Looking Forward: Toward a New Role in Promoting Educational Equity for Students with Disabilities from Low-income Backgrounds

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Many education reformers decry the relative lack of change in the American education system (see e.g., Elmore, 2004). Since the issuance of *A Nation At Risk* (National Commission on Excellence in Education, 1983), local districts, states, and the federal government have tried a number of reform initiatives, from radical decentralization reflected in the school management movement of the late eighties and nineties, to the current federalized model represented by NCLB. Yet, there is relatively little data showing that these attempts have resulted in widespread improvement.

An exception to this pessimistic assessment of the potential for government-initiated reform can be found in the case of the Individuals with Disabilities Act, (IDEA). The implementation of this act over its thirty-year history supports the thesis that a significant federal reform initiative can influence widespread improvement in the education system. Consider the following: the practice of institutionalization of students with mental retardation and severe physical disabilities has been largely eliminated, record numbers of students with disabilities are enrolling in postsecondary institutions, employment rates of people with disabilities leaving high school approach that of their non-disabled peers, and more students with significant disabilities are being educated in increasingly inclusive settings. (U.S. Department of Education, 2004; Wagner, Newman, Cameto, & Levine, 2005).

One could argue that these successes are simply due to nation-wide efforts to extend educational opportunity to a previously excluded group. However, more recent data indicates that students with disabilities are continuing to experience improved
outcomes at an accelerating rate long after the initial implementation of IDEA. Evidence from the first and second National Longitudinal Transition Study have shown the effectiveness of IDEA in changing educational practice, as well as the limits of IDEA for students from low-income schools and districts. Using research-based standards for best practices, the paper will argue for changes in litigation and advocacy to promote equity for all students with disabilities.

**IDEA and Educational Practice for Students with Disabilities**

In the mid-1980s, the federal government initiated a major longitudinal study to determine the status of students with disabilities in high school and to ascertain their attainment levels after school. Known as the National Longitudinal Transition Study (NLTS), this study of a nationally representative sample of students with disabilities gave us an accurate glimpse of what was happening for disabled students in high schools in 1987, as well as how they fared three and five years after that, also including students who graduated from high school. This study at best presented a mixed picture.

NLTS documented that disabled students were dropping out at high rates approximately double that of their nondisabled peers, and dropping out was associated with other negative outcomes such as unemployment, trouble with the law, and early pregnancies to unwed youth (Wagner, 1991; Wagner, Blackorby, Cameto, & Newman, 1993). Of particular concern were outcomes for students with emotional disturbances, of whom 59 percent dropped out of high school (Wagner, D’Amico, Marder, Newman, & Blackorby, 1992). Of that number, 37 percent had been arrested within two years of dropping out; five years after dropping out, 56 percent had been arrested at some point
(Wagner et al., 1992). The NLTS study also documented that large numbers of students with disabilities were not enrolled in challenging classes at the high school level and that failure rates were very high among these students. In addition, a substantial number of regular education teachers had not been trained to meet the needs of disabled students in their classes (Wagner, 1991; Wagner et al., 1992).

Though the study documented results that were less than satisfying, it did identify a subpopulation who appeared to be doing well, as well as practices that were associated with improved outcomes, including greater levels of integration, avoiding course failure, more access to challenging curricula, greater access to vocational education, and greater level of parental involvement (Wagner et al., 1993). One cannot assume direct causal relationships between these variables and improved outcomes, but these practices were supported by strong evidence in this large-scale longitudinal study.

Further, the study heavily influenced the 1997 reauthorization proposal submitted by the Clinton Administration that ultimately became IDEA 97. Especially notable changes in the reauthorization included requirements that students gain access to the curriculum, that states take action to reduce drop-outs, and that special education support greater integration of disabled students into general education classrooms.

The NLTS study was reproduced again in 2000, with outcome data published in 2003. In their report on NLTS-2 findings, students with disabilities had demonstrated large improvements in educational attainment levels (Wagner et al., 2005). These improvements included:
• The school completion rate of youth with disabilities increased 17 percentage points, with 70 percent of the 2003 second cohort youth with disabilities completing high school.

• The dropout rate decreased by 17 percentage points between 1987 and 2003, down to 30 percent. Youth with emotional disturbance demonstrated a substantial improvement (16 percentage points) in their school completion rate.

• The rate of postsecondary education participation by youth with disabilities more than doubled over time, with 32 percent of the cohort 2 youth enrolling in a two or four-year college or postsecondary school within two years of graduation.

• In 2003, 70 percent of youth with disabilities who had been out of school up to two years had worked for pay at some time since leaving high school; 55 percent had done so in 1987.

In addition to these improvements, NLTS-2 documented that many of the practices associated with improved outcomes, such as integration and taking challenging academic subjects, were more widespread in the second study (Wagner, Newman, Cameto, Levine, & Marder, 2003):

• Students’ schools had a range of resources to meet students’ needs.

• Students accessed a diversity of courses.

• Students typically were instructed in multiple settings.

• Within the classroom, instruction for students with disabilities typically mirrored instruction for the class as a whole, though curricular content might differ for students with disabilities.
• The vast majority (60 percent) of general education teachers received some support and resources for students with disabilities in their classes.

• Most accommodations in the classroom did not require modification to instructional practices.

• Most factors used in student evaluation were the same for all students in class.

Again, it is important to note that one cannot infer causation from this type of study and that individual children might not benefit from practices that had a group effect. For instance, compared with other students with disabilities, a child with mental retardation might not benefit from advanced curricula such as foreign language instruction. Further, it should be noted that diagnostic and assessment criteria resulted in some significant changes between the studies – for example, in NLTS-2 more children were being classified as having attention deficits and autism (Wagner, Cameto, & Newman, 2003). However, even with these caveats in mind, it should be noted that students from most disability groups showed major attainment gains (Wagner, et al., 2005). This evidence would thus support the argument that reform is possible and that the federal law may have plausibly played a role.

**Standards to Improve the Equity and Effectiveness of IDEA**

However, a deeper look at the data, comparing NLTS-1 with NLTS-2, might give some reason for pause. Most of the gains experienced by students with disabilities are due to improvements in outcomes of children from middle-income and upper-income
homes. The outcomes of students with disabilities from low-income homes are largely flat.

For example, researchers from NLTS-2 (Wagner, et al., 2005) also found that:

- Youth from households in the lowest income group did not have a significant improvement in postsecondary education participation, continuing the gap between income groups that existed in NLTS-1’s cohort.
- Youth from the lowest-income households did not share with their highest-income peers an increase in having been employed at some time since leaving high school, so that they lagged significantly behind that group on that measure, as well as on their rate of current employment.
- Only White youth with disabilities experienced a significant increase in postsecondary education enrollment overall, and in the pursuit of both employment and postsecondary education since high school.

Two logical questions arise from this data. First, what caused the rather large improvements in attainment levels for students with disabilities from middle-income and upper-income homes? Second, why did students from low-income families not enjoy the same improvements?

Neither of these questions is fully answerable with current data, as the attribution of causal connections is undoubtedly complex and diverse. There is likely a sea of variables that influence these results. For instance, blind students showed significant gains in employment; this is likely due to mix of improved educational opportunity, employment market changes brought about through the digital revolution that make employment of blind people more accessible, and the passage of the Americans with Disabilities Act
(ADA), which may have decreased employment discrimination and other unidentified variables.

However, it also is likely that improved educational opportunity is at least partially responsible for improved life outcomes. Regarding the question of whether educational practice for students with disabilities has changed between the period of both studies, NLTS-2 provides extensive data in this area. For many children with disabilities the answer is yes – educational practice in classrooms and schools has changed considerably (Wagner, et al., 2005). These changes in practice include more children being educated in more integrated environments, and were enrolled in challenging academic subjects. More students benefited from earlier intervention (another factor associated with improved outcomes). Finally, more children had general education teachers who had training and resources to meet the needs of disabled students.

All of these factors appear to be happening to a lesser degree with low-income students. For instance, integration into general education classrooms is associated with greater attainment levels in both NLTS studies. Yet in large urban districts where large numbers of low-income students are clustered, large numbers of students are still being served in segregated settings. Examples include Los Angeles, New York City, San Diego, and Washington, DC (Hehir, Figueroa, Gamm, Katzman, Gruner, Karger, & Hernandez, 2005; Hehir & Mosqueda, 2007).

For example, within its district, Los Angeles continues to operate a large number of separate schools for students with disabilities (Hehir, et al., 2005). New York City has a separate sub-district that operates separate schools, as well as totally self-contained programs within general education schools (Hehir, et al., 2005). Even in San Diego,
where the district has done a good job in educating higher numbers of students within
regular school buildings, only 90 students with mental retardation out of 796 are served
predominantly in general education setting, many of whom are from middle class
backgrounds, integrated only after parents have used the due process system (Hehir &
Mosqueda, 2007).

Another factor associated with better outcomes is earlier intervention for students
experiencing significant problems with reading or behavior in the primary grades (Lyon,
Fletcher, Shaywitz, Shaywitz, Torgesen, Wood, Schulte, & Olson, 2001). Again, districts
with large numbers of low-income students appear to come up short (Lyon et al, 2001).
There is also strong research evidence supporting children having access to challenging
curriculum and teachers who are trained to meet their needs (Wagner et al., 1993).

Concerning the question of low-income students and their relative lack of
progress, a further logical inquiry would be why schools and educational practices are not
changing for low-income students as they are for more affluent students. Again, this is a
question that is not fully answerable with existing data. However, the phenomenon of
relatively significant change in educational practice experienced by middle-income and
upper-income students is an anomaly in the public education system and therefore worthy
of study. One factor may be financial resources.

This author (Thomas Hehir) was involved in an evaluative study done in
conjunction with a school finance case in Massachusetts (Hancock v. Driscoll), which
examined the degree to which districts with poor tax revenues, both urban and rural,
implemented strategies associated with better outcomes for students with disabilities
(Hehir, Gruner, Karger, & Katzman, 2003). Evaluators were asked to determine if
students with disabilities were given access to appropriate educational options and, if not, whether financial resources partly responsible for the breakdown. This study provided interesting findings concerning the disparities in educational opportunities available to students in poorer districts in the era of standards-based education. Further, the methodology used in the study is potentially useful to advocates and interveners who may be interested promoting reform in districts with large numbers of low-income students.

This research asked whether students were receiving access to the curricula standards and making sufficient progress toward the attainment of such standards. The central research question was what would be expected to happen within these schools if children with disabilities were receiving effective education based on the best available research. The following three factors were used to determine whether a discrepancy existed:

1. Children who demonstrate potential problems with reading and/or behavior were identified and supported at an early age, prior to referral for special education services.

2. The process for special education referral was appropriate, culturally-sensitive, timely, and efficient.

3. Students with disabilities were educated in the least restrictive environment and have access to the general curriculum.

These three standards parallel the three stages of the special education process and therefore have a basis in law — namely, the three stages of pre-referral, referral, and the provision of services — and the consequence of these three stages — student outcomes. These three standards of effective education are intimately linked, and the report argues that an effective framework for evaluation should not only look at evidence of
effectiveness for each standard, but should also look for how each standard connects with and builds upon the others.

**Pre-referral**

The first standard used in this study was to determine if children who demonstrated potential problems with reading and/or behavior were provided support in the primary grades, prior to referral for special education services. Pre-referral, the first stage of the special education process, has generally been viewed as a method of helping to prevent the misidentification of students with disabilities and reduce the number of inappropriate referrals (Chalfant & Pysh, 1989; Fuchs, Fuchs, & Bahr, 1990; Garcia & Ortiz, 1988; Graden, Casey, & Bonstrom, 1985). In contrast, the study’s authors used the above standard of best practice, which embodied a functional definition of pre-referral focusing specifically on reading and behavior – two areas identified in the literature as important for helping all children to succeed in school (see, e.g., Eber, Sugai, Smith, & Scott, 2002; Lyon et al., 2001).

The emphasis on reading was based on important findings in the literature. First, more than half of all students who are identified for special education services are classified as having a learning disability (LD) (Vaughn & Fuchs, 2003). Of these students, approximately 80 percent of children with LD have problems with reading (Lyon et al., 2001). Moreover, students who do not acquire basic reading skills by the third grade do not catch up to their peers in later grades, encountering difficulty when they must read to learn, instead of simply learn to read (Lyon et al., 2001). Consequently, in order to meet the above standard of best practice, it is important for school districts to
provide support in reading at an early age, for all children who demonstrate potential
problems in reading (Lyon et al., 2001; National Institute of Child Health and Human
Development, 2000; Torgesen, 2002; Vaughn & Fuchs, 2003). School districts should
also target resources toward interventions at the pre-Kindergarten level (National Institute
of Child Health and Human Development, 2000; Yaden, Tam, Madrigal, Brassell, Massa,
Altamirano, & Armendanz, 2000). This standard has been reinforced in the 2004
reauthorization of IDEA which has sought to encourage the use of Response to
Intervention (RTI) practices in general education classes, prior to referral of students to
special education (for details on RTI, see Haager, Snow, Vaughn, & Klingner, 2007).

Research also shows that children are often not identified as having a serious
emotional disorder (SED) until the middle to late elementary years (Duncan, Forness, &
Hartsough, 1995). Moreover, delays in identification and interventions can result in
exacerbation of emotional and/or behavioral problems whereas effective, early behavioral
interventions can be instrumental in mitigating subsequent problems and is associated
with lower attainment levels (Forness, Serna, Nielson, Lambros, Hale, & Kavale, 2000).
School districts thus need well-qualified personnel who are able to develop children’s
social and emotional skills and address behavioral problems that develop prior to referral.
In particular, the literature documents the effectiveness of comprehensive, school-wide
behavior supports (Horner, Sugai, & Horner, 2000; Lewis, Sugai, & Colvin, 1998; Scott,
2001; Sprague, Walker, Golly, White, Myers, & Shannon, 2001}
Referral

The second standard used in this evaluation is that once a child is referred the special education, referral must be appropriate, culturally-sensitive, timely, and efficient. The effectiveness of a school district’s referral process is intimately connected to the pre-referral process. If pre-referral is successful, then most students with disabilities will be identified by the third or fourth grade and will be appropriately referred to special education. In order to meet the above standard of best practice, the evaluators also examined whether school districts possessed a sufficient number of well-qualified personnel to conduct diagnostic evaluations, including school psychologists, special education teachers, and speech/language therapists. In addition, in order for school districts to carry out evaluations that are culturally sensitive, districts need competent bilingual evaluators (Figueroa, 2002).

The Provision of Services

The next standard used in this evaluation study concerns whether students with disabilities are educated in the least restrictive environment and whether they have access to the general curriculum. This third standard of best practice corresponds to the provision of services and follows directly from the referral process. While current federal and state evaluations of compliance with IDEA examine a variety of areas pertaining to services for students with disabilities, this standard focused on two specific aspects of the provision of services that have been identified in the literature as important components for ensuring that students with disabilities achieve high outcomes: (1) education in the least restrictive environment; and (2) access to the general education curriculum.
In order for students with disabilities to attain proficiency on statewide assessments, it is important for them to receive meaningful access to the curriculum on which the exam is based. Research has shown that, in the past, the IEP goals of students with disabilities were often not connected to the general curriculum or assessments (Brauen, O’Reilly & Moore, 1994; Giangreco, Dennis, Edelman & Cloninger, 1994). In order to meet the above standard of best practice, one specific question was whether districts provided professional development opportunities to regular education teachers to develop the skills to provide appropriate accommodations in the classroom that do not water down the curriculum (Sands, Kozleski, & French, 2000).

In the study for Hancock v. Driscoll by Hehir et al. (2003), findings showed that in the four low-income districts, practices were not consistent with the standards for best practice upon which the evaluation was based. Though there was some variability, data showed that in general, the low-income districts were not providing adequate support for children who demonstrated problems with reading or behavior in the early grades.

Concerning the issue of least restrictive education (LRE) and access, data showed that students in low-income districts were far more likely to be placed in more restrictive educational settings than their counterparts in more affluent districts. For instance, one low-income district educated only 24 percent of its students with disabilities in regular classes, 54 percent of its students with disabilities in resource rooms, and 11 percent of its students with disabilities in separate classrooms. Compared to a national average of 48 percent of students being educated in regular classrooms for most of the day (U.S.}
Department of Education, 2004), this data paints a picture of a system that is segregating its students with disabilities to a considerable degree.

The study for *Hancock* was informative because it helped explain why some of the disparity existed between high-income and low-income districts. Interviews revealed that although leadership personnel knew they should be intervening with children who demonstrated problems with reading or behavior, they did not have sufficient resources to do so. For example, the special education director in one district explained that the district did not provide robust literacy instruction in general education; rather, special education provided most of the literacy remediation. She hypothesized that fewer students would be referred for special education services if the district provided these services. The one low-income district that did provide rather systematic early intervention for students experiencing reading difficulties did so primarily through various grant resources. The entrepreneurial leaders of this district expressed concerns that these efforts could not continue if they were not able to bring in these funds.

With regard to LRE, we found that leaders and staff in districts wanted very much to practice inclusion to the greatest degree possible, but felt they didn’t have the resources to do it in a way that would be effective. For example, inclusion requires a collaborative relationship between special education and general education teachers that allows students with disabilities to receive both access the general education curriculum and individualized support. In one district, schools were greatly understaffed. As a result, the most efficient way to serve students with disabilities was to educate them for most of the day in a resource room. When students went into the regular classroom, they rarely had support from a special education teacher. In addition, there was no money to provide
professional development for regular education teachers on how to provide appropriate accommodations/modifications and access to the general education curriculum.

For those schools that were able to educate students with disabilities for most of the day in a regular classroom, they were forced to “cluster” all the students with disabilities in one class, because of their limited staff. As one principal explained,

Ideally, … you want to divide them evenly in classes, but we have to cluster them together in order to use our limited special education staff efficiently. But then is that really [inclusion]? It’s not really following the letter of their IEP. But we do the best we can. We compromise.

For most of the schools in this particular district, clustering wasn’t even an option. Without adequate support from special education teachers, students with disabilities could not effectively access the general education curriculum in a regular education class.

Furthermore, nearly all of the students with emotional disabilities in this district were placed in self-contained classrooms. The needs of these students require staff with specialized expertise, of which there was an extreme shortage. In the four low-income districts, there was an average of 1 psychologist to 230 students, compared to a 1 to 95 psychologist/student ratio in the high-income districts. The ability to provide high-quality services to this population of students was therefore heavily compromised in the low-income districts, in turn leading to even greater difficulty in providing services in the least restrictive environment. Not surprisingly, the low income district spent considerable less per child in special education.

(Insert Table from Study)

The picture that emerged from this study is that the education of children with disabilities in low-income districts departed significantly from practices that would
increase the students’ likelihood of passing high-stakes state standard’s test, (MCAS). In Massachusetts and many other states, this means that large numbers of students with disabilities will be denied diplomas. The good news is that in the high-income communities; where fidelity to best practices was rather high, virtually all non-cognitively disabled students with disabilities appear to passing these tests.

Fortunately, the judge in the *Hancock* case, Margot Bosford, found in favor of the plaintiffs. However, this decision was later overturned by the state Supreme court. Though the plaintiffs were unsuccessful in the Hancock case, the importance of this study is that it reinforces and supports those who contend that low-income districts’ lack of financial resources in may ultimately negatively influence student results, and that using evaluation techniques similar to those used in this study can yield actionable findings either by advocacy attorneys or government regulators.

**The Influence of Due Process**

Though lack of financial resources might partially explain some of the lack of progress experienced by low-income students, in Massachusetts many low-income students do not attend districts with low financial resources, such as those attending schools in NYC or San Diego. One plausible factor that may partially explain the beneficial change in practice experienced by these students may be the activation of the due process protections under IDEA. Research on the implementation of due process has shown that school administrators are quite attentive to parents who file, or even threaten to file for due process hearings. Directors often change programs in order to avoid these
contentious, and often expensive, adversarial proceedings. Changes sought by a relatively few parents can thus impact programs serving many more (Hehir, 1990).

Some due process hearings ultimately move through the courts and provide significant legal precedence that can have a far-reaching impact. Consider the case of inclusive education. In the mid-1980’s, some parents of significantly disabled children began to use the due process proceedings to promote more integration of their daughters and sons. Some school districts worked with parents and began integrating students with significant disabilities, while others opposed these efforts. As these cases began to make their way through the federal court system the courts began to create precedence upon which later cases were built. *Daniel RR v San Antonio* was the first to provide workable tests. Though his parent’s desire for full integration was not supported the court developed a two-prong test that laid the foundation for future inclusion cases: (1) Can education in the regular classroom be provided with the use of supplementary supports and services? (2) If removal is necessary, is the child participating in non-academic and extra-curricular activities with nondisabled students? (Hehir & Gamm, 1999)

A few years later, parents obtained a significant victory with the *Oberti* decision, in which the court supported the integration of student with mental retardation and behavioral issues into a regular class. The court required the school district provide supplementary support services in general to lessen the disruption that Rafael might cause. The court also required that curriculum be modified to meet Rafael’s needs. Further, the court was persuaded by the parent’s expert evidence that given the right services and training, other school districts had successfully integrated similar students to Rafael (see Hehir & Gamm, 1999, for further discussion)
Finally, the Supreme Court failed to grant cert in the *Holland v Sacramento* case, allowing the lower court ruling to stand that required integration of a child with moderate cognitive disability (Hehir & Gamm, 1999). In a relatively short time, the inclusion of students with more significant cognitive disabilities was affirmed by the courts. This undoubtedly had significant impact throughout the country. Given this precedent, it is likely that special education directors were more apt to acquiesce to parents seeking these types of placements. What some may have considered radical in the mid-1980’s became much more widespread by the late 1990’s.

The expansion of inclusive education for students with significant cognitive disabilities supports my belief that change can occur through legalized mechanisms. I would also argue that some of the change that occurred for more affluent students, as documented in the NLTS studies, were probably supported by school districts being more attentive to parents as means of avoiding due process. It should be noted that many of the improved educational opportunities enjoyed by more affluent students were those that were supported in the original NLTS study, including earlier intervention, more integration, and access to more challenging curricula. It should also be noted that these changes took place at a time where state and federal laws, were changing requiring students to be included in accountability measures.

**Improving Equity for Low-Income Families**

So why is the legal mechanism of due process not working as well for low-income students? First, the vast majority of parents who use this mechanism are middle and upper class (cite). This is probably due to both the potential expense entailed as well
as the social capital necessary to challenge the authority of district administrators.

Further, there is evidence that in some large cities where due process use is high (e.g., New York City and Washington, DC), the types of disputes going to hearings are disproportionately involving parents seeking out-of-district placements for their children (Hehir, Blackman Jones Report). In Los Angeles, it appears that administrative policy changes implemented by the administration may have resulted in a rapid increase in due process hearings (Independent Monitor’s Report, Chanda Smith). One could argue that in these districts that the impact of due processes is not leading to systemic reforms as they have done in the inclusion cases, but may instead be diverting attention and resources away from fundamental reforms associated with improved results.

Another avenue employed by advocates to promote reform, class action litigation, has had mixed results. Though it appears that these litigations have brought some districts into higher levels of procedural compliance reforming educational practice through this mechanism in large systems seems mixed at best. (It should be noted here that I have extensive experience in over a half a dozen of these cases as a defendant, consultant, and mediator.) For instance, Blackman Jones in Washington, DC has failed to yield demonstrable reform in practice within the district and NYC continued to run a segregated sub-district many years after Jose P.

**Strategies for Advocates**

The question that now arises for advocates from low-income districts is whether the due process mechanisms in IDEA and class action litigation can be used promote
reform of educational practice? I believe they can and recommend the following four strategies for advocates:

*Know the Research*

First, advocates need to know the practices most associated with better educational results and promote their use. The good news is that we know far more about what those practices are than we did when many of the class action litigations were filed. Special education research knowledge and practice has advanced enormously over the last twenty years. It is important that advocates know these are and promote their use wherever possible. Though there might be pressure to “get kids out of the system” and into private schools, advocates should be aware that such action is unlikely to improve integration for the masses of students served within the system. Attorneys should thus work with knowledgeable practitioners and seek smart strategies designed to have a systemic impact.

*Provide Free Representation to Low-Income Parents*

The due process mechanisms are powerful and, as the inclusion cases have demonstrated, they can have an enormous influence over educational practice. Some might argue that funding to enable poor parents to effectively use due process might, in some places, simply result in more children being placed in private schools. However, the use of due process by more advantaged parents is much more complex than that. Many parents use the threat of hearings to secure greater integration for their children with disabilities, and many of those cases never proceed to hearing because districts settle
given the LRE imperative in IDEA law (Hehir, 1990). It is undoubtedly that threat that accounts for some of the movement of middle and upper income students to more inclusive settings between the two NLTS studies.

Though this proposal might sound utopian in the current political climate, there is a practical way it could be accomplished even in part: fund Protection & Advocacy Centers to selectively provide representation to parents within the centers’ current legislative mandate. These centers, currently funded under the Developmental Disability Act, serve individuals with significant disabilities and their families, and their legislative mandate is to prevent institutionalization and to promote integration. Funding these centers to provide representation would thus increase pressure on districts to provide more effective integration for students with significant disabilities.

The California Protection and Advocacy Center has implemented a model of how this might be implemented. Currently the center funds a skilled educator who works mostly with low-income parents seeking more inclusion for their children within the Los Angeles Unified School District. This educator has worked with scores of parents over the years and has helped promote more inclusive practice within the district.

Promote More Strategic Litigation Focused Systemically on Changing Practice

Though it is my opinion that class action litigation has on the whole had a positive impact for students with disabilities, the primary impact has been in assuring implementation of IDEA’s procedural elements. Though this is important in that children with disabilities need to be identified and receive services, the overall impact of these litigations on district instructional practice can be questioned (Hehir et al., 2005). For
instance, a number of districts that have been under consent decrees for years, including Boston, New York, and Washington, DC, continue to segregate large numbers of students with disabilities, at rates that are far above national averages (Hehir et al., 2003; Hehir et al., 2005; Hehir & Mosqueda, 2007)

Litigation’s focus on procedural compliance is understandable, in that IDEA is a law of individual entitlement with prescribed procedural elements. These procedural elements lend themselves to oversight and enforcement (e.g., whether the child had their evaluation conducted on time or not, whether the child received a service or not). However, it is far more difficult to evaluate whether a child has received a Free Appropriate Education (FAPE) in the Least Restrictive Environment (LRE). Though these are legal requirements, both contain an element of regulatory vagueness that is difficult to assess. Further, a district would likely claim that simply because they have large numbers of students in separate environment does not mean that they are violating LRE for individual students.

Though both FAPE and LRE are relatively vague, they are central to IDEA and should be viewed as the main entitlements of the law, designed to confer benefits on children. As the research has shown, integration is associated better outcomes for students with disabilities, and FAPE ultimately should ensure that the impact of students’ disability is minimized through the provision of special education services and access to general education with individualized disability accommodations.

It should be noted, however, that though these are vague concepts, class action litigations have been successful in finding districts and states in non-compliance with these elements either through court action (e.g., Corey H.) or through negotiated
settlements (e.g., *Chandra Smith*). Of the two requirements, it may be easier to establish non-compliance with LRE, given the tests developed in the inclusion cases. A litigant could apply these tests to groups of students in districts and establish that these thresholds were not met, therefore establishing a class as was done in *Corey H*.

On the issue of FAPE, past litigations such as *Jose P.* have focused on the provision of special education services. However, the issue of access to curriculum, an essential element of FAPE since IDEA 1997, has not been a main focus of these class actions. The focus on special education service delivery in these districts may well have inadvertently removed many students from accessing general education. For instance, in 2005 when I was conducting an assessment of the reorganization of special education in New York City for the plaintiffs and the district in the *Jose P.* case, I observed meetings between the parties in which the primary concern was how rapidly students were being placed in special education programs. Most of these special education programs were segregated. At the same time the plaintiffs were pushing for faster placements, the district was promulgating a policy concerning the new “small high school” initiative that largely excluded students with disabilities from enrollment. In my view the plaintiffs were missing a major opportunity to promote integration and equity.

To increase the likelihood of districts implementing practices that will improve outcomes, class action litigation must focus more closely on educational practices and move away from their current emphasis on procedural compliance through “top down” bureaucratic intervention. They need to promote changes in educational practice at the school level where children are educated. This is admittedly difficult to do because each school is an organization that is semi-autonomous (Weik). However, the fact that schools
are individual organizations may explain some of the failure of traditional bureaucratic interventions.

Moving class action litigation is possible and has been happening in several sectors, such as mental health facilities, prisons, and housing, as well as education with some initial promising results (Sabel & Simon, 2004). Two promising cases, *Corey H et al. v Chicago Public Schools* and *Chandra Smith v Los Angeles Unified School District*, have explicitly sought to change the traditional approach. There are several principles that have arisen out of both these cases that should be helpful to those seeking to promote substantive changes of educational practices for low-income students with disabilities.

*Promote Data-Based Agreements*

Though not all aspects of education are easily quantifiable, many are. The degree of integration a child receives, the relative participation of parents at IEP meetings, whether a child is educated in their neighborhood “home” school, the number of days children are suspended, the over-placement of students of color in special education, graduation rates, and the performance of children on state-wide accountability measures are all important measurable outcomes related to IDEA compliance and educational reforms likely to benefit children and families.

These types of measures can be used in class action suits or governmental oversight to promote systemic reform. However, many traditional class action litigations have not sufficiently focused on measurable outcomes associated with educational reform. *Jose P.* is an example of a long standing class action suit for which it is difficulty to identify measurable outcomes. Concerning the work I conducted assessing the impact
of the New York Chancellor’s reorganization on special education in 2004, it was very
difficult to find measurable data that could document progress in implementing the IDEA
within New York City. The agreement is not structured that way, nor are there data
systems capable of answering basic questions concerning IDEA implementation. One
observed meeting between the parties took on a vitriolic air, as the parties argued whether
children were getting the services on their IEPs. This resulted in a costly audit, which
verified that neither party was totally correct in their assessment. This class action suit is
over twenty-five years old.

In my view, a more effective intervention would involve carefully selected
measures, upon which data systems could be build that would generate valid information
to the parties. If this were the case, the district could intervene when and where problems
arise, and the plaintiffs would have transparent measures upon which to hold the district
accountable. More importantly, such an approach would be likely to lead to substantive
improvement for children and families.

Such an approach has been employed in the Chandra Smith case in Los Angeles.
This suit originally evolved as a traditional top-down bureaucratic case that required
hundreds of actions costing the district millions of dollars. The district sought to have this
consent agreement modified by the federal court, due to their view that the agreement
was too burdensome with little demonstrable benefit. The judge in case refused to modify
the agreement because of the unilateral action of the district without the involvement of
the plaintiffs, but he did express his view that the agreement as written would never be
resolved. Judge Lew stated, “The way I see it structured now, what I fear most is that
there may be a never-ending conclusion to the case, and that is not right….But there is
certainly an inherent problem with how this case is structured before this court.”
(Proceedings, U.S. Central District Court of California, Sept 24, 2001). When the district appealed to the circuit court, they upheld the lower court but also encouraged mediation. The plaintiffs agreed to mediate a new agreement, and this author was appointee as a mediator.

The ultimate agreement reached in 2003 was based on eighteen verifiable outcomes, the accomplishment of which would result in the termination of the lawsuit. The outcomes represented some traditional compliance such timely completion of IEP meeting to student outcome measures such as graduation rate and performance on statewide assessments. The agreement established a small independent monitor’s office whose primary responsibility is to verify accuracy of data and to approve plan designed by the district to bring about compliance.

Though the district has not fully come into compliance with the agreement measurable progress has been made. For instance, the number of students suspended more than six days has dropped from 828 in 2003-2004 to 489 in 2006-2007. The number of students with low incidence disabilities (disabilities other than speech and language or learning disabilities) placed 40 percent or more of their day in general education has gone from 5687 to 9778 during the same period. Other areas where major improvements have occurred include, timely completion of evaluations, parental participation, response to parental complaints, and translation of IEPs (Weintraub, Alleman, and Hernandez, 2007) Though data is not available at this time concerning test results and graduation rates, some, though slow, progress is happening there as well.
The early but important lesson from the *Chandra Smith* case is that progress can be made under this model. The establishment of a monitor’s office charged with assuring the accuracy of data can free the parties to focus on remedies as opposed to endless disputes over data accuracy. It should be noted that recently the office uncovered major inaccuracies with the district’s reporting of architectural accessibility renovations of schools. This transparency allowed the district to focus on holding contractors accountable and was reassuring to the plaintiffs that accessibility renovations would occur.

However, improving student outcomes is likely to require significantly more effort and attention. It is the hope of this author as the district comes into compliance with many of the more procedural aspects of IDEA it will be free to focus its energies on improving educational practice and that the litigation will serve to assure that that will take place.

*Focus Intervention*

As the *Chandra Smith* case is demonstrating, improving real educational opportunity and outcomes for disabled students from low-income backgrounds will require major change in practice and will not occur rapidly. Though it may be tempting for advocates to structure agreements that are comprehensive, seeking many changes simultaneously, large school systems do not change that fast. Further, the organizational change literature generally acknowledges that reforms that actually impact on how people in organizations do their work, in this case teachers and administrators, requires strong focus and capacity building (Elmore, 2004; Hess, 1998). Thus, in the Los Angeles case,
the independent monitor is now requiring the district to develop interventions that focus on low performing schools, while also including major staff development activities (Weintraub et al., 2006).

Another case that is relevant here is Corey H. In this case, the primary issue at hand was the failure of both Chicago and the State of Illinois to provide students’ education in the least restrictive environment. The remedy in case has involved capacity building at the school level largely funded by the State of Illinois, with over $19 million in funding. Individual schools in Chicago have since shown impressive gains (Soltman & Moore, 2002).

Involving States

The Corey H. suit is also notable in that the State of Illinois is joined as a defendant. As the Hancock case demonstrates, many districts that have large numbers of low-income students with disabilities also have significant fiscal restraints. In Corey H., the state was required to provide significant funds to support reform. (It is important to emphasize here that IDEA is a state grant program and that major responsibility for its implementation resides at the state level.) From the perspective of this author, it is unfortunate that the State of California was never joined in Chandra Smith and that the cost of litigation rests solely on the city of Los Angeles. States should be joined in these cases. It important for all parties involved in these suits to remember that the primary statutory responsibility for implementation IDEA rests with the states. The strong state monitoring role envisioned in NCLB adds further importance to the state role. States therefore should always be parties. This takes on even greater importance given the states
role in funding education generally and that funding may be an issue that undergirds the lack of educational opportunity experienced by many low income students with disabilities.

Though there is much promise in well-structured class actions suits to promote change, most districts will never have such action brought against them. It is therefore important for advocates to first and foremost seek ways for states to play a greater role in enforcement and reform. States can structure interventions with school district that incorporate many of the elements of discussed above. Further, states can bring significant and diverse resources to the table, from state universities to discretionary grants. Fortunately the IDEA amendments of 2004 support a more assertive role on the part of states in enforcing IDEA.

Conclusion

Compelling data suggests that IDEA has influenced widespread research-based improvement in educational practice for students with disabilities. Despite positive effects for students and teachers, it is clear that youth from low-income backgrounds are not showing the same academic, postsecondary education, and employment gains as students from middle-income and upper-income households. One likely reason for this may be the failure of school districts that serve these students to implement practices associated with better outcomes for students with disabilities. One factor that has likely affecting this failure is lack of funding. Another factor may be the relative lack of access to due process hearings of low income parents a means of change in schools.
Those interested in improving educational opportunity for low income students with disabilities have brought lawsuits against a number of large school systems in the US. Though I believe these have promoted some reforms, their influence at times may have promoted greater segregation of disabled students and may not have been as effective as they may otherwise have been. Lessons from some more recent actions show the promise that these interventions may hold for future reform if interveners concentrate more closely on focused, data-based, reforms in educational practices associated with improving results. Further, a greater involvement of states is needed to increase the likelihood that the promise of IDEA will be achieved for all students.
References Cited


It is important to note that this author was Associate Superintendent in Chicago when *Corey H* was filed and has served a court-appointed mediator and consultant in the *Chandra Smith* case.