Department of Education's (DOE) interpretation of it, shows that this issue is somewhat unsettled. A report in the *New York Times* on the implementation of the act raises some serious concerns:

Many states have found ways to transform No Child Left Behind into something closer to Some Children Left Behind, particularly for disabled children and immigrants. More than a dozen states have adopted higher threshold numbers for counting these students in school ratings, so that they are frequently excluded from accountability systems. . . . In assessing schools, California and Texas include subgroups of 50 or more only if they account for 15

percent of the school's enrollment. Otherwise there must be 100 of them in California. In Texas, there must be 200. (Schemo, 2004)

The inclusion of subgroups such as disabled students in school-level accountability systems does raise legitimate concerns. For instance, at the elementary level in Massachusetts, students are assessed under MCAS (a state assessment tool) only in grade four. In a small elementary school with only two fourth-grade classes, that may mean only four or five students with disabilities are tested annually. Making assertions about the efficacy of school programs based on such small numbers is likely to be invalid. Many school officials are advocating to remove subgroups from school-level accountability within the NCLB framework that potentially involves significant sanctions at the school level. This is understandable and in many cases legitimate.

Another unintended consequence of including students with disabilities in school-level accountability systems in which the school can experience sanctions may be that schools avoid enrolling students likely to do poorly on these tests. I have been working with a small inclusive elementary school in Boston that has done very well over the past few years in student performance, receiving many local and national awards. This past year the school has been cited for failure to achieve "adequate yearly progress" due to a decline in fourth-grade MCAS scores. When the principal investigated, she found that four students were largely responsible for the decline, and of these, three transferred into the school from other schools. Only one student had been enrolled in the school since kindergarten, and that student had fairly significant disabilities. The principal was concerned that landing on a "watch list" had demoralized her staff and led them to question the school's open enrollment. This school is very popular with parents of disabled students due to its inclusive philosophy and strong results. Thus, the inclusion of students with disabilities in school-level accountability systems may have perverse results in some circumstances.

Despite the problems associated with including students with disabilities in school-level accountability systems, particularly in

small schools, it is important to disaggregate performance and hold school districts accountable. The question is the unit(s) of accountability. In larger schools, an element of school-level responsibility is more reasonable. In smaller schools, accountability for results over several years may be a more desirable and valid measure of program efficacy. However, there should always be a significant level of school-level accountability so that those closest to the child will be motivated to improve educational opportunities. An article in the *Boston Globe* (Schworm, 2004b) underscores the importance of disaggregating data for students with disabilities. Because Massachusetts requires disaggregated reporting and accountability measures, many previously high-performing, affluent schools are landing on the state's "in need of improvement" list. The copresident of an affluent school's parent organization said this confirmed her fears that pockets of students were not fulfilling their potential. Former U.S. secretary of education Rod Paige is quoted in the *Globe* article: "We're not saying it's a bad school . . . but when we measure the aggregate it hides a lot of failure." The piece ends with a comment from the district's director of special education, Linda Croteau: "Schools like us are going to be in the forefront of answering the question of how do we help these harder-to-reach kids." This attention to the performance of disabled students is a far cry from the lack of accountability for educational results that has long plagued special education, and it is cause for optimism in terms of improving educational opportunity.

Although attention to educational performance is hopeful, change will require concerted effort. Therefore, school accountability systems should include a significant element of shared responsibility between the district and the school. This is particularly true in special education, where a school district's policies and practices can have a great influence on building-level results. For instance, some school districts "cluster" large numbers of students with disabilities in certain schools, which can result in fewer opportunities for inclusionary placements due to the disproportionately large numbers of disabled students in a given school. Further-

more, the large number of students at one site may distort scores, depending on the type of disabilities the students have. Teacher assignments may also have an impact on student performance. Many districts have difficulty recruiting qualified special education teachers and thus may assign a disproportionate number of unqualified teachers to certain schools. A shared accountability system is therefore more likely to result in meaningful change.

2. Hold states accountable for improving educational results for students with disabilities.

Under a shared accountability system, states too must be held accountable for the performance of disabled students. States can have a major influence on the educational opportunities available to children. For instance, as the *Hancock* case illustrates, holding districts or individual schools solely accountable for performance when they have not received the resources they need to meet high academic standards is unfair and not likely to result in significant improvement. As the court ruled, Massachusetts should be held accountable for its failure to adequately fund schools in poor communities. It should also be emphasized that the IDEA is a state-grant program, which means that states are primarily accountable for implementing the act. Other areas in which states should be held accountable include teacher preparation, curriculum development, civil rights enforcement, and interagency collaboration. IDEA 2004 has important new provisions that are designed to increase state-level accountability. They will be discussed later in this chapter.

Teacher Preparation Local districts with few qualified special education teachers are at a distinct disadvantage in their efforts to improve educational results and provide for the needs of their disabled students. For instance, the Los Angeles Unified School District (LAUSD) has had to employ significant numbers of uncertified special education teachers. In 2004, only 70.6 percent of special education teachers were certified, and the district experienced major

difficulty in hiring speech pathologists (Trent, 2004). Not only has this had a negative impact on students, but it has become a legal issue for the district. The district has responded by recruiting extensively and developing its own training programs. This situation takes on greater legal consequence under IDEA 2004, which aligns with "highly qualified" provisions of NCLB. Broadly interpreted, this means that teachers must be qualified to teach the subjects they are teaching. IDEA 2004 also adds the requirement that special education teachers be qualified to teach core subjects in accordance with NCLB (Section 602 [10] A, C-F). Clearly, the LAUSD and many other local education agencies (LEAs) cannot meet this requirement on their own. California and other states will have to enhance their efforts to recruit qualified providers.

Curriculum Development Many states have been developing state curricula frameworks that are aligned with their accountability systems. States that have clearly defined standards as to what students should know and be able to do and assessment programs that measure their attainment are more likely to increase student performance. Here again, the Massachusetts experience is illustrative. Massachusetts has engaged in a decade-long process of defining these frameworks, training teachers on them, and aligning state curriculum frameworks with the MCAS. This may have contributed to the state's improved performance on national indicators.

Interagency Collaboration Another area where state activity is crucial is in serving the role of interagency collaboration. This role is particularly critical in special education, where a child's success may depend on whether he or she receives services from multiple state agencies. For instance, children with significant emotional disturbance may need mental health services, home supports, and community programs in order to increase their chances of success within their families and their communities. Educators and mental health professionals increasingly recognize that success for these children cannot be accomplished by schools alone. As discussed in chapter 4, a movement called systems of care,

which has been spreading across the country, seeks to "wrap services around" children with mental health needs and their families. Such efforts can be greatly enhanced through state initiatives, and, if successful, they can help support improved educational performance for many students with disabilities. Other children with disabilities and their families, such as those needing medical supports or home supports, require interagency supports as well. For instance, a family that needs a home health aide whose services are not paid for by the family's health insurance may need a Medicaid income waiver in order to receive this type of support.

Given the goal of minimizing disability and maximizing the ability of children to participate in their community, well-functioning interagency programs are crucial. The converse is also true: When state agencies fail to work together to support children and families, some parents may be forced to institutionalize, hospitalize, or place their children in residential schools, thus accentuating the impact of their children's disabilities and restricting their ability to participate. Other parents may be forced to give up employment, thus affecting the whole family's prospects.

The state's role in interagency collaboration is so important to school administrators and parents that both groups supported amendments to the IDEA in 1997 that require states to oversee this activity. This requirement, which was reaffirmed in IDEA 2004, requires the chief executive officer of a state to have mechanisms in place to ensure the coordination of services across state agencies. Further, the law prohibits state agencies from denying any services to a child that they would normally provide using the excuse that that child is also served under the IDEA (IDEA 2004, Section 612 [2] A). This is an important protection for school districts that have complained that some state agencies were refusing to fund services for children covered under the IDEA. Advocates, parents, and school personnel who want to promote the well-being of children and families in their state should become aware of their state's efforts in this area and use this provision of the law to leverage change.

Civil Rights Enforcement Finally, an important area of state-level activity relevant to improving results for students with disabilities concerns civil rights enforcement. The rights of students with disabilities to appropriate accommodations, supports, and services is a matter of law that states are responsible for ensuring under the IDEA's requirements of "general supervision under the act" (IDEA 2004, Section 612 [11]). The requirements that flow from this section of the act are rather comprehensive and require assurance that the requirements of Part B of the act, the state grant program out of which most regulatory requirements affecting the education of children with disabilities flow, have been met. Importantly, a state is responsible for determining whether its LEAs are eligible to receive special education funds, based on the assumption that the LEA is in compliance with the law. The Office of Special Education Programs (OSEP) of the U.S. Department of Education has historically required that states have internal monitoring systems to meet this requirement.

However, in reality, few states serve this role effectively (Hehir, 2002; National Council on Disability, 1996, 2001). Although due process complaint systems can be highly effective in ensuring that students with disabilities have their needs met, relatively few parents use these systems, and most that do tend to be affluent, as the exercise of these rights often requires hiring a lawyer (Hehir, 1990). Therefore, states need to take on an enforcement role for the vast majority of students. While many in schools view compliance monitoring as somehow removed from educational results (Hehir, 1990), the importance of students receiving the accommodations, supports, and services they need is directly tied to student outcomes. And, as the *Hancock* case indicates, poorer students are less likely to get what they need without state intervention and support.

It should also be noted that although a state's internal monitoring may be weak, some states have been defendants in major class-action suits involving implementation of the IDEA at the local level. Notable among these is *Corey H. et al. v. City of Chicago*

et al. in which the district was found to be in compliance with the least restrictive environment requirements of this case. The judge found that the state of Illinois failed to meet its duties under the general supervision provisions of the IDEA:

Children with disabilities in the Chicago public schools have been and continue to be segregated into separate and unequal educational environments, contrary to established federal law. Although the local school district has recognized its deficiencies and agreed to a remedial plan, the State educational agency has continued to deny its responsibilities. The denial conflicts with clear Congressional intent to make the State ultimately responsible for compliance with longstanding federal mandate that children with disabilities be educated in the least restrictive environment. (cited in Hehir & Gamm, 1999, p. 226)

The logical question about the importance of the states' role concerns to whom states are accountable. Of course, state education departments are responsible to their legislatures and their governors, and major progress can and does occur through these channels. The Massachusetts school reform initiatives, for example, have been largely state driven. Disability activists have also been effective in promoting reform through state-level activity. For instance, advocates in California were successful in getting a law through the state legislature, the Hughes Bill, which required "positive behavioral supports" for students with disabilities. Also, as in *Hancock*, courts can hold states accountable. However, relying solely on the courts is inappropriate and inefficient. Therefore, both the IDEA and NCLB envision a significant federal role in ensuring state-level accountability.

A shared system of accountability, however, should not let the federal government off the hook. States should be able to look to the federal government for support, and the country has a right to expect the federal government to hold states accountable for their responsibilities as defined in federal law. In turn, states should be able to expect sufficient federal funding to support meeting the requirements of NCLB and the IDEA. Furthermore, the federal gov-

ernment has an ongoing role in supporting research and technical assistance relevant to state and local efforts to improve education results. Congress requires that the federal government monitor state implementation of grant programs and civil rights legislation: Both NCLB and the IDEA require states to meet various conditions in order to receive federal funds, and the civil rights of students with disabilities are monitored by the Office of Civil Rights under Section 504 of the Rehabilitation Act. The available evidence would suggest that the federal government could improve its performance in all these areas.

3. Improve federal monitoring.

Though the federal government's responsibility for monitoring the IDEA is well established in the law, its role traditionally has been relatively weak. The number of federal employees devoted to this function is very small, only about 50. Both Congress and previous administrations have resisted assertive enforcement (Hehir, 2002). Thus, it is not surprising that OSEP has been widely criticized by advocates for not appropriately monitoring special education. The National Council on Disability conducted a study in 1996 on federal monitoring and found that

despite progress in the last decade in educating students with disabilities, current federal and state laws have failed to ensure the delivery of a free appropriate public education for too many students with disabilities. . . . Lack of accountability, poor enforcement, and systemic barriers have robbed too many students of their educational rights and opportunities and have produced a separate system of education for students with disabilities rather than one unified system that ensures full and equal physical, programmatic, and communication access for all students.

The federal government's failure to monitor special education more effectively is likely due to a complex set of political factors (Hehir, 2002). Given that the major enforcement mechanism has been to withhold state funds, federal officials' reluctance to use this remedy may be understandable. However, failure in this area

often means that parents and advocates are forced to turn to due process hearings or the courts to seek enforcement of their children's rights. Therefore, because relatively few have the means to seek this form of redress, the needs of many students go unmet.

In IDEA 1997, Congress gave the Department of Education more flexible enforcement options, including partial withholding. These provisions were revised and strengthened in IDEA 2004, under which states must produce a state performance plan that will play a central role in the federal monitoring of each state. The statute is quite specific in detailing enforcement mechanisms available to the secretary of education, such as interventions and withholding funds. The new law also clearly says that the states must monitor LEAs (IDEA 2004, Section 616).

These new mechanisms, coupled with a more focused, data-based federal monitoring system, could help promote better educational results for students with disabilities. In addition to a greater commitment of staff resources, the Department of Education will be required to revise its monitoring system to be a more outcomes-based, data-driven system (IDEA 2004, Section 616). The monitoring of outcome measures must be used to determine the status of a state's eligibility to receive funds under the act. Areas in which such goals could be established based on current data include participation rates in statewide testing, the degree to which children are educated in general education classes, dropout rates, graduation rates, and rates of minority placement in special education. Incorporating outcome standards in the monitoring could move the nation toward a more uniform implementation of the act and away from the current process orientation.

4. Increase federal funding for special education and NCLB.

Both the IDEA and NCLB are woefully underfunded, which appears to have an impact on results. As the *Hancock* case illustrates, the availability of special education funding can influence outcomes. Congress has been widely criticized for not funding the IDEA at the 40 percent authorization level. The call to increase

federal support for the IDEA has been growing in Congress as school districts and parents seek a greater funding role for Washington. During the 2003-04 school year, the federal government funded approximately 18 percent of the excess cost of providing special education (National Association of State Boards of Education, 2004). Some view this law as an unfunded mandate, and although this is not technically true, since the IDEA is a voluntary state grant program, the perception is strong. Advocates for a greater level of federal funding also use the law's original commitment of up to 40 percent of excess cost to reinforce the notion that the federal government has been derelict in its responsibilities to fund the program (IDEA 2004, Section 611).

Although achieving the promised 40 percent has gained some momentum, the reality of federal funding priorities makes this a daunting goal. The additional amount of money required approaches \$15 billion (IDEA 2004, Section 611). In IDEA 2004, Congress authorized amounts that will reach the 40 percent goal by 2011 (IDEA 2004, Section 611). However, it is important to reiterate that authorized funds are not appropriated funds and that Congress annually appropriates funds for state grant programs. Therefore, there is no promise that these funds will ever materialize. For instance, the president's request for funds for fiscal year 2006 is approximately \$11 billion, even though IDEA 2004 authorizes over \$14.5 billion.

Obviously, the administration and many in Congress are, therefore, not committed to reaching this level of funding. Furthermore, some members of Congress express reluctance to increase funding significantly due to concerns about the program. At a hearing at which I testified about the placement of large numbers of minority students in special education, one member expressed his reluctance to increase funding, stating, "This is good money chasing bad."

Even though reaching the 40 percent level may not be realistic at this time, Congress should not be off the hook for providing more resources. A way to support increased appropriations while

not subsidizing questionable practices might be to target increases for specific purposes. One possibility would be to subsidize school districts for the cost of educating students with significant disabilities. These children, depending on how we define them, represent a subset of children served under the act who have significant, usually medically based disabilities that result in needs that often require school districts to incur costs several times those for nondisabled students. I would define this group as students with low-incidence disabilities, ones that occur in less than one half of 1 percent of the population (moderate to severe mental retardation, blindness, deafness, etc.). These children together represent approximately 20 percent of the students served under the IDEA, or approximately 2 percent of all students in K-12. Further, these conditions exist in relatively constant numbers across populations, with a slightly higher incidence in high-poverty populations (Hehir & Gamm, 1999). Congress could target increases through annual appropriations bills to subsidize the education of these students using a census and poverty-weighted formula. An advantage of this approach is that it targets money where it is most needed and to a population whose eligibility for services is beyond dispute.

Another option that Congress could consider through the annual appropriations process that could greatly help states improve results would be to target money to low-income districts for specific purposes. A particularly productive use of such funds might be to provide early intervention for students experiencing reading and behavior difficulties. Given that these services should be part of general education, the funding for these services may more appropriately come through NCLB rather than from special education. Research has consistently shown that providing intervention for students experiencing early problems in learning to read or to behave appropriately in school can reduce the number of students requiring special education. Furthermore, the current practice of intervening late, typically in fourth or fifth grade, for students with learning or behavioral disabilities is less than effective. Targeting the money to these research-based approaches in K-3

would both help disabled students and result in fewer inappropriate referrals. The White House has advocated this approach, and a paper written by former Bush presidential advisor Reid Lyon and several colleagues entitled "Rethinking Learning Disabilities" describes this approach in detail. It is important to reemphasize that these programs should be regular education interventions: "A label is not necessary for implementation of prevention programs, and the cost of delaying is too great to wait" (Lyon et al., 2001, p. 277).

5. Design universal discipline policies for all students.

The issue of discipline and students with disabilities is a long-standing and contentious issue. The basic issue at hand has revolved around two questions. The first is the degree to which we can hold students accountable for behavior that arises out of their disability—essentially, behavior they cannot control. The other has to do with the obligation school districts have concerning the provision of services for students who have been suspended for a long term from school or expelled. IDEA 1997 included significant revisions of the law in this area that were designed to clarify these issues while giving school districts increased flexibility in disciplining students with disabilities. These provisions were a result of compromises between disability advocates and school interests and had their basis in a 1994 dispute between the Department of Education and the state of Virginia.

In 1994, the DOE was informed by advocates in Virginia that the state was not providing services for students with disabilities who had been expelled from school for behavior not considered a manifestation of their disability. (See IDEA 1997 for the definition of manifestation and for the legal requirements for determination.) The DOE informed Virginia that if it would not assure that these students would receive free and appropriate public education, the department would withhold its IDEA grant. A period of intense negotiation and political opposition ensued. Though the DOE assured Virginia's chief state school officer that the state could legal-

ly expel students as long as it continued to provide services, Virginia refused to serve these students. Republican governor George Allen publicly criticized the Clinton administration's action as being soft on school discipline. I recall getting a call from the DOE's deputy chief of staff, who had been informed by the White House that the president had read the governor's criticism in the press clips and wanted to know what the DOE was doing. She warned me, "You're going to have to explain this one, Tom." As we had done with Secretary Richard Riley prior to the enforcement action, we explained to the White House that we were enforcing the first Bush administration's interpretation that, under the IDEA, all students were entitled to FAPE, even those expelled from school. We explained further that this interpretation was central to the statute's requirement that "all students" meant all students, a principle that was reinforced by a U.S. Supreme Court decision, *Timothy R. v. Rochester, New Hampshire*. The White House supported our action, even though it was politically risky to do so. I received another call from Virginia's Democratic senator, Chuck Robb, who implored us to seek a compromise.

The disability advocacy community strongly supported the administration's action. The committee saw Virginia as undermining the fundamental principle of the IDEA, that all disabled students were entitled to FAPE, and that any compromise of that principle could bring about more widespread exclusion. In a meeting shortly after the action, disability community leaders unanimously urged Secretary Riley to hold firm on the issue. Governor Allen was equally adamant and continued to publicly criticize the administration's action as an overreach of federal authority that was undermining school safety. An example of the irreconcilable positions taken by the governor and the disability community on this issue was evident in a televised debate Allen had with a parent advocate, Stephanie Lee. (Lee became director of OSEP during the current Bush administration.) The mother of a young woman with Down's syndrome, Lee had worked on Capitol Hill for the Republicans. Though her daughter was well behaved and not at risk

of being expelled, Lee, like other disability advocates, saw Allen's action as a threat to the fundamental principles of the IDEA. Lee strongly supported the DOE position in her first television appearance. Her support, along with that of other Republican disability advocates, laid the political foundation for the battles that would ensue over the reauthorization of the IDEA. They represented strong bipartisan opposition to any weakening of the act.

Virginia ultimately brought suit against the DOE's action in the Fourth Circuit Court and won. The court agreed with Virginia that the DOE's interpretation of the statute was faulty and that the IDEA did not contain language that protected students expelled from school. However, Virginia's victory was temporary. When the IDEA was reauthorized in 1997, both the Clinton administration and the disability community insisted that the "Virginia problem" be corrected statutorily by insisting upon language that prohibited cessation of services for students expelled from school. This was not an easy sell, but both parties held firm. I recall an incident when the administration sent up a statement of position (SOP) on a draft version of the IDEA that did not include the sought-after language. A draft of the SOP that Assistant Secretary Judy Heumann and I were reviewing did not address the issue either. Kay Cassteavens, assistant secretary for legislation, met with us and said that we were not going to prevail on this matter. She suggested that the only way it could be saved was for Judy to meet personally with the president's senior staff. That day, Judy wheeled (she uses a wheelchair) up to the White House with Kay and met with the president's senior staff, and we did prevail. Kay informed me afterward that Judy had won the issue single-handedly. Her argument that the disability community was solidly behind this position was undoubtedly not lost on the White House political operatives. (See Shapiro, 1994, for a discussion of the political strength of the disability community.) As a result, IDEA 1997 included strong language prohibiting the cessation of services for students with disabilities who were suspended or expelled from school.

However, the issue of discipline was not resolved in 1997 and was addressed again in IDEA 2004. Among other things, the bill continues to provide significant protections in the area of discipline while at the same time giving school districts greater flexibility in removing students who exhibit disciplinary problems. The bill also provides clearer language regarding manifestation determinations. Importantly, the new law does continue to require that services be provided to all students with disabilities who are suspended or expelled from school for more than ten days, but it also allows the removal of students with disabilities from existing placements for behavior if it is not a manifestation of a disability. The law defines manifestation narrowly as being "caused by" or having a "direct substantial relationship" to the child's disability or as being due to the "direct result" of the LEA's failure to implement the IEP. The law protects from removal the child whose behavior is determined to be a manifestation of disability, except under what the law defines as special circumstances, such as weapon or drug possession or if the child inflicts serious bodily injury on another at school (IDEA 2004, Section 615 [K]). Though Congress may permit easier removal, schools are not required to remove children for whom such removal may not be in the child's best interest. School districts are free to go beyond the IDEA in serving children as long as that service does not violate the act. As my former law professor Jay Heubert once stated, "Just because something is legal doesn't make it right."

One of the main controversies surrounding the education of disabled students is the imposition of a "double standard" concerning their discipline. That is, the protections under the IDEA can mean that students who are guilty of the same infraction may have different consequences applied. Although there may be some justification for this differential treatment of students whose disabilities prevent them from controlling their behavior, applying a different standard for other students with disabilities who willfully break school rules could undermine school discipline policies. For in-

stance, in many districts a child who assaults a teacher will be expelled from school. Under existing federal law, if the expelled child has a disability, he or she is entitled to continuing educational services, while the nondisabled child may not be.

Many school administrators claim that this gives a mixed message to students. I agree with this view. Holding students with disabilities to a different standard when they knowingly break rules by behaving in a way that is not a manifestation of their disability is a bad practice. The message in a sense is ableist and patronizing in that it implies that disabled students cannot abide by rules. Further, such practices may set a disabled student up for future failure if he or she does not learn the importance of developing appropriate social behavior in school. The question becomes whether it is possible to design school discipline programs that protect the legitimate rights of the minority of disabled students whose disability necessitates some differential in discipline procedures while appropriately holding most disabled students accountable for their behavior. I believe the answer is yes.

First, for the small number of students whose behavior is a manifestation of their disability, the rigid application of school rules by punishing these students for some of these behaviors may not make sense and is illegal. Though these behaviors generally should not be ignored, the goal with these students should be to develop behaviors that are more socially acceptable. This generally requires significant work with well-thought-out behavioral interventions that are consistently applied. These approaches may have to involve other students as well. I was in a school that had successfully included a fifth grader with significant autism. Having observed the child for a full day, I was impressed with how both the staff and students supported him. In a meeting with a couple of his classmates, I asked how they responded when John had a behavior problem. A pensive classmate responded, "Specifically which behavior are you referring to?" To me this response spoke volumes. The school had done a great job in coordinating its behavior support efforts for John. But the classmate's response

also showed that children are capable of understanding the need to respond to the behavior of some significantly disabled students differently. This is important, in that children need to understand why discipline rules might have to be applied differently in some instances if they are going to view school discipline procedures as fair and just. I believe the students in this school would have considered it unfair and absurd if John was punished the same way for every rule infraction as his classmates.

The majority of disabled students can and should live by school rules. However, as the discussion about the Virginia case illustrates, disability advocates most fear the separation of disabled students from school through long-term suspensions or expulsions. This fear is justified. First, disabled students already have much higher dropout rates, and dropping out is associated with very bad outcomes for disabled students: an increased likelihood of problems with the law, unemployment, and early teenage pregnancies (Wagner et al., 1993). A pattern of frequent suspensions and expulsions from school can predispose students to dropping out. In addition, disabled students who drop out have fewer options than their nondisabled counterparts. Some may find it more difficult to access alternative programs designed for dropouts, such as GED programs, given the educational deficits more common among disabled students.

Obviously, frequent suspension from school is likely to cause educational deficits for nondisabled students as well. Thus, federal law should be "universally designed" to incorporate the principle of prohibiting the cessation of services for all students, ideally through an amendment to NCLB. Special education law rightly recognizes that expulsions or long-term suspensions without services almost always prevent acceptable progress in school and increase the likelihood that a child will drop out of school (Wagner et al., 1993). The same is likely true for nondisabled children. Children who are not in school are less likely to be able to meet higher standards. An analysis of attendance records of students in Massachusetts reveals a significant correlation between MCAS failure

and frequent absences from school. Consequently, the Massachusetts Department of Education currently factors in school attendance in its monitoring of adequate yearly progress under NCLB.

Consistent with this approach, a clear standard should be established to determine at what point a series of suspensions represents functional exclusion and therefore triggers the requirement for continued educational services. Clearly, providing educational services for a student who might be suspended for a day or two is impractical, and IDEA regulations recognize the need for considerable flexibility here. The law's requirements for providing continuing educational services do not kick in until after ten days of suspension, or when a series of suspensions over time amounts to cessation of services (IDEA 2004). The vagueness and complexity of special education regulations and the double standard they create could be solved by establishing a clear policy for all children that requires the continuation of educational services when cumulative suspensions reach ten days.

Given a system universally designed in the manner described above, much of the current regulations in this area can be streamlined and revised in a manner that can be easily understood.

6. Reduce paperwork and improve IEPs.

One reason many teachers leave special education is that they feel buried in paperwork (Coleman, 2000). Clearly, we need to make sure we have sufficient numbers of qualified personnel to serve students with disabilities. (The issue of special education teacher preparation is addressed more extensively in chapter 3.) If we are going to improve educational results, we need to assure that the teachers we have spend as much time as possible working with children, families, and other professionals.

Many providers look to the IEP as the place to reduce paperwork. School staff refer to thick IEPs with extensive goals and objectives. However, many parents view IEPs as the heart of the law, the vehicle by which their children receive free and appropriate education in the least restrictive environment. Further, many par-

ents of children with disabilities view calls for paperwork reduction as a thinly veiled attempt to reduce their children's rights or an effort by the school district to avoid accountability. Some counter that much of the paperwork burden is the result of requirements added by local school districts and states, some of which are designed to curb costs or increase the likelihood that districts will prevail in due process hearings. Are these irreconcilable positions? I do not think so. I believe that there is significantly more common ground on this issue than might appear at first glance.

Both parents and school staff have a deep interest in making sure that there are sufficient qualified providers to work with their children. Many parents also complain about excessive paperwork. I remember a meeting I had with a colleague who was also the parent of a young man with disabilities. She had two file drawers full of paperwork concerning her son, who at the time had just graduated from high school. I recall her saying that most of it wasn't worth the paper it was printed on. She told me that even with all the forms and evaluations, her son's school district fought her for years as she worked to get him included. She said that what was important to her was that her son be taught the same subjects as the other students. She finally achieved her goal when he was in high school and told me that it has made all the difference, now that he is fully integrated into his community as an adult.

IDEA 2004 makes some changes related to IEP content that are aimed at reducing paperwork. Specifically, the law requires short-term objectives only for students participating in the alternative assessment program, generally a relatively small number of students with cognitive disabilities (IDEA 2004, Section 614 [D]). This change should help reduce paperwork for providers. Another potentially important change in IDEA 2004 allows the establishment of up to 15 pilot demonstration proposals that will allow for the development of multiyear IEPs. This pilot program has significant restrictions and requires the secretary to report annually to Congress on the effectiveness of these demonstrations (IDEA 2004, Section 614 [E]).

Though these changes may reduce paperwork, it is important to make sure that changing the format of IEPs also improves education for children, particularly in the context of NCLB. Given the centrality of the IEP to special education, I believe this is an optimal time for school staff and parents to revise this IEP process and content. It is time for parents and schools to come together around a common set of interests, improving education for disabled students. The common ground lies in embracing the intent of the law concerning IEPs as the driver of improved education for students with disabilities. Parents want education based on high expectations for their children, and they want educators to be accountable for meeting their children's needs. In short, they want the IEP to drive appropriate education and successful outcomes for their children. Educators should want the same thing.

As should be clear from the discussion in chapter 5, the landscape has changed significantly in special education with the passage of the 1997 amendments and more recently with No Child Left Behind. We can no longer be content to simply implement procedures and provide services. We are increasingly responsible for educational results. Like parents, educators should view the IEP as driving change and accountability.

We should be seeking more powerful IEPs that are tightly focused on gaining access to the curriculum and meeting the unique needs that arise out of each child's disability. IEPs that go on for pages, listing goals and objectives that are disconnected from the curriculum, do not meet this standard. On the other hand, an IEP for a child with dyslexia that specifically addresses how that child will be taught to read and write, how that child will participate in state-level assessments, and how that child will gain access to other subjects is an IEP that parents and school administrators should embrace. For instance, the IEP should have goals specified only in areas in which the curriculum is being modified for a student with disabilities or when the IEP addresses unique needs that arise out of the child's disability, such as the need to learn Braille. In areas where accommodations or supports are needed, the IEP should

simply state the nature of these requirements. And, depending on the child's disability, these accommodations may be constant from year to year. In short, IEPs should be designed to minimize the impact of disability and maximize the ability of children to participate in school and their community.

For example, an IEP for a child with dyslexia would focus specifically on how that child will be taught to read and write. This goes directly to the needs that arise out of the child's disability. Goals and benchmarks should be developed. However, for the rest of the curriculum, the IEP should address how the child will access the curriculum given her dyslexia; that is, the accommodations and supports that child will receive. There would be no need for additional goals and benchmarks, because for every subject except language arts the child's goals should be the grade-appropriate curriculum goals. The child's assessment accommodations should mirror her instructional accommodations, which may apply across curriculum areas and may be the same or similar from year to year. The annual reviews would thus focus directly on the impact of the child's disability and would be a time to fine-tune the child's program based on the program's success. Therefore, a well-constructed IEP would not require lots of additional paperwork. This is the type of IEP that both parents and school administrators should embrace and that would be a huge step forward compared to many IEPs.

Though this change may be significant in practice, it compares with the law in both substance and spirit. Simply put, IEPs would specify that goals and benchmarks should only be required when addressing the unique needs that arise out of a child's disability and only in areas where the child is receiving modified, non-age-appropriate curriculum. Thus, the length and specificity of the IEP would be a function of the impact of the disability. Under this standard, a student with significant cognitive disabilities might have a much more involved IEP because he would need to have more areas of the curriculum modified, and he may have other specific needs rising out of his disability. However, it should be noted that

most children with disabilities have a high-incidence, noncognitive disability and thus should not be receiving most of their subjects in a modified form. Therefore, the reduction in paperwork that would result from this proposal would be considerable.

The issue of paperwork reduction should not boil down to whether we require short-term objectives or seek multiyear IEPs but to making the IEP process and product more meaningful to both parents and educators while eliminating unnecessary paperwork for both. However, beyond paperwork reduction, this proposal should be embraced because it will call attention to what is potentially a bad practice, as cited in the previous chapter: the inappropriate modification of curriculum for students with disabilities. In the above example it is completely appropriate to modify the reading curriculum for a child with dyslexia because that child can't read at grade level. Her disability precludes her from doing so. However, her instruction in the rest of her subjects should be accommodated to address her access needs, given her dyslexia. If, for instance, her science curriculum was modified because she reads and writes below grade level, she would not be learning the same curriculum as her peers, and the cumulative effect of this over the years would likely preclude her from ever passing the state science test. In some states that could mean she would be denied a diploma. A far more appropriate response to her needs might be to provide her with a science book on tape and allow her to take her science tests on a computer where she could access a spell-check. The IEP should be the vehicle to force this issue. Being judicious about the use of modifications and encouraging the use of robust appropriate accommodations to gain access to the curriculum are necessary conditions to improve the performance of students with disabilities on state and local assessments.

7. Increase funding for research and support programs.

The discretionary programs funded under the IDEA are designed to improve implementation of the IDEA through research, technical assistance, technology development, teacher preparation,

and parent training. Special education is a large enterprise serving a highly diverse population, and Part D of the IDEA is its research and development (R&D) arm. All of these functions take on greater importance within a results-oriented framework. The field needs high-quality research and technical assistance to improve educational results for students with disabilities. Examples of research needs include such diverse topics as the best approaches to prepare preschoolers with disabilities to be successful in school; the optimum approach to teaching English to children whose primary language is American Sign Language; the most effective behavioral interventions for students with autism; and the most appropriate uses of communication devices for students who are nonverbal. Given the fact that the IDEA covers 13 disability areas from birth to early adulthood, the list of unmet research needs is extensive. Also, the need to get research into the hands of teachers, school administrators, and parents is crucial.

Although the federal government has supported significant research and innovation in the field, the appropriation levels for these activities have been very inadequate. Only about \$340 million was appropriated for all discretionary programs under the IDEA in federal fiscal year 2005, and only \$83 million of that amount is for research (see the Council for Exceptional Children website at www.ideapractices.org), or less than 1 percent of the annual amount the country spends on special education. The inadequacy of this commitment was brought home to me when OSSE sponsored a research conference at Gallaudet University several years ago, bringing together the top researchers in deafness from across the country to establish a research agenda. The unmet research needs the group identified exceeded the whole research budget for all of special education. Yet deaf children represent a small percentage of the students served by the IDEA (U.S. Department of Education, 2003). All of the identified research needs were legitimate, given the very low educational attainment level of large numbers of deaf students; many high school students function at the fourth- or fifth-grade level. Most needs will remain unaddressed unless the

federal government increases its appropriation; there is no other source of significant research support in this area.

No major business could prosper with so little money devoted to R&D. Given the significant national commitment to special education, it is important that this money be wisely spent on research-validated practices. Unless the federal government invests in R&D, the likelihood that money will be spent inefficiently is great. A way to address this issue would be for Part D of the IDEA to be funded as a percentage of the Part B grant. This could be based on a constant percentage of the 40 percent federal commitment. If this level were set at 10 percent of the federal Part B state grant program, this would yield a 4 percent commitment of total national effort devoted to R&D. Sufficient funding would vastly increase knowledge development and utilization and would provide a predictable funding source that would enable multiyear planning and commitments. Such an effort could greatly improve educational results for students with disabilities.

8. Provide increased support for the preparation of personnel in special education and related services.

The federal government has supported the preparation of personnel for special education and related services for three decades under the IDEA and its predecessor, PL 89-313. This support has helped prepare teachers, teacher educators, researchers, and administrators in special education. These funds have also been used to promote innovation in higher education programs. Though this role has been relatively limited, if we are going to improve student achievement, we must refocus this effort to help states develop the type of personnel that will be needed in the future.

First, it is important to emphasize that in the era of standards-based reform, special education should be specialized. This is necessary if we are to have a professional workforce capable of developing educational programs that minimize the impact of disability while at the same time maximizing opportunities to participate as advocated in chapter 2. There has been a persistent debate in the

special education literature over the degree of specialization needed

ed by special educators (Biklen, 1992; Jorgensen, 1997; Millofsky, 1974; Skrtic, 1991; Will, 1986). In 1970, Burton Blatt quoted Alice Metzner's comments on special education, which are still relevant today: "The problem with special education is that it is neither special nor education" (p. 21). This observation reflects the well-documented history of inferior education experienced by many in special education classes at the time (Kirp, 1974).

The notion that once children are placed in special education classes they should receive a different education should be rejected as yet another example of ableism. Though students with disabilities may have individual needs, by and large their education should be based on the same curriculum as that of nondisabled students. This is why advocates worked so hard to amend the IDEA in 1997 and continue to support No Child Left Behind—to specifically require IEP teams to address issues of curricular access. Deafness does not mean students should not be taking physics, and dyslexia should not preclude access to great literature. Viewed in this light, special education should not mean providing a different curriculum but providing the vehicle by which students with disabilities can access the curriculum and the means to address their unique needs. The role of the special educator thus requires a good deal of specialized knowledge and skill.

Unfortunately, one by-product of the desire for greater inclusion, particularly for students with cognitive disabilities, has been minimizing the need for specialization (Biklen, 1992; Jorgensen, 1997; Will, 1986). In many states, specialized preparation of special education personnel is minimal and requires preparation as a general educator first. Though this may be desirable in the ideal, an emphasis on general education may take away from the need to learn specialized skills and also may inadvertently contribute to the increasing shortage of personnel for special education and related services. If we accept that the role of these people is to help disabled children access the curriculum and meet the unique needs that arise out of their disability, the need for specialization

should be obvious. Teaching Braille, knowing how to help students use communication devices, developing behavioral interventions for a student with autism, and providing a comprehensive approach to accommodating the curriculum for a dyslexic student are but a few of the specialized competencies required to ensure full access to education for students with disabilities. Though it is important to increase the skills of regular educators in accommodating and modifying instruction for students with disabilities, it is unrealistic to assume that all regular educators can develop these skills. The lack of availability of specialized support has been cited in recent research as a reason some students were placed in segregated settings, although they otherwise may have been served in inclusive settings (Hanson et al., 2001). Well-trained special educators are needed to assist general educators and the students they teach in inclusive settings and at times to provide intensive instruction outside those settings.

The need to ensure that special educators learn specialized skills is not an argument for traditional categorical (by disability) special education teacher-training programs. Such programs often reinforce existing approaches that focus on the characteristics of disability to the exclusion of access to the general curriculum. Further, some traditional programs are not teaching the specialized skills required by IEPs. For instance, when I worked at OSEP, advocates for the blind complained that many "vision teachers" could not teach Braille. A review of existing teacher-training programs for the vision impaired by the U.S. Department of Education revealed that many programs did not teach this skill. This lack of focus on disability-specific skills is not confined to blindness. Examples of such deficiencies exist in virtually all areas of special education teacher preparation. A number of deaf advocates have complained that many teachers of the deaf are not proficient signers, a complaint that reflects the controversies about oralism in the field. Learning disability advocates have been so concerned about both regular and special educational personnel's lack of appropriate skills that the National Center on Learning Disabilities

sponsored a summit on teacher preparation in 1996. A major concern emerged over the lack of appropriate training in the area of teaching reading to dyslexic students.

We need to develop clear standards for special education teachers to develop appropriate individualized programs. These standards must recognize disabled students' specific needs and ensure that teachers have the skills necessary to develop appropriate individualized programs. The federal government should take the lead in this effort and support the development of national standards for the preparation of personnel for special education and related services. These programs must explicitly challenge the ableist assumption that the manner in which nondisabled children perform school-related tasks is always the preferred goal for students with disabilities. Teachers must be able to give these students the skills they need to perform at their maximum level and give the students' regular education teachers the help they need to ensure maximum access to the curriculum. Without special education teachers who have disability-specific skills, children with disabilities will continue to lack the skills they need to efficiently and effectively deal with the demands of school and life.

In order to assure that students with disabilities receive appropriate supports and interventions designed to promote better outcomes, general educators also will need improved preparation in the area of disabilities. Again, the federal government should take the lead in promoting improved teacher-preparation programs. Suffice it to say that both the quality and the quantity of special education teachers and general education teachers must increase. The law is meaningless without qualified implementers. A two-pronged federal approach with strong state partnerships is thus necessary to meet this need.

On the supply side, the usual way the IDEA has addressed short-ages has been through grants to universities, which provide stipends to a small number of students. This has been inefficient and ineffective. For instance, analysis conducted by the U.S. Department of Education in 2002 concerning shortages of speech thera-

rencing high-stakes consequences. In my view, this change also may promote more inclusive practices, as many special education teachers may be unqualified to teach core academic subjects. Thus, some students who are currently segregated, particularly those who are not part of alternate assessment programs, may be more appropriately placed in mainstream academic classes with accommodations and supports.

Therefore, the need to improve the skills of special education teachers so they can work with their general education counterparts on accommodating instruction for students with disabilities will grow. Furthermore, these teachers will need to become more proficient in providing interventions that address the unique needs that arise out of children's disabilities. As more children move into mainstream general education, teachers need to learn more about how disability impacts curriculum acquisition and how they can accommodate instruction.

Thus, to reach the goal of graduating highly qualified teachers, the teacher-training discretionary program of Part D should focus on state-of-the-art teacher-training programs for both regular education and special education personnel. Grants to higher education should support innovation in both preservice and in-service training. National institutes and research centers should be established to develop and disseminate best practice. These efforts should be closely coordinated with state professional development programs. Therefore, under this proposal, an enhanced federal commitment of loan forgiveness and support should be accompanied by greater accountability at the state level, with states being required to demonstrate that their programs meet statewide and local needs for highly qualified teachers and related services personnel.

In addition to this increased focus on state-level accountability, there is a need to reinforce the enhanced federal role, established in the 1997 reauthorization and continued in IDEA 2004, in the area of teacher preparation for students with low-incidence disabilities, that is, disabilities that occur in less than 1 percent of

pists showed that 59 percent of special education administrators reported that these shortages hindered their efforts to hire qualified people; 12 percent hired unqualified providers (U.S. Department of Education, 2003). The report went on to warn of future personnel shortages due to the aging of the speech and language pathology workforce; 49 percent of the approximately 49,700 therapists are 45 or older, with a much smaller cohort following.

A more aggressive approach to training qualified special education teachers would be to offer loan forgiveness for students who work a minimum of five years within the field after completing school. This approach has been successful with other programs and would create a powerful incentive to enter the field that could help reduce shortages.

The federal government should also fund research and projects that develop and promulgate state-of-the-art practices in the preparation of both regular and special education personnel to serve students with disabilities. The work of teaching and supporting disabled students is complex; teachers have to know how to bring this diverse group of students to high levels of achievement—it is not enough to simply certify people to teach. Ultimately, the effectiveness of various teacher-preparation programs can be studied. This is a particularly critical issue for special education, where shortages are extreme and the temptation for "quick-fix" programs is great. Adding to this complexity is the diversity of the populations served, from low-birth-weight babies to college-bound high schoolers with dyslexia.

This may be an opportune time to reconceptualize the federal role in assuring an adequate supply of highly qualified personnel, given changes made in IDEA 2004. Most important, the new law conforms with NCLB requirements concerning highly qualified providers and emphasizes the need for special education teachers to demonstrate competence in the core academic areas they are teaching (IDEA 2004, Section 602 [10] A, C, F). This change makes sense in an era of standards-based reform in which students are being tested in core academic subjects and, in many states, expe-

tain students first be exposed to intensive regular education interventions before they are designated as disabled under the IDEA; that is, they are eligible to receive special education services. This change in the disability identification process holds promise for getting help to children earlier while avoiding inappropriate labeling of children, particularly those with learning disability (LD) or serious emotional disturbance (SED). These approaches also comport well with the concepts of universal design developed in chapter 4. Finally, these models may positively impact the long-standing problem of inappropriate overplacement of minority students in special education (Donavan & Cross, 2002; Losen & Orfield, 2002). However, though this is a promising policy development, there are sound reasons for moving cautiously in this area.

The treatment-resistant approach has been heavily influenced by research in the area of learning disabilities. As discussed in chapter 3, this research has demonstrated that many students who are identified as LD might not have developed reading-related difficulties if they had received appropriate interventions in kindergarten and the primary grades. This assertion is based on years of high-quality research conducted at the National Institutes of Health, which demonstrated that roughly 18 percent of children experience significant early reading difficulty. Further, well-structured early interventions with an emphasis on phonemic awareness were shown to greatly reduce the number of these students who experience persistent reading difficulty. Intervention studies have shown that only a relatively small number of students, 1.4–5.4 percent, depending on the study, do not respond to these interventions. Given this finding, the study's authors rightly condemn current practices associated with LD, specifically, allowing children to struggle with reading in the primary grades before providing interventions. This practice, which is largely driven by the discrepancy definition of LD, virtually guarantees that students will be inappropriately identified as LD and, more important, as time goes by, decreases the likelihood these children will become proficient readers (Lyon et al., 2001).

the population. Most states do not have sufficient demand for such highly specialized staff to justify the establishment of programs. For instance, the need to have teachers who can teach Braille to blind students is very small in relationship to the entire workforce, involving less than one tenth of 1 percent of students. Small states will need only a few new Braille teachers every year. Given the lack of feasibility for each state to have programs in each of these specialties, the federal government should assume increased responsibility in this area. An important step forward would be for the federal government to subsidize the development and maintenance of regionally based programs to serve the needs of these populations.

9. Expand parent training centers.

Parent Training Centers have been funded under the IDEA for many years. Though these centers reach a relatively small number of parents due to lack of funding, they are often models of parent empowerment that enable parents to advocate for their children. Centers give parents training that helps them understand the nature of their child's disability as well as the complexity of special education law. Given that students with disabilities whose parents are highly involved in their education experience significantly improved outcomes (Wagner et al., 1993), an important strategy for improving results should be expansion of these centers. Particular emphasis should be on expanding efforts in minority and low-income areas, where parents are least apt to have this training and where the cumulative impact of poverty and disability can have an even greater negative impact on educational outcomes.

10. Cautiously implement treatment-resistant models of disability identification.

A major new movement in special education policy concerns the movement toward the identification of treatment-resistant models of disability. Essentially, this policy seeks to require that cer-

ed consequences. Advocates fear that changes may result in students with LD being denied services, while educators fear burgeoning inappropriate referrals.

IDEA 2004 does not go as far as these authors advocate, but it does provide important policy changes that support the response to intervention. There are opportunities to implement new approaches without the potential negative implications of mandated wholesale change. First, the new law does not require the use of "severe discrepancy" for learning disability identification purposes and may use response to research-based intervention to determine eligibility; that is, school districts could implement early reading interventions prior to referring children to special education (IDEA 2004, Section 614 [C]). Further, the law allows the use of up to 15 percent of IDEA funds in combination with other funds to provide, among other things, early intervention services for students experiencing reading or behavior difficulties. Thus, children in the early grades could get support without having to be labeled (IDEA 2004, Section 613 [F]). Finally, the law increases the states' responsibility for monitoring and intervening in school districts that have demonstrated an overplacement of minority children in special education (IDEA 2004, Section 616 [A]), which may provide an impetus for some school districts to implement early interventions in regular education for students experiencing reading and behavior problems.

The new law, therefore, provides opportunities to implement treatment-resistant models that may benefit disabled students by providing earlier intervention while at the same time having a positive impact on the overplacement of minority students. (These approaches are concrete examples of universal design, as discussed in chapter 4.) First, the law seeks to insure that general education has provided significant scientifically based interventions before referral is made, thereby decreasing the likelihood that students would be referred because they have not been taught properly. This differs significantly from traditional prereferral approaches that have focused on teacher methodologies and strategies, not

Lyon and colleagues propose some rather sweeping changes to policy and practice. It is noteworthy that they identify the solution to this problem as largely a regular education issue, with special education playing a supportive role. Given the prevalence of early reading difficulty in young children, they argue that early intensive intervention for students experiencing early reading difficulty should become an integral part of K-3 education. They emphasize that these children are easy to identify and that the longer we wait, the greater the likelihood that they will develop into disabled readers. This is not to say that all children will become facile readers with these interventions. Some children have deep-seated problems with reading and do not respond fully to these interventions, and they will likely need significant support throughout their school careers. However, these students also benefit from these interventions, although not as dramatically. An important point these authors make is that unless we get a handle on the early reading issue, we will not have the resources to support those who truly have LD. As standards-based reform progresses, it is becoming increasingly clear that most students with LD are struggling; many need more, not less, support. This cannot happen if our special education system is overwhelmed with inappropriate referrals.

On the policy level, Lyon and colleagues seek substantive, far-reaching change. They call for the abandonment of the IQ/discrepancy model for determining the existence of LD and seek an identification system that would require the provision of interventions before identification. They argue against the current exclusionary aspect of the federal LD definition, that is, that LD is not the result of other conditions that impede learning such as inadequate instructional opportunities or cultural issues. They argue further that the brain and the environment operate in a reciprocal fashion and that excluding needy children from the specialized services they need is wrong.

The LD definition issues have been with us since the early years of IDEA implementation. However, crafting an alternative system is fraught with difficulty and carries a significant risk of unintended-

on systematic early programmatic interventions, and that often have not occurred until the intermediate grades or later. Preferential, the first stage of the special education process, has generally been viewed as a method of helping prevent the misidentification of students with disabilities and reduce the number of inappropriate referrals (Fuchs et al., 1990; Garcia & Ortiz, 1988). In contrast, treatment-resistant models imply a functional definition of preferential that focuses specifically on reading and behavior, two areas identified in the literature as important for helping all children succeed in school. Second, this approach avoids the "wait and fail" model of disability determination, thus decreasing the likelihood that young children will experience devastating failure early in their school career. It is important to note that "treatment resistant" are also helped by these interventions; they simply are not sufficient. Third, this approach explicitly acknowledges that disability determination is influenced by context; that is, the way general education serves students has a major impact on disability identification. The research shows clearly that lack of appropriate instruction can "cause" reading disability. It is important to acknowledge that all students who are significantly behind in reading by fourth grade are functionally disabled, whether due to dyslexia or to poor instruction. The traditional approach of trying to find intrinsic causality for disability as the basis for special education intervention misses the broader issue of the efficacy of the school districts' reading approaches for all students.

There are some interesting parallels between the research on behavioral disabilities and that on early reading. Given that behavioral problems are the second major cause of referrals to special education, the relevance to the overplacement of minority students in special education should be clear (Donavan & Cross, 2002). For instance, the likelihood of African American students being placed in programs for students with emotional disturbance is as much as four times the expected incidence of other students (Los Angeles Unified School District placement data provided to the court monitor in the Chanda Smith litigation).

As discussed in chapter 3, research shows that children are often not identified as having SED until the middle to late elementary years (Duncan et al., 1995). Moreover, delays in identification and intervention can exacerbate emotional and/or behavioral problems, whereas effective early behavioral interventions can be instrumental in mitigating subsequent problems and special education placement (Forness et al., 2000). Therefore, school districts need to develop approaches that address children's social and emotional skills and address behavioral problems that develop prior to referral. In particular, the literature documents the effectiveness of comprehensive schoolwide behavior supports (Horner et al., 2000; Lewis et al., 1998; Scott, 2001; Sprague et al., 2001). Again, as with early reading, the approach of general education to the behavioral needs of primary-grade students can have an impact on the special education identification process.

Although this emerging research consensus is promising, and changes in disability identification provide potential opportunities for all students with disabilities, particularly those with LD and SED, the degree of change required is daunting and calls for a degree of caution on the part of educators and advocates. In short, in order to implement this change in disability determination effectively, school districts will have institute practices that are guided by research in a relatively uniform manner. It is only possible to determine if a child is a treatment resister if all students receive relatively standard treatments. The ability to implement these new approaches on a large-scale basis is likely to encounter a number of obstacles. Among these are (1) the historic inability of schools to change their practices quickly; (2) the conflicts that may arise while implementing these practices with other federal, state, and local policies on discipline and English-language acquisition; (3) the historic autonomy teachers have enjoyed concerning classroom practices; and (4) the lack of financial resources, particularly in low-income districts.

The history of attempts to foster large-scale change in education does not support the notion that education can change quickly.

The second major problem that treatment-resistant models are likely to experience is teacher autonomy. American education has a long tradition of teacher autonomy, with large numbers of teachers working in "egg-crate" schools, that is, teachers working alone in separate rooms with minimal collaboration (O'Day, 2002). As discussed in chapter 4, researchers have begun to identify the negative consequences of the traditional model of teachers working in isolated, autonomous classrooms and the promise of more collaborative approaches. O'Day's research in Chicago found that effective urban schools were more likely to have collaborative cultures, in which teachers work together on improving the education of urban youth. Richard Elmore's research in District 2 of New York City has demonstrated the power of "distributed leadership," in which educators work collaboratively to improve educational results. Given the complex, knowledge-intensive nature of teaching and learning, instructional improvement is more likely to occur when organizations recognize that different kinds and levels of knowledge are necessary for good instruction. Under distributive leadership, the challenge is to harness these varied skills so that they complement each other and, if there is not enough expertise within the organization, to seek help from outside. Elmore (2004) asserts that this complex work is enhanced when the responsibility of leadership is distributed among educators, thus creating a common culture around instructional improvement for all students and a common set of values to determine how to approach the task. Clearly, treatment-resistant models require a movement away from egg-crate schools and toward schools that implement more universally designed collaborative frameworks in which special educators and general educators work closely to ensure that students have received appropriate early intervention (Elmore, 2004). Though researchers are identifying the efficacy of collaborative approaches, there is little evidence that traditional structures are breaking down. When Elmore, a colleague of mine, speaks in my class, he describes the distributive, collaborative cultures he has researched as being rare and deeply countercultural.

The implementation of PL 94-142 is an interesting case. Thirty years after its enactment we still see widely varying implementation patterns. For instance, even though the law seeks to integrate students with disabilities in accordance with its LRE requirements, states and local districts vary enormously in the degree to which children are educated with their nondisabled peers (U.S. Department of Education, 2003). This is not to say that the law has not promoted greater integration; it has, over time (Hehir, 1997). However, the change has been quite slow and variable. The public education enterprise is large, complicated, and relatively slow to change, but school districts and states should move deliberately in this area.

In the area of learning disability identification, research-based early intervention reading programs are becoming more widespread and are receiving considerable support. However, there is a need for significantly greater research to test these approaches (Fuchs et al., 2004). Another complicating factor may be the receptiveness of many general educators to these approaches. There are still many educators fighting the "reading wars," pitting whole-language advocates against those seeking a more systematic approach to phonics instruction. How these wars play out at the local level may still have an impact on the ability of school districts to implement treatment-resistant disability determination models.

The ongoing implementation of NCLB, with its emphasis on testing students who have limited proficiency in English, further complicates this issue. Though the vast majority of educators and parents support the goal of the speedy acquisition of English-language proficiency, the means school districts employ to achieve this goal may be at odds with the research, with some approaches appearing more ideologically driven than research driven. Full English immersion is an example of this. The use of treatment-resistant models with English-language learners in the primary grades may be compromised by simultaneously learning English and learning to read (Snow, 1998). Thus, treatment-resistant models may be difficult to implement for English-language learners.

An evaluation I recently conducted of a small, diverse school district that is sincerely attempting to address the issues of earlier intervention and the overplacement of African American students found that the district had very inconsistent approaches to early reading instruction and to discipline and behavior. Though most district leaders identified these inconsistencies as contributing to the problem of overplacement and agreed that it should change, they expressed the belief that change would be difficult due to "teacher autonomy." One described how previous attempts to provide some consistency in the math curriculum had required a lengthy process of "consensus building." Though this district has many impressive and well-credentialed teachers, it is a long way from having a collaborative culture. Furthermore, we cannot be sure that children experiencing early reading problems will receive a more intensive, phonemically based reading approach. In this district, the implementation of treatment-resistant models will require a major cultural shift, and there is no reason to believe that it is atypical. The movement to treatment-resistant models of disability determination will require major cultural change in most districts, and this will take time.

The implementation of more effective early intervention approaches for students experiencing reading and behavior difficulties will require significant resources, and many districts with the highest numbers of minority students may have fewer resources to implement these innovations. To reiterate the findings in the *Hancock* study discussed in chapter 5, the urban and low-income school districts, those whose students may need these approaches the most, are apt to have difficulty implementing them. In general, the picture that emerged of low-income communities' ability to implement treatment-resistant models is sobering. The availability of early intervention services in the area of reading and behavior is spotty. Special education evaluation systems are overtaxed and at times lack comprehensiveness. The good news in this study is that the affluent districts appeared to be implementing research-based best practices and that special education was largely effective.

RECOMMENDATIONS REGARDING TREATMENT-RESISTANT MODELS OF DISABILITY IDENTIFICATION

Given the promises of treatment-resistant models in special education identification and the difficulties their implementation will raise, the following recommendations seem appropriate:

1. *Start out with model demonstration programs that are carefully implemented and documented.* This strategy has worked successfully in the past in special education and has resulted in significant large-scale innovation. Early intervention programs, inclusion programs for students with significant cognitive disabilities, transition programs for adolescents, and preschool programs are examples of widely adopted practices that started out as either model demonstration programs or "systems change" grants. Given their national significance, these programs all began with significant federal support under the IDEA Part C (discretionary grant) program. Given the importance of this issue nationally, it is worthy of similar support.

In these districts, treatment-resistant models may prove relatively easy to implement. Furthermore, though the low-income districts had difficulty implementing these strategies, district leaders (principals and special education directors) were aware of the research. Funding was the largest impediment to implementing new models. And although the study was limited in scope, it appears that unless the issue of funding is addressed in the low-income districts where many minority students reside, the opportunity to address the overplacement of minority students in special education that is provided by treatment-resistant models of disability identification may be limited. However, given the priority established in IDEA 2004 for states to address the issue of overplacement, states and local school districts could combine funds to demonstrate more effective practices.

The movement toward treatment-resistant models of disability identification is a hopeful development that begins to put the onus of inappropriate placement in special education more in the court of general education. Further, these models also provide students with disabilities who may not yet be identified with services that will lessen the impact of their disability and at the same time promote the concept of universal design. More than ever, special educators must join with general education colleagues to implement the types of programs all children need to succeed. All levels of government, local, state, and federal, should partner to provide the resources necessary to promote this significant and overdue reform. Within this context, universally designed treatment-resistant approaches can add an important element of educational improvement in both disability and racial equity enforcement efforts.

SUMMARY

Policy drives much of the education of students with disabilities. Therefore, understanding federal and district policies is vitally important. However, policy is constantly evolving and subject to change. Therefore, policy recommendations included in this chapter may or may not at any given time reflect federal or state policy. The proposals outlined above seek to encourage an optimal environment for improving educational results for students with disabilities and in some respects advocate changes in current policy. However, it is important to add a word of caution. The environment of standards-based reform and high-stakes testing is relatively new, and there are many unknowns. Therefore, policy makers and implementers need to be flexible and respond to new situations as they arise. As a wise person once warned me, "Today's policy solution is tomorrow's policy problem."

Further, it is important to note that though policy in special education tends to be federally driven, there has always been more

2. *Ensure funding.* The inadequate level of funding for low-income districts, where minorities are more likely to be enrolled, will likely greatly inhibit the implementation of these new identification models. States and the federal government should examine the adequacy of funds to implement these approaches before requiring LEAs to implement them. Local capacity-building grants under the IDEA that enable states to target federal funds for certain districts could be very helpful here. These grants allow states to target IDEA money to certain school districts to promote innovation or program improvement.
3. *Ensure that once students are identified, special education services are powerful and beneficial.* For students who have disabilities who have not benefited sufficiently from general education interventions, special education programs must be based on comprehensive evaluations, with IEPs designed to confer benefit in accordance with the recommendations in chapter 2. This means that students' programs address the needs that arise out of their disabilities while at the same time ensuring access to challenging curriculum. For instance, students with dyslexia will continue to need powerful intervention around their reading (Shaywitz, 2003; Torgesen, 2000; Torgesen et al., 2001) while being provided with access to a curriculum that accommodates their likely problems with reading, writing, and spelling. Though some interventions may require removal from the general education class, unnecessary segregation should be avoided.
4. *Conduct additional research.* Although there is promising research in the area of treatment-resistant models of disability and in the universal design of early reading and behavior intervention and support programs, much more research is needed that replicates most efficiently and effectively. The federal government should fund this research under Part D of the IDEA.

flexibility in special education policy at both the state and local levels than most assume. The tremendous variability in implementation patterns attests to that fact. As a general rule, as long as basic federal requirements are met, states and local districts are free to innovate. Local districts or states can implement most of the recommendations in this chapter under existing federal law. School officials and parents do not have to wait for Congress to act.

More important to the policies per se are the values that guide them. Being clear about the value of—and the right of all students with disabilities to—a quality education that minimizes the impact of their disability while maximizing their future options will help ensure beneficial future policies. We may come to a day when policies and regulations matter far less than they do today, a day when students with disabilities receive what they need as a matter of course, a day in which ableism is eliminated. I hope this book helps promote that future.

Epilogue

■ I would like to conclude this book with an update on Joe Ford. He is currently entering his senior year at Harvard College and is progressing along with his classmates, taking a full load of classes and doing well. He has found most of his professors willing to accommodate his needs. However, access to higher education has not gone as smoothly for Joe as it could have. In a very real sense, Joe's experience at Harvard is a metaphor for the content of this book.

That is, Joe's mere presence at the school represents progress for the school and for society. Had Joe not had the inclusive opportunities that enabled him to access a quality K-12 education, he would never have been able to meet the criteria for admission. As such, he represents a new generation of students who have benefited from Section 504 and the IDEA and are breaking down historic barriers. There were no doubt a number of "Joes" in that institution I visited as an undergraduate, but countless disabled people in the past did not have the benefit of today's more benevolent policy environment.

However, Joe has faced barriers to access that were completely avoidable. For example, he has had great difficulty getting access to digitized text, which is necessary for his screen reader. During his first years at Harvard he often had to wait weeks to get digitized copies of readings, which made it difficult for him to keep up in certain classes. (He enlisted family members as readers to close this gap.) However, during his junior year, Joe began to notice im-