

NCLB AND IDEA—NEVER THE TWAIN SHOULD MEET

BY BEVERLEY H. JOHNS

LEARNING AND BEHAVIOR CONSULTANT

JACKSONVILLE, IL

An air of frustration is present in many school buildings. A sense of overwhelming struggle is felt by school personnel. A realization of the impossible dream dawns upon many educators as they try to align No Child Left Behind with IDEA. It is most difficult over the long term to be both "equal" and "unequal" at the same time. IDEA allowed (even demanded) unequal treatment. It demanded individualization—not one size fits all. NCLB demands equal treatment with once-a-year tests in reading and math as the measuring instrument. IDEA focuses entirely on the individual. NCLB focuses entirely on the group (on all those with disabilities).

Given the dichotomy of the two concepts, group vs. individualization, is it any wonder that there is widespread frustration within our schools and the personnel who work in them?

There is also frustration on those students who have the potential to be very successful in school because their special education needs are being met but they don't understand why a single test is so important. There is frustration among those students who may become anxious at the thought of taking a test and those

students who may not be good test-takers. Even more frightening is the sense of frustration for students whose schools refuse to make the appropriate accommodations that are needed for the student.

What are the multiple problems that we are seeing in the field of special education as a result of these efforts to create a “unified system” where No Child Left Behind becomes the priority over the Individuals with Disabilities Education Act?

This author picked up a large city newspaper only to see a headline that students who have fallen behind and are causing behavior problems are being pushed out of school before they ever make it to high school—that way the students don’t “mess up” the school districts’ test score data and the school’s graduation rate.

WHY HAS THIS HAPPENED

On a listserv a special educator asked the question "why we have been so ineffective in forming political alliances that would help preserve and improve special education." The most basic reason is that since the field dramatically disagrees on just what actions would "preserve and improve special education," it is impossible to form a political alliance. There is little agreement among special ed groups on basic specific provisions of IDEA such as a 3 year IEP, short-term objectives and benchmarks, "full inclusion", allowing 23% of IDEA money to be used for regular education, on the "unified system of education."

On learning disabilities, there is discord among leaders in the field of learning disabilities and their respective organizations on whether to support the language now in both H.R. 1350 and S. 1248 that would allow "response to intervention" as a means of identification for LD (and on how to change that language if they favor change).

FULL INCLUSION

The zeal of many to promote the inclusion of all students with disabilities in regular general education classrooms has caused the backlash that we have seen in H.R. 1350, the House version of the reauthorization of the Individuals with Disabilities Education Act (IDEA).

Influential regular education groups are using inappropriate inclusion to change Federal law to allow the unilateral exclusion of students with disabilities if the students break the school's code of conduct.

If some want every child in the general education classroom, every child will eventually have the same rights (or to be more precise: the same lack of rights). After all, equal is equal.

When major special education groups support "full inclusion", 3-year IEPs, the elimination of short-term objectives from the IEP, standardized testing (the "right" of students with disabilities to take standardized tests), and "aligning" IDEA with

No Child Left Behind (NCLB), the natural conclusion for Congress is to begin to treat students with disabilities JUST LIKE students without disabilities.

“Full inclusion” versus the “continuum of alternative placements” is an issue that divides the special education community. This division has allowed regular education groups to drive the decision making in Congress over the IDEA reauthorization.

We face an increasing problem of a local school or school district adopting a philosophy of "full inclusion". For the following reasons "full inclusion" violates Federal law and Federal regulations, despite some school administrators and others saying all students with disabilities have the "right" to full inclusion in the general education classroom.

THE "right" in IDEA, its most basic legal concept and indeed very basis is Free Appropriate Public Education (FAPE).

Each of those words has meaning. There is no charge for the schooling of any child with a disability (Free). That schooling shall be individually tailored to the needs of a child, but cannot be so extensive or expensive as to do absolutely everything that may be of educational benefit, and there is no one educational placement for every child (Appropriate).

This right is for schooling paid for with taxes (Public). And IDEA's greatest emphasis is on the imparting or acquisition of knowledge and skills (Education), not on a whole variety of other subjects.

Of course the word "inclusion" is not in IDEA and not in the IDEA Regulations. Courts have consistently held that (when they conflict) FAPE overrules LRE, that FAPE is more important than LRE.

In simplistic terms, "education" is more important than "placement" in the regular classroom.

In Rowley, the U.S. Supreme Court ruled that the IEP team decision must be based on what will provide "educational benefit".

Who decides placement for an individual student along the required "continuum of alternative placements"? ONLY the IEP team - NOT a school principal, not a school superintendent, not a school board - has any authority whatever to make such placement decisions. And that decision is to be made by the IEP Team only AFTER it makes almost all other decisions about that particular child.

There is no "right" whatsoever for a school, a school district, or even a State to adopt a philosophy of "full inclusion" and to place every student with a disability

(or almost every student with a disability) in the regular classroom. As a matter of current law and regulation that action would violate the law.

CONTINUUM OF ALTERNATIVE PLACEMENTS

A secondary but important right is Least Restrictive Environment (LRE), but again LRE is individually determined. In both the legislative language of IDEA and in its regulations is the concept of the "continuum of alternative placements".

In fact the "continuum of alternative placements" is a REQUIRED part of LRE.

The IDEA Regulations have headlines beginning each section of the regulations.

Under "LEAST RESTRICTIVE ENVIRONMENT (LRE)" are seven subparts. The first is "Sec. 300.550 General LRE Requirements". The second is "Sec. 300.551 Continuum of Alternative Placements" and it requires under (a) that "Each public agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services."

This is a mandatory requirement: the words are "shall ensure". The "continuum required" (again the word is "required") is defined in (b) as "alternative placements" including "regular classes, special classes, special schools" etc.

The National Association of State Directors of Special Education (NASDSE) under its priority of "Unified System of Education" wants Federal IDEA regulations

changed to remove the requirement that special education provide a continuum of placements, but instead require “a continuum of services” aimed at participation and progress in the general curriculum.

School districts have been very successful at convincing parents that some non-special education process (flexible service delivery, etc.) is best for their child because the child avoids being "labeled", etc.

Just as S. 1248 states that parents and students have NO rights under IDEA while being served under pre-referral, parents and students have no IDEA rights while spending 1 to 4 years in "flexible service delivery". (This is hardly the 10 weeks that some say pre-referral should and will last.)

CONTINUUM OF SERVICES VERSUS INDIVIDUALIZATION

The precise language one uses is very important. Some say that IDEA requires “a continuum of services” (although those words are nowhere to be found in IDEA or in its regulations). Some believe that continuum of services would be an array of services within the regular classroom. As a result, some school districts have eliminated self-contained special education programs, eliminated residential placements, and even eliminated resource services. Individuals and organizations who did not subscribe to the inclusion philosophy were accused of being “segregationists” and of being “behind the times.”

We need more placement options for children, not fewer options. We need a true “continuum of alternative placements”.

What has happened, though, is the movement toward only ONE option. Some children were appropriately placed in the general classroom; some were not. Special education (and special educators) were devalued — they heard a clear message that their specialized instruction wasn’t important — it was more important to place the child in the regular classroom. Highly skilled special education teachers were often treated as teacher aides, or expected to be able to “consult” on students with every disability at every level of severity.

At the same time, an increasing population of children were coming in to schools with significant emotional/behavioral challenges or complex medical needs. The children that were inappropriately in general education classes caused great frustration for teachers and administrators. Those educators realized they could not meet the needs of all of the children with disabilities who were coming in to their classrooms and schools. Unfortunately these frustrations were conveyed to members of Congress in this latest reauthorization of IDEA.

What was the answer some members of Congress saw? Eliminate much of the specialized treatment of children with disabilities and treat them exactly the same as other students. In the House reauthorization of IDEA (H.R. 1350), if children

engage in a violation of ANY school rule, they can be moved to an alternative setting immediately, which may mean sending them home and providing a few hours of homebound instruction each week. And if State law allows it for other students, they can be in that alternative setting for a year or more.

General education students don't get functional behavioral assessments or behavioral intervention plans or manifestation determinations, so Congress says special education students shouldn't get them either.

THE IEP

The heart of individualization—the IEP—is being dismantled. The IEP team is so devalued that schools may be able to do a “voluntary” 3-year IEP. Of course many schools will simply tell parents that the Federal law has changed, and now they are doing 3-year IEPs.

We have been doing at least annual IEPs since the inception of the original PL. 94-142, but we don't do them for every general education student, so Congress says you can do them once every 3 years.

FULL FUNDING FOR SPECIAL EDUCATION—NOT WHAT IS APPEARS

The catchy phrase “Full funding” for special education is not what it appears. The lack of necessary funding for No Child Left Behind is resulting in major efforts to

use special education dollars for non-special education purposes. At the same time children with disabilities are not getting necessary services and a lack of dollars is being cited as the reason for lack of services.

Current proposals in the IDEA reauthorization allow 15% for a non-proven concept known as “pre-referral” interventions. (The Senate version of the IDEA reauthorization also allows schools to utilize 8% of special education dollars for non-special education purposes, so a total of 23% of all IDEA dollars could be used for “regular” education). Schools would be allowed to use 15% of special education dollars for this pre-referral system (plus 8% for any purpose) that does not mandate any limit of time that the child might spend in the system. While those who advocate this system and espouse that it might last no more than 10 weeks, this author knows of cases where a student truly in need of a case study evaluation stayed in this system for 4 years—4 years that the child lost and that can never be regained while various methods of inappropriate instruction were being tried.

Such a system is very dangerous for students with learning disabilities whose parents may be asked to sign a “waiver” that their child won’t be evaluated for special education—the parent is sold the concept that their child will receive services in the classroom and won’t be “labeled” as having a disability. By signing that waiver, the parent is agreeing that their child does not have a disability and giving the school system “carte blanche” to not provide the specialized or individualized instruction the student needs, to suspend the student from school or even to expel

him/her if he or she violates the school rules. As the student is frustrated, begins to cause behavioral problems, is suspended and falls further and further behind in school, the child may be retained, may dislike school, and may drop out of school. Of course, if that happens prior to entry into secondary school, the child won't be counted in the drop out rate. The hidden agenda is no longer a secret.

Special education dollars should be utilized for scientifically-based special education programs for children with disabilities—dollars should not be diverted for other unproven purposes. Fuchs and colleagues (2003) have stated: “Finally, neither the prereferral intervention and multi-level versions of the problem-solving model nor the standard-protocol approach has yet proved feasible for large-scale adoption.” (p. 167).

WHERE DO WE GO FROM HERE?

We are indeed at the crossroads in the field of special education. We can either stand up and fight for the individualization for which special education was created or we can bury our head in the sand and say it is a “done deal” and there is nothing we can do. Children with learning disabilities are counting on us to make the right decision.

Reference:

Fuchs, D., Mock, D., Morgan, P., and Young, C. (2003). Responsiveness-to
-intervention: definitions, evidence, and implications for the learning

disabilities construct. Learning Disabilities Research and Practice, 18(3), 157-171.