

BARRIERS TO INCLUSION



The 1994 report cited eight barriers to the inclusion of children with disabilities in general education and offered recommendations for their alleviation.⁵⁰ Several of these recommendations were in fact implemented and progress has been made in removing some of these barriers.⁵¹ However, some obstacles cited in 1994 continue to persist and, as more attention has been paid to this issue, new barriers have presented themselves. In 2004, the Task Force identified the following five factors that continue to present significant barriers to inclusion in New Jersey:

FUNDING AND THE AVAILABILITY OF SEGREGATED PLACEMENTS

In 1996, the Comprehensive Educational Improvement and Financing Act of 1996 (CEIFA)⁵² significantly changed the manner in which special education is funded. The implementation of a tier funding system based on the specific needs of the student now provides funding regardless of the placement selected for a particular child. This is a significant improvement from 1994 when a categorical funding formula was in place and did not fund placements of special education students in general education classes with support.⁵³ However, as noted earlier, this change in the funding scheme has not yet had a substantial effect on inclusion rates in New Jersey. Arguably, this is due (at least in part) to the fact that New Jersey has an abundance of segregated placements which ultimately operate at the expense of in-district services. As noted by the New Jersey Department of Education:

“when a separate placement is available, it tends to be used to capacity, whether it is a district class, special services school district, educational services commission, regional day school or private school.”

—[New Jersey Department of Education, *Statistical Report for the 1990-91 and 1991-92 School Years*].

New Jersey currently has 20 receiving public school districts, which were established to serve only students with disabilities.⁵⁴ Notably, these county-funded entities have built at least four new separate schools since the 1994 publication of *Separate and Unequal*.⁵⁵ In addition to these county facilities, New Jersey operates 10 regional day schools that only serve children with disabilities and 18 regional schools that, until recently, only served children with disabilities.⁵⁶

In addition to these public separate facilities, as of December 2003, there were 171 private separate facilities in New Jersey. The number of these state-approved private special education schools in New Jersey has increased by 25 percent from 1994 to 2004.⁵⁷ Indeed, New Jersey is the state with the highest percentage of pupils placed in separate schools, public and private, and has failed to significantly reduce the percentage of students with disabilities attending out-of-district programs over a 10-year period.

Because districts in New Jersey spend between \$25,000 to \$70,000 (plus transportation and other expenses) per student each year to send students to separate facilities,⁵⁸ these funds are unavailable to build capacity to appropriately include students with disabilities in district.⁵⁹ Thus, sending students to separate facilities (and sending the necessary funds out of district) creates a downward spiral of decreased capacity in districts and ultimately leads to more students being sent out. This trend is exacerbated in some urban areas, where the overall lack of services and infrastructure provide additional incentives for families to seek out-of-district placements in order to remove their children from failing schools.

In sum, although New Jersey now has a placement-neutral funding scheme,⁶⁰ significant obstacles to inclusion in New Jersey remain due to the collective effects of the large number of available segregated placements, the “tendency” to place students in segregated settings to capacity and the negative effect these conditions have on districts’ ability to provide the appropriate supports for inclusive settings.

■ STRUCTURE OF NEW JERSEY DEPARTMENT OF EDUCATION

Until recently, the administrative structure of the New Jersey Department of Education presented a significant barrier to the successful implementation of monitoring and enforcement of special education laws in the local school districts. County Supervisors who have a major role in the compliance process were “not direct line employees of the New Jersey Office of Special Education Programs (NJOSEP), but rather of the Division of Field Services, and the NJOSEP had little or no control or leverage over these employees.”⁶¹ Changes that were made to the organizational structure of the department and functional roles of the staff were recognized in a follow-up report by NJOSEP in September 2001. County Supervisors have been given additional responsibilities and a redefined role, with NJOSEP assuming dual supervision of these employees. Unfortunately, however, there seems to be a high turnover rate in these positions, which creates vacancies for long periods of time and makes effective and consistent implementation of their revised role difficult to sustain.

■ MONITORING FOR LEAST RESTRICTIVE ENVIRONMENT

As noted in the 1994 report, the United States Department of Education, Office of Special Education Programs (USOSEP), concluded (in both their 1989 report and their 1993 review) that the New Jersey Department of Education had failed to implement an appropriate monitoring process for least restrictive environment (LRE).⁶² As a result, in April 1999, the state Office of Special Education Programs revamped the monitoring process to include a yearlong self-assessment by every school district, followed by on-site monitoring. Districts have been phased into this process, with the districts that have the highest number of classified students going first and the others phased in over six years. USOSEP has recognized this effort in their 2001 monitoring report update. New Jersey is more than halfway through the process.

This comprehensive look at special education policies and practices, with district ability to identify areas of non-compliance on their own, was generally regarded as a beneficial opportunity to analyze and correct problems. Much effort

has been invested in this process. However, according to the reports of families to Task Force member organizations, there is inconsistency in the manner in which districts have implemented the self-assessment and monitoring process and districts vary in their efforts to include meaningful parental involvement. Additionally, although various enforcement actions for district non-compliance were identified as part of the process, the standards do not specify the criteria for imposing any of the particular enforcement actions. Moreover, it is not known whether any of the enforcement actions have been implemented. In some districts with significantly high rates of segregated placements, for example, there appears to be no consequences for repeated failure to increase inclusion of students with disabilities, despite years of self-improvement plans and/or corrective action.

In 2004, the New Jersey Council on Developmental Disabilities conducted a survey of the districts that have thus far completed the self-assessment and monitoring process. Over 3,000 surveys were sent to districts for distribution to their self-assessment committees. Although only 300 surveys were returned, a review of the preliminary results of the survey data indicates a general satisfaction with the process by administrators and child study team members. Parent members were less satisfied and reported either not knowing or not being sure of various components of the process.

LACK OF ADEQUATE AND ACCURATE INFORMATION FOR FAMILIES

The authors of the 1994 issue of *Separate and Unequal* concluded that there was a lack of information available to families at the time of eligibility determination regarding the array of options available to their children as well as about the benefits of fully supported inclusive education. Families continue to report this problem.⁶³ Indeed, parents still routinely advise Task Force member organizations that they receive misinformation from various sources about the availability and benefits of inclusive options in a general education setting. Significantly, families also report a lack of confidence in their school districts to properly provide the supports and services their children may need and often opt for more restrictive settings rather than rely on their district to provide them.⁶⁴

SUPPORT FOR OUT-OF-DISTRICT PLACEMENT

The recent nationwide trend in special education is to stop the creation of separate schools and focus resources on supporting teachers and students in general education settings. However, in New Jersey even incremental moves towards inclusion face opposition. Indeed, the increasing numbers of private special education schools reflect the presence of ongoing support for building capacity out-of-district. Ultimately, this acts as a significant obstacle to the movement towards inclusion of students with disabilities in New Jersey.⁶⁵

Despite these obstacles to change, the Commissioner of the N.J. Department of Education recently issued a welcome six-month moratorium on the approval of new private separate facilities to examine these and other issues affecting in-district capacity.

THE 1994 RECOMMENDATIONS 10 YEARS LATER



The 1994 report included numerous recommendations to policy makers for increasing the number of students with disabilities that are included in general education settings. These recommendations called for action by the State's Department of Education, the State Board of Education, the Legislature and others. Much significant work on moving the system forward has taken place and most of the 1994 recommendations have been implemented to some extent. It is our hope that the State's activities under the State Improvement Grant (SIG) and State Improvement Plan (SIP), as well as the efforts of the Council's Education Task Force and other advocates, will continue to move the system forward toward more inclusive environments for all children.

The 1994 recommendations are listed below along with a status update on implementation.

1. The Commissioner of Education must promulgate and widely circulate a policy statement that underscores the Department's commitment to ensuring the availability of fully supported inclusive educational opportunities as a viable option for all children.

A strong policy statement regarding the Department's clear interpretation of the LRE mandate was developed and circulated several times throughout the past ten years. The Department also developed a strong vision statement for the inclusion of children with disabilities in all aspects of their schools and communities as part of the State Improvement Plan process.

2. The New Jersey Department of Education must develop a concrete written plan with specific activities and measurable goals and objectives leading to an increase in the percentage of pupils with the full range of disabilities that are educated in general education classes with all necessary supports. Progress should be monitored by an external body appointed by the Developmental Disabilities Council and the Protection and Advocacy System.

The creation of a State Special Education Steering Committee to guide the development of the State Improvement Plan and Grant begins to approach the vision of this recommendation. The improvement plan addresses only issues that have been identified as deficient, and is not a comprehensive strategic plan for making all of the changes that are necessary. The targets that have been developed as part of this process are not the bold steps necessary to reach the strong vision for children delineated in the introduction of the plan.

3. The New Jersey Legislature must enact legislation that provides funding for placements in general education classrooms with all necessary supports.

The funding formula enacted in 1996 now makes funding such placements possible.

4. The New Jersey Legislature must modify statute N.J.S.A. 18A: 46-14 to clarify, pursuant to federal law, that a general education class with all necessary supports is one of the placement options to be considered for all children who are classified.

The funding formula enacted in 1996, clarifies the existence of this placement option.

5. The New Jersey State Board of Education must modify State Code N.J.A.C. 6:28 to clarify that placement in a regular class with all necessary supports must be considered prior to placements in alternative settings.

This was adopted in the State code in July 1998. There has been uneven implementation throughout the state.

6. The New Jersey State Board of Education must adopt regulations proposed on April 8, 1993, which expand placement options for preschool students with disabilities to include placement in natural settings such as typical day care, preschool programs and Head Start.

These regulations were adopted in July 1998 and have resulted in increases in the numbers of children now educated in these settings. The Department of Education is also an active partner in the Map to Inclusive Childcare Team, whose purpose is to expand opportunities for inclusion of preschoolers with disabilities in typical childcare settings.

7. The New Jersey Department of Education must direct State and federal funds to provide technical assistance to local education agencies to enable districts to implement state-of-the-art, fully supported inclusive models of education for children with disabilities.

In 2001 the New Jersey Department of Education's Office of Special Education Programs was awarded a State Improvement Grant of \$1.2 million a year for five years by the U.S. Department of Education. This grant was developed in collaboration with a State Steering Committee of special education parents, advocates and professionals and contains elements of a State Improvement Plan that was developed in response to deficiencies identified through federal monitoring in 1994, 1996 and 1998. The grant has 13 major components; each designed to address key areas in the improvement plan. One of the themes of the grant is to create positive and effective school environments that promote participation of students with disabilities in the general education curriculum, in extra-curricular activities and their school community, and in successful transition to adult life and community activi-

ties. Increasing the number of general and special education teachers prepared to educate students with disabilities in inclusive programs is also a theme.

The Office of Special Education Programs also offered grant funds to local districts with high rates of segregated placements, both in and out of district, to build capacity for the inclusion of students with disabilities in general education programs, as well as to enhance opportunities for inclusive placements.

The Office of Special Education Programs collaborated with the NJ Council on Developmental Disabilities in conducting Inclusion Institutes for three years, one of which focused on administrative leadership.

These initiatives are voluntary, however, and there is no requirement to demonstrate outcomes when districts do participate.

8. The New Jersey Department of Education must issue and enforce a moratorium on the purchase or construction of segregated public school buildings.

This recommendation has not been implemented. In fact, since 1994, there has been expansion in virtually every totally segregated public school. Additionally, 35 private schools have been approved and opened during this time period, a 25% increase. The Department has recognized the need to re-tool the functions of the public segregated schools and has issued an RFP to redirect the services provided at these facilities back into the district to support teachers and students in inclusive settings.

Moreover, in July 2004, the Commissioner of the N.J. Department of Education issued a six-month moratorium on the approval of new private segregated schools.

9. The New Jersey Department of Education must compile, assess, and document available data on current inclusive practices and distribute this information to all local school districts.

The State Improvement Grant contains activities for two newsletters on the subjects of inclusion and transition. There have been long delays in the publication and distribution of these newsletters. In addition, additional practical easy-to-use information must be compiled, assessed, and disseminated to educators, administrators, and families.

10. The New Jersey Department of Education must provide training programs for all child study teams, administrators, teachers, and parents that clarify least restrictive environment and the presumption of general education placement with supports for all students with disabilities.

As noted in the response to number 7, the Department has several initiatives aimed at improvements in parent and staff development. Virtually all of the trainings offered by the Department's Learning Resource Centers focus on

providing services to students in general education settings. In addition, the Department has provided trainings to all Abbott districts, which must offer universal preschool to all 3 and 4 year olds, on the obligation to include preschoolers with disabilities in these programs and strategies for their effective inclusion. The State Improvement Grant contains activities for additional parent trainings to be conducted by the Statewide Parent Advocacy Network. Issues remain about the voluntary nature of these initiatives and their lack of meaningful impact on practice at the local level and on placement data.

11. The New Jersey Department of Education must begin to compile, assess, and document available data on the number of classified pupils placed in general education classes with all necessary supports. These data should become part of the Report to Congress and the annual statistical review provided by the New Jersey Department of Education and distributed to all local school districts.

The Department has made significant gains in the collection and availability of data. Important data can be viewed on their website and crucial information is now being collected. A long overdue student database is expected to be completed within the next year.

12. The New Jersey Department of Education must initiate a revision of certification requirements for all school and related services personnel to include course work and practica in educating students with disabilities in general education settings.

New certification requirements for teachers have been adopted by the State Board of Education requiring that “teachers know and understand...how to identify and teach to the developmental abilities of students, which may include learning differences [and] special physical and emotional challenges.” Teachers are also expected to value and be committed to the educability of all children and adolescents and to an appreciation of multiple ways of teaching. The rules do not include specific course requirements for teacher certification or professional development that prepare teachers to educate students in general education settings.

13. The New Jersey Department of Education, in conjunction with colleges and universities, must revise undergraduate and graduate curricula to reflect the revised certification requirements.

The Department has indicated that it will convene a workgroup to determine implementation strategies for the newly adopted regulations governing certification requirements for teachers. The five university based Technical Assistance Centers planned for in the State Improvement Grant, to be housed in institutions of higher education, and the proposed Faculty Academy for Educational Change, will be instrumental in providing the guidance and technical assistance necessary to make the appropriate curriculum changes called for in the regulations.

14. The New Jersey Department of Education must establish a continuing education requirement for all certified school personnel that includes training in the provision of educational services to students with disabilities in general education settings.

While continuing education hours are now a requirement for all school personnel, there are no specific requirements for all teachers to receive this instruction in effective ways to include and teach students with disabilities in general education settings.

15. The New Jersey Department of Education must consider the appropriateness of assessment and evaluation methods currently used to identify, determine eligibility, and place children of color in special education services. The Department must make all necessary changes to these instruments and methods to ensure non-biased testing and assessment. In addition, the department must examine this issue in the monitoring process.

The issue of overrepresentation of minority students in special education persists. The NJ Department of Education has been involved with a long-standing initiative with the US Office on Civil Rights and New York University Equity Assistance Center and entered into a Memorandum of Understanding in March 1999. Qualitative and quantitative data protocols, recognized by both the Office for Civil Rights and the Equity Assistance Center as a model program were created and memorialized in NJDOE procedures. As a result, the Office of Civil Rights will not be conducting compliance reviews in New Jersey during the current school year. To date, there has been insufficient information to determine the effectiveness or outcomes of this initiative. The monitoring process has flagged districts with high classification rates for African-American males, which only reflects a portion of this extensive problem, particularly given the large threshold of African-American students who must be present in a particular district in order to trigger participation in the initiative.

16. The New Jersey Legislature must enact major education funding reform legislation that allows special education aid to be generated and used by districts to educate pupils in the full range of environments and that provides level funding, regardless of the placement selected for a particular child. This system must not rely on the labeling of children determined to be eligible for special education and must not provide higher levels of funding for particular placements.

The revision of the funding formula in 1996, made significant changes to the State funding formula and created equitable funding, based on the service and support needed and not disability label or placement. Unfortunately, the additional funds contributed by counties for the operation of separate schools by Special Services School Districts, Educational Services Commissions and Jointure Commissions is available only for segregated special education students. This creates a disruption of the placement-neutral funding formula mandated by federal law and acts as a disincentive to keep children in district.

17. The New Jersey Department of Education must establish effective and thorough monitoring procedures that ensure consistent compliance with the least restrictive environment provisions of PL 94-142 and its amendments, with strict penalties for noncompliance, including but not limited to the withholding of federal funds.

The self-assessment and monitoring process developed in 1999 made a significant improvement in the ability of districts to identify specific deficiencies and areas of non-compliance. However, there continue to be no penalties or consequences for non-compliance, and the ongoing monitoring of the districts' improvement planning and implementation is inconsistent and minimal. The required self-assessment steering committees have been inconsistently implemented. Moreover, districts are only required to appoint one parent of a special education student to the steering committee, and families report that many districts select the parent for the role rather than seek input from families who may have new information for the district. Additionally, a different, less rigorous process and set of standards has been implemented for private special education schools.

18. The State of New Jersey, including the Governor, Legislature, and Department of Education, must require school districts to provide education leading to clearly defined outcomes to all students, including students with disabilities. Positive outcomes should be evaluated in the areas of physical health, responsibility and independence, contribution to society and citizenship, academic and functional literacy, personal and social adjustment, and satisfaction with the educational experience.

The Core Curriculum Content Standards adopted in 1996 apply to students with disabilities, and materials have been developed to assist districts in their efforts to educate students with disabilities to achieve the standards. However, these standards have been designed to only measure reading, math and science, which often are not the only critical educational components of the Individualized Education Plans for students with significant disabilities.

RECOMMENDATIONS FOR THE FUTURE



The New Jersey Council on Developmental Disabilities commends the State Legislature, the State Board of Education and the Department of Education, Office of Special Education Programs for taking the steps indicated above to improve the inclusion of students with disabilities in all aspects of their schools and communities. Notwithstanding this significant progress, the data contained in the body of this report clearly demonstrates that there is much more that needs to occur before New Jersey achieves the full inclusion of students with disabilities in programs and services that truly meet their individual needs.

The steps that have been taken can be considered a start on the long road of realizing this goal. We must build upon the themes established in the State Improvement Plan that is being developed by the State Special Education Steering Committee in collaboration with the Office of Special Education Programs.

The system cannot simply respond to deficiencies found by monitoring bodies and build changes around them, expecting volunteer initiatives to be sufficient to build capacity. Strategic planning with outcomes for which responsible parties are fully accountable must take place. Ongoing and independent monitoring of this systemic change is essential.

The Council on Developmental Disabilities looks forward to working with all the relevant stakeholders in making this goal a reality. We recommend the following specific steps toward that end:

VISION

The Department of Education must make bold moves - in words and actions - to deliver a consistent message regarding their commitment to providing each student with a disability an education in the least restrictive environment. Districts must be told, not asked, to increase capacity in general education classrooms to include children with disabilities.

The steering committee convened by the Office of Special Education Programs must play an ongoing advisory role in the Department of Education's development, implementation and ongoing monitoring of the State Improvement Plan.

The vision statement developed with the Steering Committee should be widely circulated and made highly visible in all appropriate Department communications.

The process for the approval of new private separate schools for students with disabilities must be revamped to make approval less automatic and ensure that the

need is justified by specific data.

No State facilities construction dollars should be used for the development of separate facilities that segregate students with disabilities.

Consequences and sanctions must be imposed on school districts that utilize Department of Education grant dollars, but do not demonstrate outcomes indicating significant improvement.

PROFESSIONAL DEVELOPMENT

Mandatory training for all school personnel on including and supporting students with disabilities must extend beyond awareness level. It must foster an environment of teaching all learners, including information on successful strategies and techniques, and on recognizing and addressing learning disabilities.

The Office of Special Education Programs must immediately implement training and technical assistance activities in the State Improvement Grant.

The Inclusion and Transition newsletters funded through the SIG as well as other practical material on inclusion must be issued in a consistent fashion and disseminated to every school and made widely available through a variety of mechanisms.

MONITORING AND ACCOUNTABILITY

As part of the monitoring process, the Department of Education must develop a specific enforcement plan that specifies enforcement actions and specifies under what particular circumstances each action will be used. This plan must describe in detail the “progressive discipline” that will be implemented for noncompliant districts, and the criteria for imposing each enforcement action. Parent and community notification of noncompliance and the potential enforcement actions that will be imposed if appropriate corrective action is not taken in a timely manner should be part of the plan.

Consistent, timely monitoring of school district improvement plans by the County Offices for Special Education must take place with sanctions and consequences for non-compliance fully enforced.

Private and public separate schools must be accountable for the same standards and subjected to the same monitoring requirements as districts.

County monitoring teams should include parents of students with disabilities.

On-site classroom monitoring of out-of-district facilities must take place.

Districts with significant rates of out-of-district placements must be closely scrutinized, including reviewing the IEPs of students placed out of district, visiting the out-of-district placement to verify student characteristics justifying the segregated

placement, and determining through interviews and other mechanisms whether every IEP meeting starts with the presumption that the student will be returned to their home district with needed supports.

HIGHER EDUCATION

The teacher education reform initiative to assist universities to restructure their pre-service programs must require restructuring of both special and general education curricula and should begin immediately.

The Department must immediately convene a work group to examine curriculum to ensure compliance with the newly adopted teacher certification regulations. Membership must be diverse and representative of all stakeholders.

The process to award grants to five universities to implement the Technical Assistance Centers established in the SIG must begin immediately. It is critical that these centers are located throughout the State and are representative of the cultural and geographic diversity for the area served.

FUNDING

The State funding formula must be revisited by the Legislature to ensure that county fiscal contribution does not violate the placement-neutral funding requirement in the federal law.

The extraordinary aid legislation must be revisited to ensure that districts are authorized and encouraged to utilize this funding source to include children with high cost needs within the district and in general education classes.

DATA COLLECTION AND OVERREPRESENTATION

A high-level task force must be convened by the Governor, and facilitated by the State Office of the Child Advocate, to examine this issue. The Task Force should make recommendations for change and monitor the progress of improving New Jersey's dismal record of disparity in services and supports for children of color, children with limited English proficiency, and children from low-income households.

Reports tracking how many students have moved into less restrictive environments must be followed by rigorous monitoring and analysis, including intra-district analyses of how particular schools are doing.

The Department must make public the results of the project with the Office for Civil Rights and the NYU Equity Assistance Center. Districts that do not demonstrate successful outcomes must be sanctioned.

The Department must insure the proper implementation of the Intervention and Referral Service Team process in each district. Data must be collected and used to determine outcomes of the process and to determine whether providing services while deferring referral for special education classification has successful outcomes.

The Department must hold school districts accountable when unjustifiable disproportionality persists. Closer examination through the monitoring system must be implemented. The process of identifying unjustifiable disproportionality, developing and implementing corrective action plans, and determining the impact of those plans, must be made more public and inclusive. Families from diverse constituencies must be directly involved in all aspects of addressing this problem.

SYSTEM CHANGE

The State Board of Education must examine the disconnections that exist in the organization of the Department of Education. County Superintendents responsible for district improvement plans, along with the Departments of Human Services and Corrections and Offices of Education that are responsible for children in State operated facilities, must be accountable to the Office of Special Education Programs in areas that directly affect the implementation of the State Education Code.

All school construction dollars, including Abbott facilities funding, must be tied to a mandatory analysis of out-of-district students and their needs.

The Department should offer fiscal incentives to include preschoolers with disabilities in typical settings with non-disabled peers in ways that maintain “natural proportions” (i.e., where preschoolers with disabilities reflect 10-15% of the preschoolers in the inclusive pre-school program). The Department should also require districts that do not operate their own universal preschool to develop partnerships with childcare centers and typical preschool programs.

The Department of Education must initiate, and the State Board must approve, code changes that would require time for teacher preparation, planning and consultation to be built into the school day.

The State Board must require that at least 20 hours of the 100 continuing education hours required to maintain certification for ALL teachers address the education of students with disabilities in general education settings.