

SEGREGATED

1st & SECOND RATE:

"SPECIAL" EDUCATION
IN
New York

*Advocates for Children of New York, Inc.
24-16 Bridge Plaza South
Long Island City, New York 11101
(718) 729-8866*

**SEGREGATED AND SECOND-RATE:
"SPECIAL" EDUCATION IN NEW YORK**

*Diana MTK Autin
Managing Attorney,*

*Emily Dentzer
Stanford Public Interest Intern*

&

*Briar McNutt
J.P. Morgan Intern*

*Advocates for Children of New York, Inc.
24-16 Bridge Plaza South
Long Island City, New York 11101
(718) 729-8866*

"Integration is both legally mandated and educationally better for both 'regular' and 'special needs' students. Segregation for special education students has resulted in a separate and unequal system that isolates but doesn't educate the vast majority.... Schools should meet the instructional needs of all their students, and should have a range of classroom and support services available toward that end."

Education advocate

TABLE OF CONTENTS

	<u>Page</u>
Acknowledgements.....	vii
Preface.....	ix
Executive Summary.....	1
Introduction - Laying the Foundation.....	15
I. Special Education Placement: Restrictive, Racially Segregated Environments.....	23
II. Benefits of Inclusion.....	45
III. Models of Inclusive Education.....	59
IV. Recommendations.....	73
V. Appendices.....	91

ACKNOWLEDGEMENTS

This report was completed through the work of many individuals. The authors wish to thank, in particular, AFC staff members for their insightful comments and recommendations. We are grateful to Yvonne Rafferty, Research Director, for her guidance in analyzing survey results, and to Ellen Gallagher Holmes, Skadden Fellow, for her extensive editorial assistance.

For their generous support and commitment to helping New York City's most vulnerable children, the authors also thank the New York Community Trust, the Aaron Diamond Foundation, Morgan Guarantee Trust and the Skadden Fellowship Foundation. Without the assistance of these organizations, this report would not have been possible.

Finally, we thank parents, advocates, school officials and staff who answered our questionnaire in the hope that sharing their views and experiences would help to make a difference.

PREFACE

Advocates for Children, Inc., (AFC) was founded in 1970 to obtain equal educational opportunities, promote quality education services, and overcome school failure for New York City's 1,000,000 public school students. AFC's special mission is to represent the interests of students placed at highest risk of educational failure: those who suffer educational disadvantage because of racial discrimination, poverty, educationally disabling conditions, or inadequate academic preparation. The core of AFC's program is assisting individual students and their families in obtaining appropriate quality public education services. In addition, through our research and policy analysis, we examine local, state, and national issues and their impact on children attending New York City Public Schools.

AFC's program is carried out by a multicultural, bilingual staff of attorneys, lay advocates, parent organizers, researchers and volunteers, all of whom provide individual advocacy, training, research, and assistance to communities.

Over the past twenty years, AFC has devoted particular attention to the educational needs of children with disabling conditions. We have worked to ensure their access to high quality, free public education. In this report, we focus on the segregated, second-rate nature of the "special" education system in New York and offer recommendations for achieving a more inclusive, effective education for all children in our schools.

- 0 Statewide statistics reveal the over-representation of children of color in segregated special education settings. African-American students represent a disproportionate number of segregated special education placements: they constitute 19.8% of the general education population and 34.1% of the segregated special education population. Similarly, Latino students comprise only 15.1% of the general education population, but represent almost 23% of segregated special education placements. Conversely, White students comprise 59.8% of general education students and only 41.3% of segregated special education placements.⁷
- 0 In New York City, African-American students represent a disproportionate number of special education students, constituting only 38% of the general education population and 41% of the special education population. In contrast, Latino and White students account for 35% and 20%, respectively, of the general education population and 34% and 19% of the special education population.⁸
- 0 Children of color represent a growing number of special education students in New York City. From 1985 to 1990, the number of Latino and African-American males in special education programs jumped 11% and 5%, respectively. The number of White males in special education programs simultaneously decreased by 14%.⁹
- 0 Citywide, African-American and Latino students represent a disproportionate number of the most restrictive special education placements. In 1989-90, African-American and Latino students together comprised over 80% of the students in self-contained special education classes and special programs. In contrast, White students represented the single largest group-- 37.2%-- of the students receiving related services only.¹⁰

Administrative Obstacles to De-Segregation

In educating disabled students in public schools, New York City and State have failed to preserve the basic principle that all children have the right to learn together. All too often, disabled children end up in separate buildings and/or classrooms because schools lack more integrated programs, children require

integration or mainstreaming, inclusion promotes the full academic, social, and physical participation of students with special needs in the general education environment. In encouraging students to accept and appreciate diversity, inclusion not only better prepares all students for life in the real world, but also fosters a society undivided by race, class, language or disability.

Recommendations for Improvement

With twenty-years experience in representing parents of children with disabling conditions in individual cases and through the Jose P. v. Sobol¹³ lawsuit, Advocates for Children has consistently urged the general education system to address the needs of more children and to avoid inappropriately placing them in special education. Fortunately, numerous projects both within and without New York State have attempted to reverse the trend toward a separate educational system for children with disabling conditions and have generated many recommendations for reform. After careful consideration of these projects and our own anecdotal experience, we offer the following recommendations for New York City and State:

- 0 NYSED should promulgate and widely circulate a policy statement which underscores its commitment to ensuring the availability of an inclusion education option for all children with disabilities.
- 0 NYSED should compile, assess, and document available data on current inclusive models and distribute the data to all local educational agencies.
- 0 NYSED should convene a task force of educators, advocates, and other professionals to study the inclusive programs of other states and to recommend

carry out the following objectives:

- create support and informational networks for teachers to share strategies for and experiences in educating disabled children within the general education classroom;
 - develop consultant-teacher and team-teaching strategies and adopt inclusive models;
 - foster "natural supports," i.e., students and adults, who can provide disabled children with informal assistance or simple special education services in the general education classroom;
 - strive towards school-based management with significant parent participation and create other programs through which parents can take an active role in the education of their children and community members can contribute their time and resources;
 - convene committees of community leaders, professionals, parents, and teachers to establish high standards for curriculum to interest and challenge students and to establish high standards of student performance; and
 - design and implement programs which frequently assess students' progress and provide remediation as necessary, such as the New York City program-- Promoting Success-- which entitles third graders to summer school and remedial services in the fourth grade.
- 0 NYSED should issue regulations which require School-Based Support Teams (SBSTs), in responding to referrals, to better document evaluation and assessment results, and to fully disclose school officials' informal assessments of students.
- 0 NYSED should promulgate regulations which establish high standards for Individualized Education Programs (IEPs) and set forth procedures for review of substandard IEPs.
- 0 The New York State legislature, in conjunction with NYSED, should revise the special education reimbursement formula, broaden the continuum of special education services offered in the general education classroom, and expand the program options between levels of service.
- 0 The legislature should establish a new continuum of intermediate, preventive services which provides students with individualized support services prior to special education referral.

classroom, rather than in pull-out programs. Providing special services directly to students will require major changes in most school districts, including: administrative leadership at the building and district level; ongoing professional development; a restructured, more open relationship between a student's home and school; the creation and implementation of adaptive curriculum and building accommodations; shared "ownership" among general and special educators; and flexible, integrated support services for children and teachers. Second, schools must include students' families as an integral part of the educational process. Administrators, teachers, and other staff must reach out in culturally and racially sensitive ways to inform families of students' activities and to encourage their participation as volunteers, members of Parent Associations, and school governance councils, or school advisors. They should also establish supportive programs for students and families confronting cultural, racial, or linguistic barriers.

Conclusion

Advocates for Children strongly recommends a radical change in the current special education system. Administrators, educators, parents, and other advocates must all work to broaden the definition of children capable of being educated in general education classrooms and eliminate the segregation of disabled children in separate special education programs. To ensure that schools meet the needs of all children in the inclusive classroom, we must also endeavor to improve the quality of

NOTES

1. New York City Public Schools, The Chancellor's Budget Request, 1992-93, at 32.
2. Id.
3. U.S. Department of Education., Thirteenth Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act 26, A-56 (hereinafter 13th Annual Report) (1991).
4. Id. at 21, A-56.
5. New York City Public Schools, supra note 1, at 32. Thirteenth Annual Report, at 3.
6. Division of Special Education, New York City Public Schools, Special Education Students in New York City Public Schools: A Racial/Ethnic Distribution 9 (1990).
7. Information Center on Education, New York State Education Department, Racial/Ethnic Data on Public School Students and Staff by School and District (1991-92).
8. Division of Special Education, New York City Public Schools, supra note 5, at 9.
9. Walter Stafford et al., Federal of Protestant Welfare Agencies, Inc., Cause for Alarm: The Condition of Black and Latino Males in New York City 14 (1991).
10. Division of Special Education, New York City Public Schools, supra note 5, at 9.
11. Beyond Separate Education: Quality Education for All 114 (Dorothy Kerzner Lipsky & Alan Gartner eds., 1989) (citing Mary T. Moore et al., U.S. Department of Education, Patterns in Special Education Service Delivery and Cost (1988)) (A recent national study examining expenditures for special education estimates that the average total cost of educating a pupil with disabilities is 2.3 times that for a general education student, or \$6,335 verses \$2,780 annually. For students in self-contained programs (where pupils spend approximately 28% of their school week in general education), the average total cost is \$6,913, or about 2.5 times the cost for a general education pupil. Finally, the

Introduction

INTRODUCTION

LAYING THE FOUNDATION

Advocates for Children (AFC) has created the following report based on certain assumptions regarding general education. In addition to the many recommendations set forth in the following pages, we wholeheartedly endorse the ten entitlements proposed in The Good Common School: Making the Vision Work for All Children.¹ The authors of The Good Common School assert that children are entitled to:

- (1) "have parents, advocates, and concerned educators involved in all decisions affecting their education";
- (2) "learn in an integrated, heterogeneous setting responsive to different learning styles and abilities";
- (3) "comprehensible, culturally supportive, and developmentally appropriate curriculum and teaching strategies";
- (4) "access to a common body of knowledge and the opportunity to acquire higher-order skills";
- (5) "a broadly-based assessment of their academic progress and grading structures that enhance individual strengths and potential";
- (6) "a broad range of support services that address individual needs";
- (7) "attend schools that are safe, attractive, and free from prejudice";
- (8) "attend school unless they pose a danger to other children or school staff";
- (9) "instruction by teachers who hold high expectations for all students and who are fully prepared to meet the challenges of diverse classrooms"; and
- (10) "an equal educational opportunity supported by the provision of greater resources to schools serving students most vulnerable to school failure."²

advance. Yet, for the purposes of this report, AFC relies upon the legislative and regulatory intent expressed in federal and State laws (20 U.S.C. Sec. 1412(5)(B); N.Y. Comp. Codes R. & Regs. Tit. 8, Sec. 200.6(1)) for a concise definition. Thus defined, inclusion signifies the process of educating children with disabilities "to the maximum extent appropriate ... with children who are not disabled" and providing "special classes, separate schooling, or other removal of children with disabilities from the general educational environment ... only when the nature or severity of the disability is such that education in the regular classes" constitutes inferior placement (emphasis added) (20 U.S.C. Sec. 1412(5)(B)). In maintaining that federal and State laws reflect the intent of inclusion, AFC nevertheless recognizes that many current State regulations and administrative practices undermine and obstruct inclusive education.

At this early juncture, AFC supports the inclusion of all children with disabling conditions into general education classrooms. If research should subsequently conclude that separate special education placement provides certain disabled children with the optimal educational experience, we will revise our position accordingly. Notwithstanding such unforeseen events, however, AFC wholeheartedly supports a program whereby, to the maximum extent appropriate, schools educate children with disabilities in general education classes with age-appropriate peers and teachers, paraprofessionals, and therapists who deliver

NOTES

1. National Coalition of Advocates for Students Good Common School Project, The Good Common School: Making the Vision Work for All Children (1991).
2. Id. at 3-9.
3. Susan Stainback et al., Toward Inclusive Classrooms, in Curriculum Considerations in Inclusive Classrooms: Facilitating Learning for All Students 3 (Susan Stainback & William Stainback eds., 1992).
4. Id. at 4.

Chapter One

New York State law similarly requires school districts to educate children with disabilities in the least restrictive environment. Title VI, the New York State counterpart to IDEA, declares that:

"[e]ach district shall provide to the maximum extent appropriate [special education] services in a manner which enables children with handicapping conditions to participate in regular education services when appropriate." N.Y. Educ. Law tit. 6, Sec. 4402(2)(a) (Consol. Supp. 1991).

To comply with federal and State statutes and regulations, New York State, through its Education Department (NYSED), must therefore ensure that school districts provide disabled children with education in the least restrictive environment (LRE) appropriate for their needs. (See Appendix A for a full discussion of the law pertaining to the LRE.)

Most Restrictive Environment

Despite the clearly delineated LRE requirement, school districts in New York State have one of the lowest rates of least restrictive placement in the country. Although most states roughly adhere to the federal continuum of special education services³, the U.S. Department of Education's 1991 annual report reveals that states differ dramatically in their use of each option, particularly with regard to special placements.⁴ The report further shows that New York, unlike the majority of the states, favors the most restrictive options in the continuum.

Among the fifty states, the median percentage of disabled students placed in regular classes during the 1988-89 school year was 37.3%.⁵ In contrast, New York placed only 7.12% of its

education students had achieved decertification and returned to general education.¹⁰ Thus, New York City not only places its special education students in segregated settings, but leaves them there.

Within the microcosm of New York City, the severity of segregation between special education and general education students readily appears. Segregated settings exist at all grade levels. A 1992 study revealed that only 20% of the mildly or moderately disabled students in the City's community school districts received any academic integration.¹¹ This represents some increase over the 5% figure reported in 1986.¹² At the high school level, a 1988 study reported that Modified Instructional Services I (MIS I) and Modified Instructional Services II (MIS II) special education students attended academically integrated classes for less than half a class period per day. In addition, these "moderately or mildly" disabled students attended integrated music or physical education classes only once or twice daily.¹³

Statistics from New York City also exemplify the wide disparity between the academic performance of general and special education students. In particular, the extraordinarily low graduation rates and high dropout rates for special education students in New York City point to the failure of restrictive settings to improve or even promote student performance. In the class of 1989, only 4% of the special education students graduated at the end of four years in high school.¹⁴ A

represent 12% of elementary and secondary enrollments, they constitute 28% of total enrollments in special education" 20 U.S.C. Sec. 1409(j)(1)(B)(iii)-(iv).

In adhering to the federal mandate that public schools educate all disabled students with their nondisabled peers "to the maximum extent appropriate," schools can address and correct the over-representation of children of color in special education programs (34 C.F.R. Sec. 300.305). Nonetheless, statistics for New York State and New York City reveal that children of color represent not only a disproportionate number of special education placements, but also a disproportionate number of highly restrictive special education placements.

Available statewide statistics evince the over-representation of children of color in segregated, i.e., separate, special education placements. Across New York State, African-American students constitute only 19.8% of the general education population, but represent 34.1% of the segregated special education population. Latino students comprise only 15.1% of the general education population, but similarly represent a far greater proportion of segregated special education students-- almost 23%. In contrast, White students, who constitute 59.8% of general education students, comprise only 41.3% of segregated special education placements.¹⁶ Thus, in heterogeneous areas of the State, the over-representation of children of color in restrictive special education placements suggests a racial re-segregation of public schools.

In New York City, African-American students, unlike their

received related services in the mainstream much more often than African-American or Latino students even though they represented only half as many general education students.

While the statistics clearly show that New York City and State place the majority of disabled students in the most restrictive environments, the figures also indicate that they place a disproportionate number of children of color in those environments as well. The State's and City's failure to ensure LRE placements for students with disabilities has not gone unnoticed. Due to the marked unavailability of the LRE for most disabled students in the State and City, federal evaluators recently determined that the State had failed to comply with federal guidelines and, therefore, potentially jeopardized federal funding.

Noncompliance Documented

Through the Office of Special Education Programs (OSEP), the U.S. Department of Education administers the programs authorized in IDEA. In 1989, OSEP conducted an intensive monitoring of the New York State Education Department (NYSED) to determine its compliance with federal regulations. Federal evaluators visited 13 public schools and examined 112 student records, 10 public agencies' policies and procedures, and NYSED's compliance monitoring system.²¹ After extensive review, OSEP concluded that NYSED had failed to comply with numerous federal regulations which require schools to educate students with disabilities in the LRE. OSEP found that NYSED failed to ensure the academic

activities provided by each responsible public agency [each local school district] as required by Sec. 300.227."²⁴

P.S. 721 in New York City exemplified the failure of public schools throughout the State to provide social interaction between disabled and nondisabled students. Although P.S. 721 stands only blocks away from a general education school building, it furnished no opportunities for the students in its Specialized Instructional Environment V (SIE V) program to interact with nondisabled students. This special education service category is designed to prepare students for semi-competitive or non-competitive employment. In explaining the lack of social integration and, thus, the school's reasons for ignoring the federal mandate set forth in Sec. 300.227, teachers responded that:

"(1) the student [with a disability attending P.S. 721] would not be accepted by students who do not have disabilities; (2) the student does not have good verbal skills; (3) the student is easily frustrated and would need the assistance of a paraprofessional in a small regular class; (4) the student would 'just be isolated.'"²⁵

To remedy NYSED's noncompliance with the LRE requirement, OSEP outlined two Corrective Action Plans. In both plans, OSEP required NYSED to set forth specific steps to meet federal regulations.²⁶ In February of 1991, NYSED submitted the plans to OSEP. The timely submittal protected NYSED against the withholding of federal funding. NYSED's specific proposals and revisions submitted in October 1991 included: a position paper, a series of public hearings, the formation of a statewide database,

education services within the general education classroom if these services appear on the students' Individualized Education Programs (IEPs) and meet their needs. Gloeckler, EHLR 211:367 (OSERS 1985). Furthermore, other states have adopted funding formulas that reimburse districts on the basis of the cost of the educational setting rather than the restrictiveness and/or provide financial incentives for integration to districts with high rates of segregation. Thus, in maintaining an arbitrary funding formula backed by neither federal guidelines nor accepted state practices, New York State encourages school districts to segregate students with disabilities. NYSED's reluctance to acknowledge the flaws of the formula and to propose alternatives further frustrates districts in their attempts to include disabled students in general education.

In New York City, the policies and procedures of the Chancellor likewise thwart schools and districts in their effort to develop innovative inclusive programs. Special Circular No. 1 (1989-1990 Update), for example, creates major obstacles to full inclusion.³⁰ Issued by the Chancellor's Office in September 1990, Special Circular No. 1 sets forth regulations and procedures for the integration of special education students within New York City public schools. The following regulations make the integration of disabled students unnecessarily tedious and capricious. First,

"No teacher is to have a case load exceeding six (6) mainstreamed students with a maximum of three (3) students during any one instructional period. This limitation applies to all subject areas

placements (Reg. 3.2.5).³³ Finally, despite the serious deficiencies identified by parent and advocacy groups, the Chancellor has refused to issue an updated, corrective circular.

The failure of New York City public schools to implement the Consultant Teacher Program citywide further frustrates integration. Although the State has approved the model as an acceptable method of delivering special education services, the City has yet to establish even a pilot program. The New York City Office for Special Education Services at the urging of the United Federation of Teachers and advocacy and parent organizations has spent several years developing and gaining approval for a pilot program. This program would employ the Consultant Teacher Model in serving special education and Chapter 1 students in general education classrooms. Until recently, New York City public schools have delayed the implementation of the pilot program even though NYSED has reviewed and approved the City's proposal.³⁴

Conclusion

The aforementioned statistics unequivocally demonstrate that New York State and New York City, in violation of federal and State law, have continued to place the majority of disabled students in the most restrictive special education settings. The statistics also show that the State and City have placed more African-American and Latino students in those settings and assigned White students to the less restrictive special education programs. Nevertheless, despite these statistics, OSEP's

"Homebound/hospital environment includes students placed in and receiving special education in hospital or homebound programs." Id. at 20-21.

4. Id.
5. Id., at 26 (Percentages refer to school children ages 6-21).
6. Id., at A-56.
7. Id., at 21, A-56.
8. New York City Public Schools, The Chancellor's Budget Request 1992-93, at 32.
Thirteenth Annual Report, at 3.
9. Division of Special Education, New York City Public Schools, Special Education Students in New York City Public Schools: A Racial/Ethnic Distribution 9 (1990).
10. Margaret C. Wang, Effective School Responses to Student Diversity: Challenges and Prospects, Issues in Brief, Oct. 1991, at 9.
11. The Chancellor's Office of Monitoring and School Improvement, New York City Public Schools, Academic Mainstreaming in the Community School Districts. (1992).
12. Division of Special Education, New York City Board of Education, Survey of Community School District Academic Mainstreaming (1986).
13. Division of High Schools, New York City Board of Education, Mis I, Mis II, Resource Room Register, and Mainstream Curriculum Index (1988).
14. Walter Stafford et al., Federation of Protestant Welfare Agencies, Inc., Cause for Alarm: The Condition of Black and Latino Males in New York City 13 (1991).
15. After five years of high school, the graduation rate of special education students in the Class of 1987 rose to 4.9%; the graduation rate for general education students in the same class hit 46.6%. The dropout rate for special education students in the Class of 1987 climbed to 31.3% while the rate for general education students reached 28.4%.

After six years of high school, the graduation rate of special education students in the Class of 1986 increased to 13.8% while the corresponding rate for general education students rose to 54.1%. The dropout rate for special

21. Office of Special Educational Programs, U.S. Department of Education, Final Monitoring Report: 1989 Review of New York State Education Department iii (1990).
22. Id., at 8.
23. Id., at 9.
24. Id., at 12.
25. Id., at 13.
26. Id., at 11-12, 13-14.
27. Letter and attached document from Thomas E. Sheldon, Executive Deputy Commissioner of Education, New York State Education Department, to Judy A. Schrag, Director, Office of Special Education Programs, U.S. Department of Education, 8-12 (Jan. 31, 1991).

Memorandum from Thomas B. Nevelidine, Assistant Commissioner for Special Education Services, New York State Education Department, to District Superintendents et al. (Jan. 1992).
28. New York Bar Association, Legislative Incentives for Segregated Special Education Program. (forthcoming Sept. 1992) (manuscript at 16-21, on file with author).
29. Cf. Paula J. Hepner & P. Crull, Public Education Association, Mainstreaming in New York: Children Caught in the Currents, 46 (1984) (citing J. Kakalik et al., U.S. Department of Education, The Cost of Special Education: Summary of Study Findings, R-2858-ED (1981) (A comprehensive national cost study found that mainstreamed classes constitute the second most expensive educational placement.)).
30. Joseph A. Fernandez, Chancellor, New York City Public Schools, Special Circular No. 1, 1989-1990- Update (Sept. 28, 1990).
31. Id., at 2.
32. Tamalpais (CA) Union High School District, EHLR 353:126 (OCR 1988) (The Office of Civil Rights (OCR), a division of the U.S. Department of Education, recently held that a similar policy resulting from a collective bargaining agreement between a California high school district and the local teachers' association violated the least restrictive environment requirement by excluding students from general education classes solely on the basis of their disabling condition.).

Chapter Two

CHAPTER TWO
BENEFITS OF INCLUSION

Introduction

Although the United States Supreme Court, recognizing the harmful effects of separating children by race, ruled segregated education unconstitutional over forty years ago,¹ segregation in schools persists today in the strict separation of children with and without disabling conditions. For the last twenty years, educational experts have compiled evidence of the many harmful effects of placing children with disabilities in separate special education classes, schools, or residential facilities. Statistical analyses show that segregated special education unequivocally legitimizes and promotes racial segregation.² Nationwide, studies of special education programming have revealed a disproportionate number of children of color, particularly in the most segregated placements.³

Research also demonstrates that segregated special education engenders what Chief Justice Warren in Brown v. Board of Education of Topeka, KS, 347 U.S. 483, 493 (1954), aptly termed a "feeling of inferiority as to [children's] status in the community that may affect their hearts and minds in a way unlikely ever to be undone." Two studies (Kelly, 1972; Oakes, 1982) reported that, among all students, students designated as "lower track" have the lowest self-esteem. Similarly, other studies (Shafer & Olexa, 1971; Alexander & McDill, 1976) indicated that lower-track placement actually decreased students'

educational and social development. Because few schools have achieved full inclusion system-wide, available research focuses upon small-scale integrated programs, i.e., programs integrating only one grade level or one classroom within a school, wherein students with disabling conditions participate in general education for most or part of the school day.⁹ Thus, in describing research results, we use the term integration and maintain the aforementioned distinction between integration and inclusion.

Significant and widespread educational gains of integrated students appear in numerous studies. A comprehensive analysis (Gartner & Lipsky, 1987) of fifty studies of the academic achievement of children with disabling conditions showed that "the mean academic performance of the integrated group was in the 80th percentile, while the segregated students scored in the 50th percentile."¹⁰ In a more recent study (Wang & Reynolds, 1989), integrated students academically outperformed segregated students by an average of six months. Unlike the students in special classes, the integrated students had continuous, consistent instruction from the same teacher in the same setting and missed less general classroom instructional time receiving outside special education services.¹¹ Furthermore, researchers (Brinker & Thorpe, 1984; Wang & Baker, 1986) have found that, among students with severe disabilities, integrated students attained more of the objectives set forth in their Individualized Education Programs (IEPs) than did segregated students.¹²

review (Madden & Slavin, 1982) of segregated and integrated placement programs reported comparable social progress among integrated students, namely positive gains in their self-esteem, behavior, and emotional adjustment.¹⁵ Moreover, integrated environments have fostered higher social development in all participating students.

The integration of students with disabling conditions cultivates social awareness and sensitivity in mainstream general education students while increasing the social competence of students from special education classes. Numerous studies (Donaldson, 1980; Fenrick & Peterson, 1986; Haring et al., 1987; Sasso et al., 1985; McHale & Simeonsson, 1980; Voeltz, 1980, 1982) reported that general education students included in integrated settings developed better attitudes towards students with disabilities.¹⁶ One educator poignantly conveyed the importance of instilling in children an appreciation for diversity.

"Only by bringing young people, disabled and nondisabled alike, together more frequently will we begin to rid ourselves of stereotypes. That is one of the principle benefits of integration, it holds potential for students to learn about each other's humanness, uniqueness, and similarities. By contrast, continued segregation of disabled and nondisabled students can only help foster stereotypes."¹⁷

In creating classroom settings which realistically reflect the world outside the school yard, integrated programs better prepare all students for life in a diversified society. Through

Administrative Gains

Besides the many benefits already discussed, integration promises to effect other constructive changes in educational systems. If schools fully include students with disabling conditions in general education classrooms, they can better utilize resources and programs which they often duplicate in special education and general education classrooms. The merger of general and special education programs will likely result in the following major structural changes.

First, general and special education teachers can share their expertise, collaborate on strategy, and design comprehensive learning programs for students with disabilities. Second, special education teachers, paraprofessionals and therapists can spend less time determining classification and eligibility of students for special education programs and more time actually instructing them.²¹ Third, in providing services directly in the general education classroom, special education teachers and paraprofessionals can simultaneously teach students with disabling conditions and students identified by general education teachers as children requiring individualized instruction. Finally, school administrators can distribute funds more efficiently. Specifically, they can consolidate programs and reduce the costs of transportation, remedial services, and instructional materials. One study (Affleck et al., 1988) reported that integrated classrooms offering special education services cost less to operate than resource rooms.²²

NOTES

1. Brown v. Board of Education of Topeka, KS, 347 U.S. 483 (1954).
2. Christine E. Sleeter, Learning Disabilities: The Social Construction of a Special Education Category, 56 Exceptional Children 5 (1986).
3. Aforementioned surveys of the special education population in New York City public schools exposed an over-representation of African-American students. See infra p. 5 and note 8.

A system-wide review in Ann Arbor, Michigan, reported a high number of African-American students in lowest track as well as special education classes. Maryann Marrisipodi Guzman, The New York City Fund for Public Education, Success for Each Child: A Research-Based Report on Eliminating Tracking in New York City Public Schools 33 (1992).

4. Jeannie Oakes, Tracking and Ability Grouping in American Schools: Some Constitutional Questions, 84 Teachers College Record 804 (1983).

D. Kelly, Tracking and Its Impact on Self-esteem: A Neglected Dimension, 96 Education 2-9 (1975).

J. Oakes, Classroom Social Relationships: Exploring the Bowles and Gintis Hypothesis, 55 Sociology of Education 197-212 (1982).

W. Shafer & C. Olexa, Tracking and Opportunity (1971).

K. Alexander & E. McDill, Selection and Allocation within Schools: Some Causes and Consequences of Curriculum Placement, 41 American Sociological Review 936-80 (1976).

5. William Stainback & Susan Stainback, A Rationale for the Merger of Special and Regular Education, 51 Exceptional Children 104 (1984).

6. Id. at 104-105.

R. Bogdan, A Closer Look at Mainstreaming, 47 Educational Forum 25 (1983).

R. Bogdan, Does Mainstreaming Work? Is a Silly Question, 47 Phi Delta Kappan 425-34 (1983).

15. Gartner & Lipsky, supra note 6, at 375.
- Nancy A. Madden & Robert L. Slavin, Count Me In: Academic Achievement and Social Outcomes of Mainstreaming Students with Mild Academic Handicaps 1 (1982).
16. California Research Institute, supra note 11, at 7.
- J. Donaldson, Changing Attitudes Toward Handicapped Persons: A Review and Analysis of Research, 46 Exceptional Children 504-14 (1980).
- N.H. Fenrick & T.K. Peterson, Developing Positive Changes in Attitudes Towards Moderately/Severely Handicapped Students through a Peer Tutoring Program, 19 Education and Training of the Mentally Retarded 83-90 (1984).
- T. Haring et al., Adolescent Peer Tutoring and Special Friends Experiences, 12 Journal of The Association for Persons with Severe Handicaps 280-86 (1987).
- G. Sasso et al., Procedures for Facilitating Integration of Autistic Children in Public School Settings, 5 Analysis and Intervention in Developmental Disabilities 233-46 (1977).
- S.M. McHale & R.J. Simeonsson, Effects of Interaction on Nonhandicapped Children's Attitudes Toward Autistic Children, 85 American Journal of Mental Deficiency 18-24 (1980).
- L.M. Voeltz, Children's Attitudes Toward Handicapped Peers, 84 American Journal of Mental Deficiency 455-64 (1980).
- L.M. Voeltz, Effects of Structured Interactions with Severely Handicapped Peers on Children's Attitudes, 86 American Journal of Mental Deficiency 380-90 (1982).
17. Douglas Biklen et al., Achieving the Complete School: Strategies for Effective Mainstreaming 9 (1985).
18. Susan B. Hasazi et al., Factors Associated with the Employment Status of Handicapped Youth Exiting High School from 1979 to 1983, 51 Exceptional Children 460 (1985).
19. Id. at 466.
20. Massachusetts Department of Education, A Focus on Integration: Including Students of All Abilities 9-10 (1992).
- L. Brown et al., Opportunities Available When Severely Handicapped Students Attend Chronologically Age Appropriate

Chapter Three

CHAPTER THREE

MODELS OF INCLUSIVE EDUCATION

Inclusion goes far beyond the mere physical placement of special education students in general education classrooms. In fact, successful inclusion requires nothing less than rethinking methods of service delivery, reorganizing special education resources- including time and staff- and restructuring the curriculum, instructional methods, and assessment procedures of general education to accommodate students with diverse educational needs. To achieve full inclusion, therefore, schools must develop innovative special education programs which provide services in the general education classroom and create a flexible core educational curriculum responsive to individual students' needs and diversities.

In designing new programs, administrators and teachers must recognize that federal and State laws require only that schools provide an appropriate education for students with disabling conditions. Nowhere do the laws mandate a separate special education system.¹ The following strategies present administrators, teachers, and parents with practical models for combining special and general education. They demonstrate that:

"special education as a whole can be reconceptualized ... not as a separate system but as an administrative tool to provide professional development and support for the instructional processes within each classroom."²

1. Adaptive Learning Environments Model (ALEM)

Developed by Margaret Wang of Temple University, the ALEM provides an alternative to pull-out resource rooms. The model

cognitive competence, and social interaction.⁴

One study (Wang et al, 1984) also suggested that the ALEM offers schools considerable flexibility. In the study, five different schools successfully implemented the ALEM despite their dissimilar demographics.⁵

2. Integrated Classroom Model (ICM)

The University of Washington created the ICM to educate students with mild disabilities. The model offers push-in services in integrated classrooms rather than pull-out services in resource rooms.⁶ One of most significant advantages of the ICM is its cost-effectiveness. In elementary schools, the ICM can yield a cost-savings of approximately \$50,000 a year.⁷

Evaluations of the ICM indicate that students with learning disabilities receive services in the classroom as effective as those offered in resource rooms. While only a few significant differences in achievement between students in the ICM and those in resource rooms appeared, these differences demonstrated the superiority of the ICM over resource rooms. Nondisabled students in the ICM performed as well as their peers in non-integrated classrooms.⁸

3. Consultant Teaching (CT)

In this model, professionals provide services to pupils with disabling conditions who attend full-time general education programs and to their general education teachers.

Although New York has yet to implement the CT model statewide, the Commissioner of Education has promulgated

good idea for both special education pupils and general education pupils, depending upon the ... [particular pupil's special education needs]."¹²

4. **Team Teaching**

Similar to the consultant teacher model, team teaching requires general and special education teachers to share curriculum and instructional responsibilities in classrooms containing students with and without disabilities. While the model usually pairs a special education teacher and a general education teacher together in a classroom, the model can assign up to seven different instructors to a classroom, including speech therapists, guidance counselors, and health professionals.¹³ Team teaching encourages teachers to draw upon one another's expertise. General educators, for instance, have the skills to teach large groups of students and develop lesson plans. Special educators, on the other hand, can identify problems in the curriculum and devise effective teaching strategies to combat such difficulties. Together, the teachers can provide all students with a curriculum responsive to their individual needs.¹⁴

5. **Cooperative Learning**

Cooperative learning describes various instructional strategies designed to accommodate a range of educational needs and to encourage social relationships among students of diverse abilities. These strategies supplement or replace students' independent seat work with small group activities. Individual success, therefore, depends upon group learning and collaboration

programs in which students with disabling conditions tutor nondisabled students in sign language.¹⁷

A comprehensive review (Osguthorpe & Scruggs, 1986) of peer tutoring programs revealed that students with disabilities who served as tutors or acted as tutees acquired social and academic benefits. The tutors-- disabled and nondisabled students alike-- acquired greater self-esteem.¹⁸ In addition to improved self-perception, tutors also gain mastery of instructional material.¹⁹

Peer tutoring, along with other school and community peer-support programs, can encourage the inclusion, rather than the isolation, of disabled students entering the general education classroom for the first time.²⁰

7. Parent Involvement

While the Parent-Teacher Association (PTA) and the Individualized Education Program (IEP) process represent the traditional models of parent involvement, schools can nevertheless adopt new approaches to encourage parent involvement. Specifically, schools can conduct meetings in the evenings when working parents can attend; supply child-care services during meetings; send parents bulletins on school activities; and lend books and educational materials to parents. Through more comprehensive models, schools can actively promote parent and community involvement in the education of children.²¹

Parents, especially those of students with disabilities, have much to contribute to schools. From parents of disabled students, schools can obtain valuable insight, as

NOTES

1. Frank Laski et al., A Legal Duty to Provide Effective Schooling, in Beyond Separate Education: Quality Education For All 389 (Dorothy Kerzner Lipsky & Alan Gartner eds., 1989).
2. Massachusetts Advocacy Center, Locked In/Locked Out: Tracking and Placement in Boston Public Schools 70 (1990).
3. Margaret C. Wang, Accommodating Student Diversity through Adaptive Instruction, in Educating All Students in the Mainstream of Regular Education 186-87 (Susan Stainback et al. eds., 1989).
4. M.C. Wang & J. Birch, Comparison of a Full-Time Mainstreaming Program and a Resource Room Approach, *Exceptional Children*, Sept. 1984.

M.C. Wang et al., An Investigation of the Implementation and Effects of a Full-Time Mainstreaming Program, *Remedial and Special Education*, Nov./Dec. 1984.
5. Wang et al., supra at 23, 30.
6. J.Q. Affleck et al., Integrated Classrooms Versus Resource Model: Academic Viability and Effectiveness, 54 *Exceptional Children* 345-46 (1988).
7. Dorothy Kerzner Lipsky & Alan Gartner, School Administration and Financial Arrangements, in Educating All Students in the Mainstream of Regular Education 110 (Susan Stainback et al. eds., 1989).
8. Affleck, supra.
9. See also M.A. Falvey et al., Educational and Curricular Adaptation, in Educating All Students in the Mainstream of Regular Education 155 (Susan Stainback et al. eds., 1989).
10. Lipsky & Gartner, supra note 7, at 108.
11. Jay Gottlieb & Mark Adler, Center for Educational Research, Inc., Evaluation of Consultant Teacher Program 5, i (1991).
12. Id. at 38.
13. J.S. Thousand & R.A. Villa, Sharing Expertise and Responsibilities through Teaching Teams, in Support Networks for Inclusive Schooling: Interdependent Integrated

21. Guzman, supra note 15, at 8, 17.
22. Barbara E. Buswell & C. Beth Schaffner, Families Supporting Inclusive Schooling, in Support Networks for Inclusive Schooling: Interdependent Integrated Education 223 (William Stainback & Susan Stainback eds., 1990).

Chapter Four

CHAPTER FOUR
RECOMMENDATIONS

In previous chapters, AFC has discussed the extent of segregated special education placement in New York State and New York City, administrative obstacles to realizing the LRE requirement, benefits of inclusion, and inclusive models. This chapter presents recommendations aimed at achieving the following goals:

(1) to maximize the inclusion of all children with disabling conditions in general education classrooms by providing most special education services directly to these children in general education classrooms;

(2) to eliminate the over-representation of children of color in special education systems, particularly in the more restrictive special education placements;

(3) to ensure that all procedures for evaluating and assessing children for special education services render culturally and racially non-discriminatory results; and

(4) to encourage local school administrators to provide leadership in and assume responsibility for implementing inclusive programs within their districts.

Recognizing the complexity of the tasks outlined below, we have divided our recommendations into three, time-ordered categories:

(1) immediate recommendations for action within the next six months;

3. **NYSED should convene a task force of educators, advocates, and other professionals to study the inclusive programs of other states and to recommend those programs particularly suited for implementation in New York.**

The task force should examine the inclusive programs of those states which integrate most or all of their disabled students into general education classrooms. Specifically, the task force should review the successful programs established in Vermont.

4. **NYSED should provide school districts with informational conferences, forums, videos, and distributions regarding inclusion.**

NYSED should offer districts information about the successful inclusive programs currently operating in the State. NYSED should also promote and teach districts about the purpose and philosophy underlying inclusion. In this endeavor, NYSED should contract with nonprofit agencies to conduct conferences and forums on inclusion. NYSED should strive to emulate the extensive program developed and operated by the New York Partnership for Statewide Systems Change. Finally, NYSED should encourage academia to make its best research accessible to local administrators and teachers.

5. **NYSED should provide technical assistance to school districts across the state. This technical assistance should enable school districts to:**

- fully comprehend the federal and State requirements pertaining to the LRE and assessment and evaluation procedures;
- fully comprehend the current special education reimbursement formula and the waiver policy to circumvent the stringent requirements of the reimbursement formula, especially

Chapter One, namely, Regs. 3.2.3, 3.2.4, 5.1, 5.2, and 5.3. The regulations should not include pre-determined ratios of teachers to disabled students, any express or implied power of teachers to block the inclusion of disabled students, or requirements that disabled students' achievement levels correspond to those of their general education classmates. Instead, the regulations should mandate flexible consultation periods for special and general education teachers and age-appropriate placement for disabled students.

9. **New York City Public Schools should adopt and implement the pilot program, developed by the New York City Office of Special Education Services and approved by NYSED, to employ the Consultant Teacher Program in serving special education and Chapter 1 students in general education classrooms.**

10. **School districts should devise local initiatives to achieve the following objectives:**

-create support and informational networks for teachers to share strategies for and experiences in educating disabled children within the general education classroom;

-develop consultant-teacher and team-teaching strategies and adopt inclusive models, such as those described in Chapter Three;

-develop "natural supports," i.e., students and adults, who can provide disabled children with informal assistance or simple special education services in the general education classroom;

-strive towards school-based management and create other programs through which parents can take an active role in the education of their children and through which community members can contribute their time and resources;

-convene committees of community leaders, professionals,

at all, SBSTs' assessments of students. Frequently, CSEs set forth illegible, vague, and narrowly-focused goals, rarely including decertification or inclusion. Furthermore, when parents request changes or improvements in their child's special education placement, the CSE which designed the child's IEP often claims that it lacks the authority to change the IEP without the approval of the child's school. When parents approach the school, the school refers them back to the CSE. The frequent refusal of CSEs and schools to accept accountability for students' IEPs thus deprives children of appropriate special education placement.

To contest poorly written IEP's or inappropriate placements, our advocates have consistently advised parents to seek independent evaluations and request impartial hearings based on the results of those evaluations. For parents with limited financial resources, this is not always a viable option. Consequently, based on AFC's practical experience, we propose the following immediate recommendation:

- 11. NYSED should issue regulations which require SBSTs to follow stricter criteria in making referrals, to better document evaluation and assessment results, and to fully disclose school officials' informal assessments of students.**

NYSED should develop and distribute revised criteria for special education evaluation and assessment. NYSED should ensure that evaluators use procedures and tests which fully assess students, specifically identifying their academic weaknesses as well as their strengths. In evaluation reports, NYSED should also require SBSTs to demonstrate point by point that evaluation

figures for providing special education services. In the revised formula, the legislature should include tuition subsidies to offset the high cost of some special education placements.

The legislature should also offer financial and other incentives to encourage schools to implement consultant teachers programs and other methods which deliver special education services directly in general education classrooms. The legislature should simultaneously expand the entire special education service continuum and reimburse schools at the same rate for all options, providing subsidies for the most intensive, residential placements. In particular, the legislature should expand the consultant teacher option to include a broader range of services.²

- 2. The legislature should establish a new continuum of intermediate, preventive services which provides students with individualized support services prior to special education referral.**

The legislature should require schools to provide short-term remediation services before referring students to special education services. Before referring a student for special education evaluation and assessment, designated school staff members should conduct: informal reviews of the student's classwork; interviews with the student, his or her peers, and his or her parents; and structured observations of the students in the classroom.

After the informal review, the reviewers and the student's teachers should devise and articulate creative strategies for classroom instruction. The strategies should include objective,

figures for providing special education services. In the revised formula, the legislature should include tuition subsidies to offset the high cost of some special education placements.

The legislature should also offer financial and other incentives to encourage schools to implement consultant teachers programs and other methods which deliver special education services directly in general education classrooms. The legislature should simultaneously expand the entire special education service continuum and reimburse schools at the same rate for all options, providing subsidies for the most intensive, residential placements. In particular, the legislature should expand the consultant teacher option to include a broader range of services.²

- 2. The legislature should establish a new continuum of intermediate, preventive services which provides students with individualized support services prior to special education referral.**

The legislature should require schools to provide short-term remediation services before referring students to special education services. Before referring a student for special education evaluation and assessment, designated school staff members should conduct: informal reviews of the student's classwork; interviews with the student, his or her peers, and his or her parents; and structured observations of the students in the classroom.

After the informal review, the reviewers and the student's teachers should devise and articulate creative strategies for classroom instruction. The strategies should include objective,

6. NYSED should scrutinize and monitor the appropriateness of instruments currently used to evaluate and assess children of color for special education.

Specifically, NYSED should compare:

- the referral and placement rates of African-American and Latino children with those of White children;
- the types of disabilities identified in African-American and Latino children with those identified in White children;
- the rate at which CSEs/SBSTs recommend less restrictive settings for children of color in segregated special education placements with the rate at which CSEs/SBSTs recommend similar settings for White children in segregated special education placements; and
- the results of evaluations of Limited English Proficient (LEP) children administered by clinicians proficient in the children's dominant languages with the results of evaluations administered by monolingual clinicians and later translated.

7. NYSED should convene a task force of racially and culturally diverse representatives from education agencies, nonprofit organizations, and professional associations to study and recommend revised evaluation and assessment procedures and materials for children of diverse cultural and racial backgrounds.

NYSED should move quickly to establish the task force. In addition to the members' own experiences, the task force should draw upon other states' evaluation and assessment procedures. Once the task force completes its revision of procedures and materials, NYSED should distribute the revisions to all testing centers and publishers as well as all local education agencies. NYSED should set forth specific time-lines to ensure that schools

also strongly discourage over-crowded schools from setting up temporary classrooms in cafeterias, auditoriums, and other non-conventional spaces. Instead, NYSED should offer special assistance to particularly over-crowded schools to enable those schools to construct additional classrooms.

LONG-TERM RECOMMENDATIONS

1. NYSED should provide technical assistance to enable school districts to fully comprehend the revised special education funding formula once enacted by the State legislature.
2. NYSED, in conjunction with local school districts, colleges, and universities, should foster culturally-sensitive, inclusionary attitudes in administrators and teachers.

Under the directives of NYSED, colleges and universities should train new teachers in culturally-sensitive and inclusionary evaluation and teaching techniques. Local school districts should provide similar on-going training for current teachers. NYSED should strive for the trickle-down effect: it should conduct conferences and information sessions for administrators and principals to convince them of the need for change. Once on board, these officials should then implement changes on the local level.

NOTES

1. Office of Special Education Services, Michigan Department of Education, Inclusive Education Policy Statement (February, 1992).
2. New York Bar Association, Legislative Incentives for Segregated Special Education Programs. (forthcoming Oct. 1992) (manuscript at 41-42, on file with Advocates for Children, Inc.).
3. Walter Stafford et al., Federation of Protestant Welfare Agencies, Inc., Cause for Alarm: The Condition of Black and Latino Males in New York City 14-15 (1991).
4. Elba Maldonado-Colon, coordinator of the Hispanic bilingual special-education program at San Jose State, reviewed a check-list of 100 behaviors by which students are often identified as learning disabled or emotionally disturbed. More than half of these characteristics, such as short attention span, disorganization, confusion, anxiousness, shyness, uncooperativeness, defiance, inconsistent academic performance, and poor recall are typical of children learning a second language or undergoing cultural transition.

Peter Schmidt, Schools Report Progress in Assessing LEP Students, Education Week (April 18, 1990).
5. Division of Special Education, New York City Public Schools, Special Education Students in New York City Public Schools: A Racial/Ethnic Distribution 2 (1990).

Appendices

APPENDIX A

THE LAW

LEAST RESTRICTIVE ENVIRONMENT REQUIREMENT

Federal Law

Prior to the enactment of federal legislation in 1975 which compelled states to provide appropriate education for disabled children, federal courts extended the principle of equal educational opportunity to students who needed special education services. Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 334 F.Supp. 1257 (E.D.Pa.1971); Mills v. D.C. Board of Education, 348 F.Supp. 866 (D.D.C.1972). The two decisions strongly supported the individual student's right education in the least restrictive environment (LRE) appropriate to his or her educational needs.

In 1975, Congress enacted P.L. 94-142, the Education for All Handicapped Children Act, specifically to redress the lack of educational opportunities for children with disabilities in public schools. Re-authorized in 1990 as the Individuals with Disabilities Education Act (IDEA), P.L. 94-142 endeavors

"to assure that all children with disabilities have available to them ... a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of children with disabilities and their parents or guardians are protected, to assist States and localities to provide for the education of all children with disabilities, and to assess and assure the effectiveness of efforts to educate children with disabilities." 20 U.S.C. Sec. 1400(c).

Within IDEA, Congress set forth specific guidelines for school

Sec. 300.552(c)).² Prior to any placement in more restrictive settings, school districts must also accommodate disabled children in the general classroom (34 C.F.R. Sec. 104.34(a)). Finally, districts must ensure that each disabled child participates, to "the maximum extent appropriate to the needs" of the individual child, with nondisabled children during non-academic and extra-curricular services and activities, such as lunch, recess, art or music classes, or after-school clubs (34 C.F.R. Sec. 104.34(b); 34 C.F.R. Sec. 300.553).³

Regulatory agencies of the U.S. Department of Education, namely the Office of Special Education and Rehabilitative Services (OSERS) and the Office of Civil Rights (OCR), have issued numerous policy letters and findings affirming the LRE requirement. Recently, OSERS reiterated the federal mandate:

"[t]o the maximum extent appropriate, children with disabilities must be educated with children who are not disabled. Placement in special classes, separate schooling, or other removal of children with disabilities from the regular education environment should occur only when the nature and severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved satisfactorily." Vergason, 17 EHLR 471 (OSERS 1991).

Likewise, OCR has repeatedly found that categorical denial of general education placement for students with disabling conditions violates federal regulations requiring integration in academic and non-academic settings. In Berks County (PA) Intermediate Unit #14, 17 EHLR 5 (OCR 1990), for example, OCR ruled that an intermediate unit and its constituent school

preference in favor of mainstreaming." Daniel R. v. State Board of Education, 874 F.2d 1036, 1044 (5th Cir. 1989); Rapid City School District 51-4 v. Vahle, 733 F. Supp. 1364 (D.S.D. 1990), aff'd, 922 F.2d 476 (8th Cir. 1990). In Campbell v. Talladega County Board of Education, 3 EHLR 552:472 (N.D. Ala. 1981), the district court found that a local education agency failed to educate a disabled child to the maximum extent appropriate with his nondisabled peers where the child had "virtually no contact with nonhandicapped students outside of his lunch period." Id. at 477. Underlying the court's reasoning was its conclusion that "such interaction is essential to provide [the disabled child] with role models and to increase his ability to act independently." Id.⁸

The Court of Appeals for the Sixth Circuit bolstered the statutory preference for integrated special education placement with its holding in Roncker on behalf of Roncker v. Walter, 700 F.2d 1058 (6th Cir. 1983), cert. denied, 464 U.S. 864, 104 S.Ct. 196 (1983). To determine whether placement is statutorily appropriate, the court enunciated the following standard:

"In a case where the segregated facility is considered superior, the court should determine whether the services which make the placement superior could feasibly be provided in a non-segregated setting. If they can, the placement in the segregated school would be inappropriate under the [Individuals With Disabilities Education] Act." Id. at 1063.

Numerous federal courts have adopted the Roncker standard in ascertaining whether school districts have integrated disabled children to the maximum extent appropriate.⁹

placement in a regular classroom failed to constitute appropriate placement for the child. Board of Education, Sacramento City Unified School District v. Holland, 786 F. Supp. 874, 880 (E.D. Cal. 1992).

State Law

In addition to the federal statute, regulations, and case law, statutory and regulatory law in New York State also manifests the LRE requirement. Mirroring IDEA, New York State Education Law specifies that each school district must provide:

"to the maximum extent appropriate [special education] services in a manner which enables children with handicapping conditions to participate in regular education services when appropriate." N.Y. Educ. Law tit. 6 Sec. 4402(2)(a) (Consol. Supp. 1991).

Furthermore, like its federal counterpart, New York statutory law requires school districts to place students with disabilities in general education classrooms before assigning them to special education classes.

"Special education services and programs shall be provided after the appropriateness of the resources of the regular education program, including educationally related support service, speech and language improvement services and remedial instruction, have been considered." N.Y. Educ. Law tit. 6 Sec. 4401-a(5) (Consol. Supp. 1991).

Thus, school districts in New York State which fail to educate disabled students in the LRE violate both federal and State statutes.

Like federal regulations pertaining to IDEA, New York State regulations clearly support the LRE requirement. The regulations

law requires that he be afforded those opportunities." Application of a Child with a Handicapping Condition, 29 Educ. Dep't Rep. 339, 342 (New York City School District, Mar. 23, 1990).

The State Review Officer and the Commissioner of Education also require CSEs to show that, prior to recommending restrictive placement, the school districts offered support services to disabled students in general education classrooms. Thus, CSEs must qualify special education placement recommendations with evidence that general education with supplementary services constituted inappropriate education for disabled students. Application of a Handicapped Child, 24 Educ. Dep't Rep. 18 (Greenwich Central School District, July 20, 1984).¹³

Consequently, CSEs can recommend residential placement, the most restrictive setting, only if they establish that it is absolutely essential to the provision of an appropriate education.¹⁴

Finally, the State Review Officer and the Commissioner of Education have consistently ruled that CSEs have the burden of demonstrating the appropriateness of their placement recommendations. Application of a Child with a Handicapping Condition, 29 Educ. Dep't Rep. 153 (Red Hook Central School District, Nov. 14, 1989); Application of a Child with a Handicapping Condition, 29 Educ. Dep't Rep. 83 (New York City School District, Sept. 26, 1989).

EVALUATION & ASSESSMENT REQUIREMENTS

Federal Law

Upon finding that children of color, especially African-

C.F.R. 300.532(f).

School districts must also make certain that only trained personnel administer tests and other evaluation materials designed and proven valid for specific educational needs assessment rather than general intelligence measurements (34 C.F.R. Sec. 300.532(a) and (b)).¹⁷ Finally, districts must ensure that in assessing students with impaired sensory, motor, or verbal skills, evaluators select and administer tests that identify students' aptitudes or achievement levels rather than their impairments (34 C.F.R. Sec. 300.532(c); 34 C.F.R. Sec. 104.35(b).)¹⁸

State Law

Although no New York State statutes establish evaluation and assessment requirements, State regulations governing procedures for evaluation and referral mirror federal regulatory criteria which prohibit racial or cultural bias in the evaluation process (N.Y. Comp. Codes R. & Regs. tit. 8, Sec. 200.4 (1982)).¹⁹ The Commissioner of Education has fervently cited CSEs for failure to gather and consider all material relevant to a child's special education evaluation and assessment. For example, in Application of a Child with a Handicapping Condition Dec. No. 12519 (New York City School District, May 31, 1991), the Commissioner ruled that the local CSE had inadequately evaluated a pupil whom it had recommended be classified as emotionally disabled and placed in a special class. Specifically, the Commissioner found the CSE's record:

Furthermore, the Secretary can also work with other public agencies and nonprofit organizations to develop:

"statewide projects ... to improve the quality of special education and related services for children and youth with severe disabilities, and to change the delivery of those services from segregated to integrated environments." 20 U.S.C. 1424(a)(5).

IDEA thus provides the U.S. Department of Education, NYSED, New York City Public Schools, and numerous nonprofit agencies with the opportunity to jointly research, analyze, and correct flaws in existing special education programs.

school placements and those of students in separate facilities, and absence of written documentation of children's ability to participate in general education program indicated inadequacy of IEP documentation and failure to provide students at facilities for disabled students with LRE appropriate to their needs.); Hawaii State Department of Education, EHLR 311:52 (OCR 1985) (Hawaii public schools' general practice of grouping all special education students together on a campus caused the segregation of disabled students from their nondisabled peers and violated 34 C.F.R. Sec. 104.34.).

5. See, for example, Rowland, 16 EHLR 501 (OSERS 1990). See also Caddo Parish (LA) Public Schools, 17 EHLR 232 (OCR 1990); Atherton (MI) Community School District, 16 EHLR 811 (OCR 1990); Danville (IL) School District #118, 16 EHLR 239 (OCR 1989); Cleveland (OH) Public School District, EHLR 353:307 (OCR 1988); Manitowoc County (WI) Handicapped Children's Education Board, EHLR 312:114 (OCR 1988); Ashwaubenon (WI) School District, EHLR 311:120 (OCR 1988); Richland (SC) School District #1, EHLR 312:111 (OCR 1988); Wyoming (MI) Public School District, EHLR 311:125 (OCR 1988); Texas Education Agency, EHLR 352:459 (OCR 1987); Normal (IL) Community Unified School District #5, EHLR 352:434 (OCR 1987); Newark (NJ) School District, EHLR 311:118 (OCR 1987); Hawaii State Department of Education, EHLR 311:52 (OCR 1985); Hendry County (FL) School District, EHLR 257:71 (OCR 1979) (OCR findings of school districts' violation of this requirement).
6. See also Johnson, EHLR 213:182 (OSERS 1988) (stating that "[no] child should be denied an opportunity for interaction with nonhandicapped children because of a lack of placement options." Id.); Earnest, EHLR 211:417 (OSERS 1986) (declaring that federal law prohibits removal to a more restrictive setting for reasons of administrative convenience: "[o]nly the individual educational needs of the child can justify such a removal." Id.). See also Elizabeth (PA) Forward School District, 17 EHLR 1051 (OCR 1991).
7. See Pike County (AL) School District, 16 EHLR 807 (OCR 1990); Peru (NY) Central School District, 16 EHLR 514 (OCR 1989); Macon-Piatt (IL) Special Education District, 16 EHLR 22 (OCR 1989); Carbon-Lehigh Intermediate Unit #21, EHLR 257:551 (OCR 1985); Special School District of St. Louis (MO) County, EHLR 257:322 (OCR 1981); Petaluma (CA) Joint Union High School District, EHLR 257:263 (OCR 1981).
8. See also Earnest, EHLR 211:417 (OSERS 1986); South Central (IN) Area Special Education Cooperative, 17 EHLR 248 (OCR 1990); Tucson (AZ) Unified School District #1, 17 EHLR 11 (OCR 1990); Berks County (PA) Intermediate Unit #14, 17

hearing-impaired program); Thorncock v. Boise Independent School Dist. No.1, 1984-85 EHLR DEC. 556:477 (D.Idaho 1985) (holding that absent evidence that a child cannot meet the academic requirements of his IEP in a mainstreamed environment, any non-mainstreamed placement is legally insufficient); Hawaii Department of Education v. Katherine D., 727 F.2d 809, 1983-84 EHLR DEC. 555:276 (9th Cir. 1984) (holding that placement of student who required intermittent tracheostomy in homebound program did not meet LRE requirement since the student was capable of participating in regular classes with appropriate related services).

11. Ordover & Boundy, supra note 1, at 15.

See also Tokarcik v. Forest Hills School District, 665 F.2d 443 (3rd Cir. 1981), cert denied, 458 U.S. 1121 (1981); Mills v. Board of Education of the District of Columbia, 348 F.Supp. 866, 880-81 (D.D.C. 1972).

12. See, for example, Application of the Board of Education, No. 91-14 (Pittsford Central School District, May 3, 1991) (Pupil's learning style should be accommodated in his general education classes to decrease the need for resource-room help. Rather than providing student nine periods of resource room services each week, "resource room teacher's time would be better employed for some of those periods in providing consultative services to the pupil's other teachers." Id. at 9.); Application of a Child with a Handicapping Condition, No. 91-13 (City of Lockport School District, Apr. 18, 1991) ("CSE should arrange for the provision of special education and related services with a minimal amount of disruption of the pupil's general education, such as providing special education and related services either at the beginning or end of the school day." Id. at 7-8.); Application of the Board of Education, No 90-19 (Schalmont Central School District, Dec. 11, 1990) (Because the IEP determines the appropriate education for a pupil, the relevant question is whether a disabled pupil "can achieve the goals of his or her IEP within a regular education program" with supplementary aids and service. "It is not necessary to demonstrate that [the pupil] will learn at approximately the same level as his or her nonhandicapped peers." Pupil could receive instruction in a regular class "with the assistance of a special education teacher serving as consultant." Id. at 4,6.); Application of a Child with a Handicapping Condition, No. 90-17 (Wayland Central School District, Dec. 27, 1990); Application of a Child with a Handicapping Condition, No. 90-16 (New York City School District, Dec. 18, 1990); Application of a Child with a Handicapping Condition, No. 90-14 (Westbury Union Free School District, Nov. 8, 1990); Application of a Child with a Handicapping Condition, No. 90-9 (Syosset Central School District, Oct. 25, 1990); Application of a Child with a

special self-contained class.); Application of a Handicapped Child, 3 EHLR 503:154, 21 EDR 337 (City of Binghamton School District, Dec. 8, 1981); Application of a Handicapped Child, 3 EHLR 502:350, 21 EDR 97 (New York City School District, Aug. 14, 1981); Application of a Handicapped Child, 20 EDR 654 (Syosset Central School District, June 9, 1981); Application of a Handicapped Child, 20 EDR 426 (Sayville Union Free School District, Feb. 3, 1981); Application of a Handicapped Child, 18 EDR 483 (New York City School District, Feb. 27, 1979); Application of Orestes and Evelyn V., 17 EDR 414 (New York City School District, May 29, 1978).

13. See also, Application of a Child with a Handicapping Condition, No. 90-16 (New York City School District, Dec. 18, 1990) (Although the resource room teacher had recommended clinical counseling, the CSE provided group counseling by a guidance counselor. "[T]he record reveal[ed] no attempt by the CSE to provide a more intensive level of counseling, such as clinical counseling by a school psychologist," to enable the student to remain in the regular classroom. Id. at 6.); Application of a Child with a Handicapping Condition, No. 90-14 (Westbury Union Free School District, Nov. 8, 1990); Application of a Child with a Handicapping Condition, No. 90-11 (City of Mount Vernon School District, Nov. 19, 1990); Application of a Child with a Handicapping Condition, 28 EDR 95 (City of Buffalo School District, Aug. 30, 1988); Application of a Child with a Handicapping Condition, 28 EDR 35 (Rockville Center Union Free School District, July 25, 1988) (Student having trouble in the regular classroom should be offered resource room or remedial reading and language services before being considered for special class placement.); Application of a Handicapped Child, 26 EDR 118 (Lindenhurst Union Free School District, Sept. 3, 1986) (District made no programmatic adjustments to compensate for pupil's limited mobility and fine motor limitations, thus failing to prove that she was unable to benefit from a general educational program with appropriate supports and services.); Application of a Handicapped Child, 25 EDR 337 (Starpoint Central School District, Mar. 6, 1986) (Recommended BOCES placement was unduly restrictive and appeared to have been recommended only because it would allow the required counseling which was not available at the regular high school.); Application of a Handicapped Child, 22 EDR 515 (Phelps-Clifton Springs Central School District, Mar. 29, 1983) (Child's previous lack of success with mainstreaming could be attributed to the fact that she had not been provided with a teacher for the visually-impaired.); Application of a Handicapped Child, 3 EHLR 502:350, 21 EDR 97 (New York City School District, Aug. 14, 1981); Application of Orestes and Evelyn V., 17 EDR 414 (New York City School District, May 29, 1978).

to determine special education placement of Native American students.); Coachella Valley (CA) Unified School District, EHLR 311:42 (OCR 1985) (District failed to establish standards and procedures to ensure that LEP students referred for special education evaluation were evaluated by qualified personnel using appropriate instruments.); Rochester (NY) School District, EHLR 311:09 (OCR 1980) (District failed to provide for identification of primary home language on referral forms, thus precluding appropriate identification and placement of bilingual students, and placed undue reliance on general intelligence testing by giving 41% of mentally disabled students only an IQ test before placement.); Hendry County (FL) School District, EHLR 257:71 (OCR 1979) (District failed to evaluate and place students in accordance with procedural requirements, including review of their social and cultural backgrounds); Special School District of St. Louis County (MO) (Region VII), EHLR 311:05 (OCR 1978) (District evaluation and placement procedures discriminated against minority students in educable mentally retarded program by failing to compare their evaluation results with the results of other students from similar cultural and racial backgrounds.).

19. See Appendix C for language of State regulations.
20. See also Application of a Child with a Handicapping Condition, 29 EDR 65 (New York City School District, Sept. 13, 1989) (No legal basis for classifying a child as learning disabled/speech-impaired existed where it was possible that the child's learning problems were primarily due to his linguistic and cultural background.); Application of a Handicapped Child, EHLR 501:182, 19 EDR 15 (South Country Central School District, July 5, 1979) (District gave inadequate consideration to a student's environmental, economic, and cultural background by failing to test the child's coding ability in his home language.).

organizations to address the special education, related services, early intervention, and integration needs of infants, toddlers, children and youth with severe disabilities through--

(5) statewide projects, in conjunction with the State's plan under subchapter II of this chapter, to improve the quality of special education and related services for children and youth with severe disabilities, and to change the delivery of those services from segregated to integrated environments.

Sec. 1426 Programs for children and youth with serious emotional disturbance.

-- Subsection (a) authorizes the Secretary to make grants and enter into contracts for studies including:

"(3) developing and demonstrating strategies and approaches to reduce the use of out-of-community residential programs..." and

"(4) developing the knowledge, skills, and strategies for effective collaboration among special education, regular education, related services, and other professionals and agencies."

FEDERAL REGULATIONS.

34 C.F.R. Part 104

Reg. 104.33 Free appropriate public education.

(b) Appropriate education. (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of Regs. 104.34, 104.35, and 104.36.

Reg. 104.34 Educational setting.

(a) Academic setting. A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(2) The number of handicapped children who are in separate classes or separate school facilities, or who are otherwise removed from the regular education environment.

Reg. 300.227 Participation in regular education programs

(a) Each application must include procedures to insure that to the maximum extent practicable, and consistent with Regs. 300.550-300.553 of Subpart E, the local education agency provides special services to enable handicapped children to participate in regular education programs.

(b) Each application must describe:

(1) The types of alternative placements that are available for handicapped children, and

(2) The number of handicapped children within each disability category who are served in each type of placement.

Reg. 300.305 Program Options

Each public agency shall take steps to insure that its handicapped children have available to them the variety of educational programs and services available to nonhandicapped children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education and vocational education.

Reg. 300.385 Adoption of educational practices

(a) Each annual program must provide for a statewide system designed to adopt, where appropriate, promising educational practices and materials proven effective through research and demonstration.

Protection in Evaluation Procedures

Reg. 300.530 General.

(b) Testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children must be selected and administered so as not to be racially or culturally discriminatory.

Reg. 300.533 Placement procedures.

(a) In interpreting evaluation data and in making placement decisions, each public agency shall...

(4) Insure that the placement decision is made in conformity with the least restrictive environment rules in Regs. 300.550-300.554.

Least Restrictive Environment

Reg. 300.550 General.

- (1) Shall review the public agency's justification for its actions, and
- (2) Shall assist in planning and implementing any necessary corrective action.

- school day shall be multiplied by one and seven-tenths;
- (2) The attendance of pupils who have been determined by a Committee on Special Education to require placement for: (i) twenty per centum or more of the school week in a resource room or to require special services or programs including related services for twenty per centum or more of the school week shall be multiplied by nine-tenths;
- (3) The attendance of pupils who have been determined by a Committee on Special Education to require direct or indirect consultant teacher services, in accordance with regulations of the commissioners adopted for such purpose, shall be multiplied by eight-tenths;
- (4) The attendance of pupils who have been determined by a Committee on Special Education to require two or more sessions a week of special instruction either in speech or in other special programs or services, including related services, shall be multiplied by thirteen-hundredths."

32. Educationally related support services apportionment (ERSSA).

1. "Eligible pupils are those pupils as defined by the commissioner, who with the provision of services would be able to maintain their placement in a program of regular education. Such pupils may receive educationally related support services in accordance with the provisions of Sec. 4401-a of this chapter or upon the referral of the building administrator, in consultation with appropriate personnel."

NEW YORK STATE REGULATIONS

8 NYCRR Sec. 200.1 Definitions

(v) Least restrictive environment means that placement of an individual pupil with a handicapping condition which:

- (1) provides the special education needed by the pupil;
- (2) provides for education of the pupil to the maximum extent appropriate with other pupils who do not have handicapping conditions; and

(3) is determined following consideration of the proximity of the placement to the pupil's place of residence.

(pp) Consultant teacher services means direct and/or indirect services, as defined in this subdivision, provided to a pupil with a handicapping condition who attends a regular education program on a full-time basis and/or to such a pupil's regular education teachers.

(1) Direct consultant teacher services means specially designed individualized or group instruction provided by a certified special education teacher to a pupil with a handicapping condition to aid such pupil to benefit from the pupil's regular education program.

[and] (vii) the evaluation includes observation of the pupil in the current educational setting;

200.6 Continuum of services.

(a) A pupil with a handicapping condition shall be provided with appropriate special education.

(1) To the maximum extent appropriate, pupils with handicapping conditions shall be provided special education in the least restrictive environment, as defined in section 200.1(v) of this Part.