

# REACHING THE IDEAL

*Special education has its problems, but they mainly follow from the failure of schools to comply fully with the law*

## THE ACCOUNTABILITY

movement has been gathering steam for more than a decade now, so it was perhaps only a matter of time before reformers began trying to apply the standards-and-testing template to special education. Patrick Wolf (see “Sisyphean Tasks” on page 24) has urged a shift from what he calls the “process” or “compliance” orientation of special education to an accountability regime that focuses on achievement gains. Now the President’s Commission on Excellence in Special Education has headed in that direction too, writing, “The current system often places process above results, and bureaucratic compliance above student achievement, excellence, and outcomes.” Nevertheless, the commission maintained, “The law must retain the legal and procedural safeguards necessary to guarantee a ‘free appropriate public education’ to children with disabilities.” The challenge is to retain the legal rights and simultaneously move toward a different kind of accountability.

The current system of procedural accountability within special education law is a logical response to the problems that led Congress in 1975 to enact the Education for All Handicapped Children Act (now known as the Individuals with Disabilities Education Act, or IDEA): the total exclusion of some students with disabilities, the inadequate education of others, and the segregation of those in school from their nondisabled peers. At the time, holding educators accountable meant using the civil-rights approach of guaranteeing access to schools and to special services. To ensure access and benefit, Congress adopted two approaches. First, it gave parents the right to participate with educators in making decisions about their children’s education; the President’s Commission not only endorsed that approach, but also wants to strengthen parents’ “empowerment” rights. Second, it gave parents and schools the right to go to an administrative hearing (and then on appeal to courts) on any issue related to the child’s right to a free, appropriate education in the least restrictive setting.

by RUD TURNBULL & ANN P. TURNBULL



It is crucial to recognize just how successful IDEA and these accountability techniques have been. They have brought the majority of students with disabilities into the general education system. They have created a cadre of parents, parent organizations, special educators, and other educators who know students' rights and how to educate students effectively. They have brought intellectual and financial resources to bear on the problems of teaching children with disabilities. And they have given us the opportunity, indeed the duty, to advocate for different and more meaningful results.

To so advocate does not mean abandoning the rights that Congress conferred more than 25 years ago. It does mean moving beyond process accountability without jettisoning the procedures that empower parents to participate in their children's education and that give them (and schools) the right to resolve their differences in quasi-legal and legal proceedings. And it means preserving the six principles of IDEA that are its bedrock—principles that derive directly from Congress's declaration that disabled students have a right to a free, appropriate public education with their nondisabled peers. Let's examine those principles, see how they are sometimes ignored in practice, and discuss what an accountability system based on results can do to advance them.

## The Six Principles

1) *Zero Reject* is the principle that no student with a disability can be denied a free, appropriate public education. This is both a civil right under the equal protection doctrine and good social policy, grounded in the individual and social utilitarianism of educating all students.

Does every student with a disability have access to education, as some assert? No, not if we recognize that some schools refuse to identify some students as having a disability in order to hold down the costs associated with special education. Some schools instead offer students protection under Section 504 of the Rehabilitation Act (which provides fewer rights than IDEA). Some schools shunt students into the juvenile justice system in order to escape their duty to educate them—students who could benefit from staying in school if only the educators held a positive view of their potential and had the ability to address their cognitive, developmental, emotional, and behavioral needs. Attacks on students' IDEA-guaranteed right to education is a back-door attempt to reseg-

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regate the schools by excluding students on the basis of their disabilities and ethnic, cultural, or linguistic characteristics. It's time to be candid about the games that some schools play and about the capacities that some schools lack to implement the zero-reject principle. The fault lies not in IDEA, but in administrative gamesmanship and insufficient system capacity. Monitoring based on outcomes must address both of these issues.

2) *Nondiscriminatory Evaluation* is the principle that schools must evaluate each student fairly and without bias to determine if the student has a disability and, if so, to plan what kind of education the student needs in order to benefit from school.

The question, "Does the child have a disability?" is heavily freighted. Policymakers repeatedly disagree over what IDEA does and does not consider a disability. There have been objections to congressional decisions to recognize as covered disabilities such new categories as autism, traumatic brain injury, and attention deficit/hyperactivity. The increase in the number of students classified as having either specific learning disabilities or emotional/behavioral disorders has also sparked much controversy. It is alleged that some students classified as having learning disabilities were simply taught poorly in their early years. Data show that students from some minority populations are overrepresented within the special education population, yet there is insufficient policy to address the fact that poverty and disability go hand in hand.

It is important to resist the pressure to jettison IDEA's present requirements for periodic, multifaceted, culturally unbiased evaluations. No good comes from classifying some children as having a disability when in fact they do not have one or from labeling a child with a disability when the child may experience other kinds of educational disadvantages arising from ethnic, cultural, linguistic, or socioeconomic conditions. Moreover, the pressure to reduce the number of special education students, in part to alleviate education budgets and eviscerate education rights, must be resisted as poor social policy. If a child truly has a disability and cannot for that reason benefit from general education, then the proper response is to offer the benefits of special education. Schools cannot do that unless they adhere to state-of-the-art methods for classifying students; it's not about measuring their progress in school but about deciding whether they have a disability and, if so, what the educational con-

sequences of that determination are.

But let's confess: classification is a political-economic-cultural tool, not just an educational issue. Its consequences, from both individual and social utilitarian perspectives, are often grave. So, outcome-based monitoring should be directed at whether the evaluations that IDEA requires are performed on time, by competent and disinterested people, in an unbiased way, and with resulting application to the student's educational program and placement. An accountability system that simply monitors the progress of students already in the system will fail to keep track of how students are evaluated and classified in order to enter the system.

3) *Appropriate Education* is the principle that students with disabilities are entitled to benefit from being in school. This principle goes beyond access (the zero-reject rule) and asks whether students are receiving an education that leads to their full participation in American life, that improves their economic capabilities and their ability to live as independently as they want to live.

Of course there are issues. Too much time and paperwork are involved in writing the student's individualized education programs and too little in making sure that the teachers know what to put into the program, can teach its content, and can defend the program on the basis of evidence that the program leads to full participation, economic self-sufficiency, and independent living. But bear in mind that most of the procedural burdens and paperwork requirements are imposed by the states, not the federal Office for Special Education Programs (OSEP). Other problems exist: many students go without the related services from which they can benefit. There are grossly insufficient supplies of qualified/certified general and special educators and related service providers. Schools of education still prepare new teachers using antiquated curricula. The general education curriculum limits access by and for many students with disabilities. Too many outcome-focused policy leaders and school administrators believe that academic achievement is the sole measure of school and student outcomes, despite the fact that IDEA itself acknowledges that students' developmental, emotional, and behavioral capacities/outcomes are a proper focus of a student's program. Too many educators underestimate students' capabilities, often because they are not aware of what can happen when teachers use curricula and instructional techniques that are based on solid research.

The question is not whether schools should be held accountable (they should), but, with respect to students with disabilities, what outcomes they should be accountable for producing. Academic outcomes, of course, but

IDEA addresses more than the cognitive capacities of students. It also addresses their emotional, physical, and developmental capacities, and schools should be held accountable for enhancing these and for connecting them to a student's opportunities for full participation in American life: economic self-sufficiency, equal opportunity, and independent living. IDEA addresses the student's quality of life, a measurable outcome that incorporates academic outcomes. That is the outcome for which schools ultimately should be held responsible. An appropriate education depends on genuine and sustained efforts at capacity-building at the federal, state, and local levels. Accountability measures should inquire into whether schools are taking the steps that research shows can lead to an appropriate, holistic education, not just an academic outcome.

4) *Least Restrictive Environment* is the principle that students with disabilities, to the greatest degree possible, must have access to the general curriculum and be taught with their nondisabled peers. This principle is based on the idea that classrooms that include both disabled and nondisabled students provide a more appropriate and beneficial environment for the disabled student, who has greater opportunity to associate with nondisabled peers, and nondisabled students learn that those with disabilities are no less worthy as individuals.

Bear in mind, however, that education is more than the academic curriculum. It includes the extracurricular life of a school and the school's other activities—a fact that is relevant in considering Wolf's results-based accountability approach, which is almost exclusively targeted at the academic domain.

The evidence is persuasive: students with disabilities can learn and develop at least as much and often more when they are included in general education. The extent of a particular student's disability can sometimes justify placement outside the general curriculum; that's why IDEA provides for an array of services inside or outside of general education.

All too often, it is simply a lack of will and capacity that limits educators' ability to adhere to this principle of inclusion. There is a large body of literature about how to include students with disabilities in general education. To monitor compliance with this principle requires holding schools accountable for sustained capacity-building that demonstrably moves all students into general education.

5) *Procedural Due Process* is the principle that students with disabilities and their parents have the right to be informed of changes to their educational plan, to participate in the decisionmaking process surrounding the design and

updating of those plans, and to protest any decisions that are adverse to their right to a free, appropriate public education by going to an administrative hearing and then to appeal to a court any adverse judgment. (By the way: the schools have the same rights to protest a parent's decision about a child's education. Moreover, schools are now resorting to a clever bypass of the hearing route, accusing parents of neglect if they do not concur with schools' decisions.) This principle—especially its manifestation in hearings—has become the most controversial one of all.

The question is not whether there should be procedural safeguards. There must be, as a matter of constitutional law. Instead, it is whether the ones that IDEA now contains should be substantially modified. They should not be.

Some provisions detailing when parents must be notified of changes to the plan might be abbreviated (although we are not convinced that even the present notices sufficiently inform all parents of their and their children's rights). But the "stay put" provisions that protect disabled students who are being subjected to disciplinary action should remain, especially since some schools do not yet have the capacity to correctly implement the provisions intended to help schools cope with disruptive behavior. The other procedural safeguards—parents' rights to mediation, administrative hearings, and judicial appeal, and their right to recover attorneys' fees—are necessary to ensure that the systemic problems under the other IDEA principles can be remedied. In 1998, just under 0.02 percent of all parents filed complaints or went to any kinds of hearings; about the same number went to mediation. Schools prevail in 60 to 80 percent of the hearings. A reformed monitoring system should document what the nature of the complaints are, what can be done to remedy them, and, as the President's Commission pointed out, what early-intervention strategies can be used to head off complaints before they harden into administrative or legal grievances. Preventive monitoring is what schools and parents need.

6) *Parental Participation* is the principle that parents and students (when they reach a mature age) have the right to participate in decisions about the students' education. This is a fundamental rule of democratic decision-making. Moreover, it is a powerful technique for accountability. As such, it should be preserved. Yes, there are problems—principally, the imbalance in power and

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resources between educators on the one hand and parents on the other (especially parents from underserved populations). But these are remediable, especially if accountability and compliance measurements address whether parents really do have access to decisionmaking processes at the student level and at the school and state levels. Simply testing for academic progress doesn't accomplish this. If "leave no child behind" is good policy, then "leave no parent behind" must also be good policy. Indeed, at a time when parents are being admonished to develop their children's emotional and social intelligences as much as their academic ones, it may well undermine parents' confidence in a results-based accountability system if

all that system does is measure academic outcomes.

### The Complexity of Compliance

The question confronting those interested in accountability is this: How can federal, state, and local agencies ensure that schools actually do the job that IDEA authorizes and commands them to do?

In answering that, let's embrace the complexity of compliance and begin by bearing in mind that the defederalization of education that began in the Reagan administration has had serious consequences: the federal agency charged with monitoring the states is hard-pressed to monitor by any means other than to determine whether the state and local education agencies dotted each "i" and crossed each "t" in a student's educational plan. It is fruitless to talk about a different system of monitoring—about moving from procedural monitoring to academic-based outcomes—when neither the federal nor many state agencies are geared up to do that. Again, it's a matter of building the system's capacity and of knowing what is worth monitoring.

Remember, too, that Congress limits state education agencies to taking 5 percent of special education funds for administrative tasks. That vitiates their ability to monitor except for procedural compliance (though it has the off-setting benefit of passing funds through to schools and service providers).

Then there is the fact that in the first case to go to the Supreme Court under the special education law, *Hendrick Hudson District Board of Education v. Rowley* (1982), the Court ruled that the way to ensure students' receiving an "appropriate" education was to follow proper procedures. This led federal and state agencies to focus on procedural

compliance instead of on the Court's equally important holding that "opportunity to benefit" is an indispensable component of an appropriate education. Is it any wonder that Congress, in the 1997 reauthorization, shifted stakeholders' focus from process to outcomes by adding provisions that require disabled students to participate in state and district testing programs?

What other problems exist? Too much paperwork (look to the states, not just OSEP, to reduce their demands); fear of litigation and an alleged (but non-existent) plethora of due-process hearings (see above); allegations that parents and their allies harass schools for their own sake, not the children's (again, where is that evidence?); the lack of a "culture of accountability"; and the reluctance of state and local agencies to be assessed for student progress. Yes, all of these factors are in play.

Schools, like other public and quasi-public institutions, have resisted outcome-based measurements. The Government Performance Reform Act began to challenge that resistance; so, too, did taxpayer revolts and devolution ideologies and, in recent years, a stagnant public economy. Congress itself challenged the resistance to a culture of accountability when it added the assessment provisions in the 1997 IDEA reauthorization and when, beginning with the "Goals 2000" launching, it amended general education laws to press for accountability for all students' benefit.

### Accountability, Structure, and Trust

But here's the harsh rub: To have accountability, one must have a legal structure within which those who are held accountable—schools, students, parents, and institutions of higher education—can function; and the structure must integrate the federal, state, and local agencies and be aligned with other education laws and initiatives. Accountability without structure simply does not make sense, and that is why we must not jettison IDEA's assurances of "zero reject," fair evaluation, appropriate education, access to the general curriculum, procedural safeguards, and parent empowerment. The present legal structure is solid; attempts to undermine it are unwarranted. What must be addressed is the law's implementation.

There one finds problems, some of which we have identified. The call for "outcomes" is certainly warranted, and perhaps some of the techniques that Wolf has suggested will be useful. But let's pause a moment to ask two questions.

First, what outcomes, for what ends, and how measured? There can be no doubt: academic outcomes are important for all students with disabilities because they

are the means to other kinds of outcomes. What other kinds of outcomes? Here, IDEA and the disability field are clear: people with disabilities must have equal opportunities to participate with nondisabled people in all sectors of American life (IDEA is a civil-rights law, not just an education law), so they can fully participate in American communities, so they can be economically self-sufficient, and so they can live independently—all according to their abilities and choices to do so. A short-sighted view—the one that pervades the school-reform ideology—is that academic outcomes alone matter and that performance on tests is the only measure worth applying. We disagree: there is more to a student's life than brainpower. The role of special education, indeed of all education, should not be so narrowly defined. Accountability must be addressed more holistically. To fail to do that is to fail people with disabilities and, in the long run, the public interest.

Second, student outcomes will always fall short when schools themselves are short of resources and will. Wolf and his colleague Bryan Hassel have called for a "big toolbox" of talents and strategies, including incentives for student and educator performance, goal-setting up and down the federal-state-local system, and consequences for underperformance. Fine, but that's not enough. Why? Because the toolbox and similar approaches do not frontally address the capacity of the schools and educators to deliver an appropriate education. In nearly all of the public debate about accountability, there is not enough to be heard about the use of research-based curricula and instructional techniques. Incentives, goal-setting, and consequences will have little effect on education and outcomes unless teachers use approaches that have been validated by research. The flaw is not in the law. The cure is not an accountability toolbox alone. The flaw is in the inadequate system for training teachers, for ensuring that they use research-based instructional techniques, and for holding them accountable for a much broader range of outcomes than merely academic ones.

The cure lies in preserving IDEA's six principles, in relying on more than process compliance, and in being serious about effective education by using research-based approaches. The "residual" rights that Wolf wants—identifying and evaluating students, setting year-by-year goals for student learning, assessing student progress toward those goals, and informing and involving parents—simply are not enough.

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