

Memorandum to Stan Herr  
Date : October 27, 1993  
Subject : Software Presentation 10/25/93

I am now a true convert to believing that computers can, and will become an invaluable tool in America's schools and in the learning process for our children, and our children's children. Although the presentation was made for the benefit of the disabled student in the school system, the practical applications range from preschool to college students of every level, and beyond.

A tool designed to allow children with disabilities to learn to read provided options which would allow the visually impaired, the hearing impaired, and other types of physically disabled to be able to learn by using different effective methods of this software program. The best part about this software is that it would also work equally effectively for children with or without disabilities, and in cases where it has been used in classroom setting it has been well received by children and faculty. The hope of the presenters is to provide this advanced learning tool for entire classrooms so that the disabled child is not ostracized for once again being different from the rest of the children.

The software is relatively inexpensive when you consider the cost of transporting a child to a special school, and if implemented in the classroom would free teachers to have more one-on-one time with each student. The program itself also acts as an effective teacher so that the child may check their own work and make their own corrections.

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NATIONAL COUNCIL ON DISABILITY  
Making Inclusionary Education Work:  
Overcoming Barriers to Quality

Wednesday, August 4, 1993

Good morning National Council Board members and staff, colleagues, ladies and gentlemen of the public. My name is Martin Gould. I am honored to be here with all of you today to listen, learn and share information about inclusionary education.

There are two points I would like to share with you today. First, inclusionary education is an index of whether communities publicly value all their children and youths. Second, the relationship between inclusionary education, federal mandates, and student outcomes is an undeveloped area of educational policy research.

POINT #1:

Effective inclusionary education is first and foremost a matter of community esteem. It works where students, parents, and teachers are respected and expected to succeed. Inclusionary education is effective where all these individuals are treated as worthy of our best efforts. It thrives where students are challenged to achieve beyond the limits of their educational labels; where parents are supported as active partners throughout the course of their children's education; and where teachers are encouraged to seize the moment and create instructional opportunities which are unique.

In the broadest sense, inclusionary education works well when students, their parents, and their teachers are part of the daily national consciousness of all who provide services or supports. This is a critical time for children and youth with disabilities, their families, our schools and communities. In the 10 years since the report A Nation At Risk was unleashed upon the American public, education reform agents -- and many other parties -- have consciously struggled to address a host of problems (e.g., competent performance) in our nation's public schools.

Throughout this past decade's struggle for reform, by and large, 4.8 million children and youths who receive special education services have not been a visible part of this national endeavor. America has neither asked for nor heard much about their competent performance. Because of this atmosphere of questionable competence, a lack of confidence about 4.8 million students who get special education has existed. There is no reason for this silence to continue.

Where, and under what circumstances, is inclusionary education working well in terms of student outcomes? Parent satisfaction? Wherever students - regardless of educational

label - parents, and teachers and their accomplishments are held in high esteem by their communities. How can you tell when communities hold these individuals and their accomplishments in high esteem? When their outcomes are publicly celebrated and reported alongside the outcomes of students who do not receive special education services.

When communities choose to acknowledge accomplishments of students, parents, teachers, and schools involved in special education, they celebrate outcomes -- using the 37 state voluntary assessment paradigm for the 1990 National Assessment of Educational Progress (NAEP) -- such as these:

**TABLE 1**  
1990 Indicators

	Inclusion Rates (%)	Special Ed.: General Ed. Rates (%)	NAEP Math Scores
U.S. REGION			
West	97.02	8.80	230
Southeast	96.20	9.72	228
Central	94.30	10.04	241
Northeast	89.09	11.41	235
NATIONAL	93.17	10.60	233

These are just some of the many achievements that should be reported throughout America. As more outcomes of students who receive special education are publicly reported, like those in Table 1, discussions about "How many of those students?" should be included in neighborhood schools, site restructuring, and systemwide reforms will be easy to answer. **All means all.**

In a few states, the celebration is going on in earnest. For example, Kentucky has demonstrated that it can include students with disabilities in its statewide system of assessments and reports. Of all students with disabilities, 98% participate in the assessments provided to nondisabled students. The remaining students participate in alternative portfolio assessments which allow students to demonstrate their educational competence through real life activities such as using community supports, maintaining friendships with nondisabled peers, demonstrating actual work experiences, and communicating with peers.

Many of the nation's 80,000 schools and almost 15,000 school districts are developing some type of local education reform. Districts developing education reform to improve all students' learning and achieve the National Education Goals, are focusing

on five interrelated systemwide components:

- \* Setting goals and/or standards for all students;
- \* Establishing curricula directly related to those goals and/or standards;
- \* Using high quality educational material relevant to the curricula;
- \* Instituting professional development programs to enable a range of education staff to understand the curricula and to learn effective ways of instructing students; and
- \* Creating and implementing student assessment systems based directly on the curricula.

Of the many school districts attempting to include students who receive special education into statewide assessments and progress reports, a few are notable: Pittsburgh, Pennsylvania; Johnson City, New York; and San Diego, California. These districts are noteworthy because they are developing standards for all students at each grade level. The standards include a clear vision of the types of knowledge, abilities, and skills students need when they graduate. This vision provides a clear direction for decisions about curriculum and instruction, professional development, and assessment. Pittsburgh, Johnson City, and San Diego possess a clear focus on learning and a desire to make changes, either in individual teacher approaches or in district policies, to help all students achieve.

As the next decade's wave of national education reform proposals are being developed (e.g., technology in the schools) and considered (e.g., youth apprenticeship) policymakers must remember to include all students who receive special education services. There are clear signs that this is happening.

New rules which require the coordination of Head Start programs with Part H special education programs have recently taken effect. President Clinton's Goals 2000: Educate America Act (S.1150) reform proposal contains specific provisions which reflect a commitment to include all children and youth who receive special education into the forefront of national education efforts. All relevant reforms and reauthorizations must contain similar commitments.

If the reauthorizing legislation for the Office of Educational Research and Improvement parallels Goals 2000, The National Education Goals Report of 1993 will include data similar to those published for students who are in regular education. If not, students who receive special education are not yet held high in public esteem and are not yet a part of America's ongoing national consciousness.

**POINT #2:**

Effective inclusionary education is a matter of firm commitment to basic principles, specifically Least Restrictive Environment (LRE). LRE was intended to inspire people to discard untenable predispositions about students' educational placements.

For 4.8 million children and youths in America who receive special education and related services the degree of programming in neighborhood public schools varies in many ways. It ranges from one geographic location to another. Alaska serves 99.83% of all of its students in neighborhood public schools; the District of Columbia serves 76.43% of all of its students in neighborhood public schools.

Programming in neighborhood public schools also varies between geographic locations based on student disability group labels. New Mexico serves 91.5% of its students with multiple disabilities in neighborhood public schools, while New York serves 35.84% of its students with multiple disabilities in neighborhood public schools.

How can we tell if inclusionary education is working well in terms of student outcomes? One way is by clustering and comparing publicly reported inclusion rates and graduation rates for all 50 states, Puerto Rico, and the District of Columbia. When we do this we learn:

**TABLE 2**  
**1990 Indicators**

# OF STATES/ TERRITORIES	Average % Inclusion	Average % Graduation
6	86.1	57.2
17	93.3	55.3
20	96.7	58.5
9	98.2	69.5
NATIONAL	93.2	57.0

The most striking detail about Table 2 data is the comparison of 1990 Indicators between the "6" and "9" states/territories categories. There is a 14% increase in the average rate of inclusion (i.e., 86.1% to 93.2%), and a 12% increase in the average graduation rate for students who receive special education (i.e., 57.2% to 69.5%).

Judging from the data in Table 2, the 9 states where

inclusionary education appears to be working well, and where graduation rates are higher on average are: Alabama, Alaska, Hawaii, Idaho, Mississippi, Montana, New Mexico, Texas, and Wisconsin. If we check 1989 data for the same 9 states, we find that rates of inclusion and graduation are quite similar.

What factors account for states' rates of inclusion and graduation? One previously unexplored factor may help explain such variations. State-to-state or regional variations in compliance with LRE mandates may account for differences in rates of inclusion and/or graduation? It is hard to verify this relationship at the national level because monitoring and compliance data are not yet standardized for all states/territories. Nevertheless, there may be enough existing information to allow us to take a first look. A preliminary analysis of federal compliance reports from April, 1989 to February, 1992 - covering 26 states and territories - reveals:

- \* 20 discrete instances when specific student disability groups were automatically placed by local school districts' in segregated classes and/or segregated schools;
- \* 15 of 20 (75%) of those instances when those same students were excluded from neighborhood public schools at 2x to 4x greater rates than statewide average rates of exclusion; and
- \* 12 of 20 (60%) of those instances when lower graduation rates were reported for students who were automatically segregated when compared to students who were not segregated within those same states.

There is obviously much more work that needs to be done in this area of public education. But perhaps this hint at a relationship between inclusionary education, compliance with federal mandates, and student outcomes will encourage future effort.

There is ample anecdotal information about successful examples of inclusionary education across the age span.

Inclusionary Preschool Programs. In Arkansas, a firm commitment to LRE mandates and the spirit of collaboration have taken root. In 1987, Project KIDS was initiated by the Association for Retarded Citizens (ARC) through a Developmental Disabilities Planning Council grant focusing on providing integrated preschool experiences for children with developmental disabilities, birth through five years old. The project provides placements into cooperating day care centers and offers ongoing technical assistance to these center staff. In support of the increasing success of Project KIDS, the ARC of Arkansas has also developed a Hospitality Program to provide families with needed time together

away from home.

Inclusionary Elementary Programs. In Forest Lake, Minnesota a collaborative university-school district relationship established the Achieving Membership Program. The Program began by returning three students with disabilities to their home school, Scandia Elementary, beginning in the 1990-1991 school year. In the 1992-1993 school year, five other elementary schools in the Forest Lake District are now welcoming students with severe disabilities into general education classes. Annual activities which support this growing collaborative relationship include: Integration and social network checklists for each student; peer observations; peer, parent, and support staff interviews; stages-of-concern questionnaires; ongoing training opportunities; and, monthly updates about achievements from the program.

In Frederick, Maryland a bold new step was taken in 1992 with the opening of Twinridge Elementary School. Following its initial design plans, Twinridge staff include neighborhood children with special education needs into regular classrooms with necessary aids and supports. Twinridge's inclusionary education program serves children with a diverse range of needs from kindergarten to grade five. Twinridge is gearing up for its next year of operation during 1993-1994, and there is every sign that the program's momentum and the school's staff are fueled for a second year of success.

Inclusionary Transition Programs. In Nashua, New Hampshire the public school system has demonstrated a progressive commitment to an inclusionary educational system -- at the secondary level -- which is paired with the notion of natural supports in the workplace. Like its counterparts at the state level, Nashua County agencies of General and Special Education, Vocational Education, and Vocational Rehabilitation have developed interagency agreements regarding youth in transition from school-to-work. These agencies are developing common administrative procedures, a common data base, and a common vision for quality jobs for all graduates. In addition, generic community organizations such as the Rotary, Chamber of Commerce, Family Support Council, and Town Council are all working with a local transition/employment consortium to support the district-wide commitment to inclusionary education at the secondary level.

The year 1993 may be the most promising time for children and youth who are entitled to special education in America. "Putting People First" may be the most accurate phrase used to describe the spirit with which education leaders are trying to pursue the 18-year-old goal of inclusionary education. With the impending reauthorization of the IDEA, there is still time to make the dream of the '70s a reality in the '90s.

If not now, when?....

Thank you for listening.

not maintain nuisance action under Michigan law based upon diminution in property value due to public fears about contamination in general area.

(*Adkins v. Thomas Solvent Co.*, Mich SupCt, No: 88897; 7/28/92)

A group of homeowners claim that a solvent company contaminated soil and ground water in the vicinity of their homes through the discharge of toxic chemicals and industrial waste. According to experts on both sides, the contamination has not reached and will not reach the homeowners' land. The group nevertheless claims that the contamination of neighboring land has adversely affected the value of their homes. They argue that the court should impose liability on the solvent company for any loss in property value due to public concern about contaminants in the general area.

Historically, Michigan has recognized two distinct versions of nuisance: public and private nuisance. A private nuisance is a non-trespassory invasion of another's interest in the private use and enjoyment of land. It evolved as a doctrine to resolve conflicts between neighboring land uses. The gist of the action is an interference with the occupation or use of land or an interference with servitudes relating to land. There are countless ways to interfere with the use and enjoyment of land, and the pollution of ground water may, depending on the facts, constitute a public or private nuisance.

According to the *Restatement of Torts (Second)*, Section 821D-F, an actor is subject to liability for private nuisance for a non-trespassory invasion of another's interest in the private use and enjoyment of land if (a) the other has property rights and privileges in respect to the use or enjoyment interfered with, (b) the invasion results in significant harm, (c) the actor's conduct is the legal cause of the invasion, and (d) the invasion is either (i) intentional and unreasonable, or (ii) unintentional and otherwise actionable under the rules governing liability for negligent, reckless, or ultrahazardous conduct. Once the general standards have been stated, however, application to any given set of facts is problematic.

The crux of the homeowners' complaint is that publicity concerning the contamination of ground water in the area (although concededly not their ground water) caused diminution in the value of their property. This theory cannot form the basis of recovery because negative publicity resulting in unfounded fear about dangers in the vicinity of the property does not constitute a significant interference with the use and enjoyment of land.

Examination of the historic development of nuisance law helps clarify the fallacy underlying the homeowners' theory. As the doctrine of trespass was gradually transmuted into the action upon the case for nuisance, the requirement that the injury involve entry into the complainant's land

was eliminated. To limit the broader action on the case for nuisance, courts added the requirement that a litigant seeking to recover for nuisance must show a legally cognizable injury, requiring proof of a significant interference with the use and enjoyment of land. Although much confusion has arisen because of the failure to discern that injury and damage are different concepts, an interference that is not substantial and unreasonable does not give rise to an action for damages against the person causing it, *damnum absque injuria*. Stated otherwise, while nuisance may be predicated on the conduct of a defendant that causes mental annoyance, it will not amount to a substantial injury unless the annoyance is significant and the interference is unreasonable in the sense that it would be unreasonable to permit the defendant to cause such an amount of harm without paying for it.

Nuisance on the case involved the common law's attempt to ensure accommodation between conflicting uses of adjoining property. Because the doctrine sought to acknowledge the right of both the property owner to carry out a particular use and the neighbor whose property or use and enjoyment of property might be injured by the use, *de minimis* annoyances were not actionable. Only for a substantial interference with the use and enjoyment of property would an action lie. As a part of this scheme, courts frequently concluded that diminution in property values alone constitutes *damnum absque injuria*.

The homeowners have stipulated the dismissal of all claims except those predicated upon an alleged depreciation in the market value of the property because of the unfounded fears of purchasers. The fact that the homeowners make no claim for relief arising out of their own fears illustrates the point that the company's activities have not interfered with their use and enjoyment of property.

Property depreciation alone is insufficient to constitute a nuisance. A cause of action for nuisance may not be based on unfounded fears. Just as the development of nuisance on the case responded to the limitations of trespass by recognizing a cause of action when there was damage, but not injury amounting to use, the modern formulation of nuisance in fact, acknowledges changing conditions by declining to recognize a cause of action where damage and injury are both predicated on unfounded fear of third parties and depreciates property values.

The homeowners do not contend that the condition created by the company causes them fear or anxiety. Thus, not only have they not alleged significant interference with their use and enjoyment of property, they do not here posit any interference at all.—Boyle, J.

**Concurrence.** I agree with the result reached by the majority.—Riley, J.

**Dissent.** The homeowners should be allowed to recover damages in nuisance on

proofs introduced at a trial tending to show that the company actually contaminated soil and ground water in the neighborhood; that the market perception of the value of their homes was actually adversely affected by the contamination, and thus their loss was causally related to the company's conduct.—Levin, J., and Cavanagh, C.J.

## Schools and Colleges

### PUBLIC SCHOOLS—

**State compulsory school attendance laws do not so restrain students' personal liberty as to create special custodial relationship between schools and students that gives rise to Fourteenth Amendment duty of schools to protect students from harm.**

(*D.R. v. Middle Bucks Area Vocational Technical School*, CA 3 (en banc), No. 91-1136, 8/11/92; see 60-LW 2430)

Two female high school students allege that several male students in a graphic arts class physically, verbally, and sexually molested them. This conduct took place primarily in the unisex bathroom and a dark-room, both of which were part of the graphic arts classroom. One of the defendants, a student-teacher, was in the graphic arts classroom during the time of the conduct in question. The plaintiffs do not claim to have informed her of the molestation but assert that she was or should have been in the classroom during the time of the acts complained of and either heard or should have heard the incidents taking place. One plaintiff avers that she told the school's assistant director, but the director did not take action to correct the situation. Based on such allegations, the complaint asserts violations of plaintiffs' civil rights under 42 USC 1983 and 1985(3) by the school district, teachers, and named officials.

The district court held that a special custodial relationship between plaintiffs and the school defendants was established by virtue of the school's compulsory attendance laws, creating an affirmative constitutional duty on the part of the school defendants to protect the plaintiffs from the types of acts committed by the student defendants. It found that the existence of the affirmative duty to act was complemented by Pennsylvania law, which gives school officials *in loco parentis* standing to take any action necessary to prevent disciplinary infractions and educationally disruptive behavior. Nevertheless, the court concluded that the complaints failed to allege sufficient knowledge on the part of the school defendants to charge them with the requisite reckless indifference to plaintiffs' rights to support a Section 1983 claim.

While the plaintiffs appeal on the ground that the district court impermissibly narrowed their allegations by focusing on the

school officials' awareness of the sexual misconduct, the defendants assert that the district court can be affirmed on the ground that no special relationship of constitutional proportion existed between plaintiffs and the school defendants.

*DeShaney v. Winnebago County Dept. of Social Sciences*, 489 U.S. 189, 57 LW 4218 (1989), declined to impose a duty upon a state to protect the life, liberty, or property of a citizen from deprivations by private actors absent the existence of a special relationship. *DeShaney* involved the state's repeated receipt of reports of abuse of a minor by his father and the state's failure, notwithstanding these reports, to remove the child from his father's custody. The court stated that as a general matter a state's failure to protect an individual against private violence does not constitute a violation of the Due Process Clause.

The court did acknowledge, however, that in certain limited circumstances the Constitution imposed upon the state affirmative duties of care and protection. In *Estelle v. Gamble*, 429 U.S. 97 (1976), the court held that the state had an affirmative duty to provide adequate medical care for prisoners since incarceration prevents an inmate from caring for himself. The court extended the *Estelle* exception from the Eighth Amendment context to a Fourteenth Amendment due process claim in *Youngberg v. Romeo*, 457 U.S. 307 (1982), involving involuntarily committed mental patients. *DeShaney* left open the possibility that the duty owed by a state to prisoners and the institutionalized may also be owed to other categories of persons in custody by means of similar restraints on personal liberty.

Our court has read *DeShaney* as primarily setting out a test of physical custody. In *Philadelphia Police & Fire Ass'n for Handicapped Children v. Philadelphia*, 846 F.2d 156, 57 LW 2682 (CA 3 1989), the issue was whether the state could be held liable for withdrawing vocational and support services provided in a daily program for mentally handicapped children. We refused to expand the *Estelle-Youngberg* exception to those children since it was impossible to find an affirmative duty to protect the mentally retarded living at home.

The plaintiffs argue that, unlike the plaintiffs in *Philadelphia Police* who chose to receive state services, they were required by law to attend school and therefore were in the state's custody during the school hours under the *Estelle-Youngberg* exception. The *Estelle-Youngberg* type custody, referred to by the court in *DeShaney*, however, sharply contrasts with the plaintiffs' situation in this case. The state's duty to prisoners and involuntarily committed patients exists because of the severe restriction of liberty in both environments. Institutionalized persons have no power to provide for themselves, nor can they seek outside help to meet their basic needs.

Here it is the parents who decide whether education will take place in the home, in

public or private schools, or in a vocational-technical school. Parents remain the primary caretakers. By requiring the plaintiffs to attend assigned classes as part of their high school educational program, and authorizing officials to engage in disciplinary control over the students, the school defendants did not restrict their freedom to the extent that they were prevented from meeting their basic needs. Thus, the defendants' authority over them during the school day cannot be said to create the type of physical custody necessary to bring it within the special relationship noted in *DeShaney*, particularly when their channels for outside communication were not totally closed.

Some courts have imposed a constitutional duty to protect foster children by analogy to involuntarily institutionalized individuals. Although the situation of a public school child is closer to that of a foster child than to an institutionalized person, the foster care analogy is not decisive. A relationship between the state and foster children arises out of the state's affirmative act in finding the children and placing them with state-approved families. The child's placement renders him or her dependent upon the state, through the foster family, to meet the child's basic needs.

Students, on the other hand, do not depend upon the schools to provide for their basic human needs. Even during the school day, parents or others remain a child's primary caretakers and decisionmakers. Pennsylvania's compulsory attendance law demands only that parents ensure that their child receive an appropriate education. Thus, the relationship between foster children and public school students is not controlling here.

Our position that no special relationship based upon a restraint of liberty exists here is in accord with the only other appellate case to directly confront this issue to date. *J.O. v. Alton Community Unit School Dist. 11*, 909 F.2d 267 (CA 7 1990).

We read plaintiffs' amended complaints to assert a theory of constitutional liability that is viable even in the absence of a special relationship duty. In *Stoneking v. Bradford Area School District*, 882 F.2d 720, 58 LW 2135 (CA 3 1989), this court recognized that state defendants may be held liable for deliberately and recklessly establishing and maintaining a custom, practice, or policy that caused harm to a student when a teacher sexually molested a student. We stated that nothing in *DeShaney* "suggests that state officials may escape liability arising from their policies maintained in deliberate indifference to actions taken by their subordinates." We emphasized that *DeShaney* was distinguishable because the abuse there "resulted at the hands of a private actor." We agree with the district court that this case lacks the linchpin of *Stoneking*, namely, a violation by state actors.—Seitz, J.

**Dissent.** The plaintiffs have sufficiently pled facts alleging a breach of the duty to

protect triggered by the special relationship that arises between vulnerable school children and their public schools.—Sloviter, C.J., Mansmann, Scirica, and Nygaard, JJ.

**Dissent.** The unique circumstances of this case imposed a constitutional duty on the school to protect the students' liberty interests for a combination of reasons: state law compelled the student to attend school; the student, by reason of her disability, lacked the mental capacity for mature judgment; and the school took affirmative steps to confine the student to situations where she was physically threatened.—Becker, J.

## United States

### FEDERAL TORT CLAIMS ACT—

**Federal district court has inherent authority to order that damages payable under Federal Tort Claims Act to disabled child be paid in form of fully reversionary trust if it is in child's best interest to do so, provided that government's obligation ceases upon payment of fixed lump sum to fund trust.**

(*Hull v. U.S.*, CA 10, No. 91-5091, 8/10/92)

The infant plaintiff was born at a hospital owned and operated by the United States. As a result of physicians' negligence, the infant suffered brain damage, cerebral palsy, with spastic quadriplegia, and developmental delay. He will require constant aid and therapy for the rest of his life.

The government admitted liability. The district court awarded the infant over \$8 million for medical services and support, fund management, lost wages and impairment of earning capacity, and pain and suffering. The court instructed that the damages awarded to the infant be placed in a trust fund managed by a third party trustee. The court wanted to establish a trust that would revert fully to the government upon the infant's death, apparently because it was concerned that the infant's safety would be in jeopardy if his parents were to receive the unspent portion of this damage award upon his death. However, the court believed that it lacked power to impose a full reversionary provision absent the parents' consent.

Instead, the court imposed a partial reversionary provision whereby if the infant were institutionalized during his life, any unspent funds remaining from the damage award would be divided at the time of his death as follows: His surviving parents or his estate would receive that percentage of the remaining trust funds obtained by dividing the infant's age at the time of institutionalization by 69.8, his life expectancy at the time of trial. The remainder of the trust assets would revert to the government. Thus, the infant's parents potentially would receive an economic benefit upon the in-

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# CH.A.D.D. Position on Inclusion

Adopted by CH.A.D.D. National Board of Directors on May 4, 1993

CH.A.D.D. believes that every child in America is entitled to a free and appropriate public education. The needs of many children are adequately met through regular education and placement in the regular classroom. There are times, however, when regular education is not sufficient to ensure that all children succeed in school. Access to a continuum of special education placements and services is especially important for many children with disabilities. This ensures their right to receive a free and appropriate public education designed to meet their unique needs and which facilitates their achievement in school.

There was a time in America when a free and appropriate public education was not guaranteed by law. Indeed, it was not all that long ago that children with undetected disabilities languished unnoticed in classrooms, and parents of children with identified disabilities were frequently told that their children could not be educated in the public schools because no special education services were available. That all changed with the passage in 1975 of Public Law 94-142 which CH.A.D.D. considers to be a benchmark in meeting the educational needs of all children.

Since renamed the Individuals with Disabilities Education Act (IDEA), this landmark legislation, among other things, mandates:

- a free and appropriate public education in the least restrictive environment designed to meet the unique needs of children with disabilities;
- the right to a comprehensive, multi-disciplinary assessment;
- a team approved Individualized Education Program (IEP) that includes current functioning levels, instructional goals and objectives, placement and services decisions, and procedures for evaluation of program effectiveness;
- the availability of a continuum of special education services and placements appropriate to the child's specific learning needs; and
- procedural safeguards to ensure the rights of children with disabilities and their parents are protected.

The principles embodied in the IDEA are as valid today as they were when P.L. 94-142 was passed eighteen years ago. The problems facing the education of children with disabilities in public schools are not the result of the Act, but rather its incomplete implementation. While it may be true that there are some children who are being excluded from the regular education classroom without sufficient reason, it is equally true that many children with attention deficit disorders (ADD) and other disabilities continue to be denied access to an appropriate range of special education and related services and settings.

We believe that the concept of inclusion should reflect society's commitment that every child be educated in the environment that is most appropriate to that child's identified needs. CH.A.D.D. supports inclusion defined as education which provides access to appropriate support and remediation at every level to facilitate each child's ability to participate and achieve. The environment in which these services can best be delivered depends on the needs of the individual student.

Many children with disabilities are educated successfully in regular classrooms with appropriate accommodations and supports. However, others require alternative environments to optimize their achievement. CH.A.D.D. supports this continuum of services and placements. As state and federal governments proceed with the reform of public education, they must ensure that schools continue to be required to accommodate to the individual needs of children with disabilities by providing a variety of options in support of the right of each child to a free and appropriate education.

Children with attention deficit disorders, like children with other disabilities, can exhibit a range of impairment, thus requiring a continuum of educational services. For some children with attention deficit disorders, screening and prereferral adaptation in the classroom may be all that is needed. For others, it will be necessary to refer for a more comprehensive assessment which could lead to a formalized IEP process. Children with attention deficit disorders have diverse needs and will require enhanced teacher preparation in

identification, as well as the planning and implementation of a variety of intervention and instructional strategies.

As Congress debates education reform, let it not lose sight of the integrity of the principles embodied in IDEA. Specifically, we recommend:

- a continued recognition of the importance of the availability of a continuum of special education services and placement settings designed to meet the individual needs of each child with a disability;
- increased monitoring of the mandated practices and procedural protections contained within the IDEA to ensure better compliance with the law;
- maintenance of the integrity of funding streams for special education to ensure that we do not return to the days when a public school could tell a parent of a child with a disability that the school cannot "afford" to provide special education and related services;
- a renewed commitment to preservice and inservice teacher training and staff development so that all educators can competently recognize the educational needs of all students and, when necessary, make appropriate accommodations and referrals for comprehensive assessments; and
- stronger collaboration between regular and special education teachers.

Adherence to the principles embodied in IDEA will ensure that all children are included in the federal mandate for a free and appropriate public education. We welcome the opportunity to continue to be a part of the education reform movement.



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P R E S S   R E L E A S E

MAY 24, 1993

**LEADING CHILDREN'S DISABILITY ADVOCACY GROUP CHALLENGES  
PROponents OF "INCLUSION" TO  
REMAIN TRUE TO PUBLIC LAW 94-142**

**Washington, D.C.:** Children and Adults with Attention Deficit Disorders (CH.A.D.D.) released a statement today that waved a caution flag at the "inclusion" movement in special education.

"For some advocates of school reform, 'inclusion' means that every child with a disability can be educated in the regular classroom. CH.A.D.D. considers that a laudable goal," said Bonnie Fell, President of CH.A.D.D. "But there are many times when regular education is not enough to ensure a child's success in school. Access to a range of special education placements and services is critical for many children with disabilities. We want to ensure that a continuum of educational services and placement settings remains available in cases where a child's individual needs cannot be met in the regular classroom."

The CH.A.D.D. Position Paper on Inclusion, adopted May 4, 1993, states that "while it may be true that there are some children who are being excluded from the regular education classroom without sufficient reason, it is equally true that many children with Attention Deficit Disorders (ADD) and other disabilities continue to be denied access to an appropriate range of special education and related services."

The individuals with Disabilities Education Act (IDEA), passed in 1975 as Public Law 94-142, mandates a free and appropriate public education in the least restrictive environment

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designed to meet the unique needs of children with disabilities. The law requires that school systems make available a continuum of special education services and placements appropriate to the child's specific learning needs.

"Congress is again visiting education reform," said Dr. Wade Horn, CH.A.D.D.'s National Executive Director. "CH.A.D.D. urges Congress to maintain the integrity of the principles embodied in IDEA." Specifically, CH.A.D.D. recommends:

- o a continued recognition of the importance of the availability of a continuum of special education services and placement settings;
- o increased monitoring of mandated practices and procedural protections contained within the IDEA;
- o maintenance of the integrity of funding streams for special education;
- o a renewed commitment to pre-service and in-service teacher training and staff development; and
- o stronger collaboration between regular and special education teachers.

Copies of the CH.A.D.D. Position Paper On Inclusion are available.

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Taibi, Anthony D. Race consciousness, communitarianism, and banking regulation. 1992 U. Ill. L. Rev. 1103-1117 (1993).

White, Lawrence J. The Community Reinvestment Act: good intentions headed in the wrong direction. 20 Fordham Urb. L.J. 281-292 (1993).

### BANKRUPTCY LAW

Frost, Christopher W. Organizational form, misappropriation risk, and the substantive consolidation of corporate groups. 44 Hastings L.J. 449-498 (1993).

Green, Janice L. CERCLA and the Bankruptcy Code. 11 Temp. Envtl. L. & Tech. J. 171-201 (1992).

Kratzke, Nancy Hisey. The right to object to claimed bankruptcy exemptions-- a question of timing? 45 Okla. L. Rev. 477-492 (1992).

McNeal, Robert. The dischargeability of environmental liabilities in bankruptcy. 6 Tul. Envtl. L.J. 61-89 (1992).

Roberts, Mike. The conundrum of directors' duties in nearly insolvent corporations. 23 Mem. St. U. L. Rev. 273-292 (1993).

Shaw, Patrick D. Comment. See no evil, speak no evil: discharging CERCLA claims in bankruptcy without notice. 6 Tul. Envtl. L.J. 127-156 (1992).

### BIBLIOGRAPHY

Knaak, Nancy. A complete bibliography of writings by Harold J. Berman. 42 Emory L.J. 561-598 (1993).

### CIVIL LAW

Brumm, Nicholas D.S. Divergent models of public law in Latin America: a historical and prescriptive analysis. 24 U. Miami Inter-Am. L. Rev. 1-35 (1992).

### CIVIL RIGHTS

Colbert, Douglas L. Bifurcation of civil rights defendants: undermining Monell in police brutality cases. 44 Hastings L.J. 499-578 (1993).

Glennon, Theresa. Disabling ambiguities: confronting barriers to the education of students with emotional disabilities. 60 Tenn. L. Rev. 295-364 (1993).

Imbrogno, Lisa M. Note. Can you have your cake and eat it too? Ratification of releases of ADEA claims. 20 Fordham Urb. L.J. 311-342 (1993).

Johnson, Alex M., Jr. Defending the use of quotas in affirmative action: attacking racism in the nineties. 1992 U. Ill. L. Rev. 1043-1073.

McGinley, Ann C. Credulous courts and the tortured trilogy: the improper use of summary judgment in Title VII and ADEA cases. 34 B.C. L. Rev. 203-256 (1993).

Patton, Alison L. Note. The endless cycle of abuse: why 42 U.S.C. section 1983 is ineffective in deterring police brutality. 44 Hastings L.J. 753-808 (1993).

Sherer, Monica L. Comment. No longer just child's play: school liability under Title IX for peer sexual harassment. 141 U. Pa. L. Rev. 2119-2168 (1993).

Gender Fairness. Articles by Justice Alice Robie Resnick, Carol J. Suter, James D. Dennis, R. Gary Winters, Joe A. Simmons, Johnnie L. Johnson, Jr., Hon. Mary Cacioppo, Christopher E. Smith, James Leonard and Stephen C. Veltri. 19 Ohio N.U. L. Rev. 549-800 (1993).

#### COMMERCIAL LAW

Cohen, Audrey P. Note. Equitable and non-equitable contribution under CERCLA section 113. (*United States v. Kramer*, 757 F. Supp. 397, D.N.J. 1991.) 11 Temp. Envtl. L. & Tech. J. 281-302 (1992).

Henrichs-Cohen, Starla. Note. EEC Treaty Article 115--the surviving safeguard: ridding residual Member State protection in the Single Market. 24 Law & Pol'y Int'l Bus. 553-587 (1993).

Medwig, Michael T. Note. The new law merchant: legal rhetoric and commercial reality. 24 Law & Pol'y Int'l Bus. 589-616 (1993).

Tyson, John M. Drafting, interpreting, and enforcing commercial and shopping center leases. 14 Campbell L. Rev. 275-322 (1992).

Wetter, J. Gillis and Charl Priem. Costs and their allocation in international commercial arbitrations. 2 Am. Rev. Int'l Arb. 249-349 (1991).

#### COMMUNICATIONS LAW

Zpevak, Michael J. FCC preemption after Louisiana PSC. 45 Fed. Comm. L.J. 185-217 (1993).

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SPECIAL EDUCATION AS A HUMAN AND LEGAL RIGHT

by Stanley S. Herr\*

**INTRODUCTION**

International bodies have long recognized the rights of children with disabilities to receive suitable education. Over the last 40 years, this right has been firmly enunciated in a line of UN declarations and covenants. From the Universal Declaration of Human Rights (1948) to the Convention on the Rights of Child (1990), formulations of the right to special education have become more specific and binding in character.

Legislative developments in many parts of the world now regard access to education for the child with a disability as a right, not a privilege. In developed nations, statutory frameworks often carefully prescribe such a child's right to a free and appropriate education. To varying degrees of detail, those laws require due consideration of the educational environment least restrictive to the particular child's needs, as well as safeguards in identifying, assessing, and placing the child recognized as having special educational needs.

In developing nations, such legal provisions are often rudimentary or nonexistent. Countries at different stages of economic and political development may seek or adopt laws designed to be inclusive of all children with disabilities, while

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acknowledging that the implementation of such laws is inevitably gradual and incomplete. Israel and Czechoslovakia are but two of many such examples.

This chapter offers an overview of a complex and rapidly evolving field of social legislation. Part 1 identifies the main sources of international human rights addressing educational and special educational requirements of the child with a mental or physical disability. Part 2 illustrates the incorporation of such rights in national laws by looking at selected case studies. The conclusion notes some of the implications of these international and national experiences for countries around the world.

## **I. INTERNATIONAL STANDARDS**

### **General Human Rights**

The UN adopted the Universal Declaration of Human Rights (1948) as a common measure of "achievement for all people and all nations," with prescribed rights to be protected by the rule of law and by progressive steps of implementation. Article 26 proclaims that "everyone has the right to education" and that, at least in its elementary stages, it should be free and compulsory. This guarantee was cited by a U.S. court in support of the educational rights of a teenager (described as "borderline retarded" and emotionally disturbed) who was denied schooling while waiting trial under adult criminal laws (Commonwealth v. Sadler, 1979). In addition to this pledge of universal education, the article is significant for its insistence that parents have a right to choose

the kind of education given to their child. Other articles affirm rights to equal protection and freedom from discrimination (art. 7) and to a fair hearing by an impartial tribunal when basic rights are at issue (art. 10).

International covenants as treaties can give legal force to the rights agreed to by the signatory parties. An example of this standard-setting and implementation process is the International Covenant on Economic, Social, and Cultural Rights (1966). Article 10 recognizes that families should receive the "widest possible protection and assistance," especially when responsible for the education and care of dependent children. State parties affirmed "the right of everyone to education" and the obligation to make primary education compulsory, available and free to all (art. 13). The liberty interests of parents and legal guardians to make educational choices for their children is also recognized. Although the Covenant's rights are subject to the caveat of "available resources," treaty nations accept the duty to achieve the full realization of these rights on a progressive basis and to adopt legislative measures consistent with these human rights objectives (art. 2).

#### **Disability Rights**

Parents and other advocates for persons with mental retardation led the way for the specific inclusion of persons with special needs in human rights charters. The Non-Governmental Organization (NGO) now known as the International League of Societies for Persons with Mental Handicap, promulgated a

declaration in Jerusalem in 1968 that became the basis for the United Nations Declaration on the Rights of Mentally Retarded Persons (1971). Article 2 of the UN declaration expressly listed education as one of the essential rights and services to enable the person with mental retardation to develop his or her "ability and maximum potential."

Educational and equality rights were then extended to persons with all types of disabilities. The UN Declaration on the Rights of Disabled Persons (1975) enumerated education, along with training, rehabilitation and other services, as rights to enable not only maximum development of capabilities and skills, but of the person's "social integration or reintegration" (art. 6). Furthering integration goals, the Declaration called for measures to foster self-reliance, normalization, and fundamental rights equal to their "fellow-citizens of the same age." If school-aged children without disabilities enjoyed entitlements to public education, it would follow that their peers with disabilities should have similar access rights.

#### **Children's Rights**

The UN Declaration on the Rights of the Child (1959) was adopted unanimously by the General Assembly. Principle 7 states, without exception, that "the child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages." The child's best interests constitutes the "guiding principle" for determining that education, as a matter of equal opportunity, should enable the child to become a useful

member of society and to develop his or her abilities, judgement, and sense of responsibility. Principle 2 promises, "by law and other means," that the child shall have the opportunities for mental, physical, moral, spiritual and social development, while Principle 5 makes clear that the child with a disability is also entitled to "the special treatment, education and care required by his particular condition."

These rights have now been strengthened and made more concrete by a United Nations treaty. The UN Convention on the Rights of the Child (1990) requires ratifying nations to recognize the child's right to education and the right to habilitative and rehabilitative services, including education for the child with a disability. Article 23 incorporates these services under the rubric of the "right to special care." Such services shall be provided free of charge, "whenever possible," and "shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreational opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development ...." (art. 23 3, emphasis added). The right to education is also spelled out under article 28, not only in terms of the familiar guarantees about primary education but in encouraging the different forms of secondary education, regular school attendance, and vocational information and guidance for all children. In framing educational programs, ratifying states agree to recognize the diversity of

abilities that children present (including development of the child's talents and abilities to the child's fullest potential), and to respect the values of the child's parents. These 119 states must report periodically to the UN Committee on the Rights of the Child on the realization of their convention obligations (art. 44). The initial reports are due in September 1992 for the first group of ratifying states and the Committee (formed in February 1991 and chaired by Ms. Hoda Badan) will review the reports to ascertain national progress in adopting and implementing children's rights. Even though its fulfillment will take years of progressive implementation, the convention represents an extraordinary consensus of UN members as to the standards and values which ratifying states accept as legally binding.

## **II. NATIONAL CASE STUDIES**

### **United States of America**

The United States has a strong tradition of using litigation, legislation and child advocacy to secure and defend the rights of children with disabilities. The right to a free appropriate education for such children offers an excellent case study of this interplay of forces.

Judicial decisions in the early 1970s revealed school practices that often excluded, misclassified or inappropriately educated children with disabilities or suspected disabilities. Mills v. Board of Education of the District of Columbia (1972), a class-action precedent based on equal protection, due process and statutory grounds, ruled that children with physical or mental

disabilities were entitled to a suitable publicly supported education. As a matter of constitutional law, the federal district court in Mills held that lack of funds was not an adequate defense and that if sufficient additional funds could not be obtained, public officials would be obligated to spend available funds "equitably in such a manner that no child is entirely excluded from a publicly supported education ...." (p. 876). Another federal class action, Pennsylvania Association for Retarded Children v. Pennsylvania (1972), produced a statewide consent decree requiring a free program of education and training appropriate to "every retarded child." This decree was also noteworthy for its finding that the state could no longer deny or postpone a child's education on the basis of presumed ability to profit from instruction.

The two landmark cases sparked similar right-to-education cases across the country. This advocacy led to a substantial body of case law upholding the so-called "zero reject policy" of universal education for all children, regardless of the nature or severity of their handicaps (Turnbull, 1986). Beside inclusion, court decisions also focused on fairness in identifying and placing children in special education classes, ensuring "mainstream" and other least restrictive educational environments appropriate for a particular child, and setting minimum standards for the habilitation of children housed in institutions that had previously offered inadequate programs of instruction (Herr, 1983).

Mills and related cases helped to persuade Congress that a national legislative solution was needed. The Education for All

Handicapped Children Act [EAHCA] produced that solution: a federal grant program to the states conditioned upon assurances that the State educational agency would guarantee "free appropriate public education" at pre-school, elementary and secondary school levels. The law required an "individualized education program" that included both special instruction to meet the child's unique needs and "related services" such as transportation, developmental services and other supportive services needed to assist the child to benefit from special education.

The 1975 Act was also notable for its procedural safeguards and individually enforceable rights. Due process considerations were emphasized at every stage of a child's identification, evaluation, and placement as a student with a disability. The Act mandated that parents receive prior written notice whenever the educational agency proposes to initiate or change the child's identification, evaluation, or placement as well as the provision of a free appropriate public education. These requirements also apply when the agency refuses to take such action requested by the parent, guardian or parent surrogate. No child is to lack a representative since the state education agency must assign a parent surrogate to a child whose parents are unknown or unavailable or if the child is a ward of the state. The written notice must describe, in language understandable to a member of the general public, the proposed action, the reasons for it, the evaluation procedure or report relied upon by the agency, and the procedural safeguards available to the parents.

Procedural safeguards in contested special education matters are extensive. The child's parents have an opportunity to examine all relevant school records. They are entitled to an independent educational evaluation by a qualified examiner not employed by the educational agency responsible for their child. If aggrieved by an agency decision, they have the opportunity to have a due process hearing before an impartial hearing officer. At such a hearing, the parents may be accompanied by a lawyer, experts or other advocates. They have the right to present evidence; compel the attendance of witnesses and cross-examine them; to make oral and written arguments; and to receive a written decision and findings of fact. If still dissatisfied, the child's representatives can obtain an administrative appeal on the state level. After exhausting these administrative remedies, representatives can bring a civil action in state or federal court. The court will then receive the administrative record, hear any additional evidence that is offered, and grant appropriate relief. If the parents or guardians are the prevailing parties, that relief can include the payment of their attorneys' fees, a possibility which acts as a strong incentive for educational agencies not to contest weak cases.

Other hallmarks of American law are its emphasis on the least restrictive educational alternatives and non-discrimination in the provision of services to persons with disabilities. Under the EAHCA, states must, "to the maximum extent appropriate," ensure placement practices that only remove the child from the regular educational environment when the severity or nature of the child's

disability precludes the satisfactory use of regular classes with supplementary aids and services.

Federal antidiscrimination law incorporates a similar requirement. The Rehabilitation Act (1973) and its accompanying regulations bar discrimination by recipients of federal assistance -- which includes virtually every public school in the country. Its equality and integration goals require that children with disabilities receive nonacademic services such as meals and recess periods in as integrated a setting as possible, that their facilities and services are comparable to those for non-disabled students, and that their educations are provided as close to home as possible. The Americans with Disabilities Act (1990) extends these non-discrimination norms to governmental services as well as to public accommodations in the private sector, such as day care centers, private schools, adult education centers, and other places of education. With strenuous efforts and full implementation over time, this Act is expected to lower barriers to the mainstreams of American life.

Although the U.S. Supreme Court has tended to interpret disability rights in a conservative fashion, the lower courts and Congress continue to be vigorous protectors of children with disabilities. This continuing activism is due to the strength and sophistication of the disability rights movement and the wide array of class and individual advocacy techniques available to child advocates in the field of special education (Herr, 1991).

In Hendrick Hudson Central School District v. Rowley (1982),

the U.S. Supreme Court held that where a deaf child was achieving success in a mainstream classroom, a sign-language interpreter would not be required since the Individualized Educational Program (IEP) was properly determined, provided some benefit, and the child was reasonably expected to make progress toward the program's educational objectives.

Post-Rowley decisions of the lower courts show, however, that judges have used a variety of interpretive techniques to read these standards expansively to the advantage of child litigants and their parents (Weber, 1990). Furthermore, after the Court weakened the enforcement of disability rights in a decision on state sovereign immunity and a decision barring attorneys' fees in special education cases, Congress struck back in 1986 with two laws lifting the state immunity defense and restoring the rights of prevailing parents to recover attorneys' fees and other litigation costs. In recent years, the Court has seemed more accepting of lower court activism, for instance, letting stand an award of attorneys' fees to parents who prevail in EACHA administrative proceedings (Moore v. District of Columbia, 1990) and letting stand an order for compensatory education, in which the trial court awarded a 12-year-old child with a disability thirty months of appropriate education at public expense beyond age 21 (the upper age limit of eligibility under the Act) because the school district had unreasonably delayed the placement (Lester H. v. Gilhool, 1991).

In summary, the U.S. has witnessed substantial progress over the last two decades through implementation of a legislative

framework that generally exceeds international human rights standards. As a result of coordinated legal, parental, and professional association advocacy (e.g., Council for Exceptional Children, American Association on Mental Retardation), that framework has survived economic recession and conservative Presidential administrations. Although the ambitious goals of the 1975 Act were sometimes undermined by bureaucratic resistance and underfunding, the law contributed to transforming special education in America (Weber, 1990). On a local level, child advocacy techniques of fact finding, negotiation, mediation and litigation continue to assure that special education rights are taken seriously, thus narrowing the gap between rhetoric and reality.

#### IV. ENGLAND AND WALES

The British Parliament has mandated "special educational provision" for children with "special educational needs." The Education Act [EA] 1981, is the main, but not exclusive source of duties imposed on local education authorities (LEAs) "for securing that special educational provision is made for pupils who have special educational needs" [§ 2(1)]. The 1981 Act modifies the Education Act, 1944, which had imposed duties on LEAs to "ascertain" the local children requiring special educational treatment under a medical model of examination by a medical officer, with the option of an LEA requiring a medical certificate for the "purpose of securing the attendance of the child at a special school." [§ 34(5)]. The 1981 Act repealed those procedures, and substituted a statutory framework of LEA discretion to

determine which children with "a learning difficulty which calls for special educational provision" are to receive an assessment and statement of educational needs, and which are to have their special educational needs met more informally. The core provision embodying this discretion -- Section 7(1) of the EA 1981 -- states that where an assessment has been made, the LEA "shall, if they are of the opinion that they should determine the special educational provision that should be made for [the child], make a statement of his special educational needs and maintain that statement ...."

This two-tier system of special education has provoked critical commentary and litigation. Buss (1985) noted that the vague statutory definitions and lack of statutory standards for classifying children with statements from those without statements produced the possibility that a "wider group" of children with milder handicaps might be excluded from the statutory protections of the statement-recording and implementing processes, while still imposing on them a special label and a different form of education. Hannon (1982) has criticized the 1981 Act for its "omissions and generalities" and for its failure to embody the Warnock Report's [the 1978 policy review of the Committee of Inquiry into the Education of Handicapped Children] call for clear entitlements for the wider group of children who would not have statements of their special educational needs.

Appellate decisions have confirmed the interpretation that LEAs have substantial discretion to trigger the statutory safeguards of assessment and statement making. In R v. Secretary of State for Education and Science Ex Parte Lashford (1988), the Court of Appeal observed that it appeared to be educational policy that a statutory statement was not needed if the child's special educational needs could be provided in the child's ordinary school. In upholding the LEA's refusal to provide a statement and residential schooling for a teenage girl with "learning difficulty" and "low average ability" who was receiving "a remedial class" in an ordinary school, Dillon L.J., questioned the two-tier structure of special education in these terms:

It is difficult to see why the Act, in making provision with respect to children with special educational needs, has not simply imposed on the local education authorities a general duty to assess the special educational needs of all children who have such needs, and to make whatever special educational provision should be made for the child's needs so assessed, if the child's parents were not making 'suitable arrangements.'

This statutory scheme may be designed to avoid the perceived burden of requiring special education plans for the less severely disabled students who could receive education in ordinary schools. As noted in R v. Secretary of State for Education and Science Ex Parte Edwards (1991), only 2% of the school population receives the statutory statement under EA § 7 while a wider group -- an estimated 18% -- are presumed to have their special educational needs met by ordinary schools without the Act's formalities.

For the child with special educational needs that call for a statement, the authority must observe certain procedural rights. Before an assessment can be made, the parent must be notified of the procedure to be followed in making the assessment and the right to make representations and submit written evidence. If the LEA on the basis of that assessment determines special education provision is required, the LEA shall specify that service and arrange for it to be made available to the student.

The duty to mainstream or integrate the student is imposed on ordinary schools [i.e., children with special needs in such schools should engage, as "reasonably practicable," in school activities together with children who do not have special educational needs, § 2(7)] and on LEAs. This latter duty is qualified by the views of

the child's parents, and is conditional on the compatibility of integration with the child's receiving the required special education, the "efficient education" of the child's classmates, and the "efficient use of resources." The breadth of these conditions and the lack of additional resources have led some commentators to describe integration as a weak duty under the Act (Kirp, 1982; Hannon, 1982). Although some progress towards education in ordinary schools has been achieved (at present about 40 per cent of children with statements attend such schools), new education laws may reduce integration as schools seek to attract higher achieving students and as educational policies favor the most able students over those with special education needs or social disadvantages (Mittler, 1992).

Parents can participate in the statement-making process and challenge statements in several ways. They can submit their views and written evidence at the assessment and statement-making stages. If they disagree with any part of a proposed statement, they may arrange one or more meetings with an LEA representative "to discuss the relevant advice." If the LEA then determines to modify, leave unchanged or make no statement, the parents will receive notice of their right to appeal to an appeal committee which has only advisory powers, or to the Secretary of State if appealing from a decision to make no statement. If still dissatisfied after an appeals committee's opinion, the parents may turn to the Secretary of State. Parents of children without statements can request an assessment, which will be granted unless the LEA deems it

unreasonable. In general, the process is one of extended consultation, with some possibility that the Secretary will, after consulting with the LEA, amend the statement regarding special educational provisions.

Although judicial review is not specifically mentioned in the Act, a line of cases reveal the possibilities of limited court intervention. For example, R v. Lancashire County Council Ex Parte M (1989) held that intensive speech therapy was a special educational provision that could be required under the EA 1981. The court concluded that teaching a child with a congenital speech deformity to communicate by speech was clearly educational, and rejected the LEA's attempts to evade as an "oversight" its own statement acknowledging access to individual speech therapy as a special educational provision. The LEA had sought to reclassify such therapy as a non-educational provision, which under the Education Reform Act 1988 it would not have had a mandatory duty to arrange. R v. Secretary of State for Education and Science Ex Parte Edwards (1991) also resulted in an order in favor of a child with a disability, specifically dyslexia and discalcula. The Court of Appeal ruled that the Secretary reconsider his affirmance of a statement that identified a special educational need (i.e., numeracy), but failed to specify the special provision to meet that need.

Other cases reveal uncertainties about integration or the production of up-to-date statements, but yield no remedy. In R v. London Borough of Newham Ex Parte D (1991), the court discovered

that the child's assessment was done eight years before and that it was "high time" that her needs were reassessed, but ruled that no judicial relief could be granted in view of her mother's failure to make a timely request for reassessment. Re D (a minor) (1987) is remarkable for the evident judicial disapproval of parents who sought to assert their rights and oppose their child's residential school placement when they felt the child could attend a nearby special day school and thus remain, in the court's words, in a loving home as "a member of a united and boisterous family." In this wardship proceeding, the court was unwilling to entertain "legalistic arguments based on an enforced compliance by the local education authority with its statutory duties," and the appellate court echoed these sentiments, urging the father to cooperate with the plans for segregated education and to drop litigation that under the EA 1981 might have offered an alternative solution to his son's special educational needs.

In summary, the English system relies on professional discretion with only limited legal interventions. It is a system that promises participation for parents, yet results in relatively few parents who will contest educational placement decisions and less parental involvement than the 1981 Act contemplated. Law reform may be part of the remedy, particularly if parents of children with special education needs are accorded the legal right to opt for ordinary or special school placement. Such a proposal is advanced in a recent authoritative report that criticizes implementation of the 1981 Act for the long delays in issuing

statements, lack of definitional clarity, lack of national guidelines on assessment, and other deficiencies (Audit Commission, 1992). Better laws, policies and practices may ultimately depend upon a change in political climate. To realize that change for children with special needs, "determined advocacy will be needed by teachers and other professionals, working in partnership with families and with the local community" (Mittler, 1992, para. 35).

#### **CANADA**

Canada is a federal state in which laws on special education vary considerably from province to province. Commentators have criticized these laws for their lack of precision in defining entitlements to special education, let alone appropriate education and enforceable rights (MacKay, 1984; Smith, 1981). Furthermore, the legal right to a free appropriate education is not adequately protected or subsidized on a national level, with one legal commentator observing that "[m]uch needs to be changed in our laws if Canada is to be true to the ideals to which she has put her name in several international undertakings" (Smith, 1980). The Canadian Charter of Rights and Freedoms (1982), effective in 1985, has roused expectations that constitutionally entrenched guarantees of equal protection and due process would lead to judicial enforcement of special-education rights. To date, court interpretation of statutory or constitutional provisions have not yielded that result.

The law in Ontario has been described as "Canada's boldest education initiative" and the "one serious effort to copy the

landmark U.S. legislation" (MacKay, 1984, p. 49). The following discussion will, therefore, focus on the Ontario Education Act, 1980 (as revised 1990), and its judicial interpretation.

The Act defines "exceptional pupil" as a pupil whose "behavioral, communicational, intellectual, physical or multiple exceptionalities" are considered by a committee to require the pupil's placement in a special education program. Under the Act, the Minister must ensure that "all exceptional children in Ontario have available to them ... appropriate special education programs and special education services" that are free, as well as provide an appeal process permitting parents to challenge the appropriateness of their child's special education services."

The problematic features of the Act are their classifications of some children as "trainable retarded" (as distinguished from "educable retarded pupils"), and of other children as "hard to serve" pupils determined by a school board to be "unable to profit by instruction" offered by a board due to mental or multiple handicaps. For the latter category of children, the school board need only assist the parent to locate a suitable placement, with the actual cost of such placement paid by the province.

The Act and accompanying regulations also set up two systems of appeal, one from special education decisions made by the Identification, Placement and Review Committee, and one from "hard to serve" determinations made by a school committee to a Special Education Tribunal.

Courts have struggled to make sense of the wide obligations

imposed on the Minister and the procedural complexities of classifying children as eligible for special education. In Thompson v. Ontario (1988), the court characterized the Act as "far from clear" and upheld the school board's power to overturn a "hard to serve" committee's decision that the pupil was not hard to serve. In Re Dolmage and Muskoka Board of Education (1985), the court adopted a "hands-off" approach to the issue of the appropriateness of special education and the parent's appeal that their son receive a "total communication programme." While commending the parents for their zeal on their child's behalf, the court declined to order a change in the broad program of special education that the Minister had approved in the Act's early years of phased-in implementation. During this period, the court opined that the "most appropriate placement ... may not only be less than ideal, but may be far less than ideal." (p. 555). Other cases have denied parents the right to appeal "hard to serve" determinations on the basis that the child was not then enrolled in a local school as a "resident pupil." (Re Townsend and Bd. of Education for Etobicoke, 1986; Re Maw and Scarborough Bd. of Education, 1983). One commentator has noted that this appeal process is inaccessible to working-class families who lack advocacy resources, and that to date even those families with lawyers or the support of lobby groups who do appeal have not been successful (Crux, 1989).

The Canadian Charter of Rights and Freedoms (1982) has been hailed as a means of vindicating the rights of persons with disabilities. Section 15(1) guarantees equality before and under

the law and the "right to the equal protection and equal benefit of the law without discrimination" to persons with mental or physical disabilities. MacKay (1984) concluded that, along with human-rights statutes, the Charter could lead to U.S.-style judicial intervention to ensure rights to appropriate education and equal educational opportunities for children with disabilities. Cruickshank (1986) also speculated on the use of § 7 (procedural fairness) and § 15 (equal protection) to challenge procedural flaws in statutes or the exclusion of pupils from schools. Although the possibilities of stricter scrutiny of ministerial discretion under the Charter are significant, to date the one reported case addressing the application of the Canadian Charter to special education law declined, with little discussion, to find a § 7 violation in the denial of hearing rights to a non-enrolled student under the Ontario Education Amendment Act, 1980 (Maw, 1983). However, parents seeking integrated education and relying on the Charter's equality rights have succeeded in obtaining two favorable settlements (negotiated on the verge of trial) that permit their child to attend a regular classroom with non-disabled peers. These victories suggest that the Charter, advocacy and educational innovation can be forces for inclusion (Porter and Richler, 1991).

Under the impetus of the Charter, the Canadian Human Rights Act, 1977 (which proscribes discriminatory practices based on disability or other grounds), and international conventions, Canadian provinces can review special education laws to make them fairer, clearer, and more comprehensive. Such a review would need

to be assisted by a concerted campaign of advocacy and law reform analysis.

### **Other Countries**

In many other regions of the world, legislation on special education has been enacted or is under consideration. Unfortunately, considerations of space preclude lengthy discussion. For example, the World Health Organization's (1990) survey of European countries noted that Sweden, France, Germany, Finland, Austria, Portugal, Spain and other countries reported a trend toward integration of children with disabilities in normal schools. Several Eastern European countries emphasized laws and provisions on special boarding or day schools, including Bulgaria, Hungary, Poland, Romania, and Turkey. Although Czechoslovakia was not included in that survey, its specialists in this field have expressed the desire to move from an institution-based to a more integrated and legally-based system of special education.

In Israel, the Special Education Law of 1988 is designed to require free, appropriate education in the least restrictive environment for children in need of special education. The law stipulates that a multidisciplinary placement committee shall determine the services required by eligible children aged 3 to 21. Due to budgetary restraints, the law is to be implemented in phases.

Like Israel's law, Korea's special education law (the 1977 Act for the Promotion of Special Education for the Handicapped) is also reported as modeled after the 1975 U.S. EAHCA law (Seo, et al,

1992). Although Korea's law mandate free public education with related services such as physical and speech therapies, the law does not contain due process or least-restrictive alternative provisions.

In contrast, Australia lacks detailed national legislation, and its special education arrangements stress autonomy by individual school principals (Levin, 1985). Although the laws of Western Australia confer rights on parents in the special education planning process, the traditions of strong states' rights and deference to educational professionals tend to favor decentralized states, and informal approaches. While one state, Victoria, pioneered an integration plan, its implementation depended more on ministerial discretion, good faith and professional judgment, than any legal foundation (Safran, 1989).

In Denmark and Sweden, laws and policies stress integration, normalization and decentralization. They bear many similarities to the United States, except that Scandinavian "child-find procedures" are more advanced and the laws are less detailed and more closely linked to general education laws (Walton et. al. 1989).

## CONCLUSIONS

The international community has made commitments to secure education for children with disabilities as a human and legal right. UNESCO's Sundberg Declaration, for instance, categorically states that every person with a disability "must be able to exercise his fundamental right to have full access to education, training, culture and information" (UNESCO, art. 1). However laws

reflect the cultural, economic, professional, and political traditions of a particular country, so it is hardly surprising that special education laws range from the highly detailed and legalistic U.S. model to the general laws of developing countries which have not even begun to address this topic. The challenge to lawmakers in those latter countries will be to balance realistic aspirations with low-cost, largely non-institutional special-education models that respect human rights and the values, beliefs and practices of their own cultures. Laws which fail these tests will be irrelevant or little more than pious wishes.

In the developed nations, the main issue which must be addressed concern the clarity and usefulness of legal frameworks to do justice for children without undue stigma. Specifically, laws, regulations, and policies must be able to identify children in need of special education, to assure non-discriminatory assessment, to deliver appropriate services, to foster integration, to secure periodic review of individualized educational plans, and to guard against arbitrary or unreasonable decision-making. In every country, these tasks remain a work in progress. In every family with a child with a disability, the quest for a realized right to an appropriate education is a decisive experience on which so many other rights and possibilities for the child hinge.

## REFERENCES

- Americans with Disabilities Act of 1990, 42 U.S.C.A. §§ 12131-12165 (West 1991).
- Audit Commission and Her Majesty's Inspectorate (1992) Getting in on the Act: Provision for pupils with special educational needs -- the national picture. HMSO, London.
- Buss, W G (1985) Special education in England and Wales. Law and Contemporary Problems 48, 119-168.
- Canadian Constitution (Constitution Act, 1982) pt. I (Canadian Charter of Rights and Freedom), § 15(1).
- Canadian Human Rights Act, Revised Statutes of Canada, ch. H-6 (1977).
- Commonwealth v. Sadler, 3 Phila. 316, 1979 Phila. Cty. Rptr., Lexis 92 (Pa. Common Pleas Ct., Phila. Co., Dec. 10, 1979).
- Copeland, I (1991) Special educational needs and the Education Reform Act, 1988. British Journal of Educational Studies, 39, 190-206.
- Cruikshank, D (1986) Charter equality rights: The challenge to education, law and policy. In Manley-Casimir, M E and Sussell, TA (eds). Courts in the Classroom: Education and the Charter of Rights and Freedoms 51, Detselig Enterprises, Calgary, Canada.
- Crux, S C (1989). Special education legislation: Humanitarianism or legalized deviance and control? Education Canada 24-31 (Spring 1989).
- Education for All Handicapped Children Act of 1975, Pub. L. 94-142, codified as amended at 20 U.S.C. §§ 1400-1485 (1988).
- Education Act, 1944, 7 & 8 Geo. 6 (Eng.).
- Education Act, 1981, ch. 60 (Eng.).
- Education Reform Act, 1988, ch. 40 (Eng.).
- Hannon, V (1982) The Education Act 1981: New rights and duties in special education. Journal of Social Welfare Law, 275-284.
- Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982).



- Herr, S S (1991) Child advocacy in special education. In Westman, J C (ed) Who Speaks for the Children? The Handbook of Individual and Class Advocacy 147 Professional Resource Exchange, Sarasota, FL, USA.
- Herr, S S (1983) Rights and Advocacy for Retarded People. Lexington Press, Lexington, MA USA.
- Israel Special Education Law of 1988, Statutes of the State of Israel (No. 1256).
- Kirp, D L (1982) Professionalization as a policy choice: British special education in comparative perspective. World Politics 34, 137-174.
- Lester H v. Gilhool, 916 F.2d 865 (3rd Cir. 1990, cert. denied 111 S. Ct. 1317 (1991)).
- Levin, B (1985) Equal educational opportunity for children with special needs: The federal role in Australia. Law and Contemporary Problems, 48, 213-273.
- MacKay, A W (1984) Education Law in Canada. Emond-Montgomery Publications, Toronto, Canada.
- Mills v. Board of Education of the District of Columbia, 348 F. Supp. 866 (D.D.C. 1972).
- Mittler, P (1992) School Integration in England and Wales. (invited paper given to international convention on school integration of disabled children, Cosenza, Italy).
- Moore v. District of Columbia, 907 F.2d 165 (D.C. Cir. 1990, cert. denied 111 S. Ct. 556 (1990)).
- Ontario Education Act, 1980, Revised Statutes of Ontario, ch. E.2 (1990) (Can.).
- Pennsylvania Association for Retarded Children v. Pennsylvania, 343 F. Supp. 279 (E.D. Pa. 1972).
- Poirier, D, Goguen, L and Leslie, P (1988) Educational Rights of Exceptional Children in Canada: A National Study of Multi-Level Commitments. Carswell, Toronto, Canada.
- Porter, G and Richler, D (1991) Changing special education practice: Law, advocacy and innovation. In Porter, G and Richler, D (eds) Changing Canadian Schools: Perspectives on Disability and Inclusion. Roeher Institute, North York, Ontario, Canada.
- R v. Lancashire County Council Ex Parte M, [1988] 2 Family Law

- Reports 279 & 395 (C.A.).
- R v. London Borough of Newham Ex Parte D, (Q.B.), The Times, May 27, 1991.
- R v. Secretary of State for Education Ex Parte Lashford, [1988] 1 Family Law Reports 72 (C.A.).
- R v. Secretary of State for Education and Science Ex Parte Edwards, (C.A.) The Times, May 9, 1991.
- Re D (a minor, [1988] 1 Family Law Reports 131 (C.A.).
- Re Dolmage and Muskoka Board of Education, 49 Ontario Reports 2d 546 (1985).
- Re Maw and Scarborough Board of Education, 43 Ontario Reports 2d 694 (1983).
- Re Townsend and Board of Education for the Borough of Etobicoke, 54 Ontario Reports 2d 449 (1986).
- Rehabilitation Act of 1973, 29 U.S.C. § 794 (1988).
- Safran, S P (1989) Special education in Australia and the United States: A cross-cultural analysis. Journal of Special Education, 23, 330-341.
- Seo, G H, Oakland, T, Han, H S and Hu, S (1992) Special education in South Korea. Exceptional Children, 58, 213-218.
- Smith, J A C (1981) The Education Amendment Act, 1980. Ottawa Law Review, 13, 199-209.
- Smith, J A C (1980) The right to an appropriate education: A comparative study. Ottawa Law Review, 12, 367-391.
- Thompson v. Ontario, 63 Ontario Reports 489 (1988).
- Turnbull, H R (1986) Free Appropriate Public Education: The Law and Children with Disabilities. Love Publishing Co., London.
- UN Convention on the Rights of the Child (1990), 28 I.L.M. 1456 (1989) (entered into force Sept. 2, 1990).
- UN Declaration on the Rights of Disabled Persons (1975)  
G.A. Res. 3447, UN Doc. A/10034.
- UN Declaration on the Rights of Mentally Retarded Persons (1971)  
G.A. Res. 2856, UN Doc. A/8429.
- UN Declaration on the Rights of the Child (1959) (adopted

- unanimously by the UN General Assembly on Nov. 20, 1959).
- UN International Covenant on Economic, Social, and Cultural Rights (1966) (entered into force Jan. 3, 1976).
- UN Universal Declaration of Human Rights, UN Doc. A/811 (Dec. 10, 1948).
- UNESCO Sundberg Declaration (1981)  
Declaration of the the World Conference on Actions and Strategies for Education, Prevention and Integration (affirmed by representatives of 103 nations and 15 NGOs, Torremolinos, Malaga, Spain, Nov. 2-7, 1981).
- Walton, W T, Rosenqvist J, and Sandling, I (1989) A comparative study of special education contrasting Denmark, Sweden, and the United States of America. Scandinavian Journal of Educational Reserarch, 33, 283-298.
- Weber, M C (1990) The transformation of the Education of the Handicapped Act: A study in the interpretation of a radical statute. University of California Davis Law Review, 24, 349-436.
- World Health Organization (1990) Is the Law Fair to the Disabled? A European Survey. WHO Regional Publications, European Series, No. 29, Copenhagen, Denmark.

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July 9, 1992

Dear Peter and Ron:

Thanks for your FAX of yesterday, and your useful suggestions and material.

In the interest of time, I'm sending you some revisions to my chapter that your comments stimulated.

If you concur with these changes, and if you Peter give permission to quote a line from your paper to the Italian audience, please have your secretary insert the changes in the disc that I previously sent you.

As to the Canadian book by Richler and Porter, I've requested a copy today. If I receive it in time, and it looks like it fits into my analysis of the legal framework, I'll be happy to drop you another message.

I mailed you an earlier set of corrections yesterday that you can disregard now that you have this version.

with best wishes.

Cordially,

Stan

1992). Although Korea's law mandate free public education with related services such as physical and speech therapies, the law does not contain due process or least-restrictive alternative provisions.

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## **CONCLUSIONS**

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Campus Journal

# For Learning Disabled, a Door Opens



Special to The New York Times

PUTNEY, Vt.

—Like their colleagues across the country this fall semester, the new students at Landmark College greeted their classmates, listened to a convocation address and stood in line to register for classes.

But here, engaging in such rites represented something of an achievement for the students. Many of them had to struggle through their studies at other schools and colleges where they were misunderstood because of their learning disabilities.

Now, at Landmark, they are attending the only college in the country exclusively for students with learning disabilities, like dyslexia—a difficulty in learning to read despite adequate intelligence and conventional instruction.

At the convocation ceremony at this young institution on Sept. 2, Kathryn O'Hare, the Mayor of West Warwick, R.I., who is dyslexic, told the 204 students: "You are fortunate because I remember attempting to go to college when there was no such college."

She recalled an adviser in high school who told her parents: "Don't waste your money on your daughter. She is not capable of handling college work." But Ms. O'Hare said that with her parents' support, she went on to receive a Ph.D. in English.

Between five and seven percent of the population has a learning disability, said Dr. G. Reid Lyon, a neuro-psychologist at the National Institute of Child Health and Human Development. One difficulty in determining the exact number is the lack of standard definitions. "You can be learning disabled in Virginia and not be in Maryland, because the criteria differ," Dr. Lyon said.

At Landmark, students can take classes for credit and receive an associate degree in general studies after two years or take noncredit courses to improve their skills so that they can continue at other colleges. Landmark, which opened in 1985, was accredited two years ago.

Many programs for dyslexic students use books on tape or excuse students from writing assignments, but Landmark uses traditional techniques for improving reading and writing. "Landmark says that here in college we're not going to bypass

## Landmark College gives students with learning problems a chance.

those skills, we're going to teach them," said Carolyn Olivier, the director of admissions.

Marlon Harmon, a 22-year-old from Kenosha, Wis., was a junior at Morehouse College in Atlanta when his condition was diagnosed as dyslexia after he had seen a guidance counselor about poor grades. He came to Landmark for a summer session and is staying on this fall. "With the tutors and the small classes, I'm finally able to zoom in on the things I did not get when I was going through the system," he said. "I really had an anxiety about writing, but I feel that it has receded."

Instead of requiring its applicants to take the Scholastic Aptitude Test, Landmark College asks them for

their scores on the Wechsler Adult Intelligence Scale, a series of oral examinations that assesses students' strengths and weaknesses and measures their potential.

The average class at Landmark has six or seven students, and each student meets with a tutor for four and a half hours a week. Students are required to live in dormitories, where quiet hours and curfews are strictly enforced. For example, doors are locked at 11 P.M. on weeknights.

"It's very structured, and that's difficult sometimes," Mr. Harmon said. "But it's good because if you ever see your self falling you know you're in a perimeter and someone else is watching you. They won't let you fall."

Mr. Harmon received a scholarship that enabled him to go to Landmark. Tuition is \$22,400 this year, and room and board cost \$5,200.

Chad Wilson, 23, was a philosophy major at the New School in Manhattan when he decided that he needed help for his attention deficit disorder. "I led discussions but couldn't produce on paper," he said. "I'd have a simple five-page essay assigned, and I'd come in with 75 pages that I could not organize and pull together."

Mr. Wilson said that at Landmark he is not only learning to focus his thoughts and organize his time but also finding out more about learning disabilities. He said he may pursue a career in educational psychology.

Landmark has had a busy first decade. It bought the campus—a dozen buildings on 125 green acres here in the Connecticut River Valley—for \$600,000 in 1984. The campus previously belonged to Windham College, which closed in 1978.

Gene S. Cesari, the current president, said: "We know our mission. There are 3,500 colleges and universities in the United States, and very few of them can make that statement."

## BALTIMORE COUNTY

# Enrollment at special education schools is nearly halved by 'inclusion'

classes. Some attend classes with nondisabled students, some do not.

The school system opened 47 new programs this school year to accommodate the students transferred out of special centers. Those programs are spread across the county and accommodate youngsters ranging in age from preschool through high school.

According to current statistics

the county's 95 elementary schools have 609 'level 5' students, compared with 293 students last year. Middle schools have 217 of these students, while high schools have 170, compared with 152 and 86, respectively, last year.

In addition to the 1,837 'level 5' students, 9,000 other students have lesser disabilities. Most are, and traditionally have been, in classes with

nondisabled students.

Though 85 students who were in special education centers last year left the county schools over the summer, the number of special education students increased by 175. Here are the enrollment figures for the other special education schools:

☐ White Oak: 211 students this year, 330 students last year.

☐ Battle Monument: 144 this

year, 195 last year.

☐ Rolling Road: 140 this year, 205 last year.

☐ Ridge and Ruxton Center: 179 this year, 232 last year.

Although federal laws say that disabled youngsters should be educated wherever possible with their nondisabled peers, the county's plans to move the students' individual parents and teachers, who said

that the changes were made for the good of the schools rather than the good of the children.

Two new board members were sworn in before the board met in executive session. Mr. Teplitzky, who chaired the board's investigative task force last summer, replaces Hilda Hillman. Mary Katherine Scheer replaces Ronald Stokely.

## A result of shifts to regular schools

By Mary Maushard  
Staff Writer

The Baltimore County schools cut enrollment at special education schools almost in half through the controversial 'inclusion' program begun late last year.

There are 709 children with the most serious disabilities — called 'level 5' — in the county's five special education centers this school year, according to preliminary data presented to the school board. Last year, those schools had 1,371 students.

The Chatsworth School in the Reisterstown area lost about 80 percent of its students. Enrollment there went from 261 students during the 1992-1993 school year to about 50 students this year.

Special education administrators presented their first report on the transfer of special education students to neighborhood schools at last night's regular board meeting.

Although board members said they were impressed with the statistics and the picture of inclusion presented to them, several members questioned the director of special education, Marjorie Rofel, about students who may be improperly placed in the program.

"What's being done in terms of looking at individual kids?" asked Sanford V. Teplitzky, one of the board's newest members.

Ms. Rofel assured him that she has heard about only a handful of children who are not doing well and that those situations are being handled.

Ms. Rofel said that special education personnel are working closely with families and teachers to improve the placement process.

Although the transfers and the surrounding controversy are now lumped under the educational buzzword, 'inclusion,' Ms. Rofel said that "we're talking about a handful of students who are fully included" in classrooms with nondisabled students.

Most children in neighborhood schools remain in special education