



National School Boards Association

LEADERSHIP Insider

November 2006
www.nsba.org/na

PRACTICAL PERSPECTIVES ON SCHOOL LAW & POLICY

A Membership Benefit of NSBA National Affiliates

School boards and special education

We can hear the groans now. “A whole issue devoted to IDEA? No one will read it.” Special education is dense, technical, legalistic, and frequently downright personal. Exactly the kind of thing school boards sometimes are discouraged from wading into.

But special education is one of the biggest costs in school board budgets nowadays. It accounts for a large portion of most districts’ legal bills. It poses particular challenges for complying with the No Child Left Behind Act (NCLB), both in making Adequate Yearly Progress (AYP) and in securing “highly qualified” teachers. And few issues can generate higher emotions between the board’s constituents and its employees than a bitter special education fight.

This issue of *Leadership Insider* is not a “Welcome to IDEA” overview. There are plenty of those out there. We include some in the online list of additional resources we point to on page 7. (We also provide a short list of special education terms and acronyms on page 12, so we won’t spell them out in each article.)

Instead, this publication offers practical tools to help school board members fulfill their *governance* role in this complex area. It does so by flagging some of the key recent developments and anticipating some of the key issues that may be coming

soon to a school district—and a board room—near you. The guest authors, all experienced in this area, share the view that these are things savvy school boards should be watching out for.

Past, present, future

The Individuals with Disabilities Education Act provides a formidable arsenal of legal levers for parents. After all, when the first version of the act was passed in 1975, most children with disabilities were routinely excluded from school or, at best, were baby-sat. Texas school attorney Christopher Borreca starts out by reflecting on the intensely adversarial culture that has resulted from the legalistic approach and on the costs it inflicts on everyone.

In recent years, however, all three branches of the federal government have shown some willingness to give schools a little more benefit of the doubt:

- Congress, in the latest reauthorization of IDEA (referred to throughout these pages as “IDEA 2004”), heeded many of the concerns of school boards and school attorneys about problems that needed addressing.
- The U.S. Department of Education made administrative changes to NCLB to allow more special-needs students to be evaluated using modified assessments.
- The U.S. Supreme Court ruled in

Schaffer v. Weast that courts should not presume that a school’s proposed special education plan for a child is inadequate until proven otherwise, and then held in *Arlington Central School District v. Murphy* that school districts do not have to pay for a parent’s non-attorney experts or consultants.

Advocates for children with disabilities view these developments with alarm, fearing that together they herald a backing off of our commitment to serve all children. As Virginia special education mediator Richard Vacca notes in his article on the school board’s role in promoting early dispute resolution, it comes down to trust. Will school districts succeed in convincing parents and policymakers that this greater trust is deserved?

Deryl Wynn of Kansas, chair of the NSBA Council of School Attorneys (COSA), next shares some things he thinks all brand-new school board members would be lucky to understand about special education right from the outset.

Indiana school attorney Andrew Manna follows by highlighting some of what’s new in IDEA 2004. One issue that could prove politically charged for boards is how the district handles the “response to intervention” (RTI) method of determining eligibility for special education.

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Leadership Insider is published six times annually by NSBA's National Education Policy Network and the NSBA Council of School Attorneys in cooperation with the National Affiliate Program.

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Leadership Insider is printed and assembled by the NSBA Office Services Printshop

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The National School Boards Association is the nationwide advocacy organization for public school governance. NSBA's mission is to foster excellence and equity in public elementary and secondary education in the United States through local school board leadership. Founded in 1940, NSBA is a not-for-profit federation of state associations of school boards and the school boards of the District of Columbia, Hawai'i, and the U.S. Virgin Islands.

About the National Affiliate Program

The National Affiliate Program extends NSBA's services directly to local school districts. School districts are eligible to join provided they are members in good standing of their state school boards associations.

About the Council of School Attorneys

The Council of School Attorneys provides information and practical assistance to attorneys who represent public school districts. It offers legal education, specialized publications, and a forum for exchange of information, and it supports the legal advocacy efforts of the National School Boards Association.

The adversarial process: Does it help or hurt our mission?

By Christopher Borreca

Upon signing the new reauthorization of IDEA on Dec. 3, 2004, President Bush noted that when schools are so busy dealing with costly and unnecessary lawsuits, they have less time to deal with students. He remarked that Congress had made the law "less litigious so it could focus on the children and their parents."

I was fortunate to be present to witness that occasion, and I welcomed the President's comments. Upon reflection, however, I question whether we have again missed an opportunity to meaningfully reform the adversarial aspects of IDEA.

The current reality

President Bush was not the first to recognize the tension inherent in the due process system created when the special education law was first passed in 1975 and amended when the law was reauthorized in 1986. Courts and hearing officers have made note of the unusual degree of hostility and bitterness that characterize many due process hearings.

In 1982 a hearing officer from Iowa offered an early observation:

"It never ceases to amaze me how educators and parents can be so close and yet so far apart in doing what is in the best interest of the student. This situation presents an almost classic case. Here, the parents are interested, caring, and dedicated. The educators are no less interested in what is best for [the student]. Yet, personality disputes and disagreements over inconsequential details of an education program have divided the persons most important to [the student's] future educational development."

A federal court in Virginia, upon reviewing the record of the 1992 case before it, offered how it was "struck by the speed with which the disagreement over Vernon's IEP was allowed to deteriorate into a wholly adversarial confrontation featuring entrenched, incompatible positions."

Around the same time, another federal judge in New Jersey sadly commented:

"It is regretful that this matter has ended up in litigation where the parties are pitted against each other instead of working together. It is difficult to imagine

a worse scenario from the point of view of the child."

School districts have not avoided the scorn of the courts when defending their positions to the full extent of the law. In a 1990 case, a South Dakota court wrote:

"As a practical matter, one cannot help but wonder whether or not the act of the school district in filing an appeal for this reason was senseless. For the parties to incur legal expenses which could approximate \$25,000 ... in order to save the school district \$861 does not strike this Court as a prudent act of stewardship of public funds. ... At oral argument, counsel for the school district, upon being questioned as to the motivation behind the appeal, replied that it was based upon 'principle.' The Court finds no worthwhile 'principle' involved. The school board and its school administrators must share the responsibility for the decision to appeal."

These are not mild words, and school district attorneys come to realize early on that simple advocacy on behalf of their clients may often be perceived as irrational defense of a frivolous concept in the eyes of a disinterested jurist.

But districts are not alone in being the subject of judicial rebuke for taking adversarial positions. An Indiana federal judge in 1990 wrote of the parents in one case:

"[The hearing officer] testified categorically that the conduct of the plaintiff and counsel in the proceedings before her manifested needless adversariness. This court is in total agreement. ... It is understandable that when one is confronted with the frustrations of this kind of disability and the attended emotional context, it may well be a human failing that causes one so situated to want to throw all of the rocks that can possibly be gathered at the school officials involved. It is apparent that a good deal of that took place, and it is also apparent that it was unnecessary. That pattern continued in the hearing before this judge. As understandable as same may be, this court does not conceive that the school authorities should have to pay for counsel to engage in needless adversariness and unnecessarily protracted proceedings."

In 1994, a Texas hearing officer also criticized the manner in which parents handled themselves:

“It appears to this hearing officer that Jimmy’s parents have adopted a hostile and uncooperative stance and are constantly looking for procedural errors upon which to file complaints. This hostile and suspicious attitude is counterproductive to Jimmy’s educational progress.”

Still, it is the school district that has ultimate responsibility for delivering the program, enforceable via this system of due process. Any reliance on the part of the school district to excuse its performance based upon the irrational behavior of the parents is likely to fall on deaf ears. As one Pennsylvania hearing officer noted in 1993:

“The district continually relies on the parents’ lack of cooperation as its excuse for its failure to provide an appropriate education. It is undeniable that parental cooperation is an important ingredient of the partnership symbolized by the IEP. Nevertheless, the IDEA and the companion state law puts the responsibility on the school district, and the legislation and regulations provide parents with procedural safeguards, including a due process hearing, to ensure the child’s rights to a free, appropriate public education (FAPE). Parental hostility is relevant to FAPE, but the focus is the district’s responsibility, not the parent’s fault.”

How did we get here?

The irony is that the intent of IDEA and its predecessor legislation was to eliminate the need for these types of battles. As the congressional conference committee noted in its report on the 1975 bill:

“Parents of handicapped children all too frequently are not able to advocate the rights of their children because they have been erroneously led to believe that their children will not be able to lead meaningful lives. However, over the past few years, parents of handicapped children have begun to recognize that their children are being denied services which are guaranteed under the Constitution. *It should not, however, be necessary for parents throughout the country to continue utilizing the courts to assure themselves a remedy. ... Congress must take a more active role ... to guarantee that handicapped children are provided equal educational opportunity.*” (emphasis added)

But the real problem may not reside in the emotionality of the issues, the expenditure of limited public dollars, or the behavior of zealous advocates who defend their clients’ positions. The real dilemma may be the very system itself, which was created to assist in obtaining adequate

services for students with disabilities but which has placed school and parents into perpetually adversarial relationships.

As the 9th Circuit Court of Appeals noted in a 1994 decision:

“Litigation tends to poison relationships, destroying channels for constructive dialogue that may have existed before the litigation began. This is particularly harmful here, since parents and school officials must—despite any bad feelings that develop between them—continue to work closely with one another. As this case demonstrates, when combat lines are firmly drawn, the child’s interests often are

“

Congress ... must undertake a thorough reform of the ability to haul a school district into a hearing.

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damaged in the ensuing struggle.”

Congress recently had an opportunity to truly reform the process and depart from the legalistic model of special education. Efforts to do so, however, were firmly resisted by professional organizations representing teacher groups, as well as the panoply of disability coalitions.

Some reform efforts approved by Congress were notable. Attorneys’ fees can now be awarded against parents and their attorneys when frivolous matters are brought and pursued in bad faith. Procedural errors must actually result in educational harm before they can form the basis of a hearing officer’s finding of fault.

Parents and school district personnel also must sit down in a good faith effort to attempt to resolve matters before a hearing is held. In reality, however, when attorneys are involved, this resolution meeting often has simply deteriorated into another battle over attorneys’ fees.

A better way?

The reform needed to correct the problem the President acknowledged must come from a complete overhaul of the legalistic framework surrounding special education. That will require, perhaps, both parents and school districts to re-examine what might constitute the “due process” each side feels it is owed.

It is noteworthy that Congress resisted attempts to create a private cause of action under the No Child Left Behind Act. Thankfully, the courts have also

refused to permit such lawsuits. The true answer in restoring the trust between school and parent lies not in creating more enforceable rights but in rethinking the enforceability mechanism itself.

As Neal and Kirp recognized early on in their remarkably prescient chapter in Kirp and Jensen’s *School Day, Rule Days: The Legalization and Regulation of Education* (1986), “Legalization betrays a mistrust of schools. It may inhibit the discretion of professionals whose judgment should be exercised creatively on behalf of the child.

According to Neal and Kirp, “Legalization can be a blunt instrument, undermin-

ing healthy, as well as malevolent, exercise of discretion. Special education teachers now find themselves as ‘defendants’ in due process hearings ... a marked change from their self-perception as lone advocates for the handicapped child. From the viewpoint of the handicapped, it would be disastrous to alienate this group.”

I am not so naïve that I fail to appreciate how difficult it is to put the genie back into its bottle. If Congress is ever to make IDEA less litigious, however, it must undertake a thorough reform of the ability to haul a school district into a hearing. Special interest groups—from advocacy organizations, to school district representatives, to hearing officers—must recognize that the inability to march into court upon the slightest provocation does not signal an end to these rights.

As a hearing officer in Maine aptly noted in a 1996 case, “Somehow this relationship, because of the student, must repair itself and become one of openness, listening, keeping commitments, and trust.”

IDEA will come up for reauthorization again in just a few years. Perhaps the legalistic model we have created finally will give way to trust, cooperation, shared responsibility, and understanding between schools and parents. Fundamentally changing the due process system as we know it will go a long way to making that a reality.

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The school board role in promoting early resolution of special education disputes

Effective school board policies can help prevent costly litigation

By Richard S. Vacca

IDEA and state laws make it clear that eligible students must receive a free and appropriate public education in the least restrictive educational environment and that the school district is responsible for carrying out the intent of these laws. These laws clearly articulate student and parent rights. Yet, special education is still fraught with potential litigation.

Nonetheless, my work as a certified mediator of special education disputes convinces me that the “era of erupting litigation” is gradually passing. I believe that parents and school officials are starting to realize that special education disputes can and should be mutually resolved long before lawsuits are filed. In most situations, alternatives to litigation, such as mediation, do work.

Alternative dispute resolution

In recent years, a trend away from using litigation as the primary method of dispute resolution has gained momentum. More parties are seeking early settlement of their grievances with local school districts through alternative and less contentious means.

There are four reasons for this change:

(1) Special education law emphasizes parent and student due process, while at the same time, comprehensive administrative process, such as complaint filings, due process hearings, and resolution sessions, are increasingly available.

(2) IDEA 2004 encourages opportunities for school officials and parents to seek creative early resolution of their differences without going to court.

(3) Parents and school officials realize that negotiated and signed agreements can be effective and are legally enforceable.

(4) Perhaps most important, parents and school officials realize that early resolution of issues through a negotiated formal agreement, rather than dragging out the matter in court, is in the best interests of the child.

I am convinced that the most effective way to settle a special education dispute

between parents and local school officials is to work for an early and mutually crafted written agreement between the parties. However, in my opinion, one neglected area of dispute resolution in special education law involves the role of the local school board and the impact of school district policy.

Implications for boards

School board policy not only controls the money aspects of a controversy and governs the actions of administrators and staff, but it also sets the overall tone and direction of negotiations between the parties. In other words, the local school board’s policy direction significantly influences the potential of reaching early, mutual resolutions by the parties.

The key to avoiding costly litigation lies in establishing a relationship of trust. Trust is best demonstrated by crafting and implementing district policies that balance the rights of students and parents with the legal duties of the school board and demonstrate that school officials, administrators, teachers, and staff are receptive to the concerns and ideas of parents.

Here are five basic suggestions for school boards to consider. School board policies, decisions, and communications with the community must make absolutely clear to everyone that the school board:

- accepts its legally mandated responsibilities with respect to such things as child find, notice to parents, IEP team requirements, IEP implementation, manifestation determinations, “stay put” requirements, and finance and budget and is firmly committed to carry out applicable federal and state statutes and regulations and provide a high-quality education to all students, including those with disabilities;
- respects the constitutional and legal rights of all students and their parents, including those covered by special education law;
- is committed to working cooperatively

with all parents, advocates, and others who represent students with disabilities and to ensuring that all student identification, classification, assessment, placement, and program decisions are based on relevant, up-to-date, and research-based data;

- is committed to seek early resolution of all disputes through administrative processes and other alternatives to judicial review; and
- is committed to provide up-to-date and relevant professional development opportunities for administrators, teachers, and staff regarding special education law and regulations; recent research into methodologies and techniques for working with students with disabilities; and negotiation, mediation, and other dispute resolution alternatives.

I have seen disputes escalate where the school board might have made a difference. Here are three pitfalls for board members to think about:

(1) **Micromanagement**—The board sometimes does not make it clear that, while the board retains the legal authority to make all final decisions, the school system’s director of special education and school administrators have the discretion to handle disputes with parents.

(2) **Out-of-the-loop**—On the other hand, a school board cannot be successful and set the right tone in the community if it is not kept informed of what is going on in the school system. The board must insist on being informed.

(3) **“Our way or the highway”**—Sometimes the board and administration convey the attitude that they are closed to creative ideas for resolving the dispute.

The big picture

In a recent law review article, DePaul University law professor Mark Weber examined some of the ideas that motivated Congress in the 2004 reauthorization of IDEA: There was an “insistence that educators be accountable for success of special education students as they are for general education students, and that chil-

dren who need assistance to make educational progress need not always be labeled and set apart from their classmates.”

To expand on Weber’s observation, we live in an era where the population of public school students with all kinds of special needs is rapidly expanding. As No Child Left Behind has taught us, disabilities are only one part of the challenge, and special education must not be thought of as the only option available to meet the unique needs of students who require remedial services.

In an era in which local school systems are held accountable for the academic progress of all students, the link between money spent (input) and student academic progress (output) is stronger than ever. The need to establish and maintain the trust of the entire community, especially parents, is critical. Community trust is a prerequisite to gaining the community’s support for its schools, their budgetary initiatives, and their aspirations for the students they serve.

The bottom line is that local boards of education must demonstrate to their communities that all funds allocated have been wisely spent and all students have made adequate progress in mastering the curriculum.

Money spent on costly litigation could be better spent on improving student progress, and when schools fail to show progress with all students, community trust is in jeopardy. A school board that succeeds in helping inspire community confidence in the uniquely problematic area of special education is well placed to rise to the occasion in other areas as well.

The challenge is to avoid costly litigation by seeking early resolution of special education disputes before they escalate.

In my opinion, important keys to success are: (1) the formulation and implementation of sound school system policies; (2) maintaining open and constant communication with the community, especially parents; (3) a willingness to seek creative curricular and methodological options that move local school systems beyond sole reliance on special education as the place to meet the unique needs of students; and (4) staff development of all personnel involved in the special education process.

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Memo: To board members

Re: Special education law (unplugged)

Here are five lessons learned, many the hard way

By Deryl W. Wynn

Here in my office, strewn in a fashion that can only be appreciated by a true type-A personality, lies a collection of special education questions and answers discovered during the course of my school law practice. Each entry is adorned with post-it notes of all sizes and colors.

This collection is not the heady stuff familiar to lawyers. Instead, it contains war stories and lessons learned. Some were learned the hard way. Others were readily grasped.

From time to time, I share these lessons with school board members, provided they agree to one simple term: Do not shoot the messenger. I explain that the comments are “unplugged,” meaning they are best delivered without the normal trappings of diplomacy attorneys use with clients.

There are about 20 lessons in all. Five of the more important are presented below. To battled-hardened board veterans, they may seem obvious. Even so, they are worth repeating and discussing now and then.

Lesson One: *Regrettably, as a school board member you do not have the luxury of narrow focus.*

Generally speaking, parents of a student in special education seek the very best services for their son or daughter. Like any other parents, they envision a program that provides the maximum educational opportunity. These desires are understandable.

Your focus as a districtwide policymaker must be broader. In contrast to the parents of a single student, you are tasked with taking a more global view of all the competing priorities.

School districts must ensure that a disabled student receives a “free appropriate public education.” What does this mean? I have found two answers especially helpful.

The first, from a U.S. Department of Education publication, lists:

(1) services designed to meet the individual needs of the disabled student as adequately as the needs of the nondisabled students;

(2) education with nondisabled students, to the maximum extent appropriate to meet the needs of the disabled student;

(3) nondiscriminatory evaluation and placement and periodic re-evaluation; and

(4) due process procedures that provide parents with required notices; a chance to review their child’s records and challenge identification, evaluation, and placement decisions; the option of an impartial hearing with opportunity to participate and be represented by counsel; and a review procedure.

The second is an analogy from the 6th Circuit Court of Appeals:

“The act requires that the ... schools provide the educational equivalent of a serviceable Chevrolet. ... We suspect that the Chevrolet offered to the student is, in fact, a much nicer model than that offered to the average student. Be that as it may, we hold that the board is not required to provide a Cadillac [as demanded], and that the proposed IEP is reasonably calculated to provide educational benefits to the student and is therefore in compliance with the requirements of the IDEA.”

Lesson Two: *When new laws are passed, ask questions.* Each time I suggest this, superintendents cringe. Let me be clear: I am not suggesting that boards help the superintendent co-manage the district. But they should ask insightful questions. My fellow authors list some questions to ask about IDEA 2004. Do not apologize for expecting answers.

Lesson Three: *Avoid unnecessary entanglement in day-to-day administration.* The skills required to fulfill special education rules are complex and technical. This is no place for amateurs. If you have concerns about your district’s compliance, confer with your administrators.

Special education matters are never black and white. Avoid a rush to judgment. Render your opinions in the context of a board meeting, and only after having gathered and reviewed all relevant materials. I repeat, in special education cases, things are very seldom as they first appear.

At all costs, avoid special causes or “favors for a friend.” Your good intentions could be manipulated into evidence for a claim of discrimination. The cross-examination might go like this:

Q: “And your job as a member of the board of education is to adopt policies and

See Memo on page 11

IDEA 2004: The light at the end of the tunnel?

The act and its regulations point to the next steps for school districts

By Andrew A. Manna

The reauthorization of IDEA took effect July 1, 2005. But the regulations implementing IDEA 2004 didn't come out until just before the start of the 2006-07 school year, leading many special education professionals to exhale after months of waiting.

The regulations provide some guidance on what steps to take in the coming months.

Upper-level school district administrators should be aware of the important changes in IDEA. Unfortunately, many lower-echelon staff members, such as special education teachers and teacher aides, have not received this information. School board members, too, should be familiar with IDEA 2004 so they can check how their district will respond.

This article highlights five important points of IDEA 2004 and its implementing regulations.

Reduction in paper and meetings

Schools across the country should be relieved to learn that IDEA 2004 cuts down on the volume of paper that has to be delivered to parents. Formerly, schools were required to provide "notice" of IDEA's procedural safeguards every time an IEP team meeting was scheduled.

The new procedure now only requires notice: (1) upon initial referral; (2) upon the filing of due process; and (3) once annually.

As an added bonus, there may be fewer meetings with parents than in the past—leading to more time in the classroom for teachers and staff. IDEA 2004 allows a student's IEP to be changed without a meeting, as long as the parties agree. Instead of meeting, the school and the parents can develop a written document to amend or modify the current IEP. The caveat is that the IEP team must have met at least once annually before taking advantage of this provision.

Discipline

IDEA 2004 takes a new look at the approach schools can take to ensure disabled students are disciplined appropriately. In a discipline scenario that potentially could result in a student being suspended or expelled for more than 10 days, a

school district must first review whether the student's disability had any impact on the misbehavior. This is called the "manifestation determination."

Previously, this process involved determining whether a student's disability impaired his or her ability to: (1) understand the impact and consequences of his or her behavior; and (2) control his or her behavior.

This process has been tailored. Now the IEP team or other committee making the manifestation determination simply reviews whether the student's conduct was "caused by, or had a direct and substantial relationship to, the child's disability."

For districts dealing with a high frequency of suspensions or expulsions, this seems to streamline the process and may provide more flexibility in moving forward with disciplinary measures. If the behavior was not caused by the child's disability, the school can discipline the student just as it would a non-disabled student. Importantly, however, the manifestation determination also must determine that the misbehavior did not result from the school's failure to implement the student's IEP.

If neither the student's disability nor the school's failures caused the conduct, then removing the student for more than 10 school days is allowed. But remember that a student removed for more than 10 days must still be provided educational services to allow him or her to participate in the general education curriculum and progress toward meeting the goals set out in the IEP.

Depending on the nature of the student's conduct and the school district's disciplinary procedures, the student could be expelled for a significant length of time. The school must make sure that the special education department provides appropriate services for the student during this period.

As before, a parent may request a hearing to challenge the school's finding in the manifestation determination. Previously, the student remained in his or her original, predisciplinary educational placement while this appeal was pending. This is commonly referred to as "stay put."

Under IDEA 2004, schools can now move the student to an alternative disciplinary setting during the parent's appeal.

Rules and interpretations still vary from state to state on this question, however, because there are still some unanswered legal questions and some state education departments have opted to preserve the old rule. School districts should seek advice from an attorney familiar with the state's stay put provisions before the district makes any decisions on this question.

Identifying learning disabilities

Another "hot topic" is a process for identifying students with learning disabilities called response-to-intervention (RTI). Darryl L. Farrington discusses this topic in depth in a separate article on page 8. In a nutshell, RTI seeks to identify students through a screening process that emerges over phases or "tiers." States still will be allowed to use a variety of methods when determining criteria for learning-disabled students. However, the new rule is that use of RTI must be permitted.

The IDEA 2004 regulations confirm the preparations many schools already have made toward this new method. Accordingly, states are in the process of adopting new criteria for determining whether a student has a specific learning disability, and experts are providing RTI training to special education staff all over the country. The sooner school districts understand the RTI process, the more prepared they will be when explaining why a student was found eligible as learning disabled.

Private schools

IDEA 2004 continues to mandate that services be provided on an equitable basis to students unilaterally enrolled in private schools. Congress made a significant change by having school districts engage in meaningful consultation with only those private schools located within their district boundaries. If the student resides within the district's boundaries but attends a private school elsewhere, then the district in which the private school is located is the one obligated to provide the special education services.

One problem that might surface from this change is that a student sometimes floats from a private school outside your district back to a public school in the district and could be left with no program at

all. The time between the two schools is what may cause problems and issues regarding which school must serve the student. Therefore, schools should continue keeping detailed documentation on students attending private schools.

Due process

IDEA 2004 allows a district to seek attorney fees from a parent's attorney for filing an action "for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation." The threshold for successfully pursuing such a recovery is probably very high. However, in the months ahead this provision is likely to be tested.

Another matter that was inconsistent among states was the question of a time limit for parents to bring a special education claim against a school. In my state of Indiana, school attorneys had argued for years that court precedent suggested a two-year deadline for bringing IDEA cases, but hearing officers were inconsistent in applying this limitation in due process proceedings. IDEA 2004 limits the reach of due process requests by setting a two-year statute of limitations.

However, this deadline does not apply if the school: (1) has made specific misrepresentations that it had resolved the matter; or (2) has withheld information it was required to provide to the parent.

Frustrated school officials also have been demanding for years that due process requests from parents be more specific so they can know exactly what the alleged problem is. A provision of IDEA 2004 answers this request. As a House Report on the law explains, "The language requiring a parent to provide a clear and specific complaint to the local educational agency is essential to making the complaint process work in a fair and equitable manner."

Once the specific complaint is made, IDEA 2004 bars a party from adding issues to its request unless the non-complaining party (usually the school) provides written consent and is given an opportunity to resolve the matter. For example, a parent cannot file for due process alleging only that the school failed to provide assistive technology, but then later add that the school also denied the parent the right to an IEE. If the parents want to add this issue, they would need to give the school the opportunity to address the payment of the IEE. The hearing officer still has the power to add issues—but not within the last days before the hearing.

An immediate concern for school districts should be procedures establishing steps for addressing a due process request. Here is the relevant timeline:

- Within 10 days of receiving the request, the school must send a written notice to the parent providing: (1) an explanation of why the school proposed or refused to take the action that is the subject of the due process hearing; (2) a description of the options the IEP team considered and the reasons they were rejected; (3) a description of each evaluation procedure, assessment, record, or report the school used as the basis for its decision; and (4) a description of the factors the school believes are relevant to its proposal or refusal.

The school also must send a written response that specifically addresses the issues raised in the request for a hearing. There are certain exceptions, but for the most part these are the requirements.

- Within 15 days of receiving the request, the school can notify the hearing officer and parents if it believes the due process request does not comply with legal requirements. The hearing officer will then issue an order finding whether the request complies. If not, then the parent must submit a revised request.

- Within 15 days of receiving the request, the school must provide an opportunity for a resolution meeting to see if the matter can be resolved. A resolution meeting must include a representative of the school who has decision-making authority and relevant members of the IEP team. The regulations clearly state that if a parent does not participate in this resolution meeting, the timelines for the due process hearing will be delayed.

The resolution meeting is intended to provide an early opportunity to resolve the parties' differences. The concern for some schools will be that the parents may request that their attorney be involved in this process and that, if this happens, the whole thing may not be worthwhile.

In addition to the resolution session, mediation provides another opportunity to resolve the dispute.

New requirements were added by IDEA 2004 to help strengthen the mediation process by stating that the mediation agreement: (1) is legally binding; (2) must state all discussions occurring during the process shall be confidential and not used as evidence in any subsequent due process or civil proceeding; and (3) must be signed by the parent and the public agency representative. Also, the agreement is enforceable in any court of com-

petent jurisdiction.

One potential irony for which school boards need to be prepared is that legal costs in special education matters paradoxically might actually increase. These attempts to prevent protracted and costly litigation do so by establishing more procedural steps on the front end. The trade-off here is that this might have the effect of increasing routine legal expenses.

Your next steps

Changes to special education law usually end up being a journey through the dark. As each regulation unfolds and new cases are decided, the light at the end of the tunnel hopefully becomes brighter. Along the way, school board members might want to raise the following questions with your administrators:

- Have the special education teachers, teachers aides, and staff been provided with training on IDEA 2004?
- Are procedures in place to address the reduction in paperwork and meetings for IEP teams?
- What are the disciplinary measures in our state to address suspensions or expulsions for students with disabilities?
- How does our district ensure that special education students expelled from school continue to receive appropriate services?
- Is the RTI process being used in our schools, and, if so, what steps are being taken to implement it?
- What private schools are located in our district, and how do we locate students with disabilities in these placements?
- Have we had any special education due process hearing requests since the implementation of IDEA 2004?
- Has IDEA 2004 had a positive impact so far on the resolution of special education due process hearing requests?

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FOR MORE INFORMATION

Online resources on all of these topics are collected at an "additional resources" link that accompanies the electronic version of this publication.

Go to the NSBA National Affiliate website, www.nsba.org/na, and click on the *Leadership Insider* link.

Response to intervention: What the school board should know

By Darryl L. Farrington

While IDEA 2004 has been welcomed by school districts for the most part, two features of the law have created a good deal of uncertainty—and even anxiety—where little existed previously.

I am referring to the introduction of “response to intervention” (RTI) as a model for evaluating students with specific learning disabilities (SLD), and the corresponding provision that the traditional “discrepancy criterion” is no longer required as an evaluation tool.

RTI has implications for other types of disabilities but the law specifically links RTI to SLD, which are defined as disorders, such as dyslexia or developmental aphasia, in the basic psychological processes involved in understanding or using language, spoken or written. These are the two key parts of the act:

- When determining whether a child has a specific learning disability, a school district shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.

- In determining whether a child has a specific learning disability, a school district may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures.

A three-tier system

Since this law was adopted in fall 2004, many school districts have begun a transition from traditional evaluation procedures to the RTI model. School board members should understand the various issues that need to be resolved and the challenges that need to be anticipated in this transition.

RTI determines a student’s eligibility for special education based upon how he or she responds to a set of “scientific, research-based” interventions. Such interventions are generally accepted to mean those based on research that has been published in a recognized journal or academic forum and peer-reviewed.

At the initial stages, the interventions are delivered in the real world of the public school classroom. The student’s responses (or failure to respond) to first-level inter-

ventions inform teachers whether the student needs the next level of interventions, and so on until the nature and intensity of the educational inputs reach equilibrium with the student’s capacity to benefit from instruction and to achieve reasonable proficiency in the skill being taught.

Though there is no legal requirement to do so, most RTI models use a “three-tier” system. A student remains in regular education throughout Tier 1 and 2 interventions, which consist entirely of regular education services and resources.

If the child does not respond successfully to Tier 2 interventions, a special education referral is made. The multidisciplinary team determines eligibility based on the data gathered in Tier 2 plus any additional assessments. Thus, the change from Tier 2 to Tier 3 is where IDEA’s requirements for eligibility and initial placement come in.

The discrepancy criterion

In contrast to RTI, the eligibility of students in the SLD category has historically been determined by use of the “discrepancy criterion.” This consists of a statistical comparison of the student’s IQ with his or her score on a standardized academic achievement test.

Under that system, if there is at least a 1.5 standard deviation between the two scores, the student is said to have a “severe discrepancy” between intellectual ability and achievement. If the student’s school performance indicates he or she is not receiving meaningful benefit from the regular education curriculum—and if the discrepancy cannot be attributed to such factors as poor teaching or socioeconomic disadvantages—such a student would be considered eligible in the SLD category.

It is difficult to overstate the revolutionary character of eliminating the discrepancy criterion as the primary factor in determining SLD eligibility. For many, the 1.5 standard deviation between IQ and achievement scores is more than a mere criterion or indicator. Many of us have become accustomed to viewing it as the very *definition* of the SLD category.

In other words, to have a learning disability *means* having a severe discrepancy between intellectual ability and academic success. Viewed in that light, it is not difficult to understand the anxiety of some members of the SLD community.

Critics of the discrepancy criterion argue that it cannot reflect anything more than a “snapshot” of the student on the given day or days of testing, and that teachers of students with learning disabilities often encounter students in their caseload whose daily classroom performance does not match the profile derived from academic achievement tests.

Many believe RTI, with its focus on responses to classroom instruction and the “longitudinal” collection of data, gives a more authentic picture of the student’s actual needs and strengths in relation to the “real world” of public school education.

RTI’s detractors, on the other hand, see it as a crude tool, lacking the refinement of identification that is perceived as one of the benefits of typical academic achievement tests.

School boards must realize that the SLD advocacy establishment is on record as opposing or at least being very uncomfortable with RTI. For example, the Learning Disabilities Association (LDA) is widely regarded as being opposed, because its publications, while stopping short of outright opposition, point out multiple reasons for caution.

We are finding that SLD advocates generally favor the traditional discrepancy model and are extremely reluctant to see it fall out of use. This means school districts planning to implement RTI should be prepared, not only for the various technical challenges, but also for the potential political unrest that might result.

Issues for discussion

If a district is considering or already embracing RTI, the school board has an opportunity to exercise policy leadership and oversight that will enhance the district’s prospects of success. Seven questions can frame a discussion among the board, administrators, and legal counsel before the district implements RTI.

- **How does the district plan to address the “research-based” requirement?**

Court decisions continue to support districts in the use of “eclectic” instructional approaches, and the academic literature supports the use of a variety of instructional methods. But for RTI evaluation purposes, the eclectic approach presents a potential problem.

Not only do we run a legal risk if any of the techniques in our multimethodological

toolbox are deemed not to be “research-based,” we also must be prepared to counter the argument that, to be successful, a singular intervention methodology must be delivered with fidelity to the underlying doctrines and precepts of the specific method.

This critique is at the heart of a conflict between two approaches to RTI, the “problem solving” (PS) approach and the “protocol” approach.

The protocol model uses a single system of strictly prescribed interventions, while the PS approach places the selection of interventions under the control of expert teachers who will vary the instructional inputs at each level according to individualized criteria. If the district has chosen the PS model, it will be important to have a clear plan for maintaining compliance with IDEA’s “research-based” requirement.

• **What other evaluative methods will be used alongside the RTI system? Specifically, will the traditional discrepancy model be included as an alternative?**

Neither IDEA 2004 nor the new regulations *prohibit* districts from continuing to use the discrepancy criterion. Experience in the 2005-06 school year with the attempt by some districts to use an “either/or” system of traditional and RTI models resulted in many families opting for traditional testing. This was seen as substantially weakening districts’ progress toward a thriving and robust RTI system.

Some districts plan to eliminate the discrepancy model completely in the 2006-07 school year. Although this is permitted under IDEA 2004, a district *must* use a variety of assessments and techniques in evaluating a student. It cannot rely upon a single test or method.

• **How has the district prepared to ensure that funding violations do not occur?**

In general, a student must be “eligible” in order to qualify for services supported with IDEA funds under Part B, the part of the act that most concerns school district programs. However, most RTI plans involve some level of service from special education in the pre-eligibility phases. Under IDEA 2004 a school district can use up to 15 percent of its Part B funding for “early intervening services” benefiting students who have not yet been determined eligible.

Beyond the 15 percent level, pre-eligibility interventions cannot be funded using Part B funds, except where the non-eligible students just happen to benefit incidentally from services provided to eligible students. Special education staff must be cautious about the allocation of Part B funds to the

lower-tier interventions. This presents a particular concern with regard to use of the PS approach in Tier 2, described above.

• **How will the district deal with student discipline issues in the “pre-eligibility” phase of RTI?**

Special education protections for students in school disciplinary proceedings generally do not come into play unless and until the student is formally identified and placed as a special education student. There is one important exception to this rule, however: where the school “had knowledge” before the discipline violation that the student might be eligible.

The concern with IDEA 2004 is that the RTI model may, by its very nature, result in the “knowledge” that the student has a learning disability. This could mean that a student who is at some early point in the RTI evaluation process and has not yet even been identified as eligible would nevertheless have the benefits of special education protections in disciplinary processes.

Diligence in processing the RTI evaluation data and prompt decisions will be necessary to counter the anticipated claims that a district artificially “held” a student at Tier 2 in order to subject him or her to regular discipline.

• **How will the district address parental concerns that the eligibility determination is being delayed unnecessarily?**

The issue of delay in reaching Tier 3 of RTI has implications beyond discipline. Because of its “longitudinal” nature, RTI necessarily needs time to work its magic. The fact that a student is undergoing “evaluation” almost continuously from the time he or she first walks through the schoolhouse door means eligibility could be determined earlier in the student’s education.

In theory, this is a major advantage for the child. The buzz words for proponents are that the student need not “wait to fail” before being referred for special education evaluation.

However, the SLD advocacy community fears exactly the opposite—that districts will “use” RTI to delay identification, in the face of parents’ requests for immediate formal testing for eligibility. Districts intending to use a “pure” RTI system must prepare a coherent and consistent response when parents request traditional testing while the RTI process is still incomplete.

• **How does the district plan to deal with requests for independent educational evaluations?**

If parents disagree with the district’s evaluation, they can request an independ-

ent educational evaluation (IEE). As long as the IEE fulfills the district’s criteria for a special education evaluation, it must be provided at public expense, unless the district wishes to defend its own evaluation in a due process hearing.

On one hand, when the district’s evaluation is based upon the collection of data over time pursuant to the RTI model, it is not feasible—logistically or financially—to use an IEE process that would duplicate the district’s RTI process.

On the other hand, since under IDEA 2004 the district cannot be required to consider the discrepancy criterion, if the IEE were based upon traditional discrepancy model testing, it would not be relevant. Presumably, the district’s position would be that it does not have to consider paying for an IEE of a kind not applicable to the district’s eligibility criteria. But it also must provide a framework for an IEE that would meet the district’s requirements while being feasible to perform.

• **What is the district’s plan to ensure that any evaluation, RTI or otherwise, is complete in time to make the eligibility determination in accordance with the state’s time-line?**

Most states have rules specifying how many days after a child’s initial special education referral the school has to make an eligibility determination. In other states, the deadline is set by federal law.

In light of the “longitudinal” character of the RTI process, it will be important to make sure the district’s staff has a plan for coordinating RTI-based evaluations with the deadline.

Conclusion

Some of the foregoing questions are not difficult to answer, if districts apply reasonable professional knowledge and common sense. Others probably will remain head-scratchers for some time to come.

The point for school boards is not that districts need to know the definitive answers right now. The point is to make sure the district has thought about the questions and has a definite plan for addressing them.

One hopes the discussion opens each district to a more progressive overall approach to the evaluation of students in the SLD category. If so, the future for students with disabilities in public education will be brighter.

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Disproportionality: A complex issue of equity in schools

By Russell Skiba

The problem of disproportionate representation of some groups in special education, most notably African American students, has long been a central concern and the subject of court cases, federal panels, and extensive research. IDEA includes provisions for states to monitor data concerning minority disproportionality and address disproportionality when it is found.

How do we measure it?

Disproportionality exists when a specific group is over or underrepresented in a specific category or area. It is not dependent on the absolute size of minority enrollment in a district. Students in a given racial or ethnic group can be over or underrepresented in special education whether they represent a small minority of students or comprise the majority.

Disproportionality can be expressed as a composition index (African Americans represent about 11 percent of our school-aged population, but 27 percent of those served in special education), a risk index (in our district, 8 percent of all African American students are in special education, compared to just 4 percent of all other students), or a relative risk ratio (African American students in our district are twice as likely as other students to be served in special education).

What do the data say?

The data on minority disproportionality have remained relatively consistent over time. Overrepresentation in special education has been found to be greatest for African American students and most likely to be found in the categories of mental retardation and emotional disturbance.

Although early studies in specific districts found some evidence of overrepresentation for Latino students, more recent comprehensive data suggest Latino students are more likely to be *underrepresented* in special education compared to other groups.

Analyses also consistently show that African American and, to a lesser extent, Latino students with disabilities are overrepresented in more restrictive educational settings and underrepresented in less restrictive settings. Given the federal mandate to serve students with disabilities in the least restrictive environment, this could be an even greater cause for con-

cern than overall disproportionality in specific disability categories.

What causes disproportionality?

The issue of minority disproportionality in special education is highly complex. No one factor can be identified as its cause. Rather, a number of hypotheses that might explain racial disparities in special education have been proposed and studied:

- **Test bias.** Court cases in the 1970s and 80s tended to focus on whether tests that were biased against minorities yielded low scores that increased the probability of special education identification. With some exceptions, research has tended to show that test bias, in and of itself, is not sufficient to explain the problem.

- **Poverty.** Research in psychology and education has shown that factors associated with poverty, such as low birth weight, less exposure to educational materials, or exposure to lead, can place a child at risk for lower achievement. In terms of minority disproportionality in special education, however, socioeconomic status has been an inconsistent and somewhat weak predictor. Poverty is probably part of the story, but not the entire story.

- **Family issues.** On an individual level, economic disadvantage can clearly lead to greater challenges in parenting that can leave some children less prepared for school. Yet there is no current evidence that African American families are in general less capable than white families. Thus, each family should be approached on its own merits, not as a representative of a racial group.

- **The special education process.** In its recent report, the National Research Council found evidence of bias in the special education eligibility determination process to be “mixed.” The council concluded, however, that the process of special education is often begun too late and that there seems to be no guarantee that those who enter special education are the “right students.”

- **General education.** Extensive research has shown that poor and minority students are more likely to be taught by teachers with less experience and expertise, in more poorly funded schools that have difficulty recruiting and retaining both teachers of color in particular and teachers generally. Students of color may face low expectations or a cultural mis-

match regarding expectations for ability or behavior. These reduced educational opportunities contribute to the increased likelihood of referral of minority students to special education.

Those seeking to address disproportionality need to consider a number of hypotheses simultaneously.

Five steps for school boards

Unfortunately, states are only beginning to address these issues, so there is little guidance available to school boards on the most effective interventions.

There is no need for school boards to wait for the states before taking action, however. The Equity Project and the National Center for Culturally Responsive Educational Systems have identified some steps that appear to be effective:

- (1) **Form a district team to examine the question.** A team-based approach allows a variety of perspectives to emerge. To be most effective, the team should be culturally diverse and should include representatives of both general and special

WHAT IDEA 2004 SAYS ABOUT DISPROPORTIONALITY

States must:

- Collect data to determine if significant disproportionality is occurring in school district identification of children as having disabilities, the identification of children with particular disabilities, educational placements, and disciplinary actions; and
- Review and, if necessary, revise policies, procedures, and practices used in identification and placement if significant disproportionality is identified.

School districts with significant disproportionality must:

- Reserve the full 15 percent of their IDEA Part B funds for comprehensive early intervention services, especially for children in the overrepresented groups (this is the maximum amount a district otherwise is permitted to reserve for this purpose); and
- Publicly report on the revision of policies, practices, and procedures.

education, as well as building-level and central office personnel.

(2) **Examine the data.** A review of the data can lead to a number of questions. In what disability categories and among which groups is there overrepresentation? Are minority students underrepresented in the regular classroom or overrepresented in more restrictive settings? Are certain schools more likely to refer a disproportionate share of minority students to special education? To what extent are there racial gaps for other important indicators, such as academic achievement or school discipline?

An important point for school board oversight is that disproportionality in special education is not simply a special education issue. Rather it might be seen as the “canary in the coal mine” that suggests other issues of equity in the district might need to be explored, as well.

(3) **Develop hypotheses.** Once the data are examined, the team will almost naturally begin a process of considering the possible reasons for disproportionality. This process will be most effective if all possible hypotheses are considered. This can be sensitive but is necessary. In partic-

ular, if progress is to be made, the team must have the courage to openly discuss issues of race and equity and to consider hypotheses that represent the perspectives of all affected groups. School board leadership can help make this happen.

(4) **Develop a plan.** A number of intervention practices have been suggested for addressing minority disproportionality in special education, including improvement of the prereferral process, improved classroom management, early intervention, professional development in the area of cultural competence, and programs targeted at parenting issues. An effective program might require some combination of these and other strategies and should be tailored to the needs identified through the analysis of local data.

(5) **Continue to monitor.** Whatever intervention the school district chooses, it is important for the board to continue to monitor the extent of racial disparity. It might be extremely valuable, for example, for a district to better monitor its referrals to special education to ensure that all such referrals are appropriate. But changing the referral process might not change the over-

representation of minority students in special education. Only by continuing to monitor disproportionality and maintaining its focus on that goal can a school board know if new programs intended to address racial disparity are succeeding.

Issues of racial disparity in education, including special education disproportionality, admit of no simplistic solutions. The existence of numerical discrepancies by race does not make it necessary to allege discrimination or assess blame.

On the other hand, districts that appear to be most effective accept that disproportionate numbers clearly indicate a problem that needs to be addressed, and they make a commitment to do so. From that point, it is possible to work collaboratively with all segments of the community to seek solutions that can improve equity in both special and general education.

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MEMO

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to engage in general oversight, correct?

Q: “But in this case, you didn’t just exercise oversight, you got your hands dirty and got directly involved, didn’t you?”

Q: “You got involved because Mr. Y is your friend, correct?”

Q: “You and Mr. Y go to the same church, correct?”

Q: “You don’t get personally involved in all special education complaints, do you?”

Q: “So, in order for someone to get similar treatment, at least as far as you are concerned, they have to be a Baptist, right?”

Lesson Four: *When it comes to special education and student information, nothing is off the record. Take this exchange from a recess during a board meeting:*

Parent: “I just don’t understand why the school won’t help my child. It’s like you’re punishing my son because of our personal disagreement ...”

Board member: Cut the crap, June! You know we can’t afford it. If we did this for you, we’d have to do it for every other autistic student. We won the due process. Just get over it.”

Board chair: “Okay, let’s resume the

meeting. You two can deal with this later.”

When I expressed concern about confidentiality, I was assured that “the meeting had not yet begun, and all comments were off the record.” Not so.

Since the comments were made by a school board member incident to a public meeting, they are public. “Off the record” refers to a courtesy offered by members of the press not to attribute or publish certain information. It is not a legal category governing the communication of student information. Privacy laws may apply.

Lesson Five: *If you receive a friendly invitation to an IEP meeting, write down the student’s name and, using every diplomatic skill you possess, politely decline. With your next breath, contact the appropriate school district administrator or, if you cannot reach him or her, your school board lawyer.*

A number of years ago, I received a phone call from a school board member announcing her frustration at “the meeting.” I listened for a few seconds before it struck me she had just stepped out of an ongoing IEP meeting. I asked, “How is it that you came to be at an IEP meeting?” She responded, “Ms. X asked me to attend to keep an eye on things.”

“Horror” does not begin to describe the feeling that crept over me.

The occasions at which board members may find themselves properly invited to an IEP meeting are extremely rare. Federal law permits a board member to attend as a member of the IEP team when invited by the parents or district because he or she possesses special knowledge or expertise regarding the child.

If you ever are inclined to accept an invitation like this, proceed with caution and advise everyone that you are attending in a private capacity only. The peril is that a statement by a board member could be taken as district policy.

A final overall lesson: Every now and then, I am asked if special education law ever makes sense. I give two answers. The first is pure therapy: No!

The second is more responsible and more accurate: Yes, if you remember one thing. It is not about the adults who get twisted up in it from time to time. Nor is it about winning and losing legal challenges. It is about what must be done to give a disabled student a fighting chance to participate in and become a vibrant part of our society.

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INTRODUCTION

Continued from page 1

Colorado school lawyer Darryl Farrington focuses a separate article on the tricky questions districts should be prepared to address regarding RTI.

Indiana University Professor Russell Skiba concludes by discussing the problem of “disproportionality” in special education referrals and placements, another focus of IDEA 2004. State school boards associations have found that one quality of effective school boards is that they persistently demand and use data. Skiba suggests how to apply that insight to this question of overrepresentation.

Promises broken, promises kept

No discussion of special education ever is complete without pointing yet again to the fact that it's been 31 years since Congress committed to contribute 40 percent of IDEA's costs. The federal

contribution peaked a couple of years ago at less than half that amount. States and school boards get to make up the shortfall, about \$53.6 billion over the past five years.

In 2004 Congress authorized IDEA funding levels that were intended to serve as its schedule to reach the full 40 percent by 2011—just 36 years late. Think of this schedule as congressional AYP. Sadly, in the very first year Congress failed to make AYP, and it doesn't appear likely to make the grade this year either. If the education community can be accused of harping *ad nauseum* on this funding problem, we're decades past the point at which congressional broken promises should have started inducing nausea among constituents listening to yet the latest excuse.

Indeed, U.S. Sen. Jim Jeffords of Vermont abandoned his GOP colleagues in 2001 and became an independent largely out of disgust over his unsuccessful

attempt to redirect \$200 billion of President Bush's tax cuts to meeting the needs of children with disabilities. Not that the Democrats who consequently gained control of the Senate came through either.

Shortchanging special education so systematically forces more painful choices on responsible school districts, contributing mightily to disputes with disappointed parents. This, of course, only drives up costs.

Nevertheless, for all the act's problems, and for all the federal hypocrisy, the underlying commitment embodied in IDEA is one of the most profoundly decent things in American law. Our commitment to helping the nation benefit from the full potential of our children with disabilities is part of what makes *public* schools great. And although it may be overlooked, school boards have a leadership role to play here.

-Thomas Hutton, Editor.

A FEW SPECIAL EDUCATION TERMS

Child find—Legally required state and school district efforts to locate, identify, and evaluate all children suspected of having disabilities, including homeless children, wards of the state, and children in private schools.

Due process hearing—An administrative hearing before an impartial hearing officer, which either the parents or school officials can request if they disagree at almost any point in the special education process.

FAPE—Free appropriate public education. The education program required by IDEA for all school-aged children with disabilities; must be free to family, reasonably calculated to confer educational benefits based on the child's individual needs, and provided in the least restrictive environment.

IEE—Independent Educational Evaluation. An evaluation of the child's needs to which parents who disagree with a school district's evaluation are entitled, at public expense. It is made by an expert not associated with the district.

IEP—Individualized Education Program. An annually updated document setting forth the plan for meeting the individual child's needs. It describes child's current performance, outlines appropriate learning goals and objectives, and details the special education and related services to be provided.

IEP meeting—Meeting required at least annually in which the IEP team develops the IEP for the student.

IEP team—Group of teachers, other professionals, and parents who convene to develop the child's IEP.

IDEA—The Individuals with Disabilities Education Act.

IDEA 2004—The 2004 reauthorization of IDEA.

IDEIA—The Individuals with Disabilities Education Improvement Act, referred to in these pages as IDEA 2004.

Least restrictive environment—Principle included in definition of FAPE that, to the maximum extent appropriate, children with disabilities are to be educated with children who are not disabled, rather than in separate classes or schools.

Manifestation determination—The legal requirement that, if the child is to be removed from the current placement for more than 10 days for disciplinary reasons, the school first must determine the child's behavior was neither caused by, nor had any direct and substantial relationship to, the child's disability. This determination is typically made by school personnel, such as relevant members of the IEP team, and the parents.

Part B funds—Refers to the part of IDEA that most directly concerns school district programs and is the primary

source of federal funds for special education.

Related services—All of the services necessary for student to benefit from special education, which IDEA requires the school district to provide. These can include transportation and medical, diagnostic, therapeutic, and assessment services, as well as assistive technology devices and services.

Specific Learning Disabilities (SLD)—A disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. These include conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, but they do not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

“Stay put”—The general rule in IDEA that the child must remain in the current educational setting while a due process hearing is pending. This rule also has applied when disciplinary hearings are pending, but IDEA 2004 makes some changes in this situation that attorneys are still working through.