

1. The Task Force is made up of advocates concerned about the education of children with disabilities in New Jersey. Agencies represented on the Task Force include the Statewide Parent Advocacy Network, the New Jersey Coalition for Inclusive Education, Inc., the Education Law Center, New Jersey Protection & Advocacy, Inc., the Elizabeth Boggs Center—University Center of Excellence, the New Jersey Council on Developmental Disabilities; The Arc of New Jersey and several educational professionals, parents of children with disabilities and other advocates for children with disabilities.
2. This landmark legislation includes the Americans with Disabilities Act, the Rehabilitation Act, and the Developmental Disabilities Assistance and Bill of Rights Act, as well as the Individuals with Disabilities Education Act (IDEA), which is the focus of this discussion.
3. Statistic from Paul Sherlock Center on Developmental Disabilities, Providence, RI.
4. Browning, P., Dunn, C., Rabren, K., & Whetstone, M. (1995). Post-school outcomes for students with disabilities: A U. S. synopsis. *Issues in Special Education and Rehabilitation*, 10, 31-37; Wagner, M. (1995). Outcomes for Youths with Serious Emotional Disturbance in Secondary School and Early Adulthood, Table 5, Postschool Outcomes for Youths with SED, Youths with Any Disability, and Youths in the General Population [Electronic version]. *Critical Issues for Children and Youths*, 5, 90-112. From *The Future of Children*, a publication of the David and Lucile Packard Foundation. Retrieved from <http://www.futureofchildren.org>
5. *Brown v. Board of Education*, 347 U.S. 483, 495 (1954).
6. *Pennsylvania Association for Retarded Children v. Pennsylvania*, 334 F. Supp. 1257 (E.D. Pa. 1971); *Mills v. Board of Education*, 348 F. Supp. 866 (D.D.C. 1972).
7. 34 C.F.R. 300.550; 34 C.F.R. 352; See also: *Oberti v. Board of Education of the Borough of Clementon School District*, 801 F. Supp. 1392 (D.N.J. 1992), *aff'd*, 995 F.2d 1204, 1215-1218 (3d Cir. 1993).
8. *Oberti v. Board of Education of the Borough of Clementon School District*, *supra*.
9. Under *Oberti's* two step test, the school district must first determine “whether education in the regular classroom with the use of supplementary aids and services, can be achieved satisfactorily.” Second, a district is only justified in removing a child to a segregated setting if it has exhausted the range of possible supported general/special education setting combinations within the neighborhood school building. *Ibid*.

10. See 20 U.S.C. § 1400(c)(5)(A); 34 C.F.R. §§ 300. 532(b), 552(e). These requirements were originally added to IDEA as part of the 1990 reauthorization of the Act.

11. The district court ordered that “Spike” Girty, a 14-year-old with significant disabilities, reading on a pre-readiness level, receive his special education program in general education classrooms in his neighborhood middle school rather than in the life skills classroom sought by the school district. The district had argued that Spike be pulled out because, even with the provision of an aide and accommodations, the sixth grade curriculum still could not be modified down to his level. The court rejected this argument observing that “the relevant focus is whether Spike can progress on his IEP goals in a regular education classroom with supplementary aides and services, not whether he can progress at a level near to that of his non-disabled peers.” The school district was faulted for not providing Spike with systematic instruction, for leaving all responsibility for his educational program to his aide, and for failing to provide supports to his general education teachers or to train them in modification techniques. *Girty v. School District of Valley Grove*, 163 F. Supp., 527, 536 (W.D. Penn 2001), *aff’d*, No. 01-3934, *slip op.* (*per curiam*) (3d Cir. 2002).

12. For example, in *Chester Township Board of Education v. J.R. and J.R. on behalf of E.R.*, Office of Administrative Law Docket No. EDS 11 250.99 (Aug. 11, 2000), an administrative law judge (ALJ) ordered that E.R., a 13-year-old girl with Down syndrome and significant behavior challenges remain in her home school with all necessary supports and accommodations, rejecting the out-of-district special education school sought by the district. While acknowledging that the school district had the right intent and had “spent a great deal of time, effort, and personnel in its genuine efforts”, the ALJ found that the modifications that had been provided as part of E.R.’s in-district program were unsystematic and either “inadequate or inappropriate” and that the behavioral support plan created in consultation with the district’s behavior expert, “[e]ll short of what was reasonable and necessary under the circumstances.” The ALJ rejected testimony from district staff that lessons could not be modified down to E.R.’s level, citing testimony from E.R.’s experts that they had successfully modified curricula for students with E.R.’s characteristics in public school classrooms elsewhere. The ALJ faulted the district for failing to provide the teacher with “much needed technical assistance and training.”

13. For a synthesis of the hundreds of research studies completed since 1975, see *Inclusive Schooling Practices: Pedagogical and Research Foundations* by Gail McGregor and R. Timm Vogelsberg (1998). Boston: Paul H. Brookes Publishing.

14. Staub, D. (1996) *On Inclusion and the Other Kids: here’s what research shows so far about inclusion’s effect on non-disabled students*. National Institute for Urban School Improvement: Boston.

15. Hunt, P., & Farron-Davis, F. (1992). A preliminary investigation of IEP quality and content associated with placement in general education versus special education classes. *The Journal of the Association for Persons with Severe Handicaps*, 17(4), 247-253.; Hunt, P., Farron-Davis, F., Beckstead, S., Curtis, D., & Goetz, L. (1994). Evaluating the effects of placement of students with severe disabilities in general education versus special classes. *Journal of the Association for Persons with Severe Handicaps*. 19(3) 200-214.

16. Jenkins, J., Jewell, M., Leicester, N., O'Connor, R. E., Jenkins, L., & Troutner, N. M. (1992). Accommodations for individual differences without classroom ability groups: An experiment in school restructuring. *Exceptional Children*, 60(4), 344-359.
17. Lipsky, D.K. & Gartner, A. National Study on Inclusion: Overview and Summary Report (1995). *National Center on Educational Restructuring and Inclusion Bulletin*, 2(2), p. 1-8.
18. Hunt, P.; Goetz, L. (1997) Research on inclusive educational programs, practices, and outcomes for students with severe disabilities [Electronic version]. *Journal of Special Education*, 31 (1), p3-31.
19. Fishbaugh, M. S., & Gum, P. (1994). Inclusive education in Billings, Montana: A prototype for rural schools. ERIC Reproduction Service No. ED 369 636; available from ERIC database: <http://www.eric.ed.gov>
20. Hunt, P., Farron-Davis, F., Beckstead, S., Curtis, D., & Goetz, L. (1994). Evaluating the effects of placement of students with severe disabilities in general education versus special classes. *Journal of the Association for Persons with Severe Handicaps*. 19(3) 200-214.
21. McDonnell, J., Thorson, N., McQuivey, C., & Kiefer-O'Donnell, R. (1997). Academic engaged time of students with low-incidence disabilities in general education classes. *Mental Retardation*, 35(1), 18-26.
22. Manset, G. & Semmel, M.I. (1997). An inclusive program for students with mild disabilities effective? A comparative review of model programs. *Journal of Special Education*, 31(2), 155-180; Salisbury, C.L., Evans, I.M., & Palombaro, M.M. (1997). Collaborative problem-solving to promote the inclusion of young children with significant disabilities in primary grades. *Exceptional Children*, 63(2), 195-210.
23. Fishbaugh, M. S., & Gum, P. (1994). Inclusive education in Billings, Montana: A prototype for rural schools. (ERIC Reproduction Service No. ED 369 636); Hollowood, T. M., Salisbury, C. L., Rainforth, B., & Palombaro, M. M. (1995). Use of instructional time in classrooms serving students with and without severe disabilities. *Exceptional Children*, 61(3), 242-252.
24. Hollowood, T. M., Salisbury, C. L., Rainforth, B., & Palombaro, M. M. (1995). Use of instructional time in classrooms serving students with and without severe disabilities. *Exceptional Children*, 61(3), 242-252.
25. McDonnell, J., Thorson, N., McQuivey, C., & Kiefer-O'Donnell, R. (1997). Academic engaged time of students with low-incidence disabilities in general education classes. *Mental Retardation*, 35(1), 18-26.
26. Helmstetter, E., Peck, C. A., & Giangreco, M. F. (1994). Outcomes of interactions with peers with moderate or severe disabilities: A statewide survey of high school students. *The Journal of the Association for Persons With Severe Handicaps*, 19(4), 263-276; Stainback, W., Stainback, S., Moravec, J., & Jackson, H. J. (1992). Concerns about

full inclusion: An ethnographic investigation. In Villa, R., Thousand, J., Stainback, W. and Stainback, S. *Restructuring for Caring and Effective Education: An Administrative Guide to Creating Heterogeneous Schools* (Chapter 16). Baltimore: Paul H. Brookes Publishing Co.

27. Villa, R.A., Thousand, J.S., Meyers, H., & Nevin, A. (1996). Teacher and administrator perceptions of heterogeneous education. *Exceptional Children*, 63(1), 29-45.

28. Phillips, W. C., Alfred, K., Brulli, A. R., & Shank, K. S. (1990). The Regular Education Initiative: The will and skill of regular educators. *Teacher Education and Special Education*, 13(3-4), 182-186; Bennet, T., DeLuca, D., & Bruns, D. (1997). Putting inclusion into practice: Perspectives of teachers and parents. *Exceptional Children*, 64(1), 115-13

29. U.S. Department of Education, Office of Special Education Programs, Data Analysis System, Table 5.2, Number, Percentage, and Difference from the National Baseline of Children Ages 6-21 Served in Different Educational Environments Under IDEA, Part B During the 2002-2003 School Year. It should be noted that, according to the foregoing data table published by the US Department of Education, 9.5% of New Jersey 's classified students are in public or private separate facilities. However, according to the New Jersey Department of Education, this figure was based on discrepancies in reporting that have since been corrected, as evidenced by State of New Jersey Table 3, Part B, Individuals with Disabilities Education Act Implementation of FAPE Requirements, 2003, dated March 18, 2004, which shows 8.8% of New Jersey's classified students in public or private separate facilities.

30. U.S. Department of Education, Office of Special Education Programs, Data Analysis System, Table 5.2, Number, Percentage, and Difference from the National Baseline of Children Ages 6-21 Served in Different Educational Environments Under IDEA, Part B During the 2002-2003 School Year.

31. State of New Jersey Table 3, Part B, Individuals with Disabilities Education Act Implementation of FAPE Requirements, 2003, dated March 18, 2004.

32. U.S. Department of Education, Office of Special Education Programs, Data Analysis System, Table 5.2, Number, Percentage, and Difference from the National Baseline of Children Ages 6-21 Served in Different Educational Environments Under IDEA, Part B

33. The percentage of special education students in New Jersey spending less than 20% of their day outside the general classroom is 48% as compared to 41% nationally. The percentage of special education students in New Jersey spending between 20% and 60% of their time outside the general classroom is 32% as compared to 30% nationally. The percentage of special education students in New Jersey spending more than 60% of their time outside the general education classroom is 18% as compared to 19% nationally. U.S. Department of Education, 2003, *24th Report to Congress on the Implementation of the Individuals with Disabilities Education Act*, Appendix A, Table ABI, Percent of Children Ages 3-5 Served in Different Educational Environments Under IDEA Part B During the 1999-2000 School Year.

34. These percentages are calculated by adding the percentage of students spending 20% to 60% of the day outside the classroom, the percentage of students spending more than 60% of the day outside the classroom, and the percentage of students receiving services in a segregated placement. *Ibid.*

35. Between 1991 and 2002, the percentage of New Jersey preschoolers with disabilities educated in inclusive settings increased from 0.4% to 21.7%, a significant improvement. It should also be noted that the data collection method used to establish these figures counts every preschool child who spends any amount of time in a segregated setting as being in a non-inclusive placement. Accordingly, some of the children reported generally as being in segregated preschool settings may also be benefiting from inclusive settings during some or much of their schooling.

36. New Jersey's inclusion rate of preschoolers is 21.7% as compared to national rate of 35.39%. New Jersey Department of Education, 2003, Number of Public Students Ages 3-5 by Placement and Eligibility Category December 2001 NJT03DC; U.S. Department of Education, 2003, *24th Report to Congress on the Implementation of the Individuals with Disabilities Education Act*, Appendix A, Table ABI, Percent of Children Ages 3-5 Served in Different Educational Environments Under IDEA Part B During the 1999-2000 School Year.

37. New Jersey's rate of out-of-district placement for preschoolers is 11.7%, as compared to the national rate of 3%. *Ibid.*

38. U.S. Department of Education, 2003, *24th Report to Congress on the Implementation of the Individuals with Disabilities Education Act*.

39. In the 1998-99 school year, 7.5% of students with orthopedic impairments in New Jersey were in separate public and private school facilities as compared to the national baseline of 2.3%. In 2002-03, these figures were 5.3% in New Jersey and 1.8% nationally. National Center for Special Education Accountability Monitoring, Part B Percent Change Educational Environments Ages 6-21 Tables 5.8 (2002-03)

40. U.S. Department of Education, 2003, *24th Report to Congress on the Implementation of the Individuals with Disabilities Education Act*. As shown in the bar graph depicting the segregation of students with mental retardation, during the 1998-99 school year, 34.1% of New Jersey students classified as having mental retardation were placed in separate public and private facilities as compared to a national average of only 5.0%. In the 2002-03 school year, 21.6% of New Jersey students with mental retardation were placed in separate public and private facilities as compared to a national average of only 4.9%. National Center for Special Education Accountability Monitoring, Part B Percent Change Educational Environments Ages 6-21 Tables 5.8 (2002-03).

41. For example, during the 1999-2000 school year, only 3.3% of New Jersey students aged 6-21 and classified as having mental retardation spent 80% or more of their day in a general education classroom, as compared to a national average of 14.1% for the same population. U.S. Department of Education, 2003, *24th Report to Congress on the Implementation of the Individuals with Disabilities Education Act*, Table AB2.

42. As shown in the bar graph depicting the segregation of students by disability, in the 2002-03 school year, 46.8% of New Jersey students classified as having autism were placed in separate public and private facilities as compared to a national average of only 10.5%.

43. As also shown in the bar graph depicting the segregation of students by disability, during the 1998-99 school year, 36.2% of New Jersey students classified as having emotional disturbance were placed in separate public and private facilities as compared to a national average of only 13.3%; in the 2002-03 school year, 31.1% of New Jersey students classified as having emotional disturbance were placed in separate public and private facilities as compared to a national average of only 12.4%; during the 1998-99 school year, 2.8% of New Jersey students classified as having learning disabilities were placed in separate public and private facilities as compared to a national average of only 0.6%; in the 2002-03 school year, 1.7% of New Jersey LD students were placed in separate public and private facilities as compared to an unchanged national average of only 0.6%; National Center for Special Education Accountability Monitoring, Part B Percent Change Educational Environments Ages 6-21 Tables 5.8 (2002-03). New Jersey only has 11 children with deaf-blindness, which is not depicted on the graph. However, there was significant movement toward inclusion in this category. Specifically, in the 1990-91 school year, 3.1% of pupils with deaf-blindness were in regular classes and/or resource rooms, compared with 16.9% nationally. In 2000-2001, over 11% of pupils with deaf-blindness spent 80% or more of their school day in a general education classroom. Although this is a welcome improvement, this rate is still significantly behind the national average of 18.5% of students with deaf-blindness who were included in general education for more than 80% of the school day. Moreover, New Jersey has a much higher percentage of pupils with deaf-blindness in out-of-district public, private or residential facilities than the national average: 61% compared to just under 30%. U.S. Department of Education, 2003, *24th Report to Congress on the Implementation of the Individuals with Disabilities Education Act*.

44. With a classification rate of about 1.3 times that of white students since 1993, New Jersey classifies 13 African-American as needing special education services for every 10 white students similarly classified. Significantly, this excludes students in State agencies such as the Departments of Human Services, Corrections, Juvenile Justice, etc., where African-American students are even more disproportionately represented. For example, as of December 1, 2001, there were nearly five times more African-American special education students in New Jersey correctional facilities than white special education students. New Jersey Department of Education, Office of Special Education Services, *Number of Public and Nonpublic students ages 6-21 with Disabilities by Racial-Ethnic-Gender Group and Placement for State Agencies*. Accordingly, the foregoing data actually understates the extent that African-American youth are classified as eligible for special education.

45. Council for Exceptional Children, 2002, *Addressing Over-Representation of African-American Students in Special Education, the Preferential Intervention Process - An Administrators Guide*.

46. U.S. Department of Education, 2003, *24th Report to Congress on the Implementation of the Individuals with Disabilities Education Act*; New Jersey State Depart-

ment of Education, Office of Special Education Programs, *Percentage of Public Students with Disabilities Ages 6-21 by Eligibility Category within each Racial-Ethnic-Gender Group in District and Charter Schools as of December 2001*.

47. The bar graph illustrates the following statistics for students ages 6-21 during the 1999-2000 school year: 2.65% of special education students in New Jersey who spend more than 80% of their school day in general education classes are Asian or Pacific Islander as compared to a national rate of 1.76%; 13.61% of similarly included special education students in New Jersey are Black or African-American as compared to a national rate of 14.92%; 9.82% of included special education students in New Jersey are Hispanic or Latino as compared to a national rate of 12.48%; and 73.82% of special education students in New Jersey who spend more than 80% of their day in general education classrooms are white, as compared to a national average of 69.59%. *24th Report to Congress on the Implementation of the Individuals with Disabilities Education Act* (2003), Table AB10.

48. As shown in the bar graph depicting the segregation of students by racial/ethnic designation in the 2002-03 school year, 10.6% of New Jersey Asian or Pacific Islander special education students were placed in separate public and private facilities as compared to a national average of only 3% for that ethnic group; 13.0% of New Jersey black or African-American special education students were placed in separate public and private facilities as compared to a national average of only 4%; 9.0% of New Jersey Hispanic or Latino special education students were in separate public and private facilities as compared to a national average of only 2.0; and 8.0% of New Jersey white special education students were in separate public and private facilities as compared to a national average of only 3.0%. U.S. Department of Education, 2003, *24th Report to Congress on the Implementation of the Individuals with Disabilities Education Act*.

49. U.S. Department of Education, Office of Special Education Programs, 2003, Data Analysis System, Table 1.4b, Number, Percentage, and Difference from National Baseline of Students Ages 14-21+ Dropping out Based on Number of Students Leaving School by Race/Ethnicity During the 2001-2002 School Year.

50. These included: (1) funding; (2) state statute; (3) special education code; (4) NJ Department of Education; (5) failure to monitor for LRE; (6) State Board of Education; (7) personnel preparation; and (8) family education. *Separate and Unequal: The Education of Children with Disabilities in New Jersey, The 1994 Report of the New Jersey Developmental Disabilities Council*.

51. For further discussion of the implementation of the 1994 recommendations, see *The 1994 Recommendations – Ten Years Later*, pp.24-29 of this report.

52. N.J.S.A. 18A:7F-1 to -36

53. *Separate and Unequal: The Education of Children with Disabilities in New Jersey, The 1994 Report of the New Jersey Developmental Disabilities Council, p. 6*

54. These consist of 10 county-funded Educational Services Commissions; eight Special Services School Districts; and two Jointure Commissions. The 10 educational

services commissions (ESC) are the Somerset County ESC, Camden County ESC, Monmouth-Ocean County ESC, Morris County ESC, Hunterdon County ESC, Union County ESC, Middlesex County ESC, Sussex County ESC, Passaic County ESC, Essex County ESC. The eight County Special Services School Districts (CSSSD) are the Cape May CSSSD, Gloucester CSSSD, Salem CSSSD, Burlington CSSSD, Bergen CSSSD, Atlantic CSSSD, Warren CSSSD, and the Mercer CSSSD. The two Jointure Commissions (JC) are the South Bergen JC and the Morris-Union JC.

55. These include the Raritan Valley Academy, opened in June 1996 and Bright Beginnings, opened in 2002 by the Middlesex County Special Services Commission. Other new schools have been opened by the Cape May County Special Services School District (CSSSD) and the Gloucester CSSSD since 2000. Although State law permits county entities to send individuals with special education expertise into public school districts to support students with disabilities in district, most provide the bulk of their services within the State's 30 segregated special education schools, established and maintained with public funds. However, one of these county entities, the Bergen CSSSD, has embarked on an ambitious program to send consultants *into* public schools, increasing their capacity to provide services within districts to support the inclusion of children in general education settings.

56. According to the NJ Department of Education, Office of Special Education Programs, these regional schools, formerly called day training centers, also enroll students in the building who do not have Individual Education Plans, but who are in crisis and need a transitional placement.

57. Specifically, 37 private separate schools were opened between 1994 and 2004. However, during this time 18 such schools have since closed, for a net gain of 19 new private separate special education schools built since the over-segregation of children with disabilities was brought to the State's attention in 1994 in the *Separate and Unequal* report. Sources: Bureau of Program Review and Approval, New Jersey Department of Education, November 2003; New Jersey Department Of Education, Office of Special Education Programs, Private Schools, Listing of Schools in Operation by Year as of 12/22/2003.

58. These figures, obtained from the New Jersey Department of Education, Office of Fiscal Policy and Planning, are probably low because they were tentative rates listed in the *Private Schools for the Disabled, Summary of Tentative Tuition Rates for 2001-2002*. New Jersey has the highest transportation rates in the northeast. During the 1997-98 school year, 31.2% of the \$617, 762, 599 which New Jersey spent in that year on transportation was used for students with disabilities (\$192,919,188) a group which made up 11% of students using transportation. *School Transportation News, Buyer's Guide*, October 1999, available at www.stnonline.com, referencing figures obtained from the Office of Pupil Transportation, New Jersey Department of Education. Moreover, districts are struggling. For example, the Gateway Regional School District, located in the southern part of the state, saw its special education costs for out-of-district placements quadruple from \$200,000 to \$950,000. Frustratingly, the costs are rising even when a district strives to maintain level the numbers of children sent out. One such district, the Woodbury Public Schools, also located in Southern New Jersey, had its out-of-district special education costs rise from \$600,000 to \$1.3 million despite the fact that the number of students held steady between 55 and 60 students.

59. These up front costs can be significant. For example, the Woodbury Public Schools received a \$75,000 grant to set up an integrated preschool. It actually cost the district approximately \$150,000. This is in keeping with research that suggests that start-up costs may initially increase the cost of inclusive services. However, research also suggests that the costs over time decrease and are likely to be less than segregated forms of service delivery, especially where there are savings in transportation. McGregor, G. and Voglesberg, R., editors, 1998. *Inclusive Schooling Practices: Pedagogical and Research Foundations*, pages 69-70. Baltimore: Paul H. Brookes Publishing Co.

60. Federal law requires that the state funding system be placement neutral and that there be no incentives for one type of placement above another. Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1412 (a)(5).

61. U.S. Department of Education, Office of Special Education Programs (USOSEP), 1999, Enclosure—*OSEP's Follow-Up Review Process Letter*, p. 4.

62. Specifically, U.S. Office of Special Education Programs (USOSEP) concluded in its 1989 monitoring report that the New Jersey Department of Education had failed to implement an effective method for monitoring the least restrictive environment (LRE) requirements of federal law. USOSEP ordered, as part of a corrective action plan, that the New Jersey Department of Education develop a new plan to monitor school districts. In 1993, when the federal government reviewed the State's new monitoring system, it determined "that the emphasis in the new system was on policies and procedures and did not yet have methods to monitor the way that certain LRE requirements were actually being implemented in public agencies in the State." See 1994 *Separate and Unequal* Report & USOSEP annual monitoring reports.

63. The Arc of New Jersey, 2003, *Needs Assessment*, (compiled from survey results of 137 parent surveys).

64. *Ibid.*

65. For example, the State Department of Education recently proposed revisions to the sections of State code that deal with the approval of private schools. This proposal would raise the number of area students "identified" as having a need for the proposed private school from 16 to 24, having a positive impact on limiting the number of new approvals for private schools. However, the proposal was met with opposition and has not been implemented.