Special Education

Testimony of Commission Chairman Clarence J. Sundram, at the Public Hearing of the Assembly Standing Committee on Education February 12,1992, Albany, NY

This hearing ultimately is about children and about the way we prepare them to live in the world around them. In school, children learn not only reading, writing and arithmetic, but they also develop a sense of their self-worth and learn to appreciate the abilities and differences in others. In a very real way, this hearing is also about the type of world we create and maintain for children — will it be one of inclusion, which values every child for his or her gifts, talents and needs? Or will it be one which excludes children based on their labels and disabilities?

Federal and state laws governing the education of students with disabilities embrace three fundamental principles:

1) students with disabilities have the right to receive a free, appropriate public education in the least restrictive environment;
2) educational services for students with disabilities are to be provided in accordance with their individualized needs and be based on collaborative planning by parents and educators; and
3) the rights of students with disabilities are to be protected through the establishment of protective due process procedures.

My testimony today will cover each of these three principles.

Least Restrictive Environment

Let me begin with the least restrictive environment. All too often, parents of children with disabilities across the state are confronted with a Hobson's Choice of receiving free and appropriate services that their children require or placement in the least restrictive environment, but not both.

Unfortunately, the legal entitlement of children with handicapping conditions to receive special education in the least restrictive environment is not yet a reality in New York State. According to a report to Congress released by the U.S. Department of Education in 1991, New York has one of the most segregated systems of special education in the nation. In this 13lh Annual Report, New York ranks last among all states in placing only 7 percent of its disabled students in regular classes compared to the median percentage of 37 percent for the other 49 slates. When placements in resource rooms are added, New York still remains last among all states with only 43 percent of its disabled students in regular classes and resource rooms, compared to a nationwide average of 69 percent of disabled students in such sellings.

The Commission's survey of over 1400 parents of children receiving special educational services found strong support for inclusionary educational practices. One of the key findings in this study was the direct correlation we found between parents' satisfaction and placement in a regular classroom setting. In this survey 84 percent of the parents with children in regular classes were satisfied with their child's placement compared to 63 percent overall.

In contrast to this high level of satisfaction, parents with children in BOCES programs and in special classes out-of-the district were least satisfied (35 percent and 15 percent respectively). Parents of children with resource room placements also demonstrated a high level of dissatisfaction, with only 55 percent indicating they would choose such a placement again. Based on parent comments, one of the critical concerns raised with resource room placements was the amount of time their child missed in academic subjects being taught in (he regular classroom while they were pulled out for the resource room.

The survey also found that there are wide variations in the reported opportunities that children with disabilities have in interacting with their non-disabled peers based on the nature of their disability. We found that 60 percent of children with multiple disabilities were fully segregated academically compared to only 29 percent of children with a single disability. Additionally, the Commission found that children with mental disabilities such as autism, menial retardation and emotional disorders had a significantly higher rate of no academic interaction than children with learning disabilities and physical/sensory impairments.

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The effects of our highly segregated special education system were summarized well by a parent of 7-year-old child with a speech impairment, who wrote:

> "We pay a big price for segregation. It amplifies differences and fears of those differences. Non-handicapped children learn very little about handicapped children by spending a half an hour in music with one or two children from the BOCES class downstairs. This kind of half-baked integration draws attention to handicapped children's differences without enough opportunities to learn about similarities. Non-handicapped children need to understand that handicapped people belong in our society, not in some separate, unknown, mysterious realm of special education. More importantly, handicapped children need to feel a sense of belonging to society through neighborhood, family and school."

Although parents and advocates frequently note the reluctance of schools to provide inclusionary educational services, the preliminary results of our survey of special education professionals shows that these individuals share the positive views of parents towards integration. Over 80 percent of professionals surveyed felt that integration has its most positive result in improving the self-esteem and social skills of children with disabilities, while 75 percent believe that integration also positively affects the educational performance of these children. In terms of its effect on non-handicapped children, some 70 percent of the professionals felt integration had either a positive effect or no effect on the academic performance of these children. These findings clearly indicate that parents and professionals have a shared belief in the importance and value of integrated special educational services.

Why then do we remain such a highly segregated system, 17 years after the enactment of PL 94-142? In our work around the state, we have seen great examples of inclusion in schools. Thus, we know that it is possible, with the leadership and commitment and involvement of parents and professionals to make the promise embodied in state and federal laws a reality. But the values that have been absorbed and the lessons learned at these schools have not been transferred to others equally in need of inclusive educational practices.

A contributing factor to the continuing segregation of children with disabilities is our special education funding formula. As noted in a recent report by the National Association of State Boards of Education, entitled "Winners All: A Call for Inclusive Schools."

> "The finance system for special education drives the dual system currently in place and has created barriers to establishing an inclusive education system...."

In our current system, the additional money provided for serving children in resource rooms or by consultant teachers gives school districts less reimbursement than if these same children were served in a separate program. If we are to succeed in promoting an effective system of inclusionary services, we must reform our funding structure to enable schools to finance the essential support services to a regular classroom, and sever the linkage between aid and placement that has encouraged schools to utilize restrictive educational placements.

However, as we strive to euhance integrated educational opportunities, we must be careful to not set this goal as our sole measurement of success. We must not lose sight of the mission of schools to educate children and prepare them for life as adults. Indeed, special education professionals in our survey voiced grave concern with the degree to which students with disabilities are prepared for employment or post-secondary education. Only 26 percent of these professionals felt that schools were doing a good or excellent job in preparing students with disabilities for post-secondary education while only 35 percent felt that these students were adequately prepared for employment. This concern with the outcome of special education is also highlighted by the National Association of State Boards of Education. As stated in the report:

> "Lawmakers and advocates assumed that guaranteed access and individualization would ensure good educational outcomes for students with disabilities. Unfortunately, as educators examine the outcomes of special education, they realize that for many youth with disabilities, a fairly bleak future was ahead."

Individualized Educational Program

The second issue I would like to address is the fundamental right of children in special education to receive services based on their individualized needs. Federal and state laws recognize the invaluable contribution that parents can make in ensuring that special educational services meet the needs of their children. Although our parent survey showed a very high rate of participation by parents in IEP meetings (85 percent), nearly half of the comments made by parents about this process indicated that their input was not truly desired by the Committee on Special Education. Frequent comments made by parents indicated that IEPs had been prepared beforehand, that parental involvement was limited mainly to personal or family issues rather than educational issues, and that IEPs lacked individualization.

In contrast to this relatively negative view of the IEP process by parents, the vast majority of special education professionals responding to our survey firmly believe that IEPs address individual student needs (81 percent). Chairs of CSEs in 96 percent of the cases were confident that the IEPs were truly individualized while teachers were the least

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likely to hold such a belief (72 percent). Ironically, although professionals hold great confidence in the IEPs, it is disturbing to note the lack of confidence these professionals have in their educational decisions. Surprisingly only 20 percent of these professionals felt very confident in their decision-making capacity while nearly one-third reported having little or no such confidence. Most significantly, nearly 30 percent of CSE Chairs said that they had little or no confidence in their decision-making ability. Given both this lack of confidence, and parental concerns with their input, one must seriously question how well our special education system is truly providing individualized services.

A related issue regarding the provision of individualized services is the commitment to providing services identified within the IEP as needed by students with disabilities. One out of four parents reported to the Commission that school districts did not provide the recommended services. In half of these cases, parents identified the lack of available specialists as the primary factor for this failure. This concern with the lack of specialists is shared by the majority of special education teachers. In contrast, CSE Chairs were significantly more positive about the availability of resources to implement IEPs (70 percent). Although parents and advocates have long pushed for school districts to enhance the availability of related services personnel, it may be appropriate to re-examine our approach. We should consider collaborative efforts among our human service systems to ensure the availability of sufficient, qualified staff to address the needs of students with disabilities. These efforts may also assist in the eventual transitioning of these school children to other services or to receiving supports from other service systems to enable them to lead productive lives as adults.

The Neighborhood Based Initiatives program of Governor Cuomo and the recently passed legislation establishing an early intervention program for infants and toddlers with disabilities create mechanisms for the coordination of services that may serve as models for improving the availability of services in regular classroom settings. The Hobson's Choice confronting parents with having their child receive few or no support services in a regular classroom setting or be provided with a comprehensive array of related services in a segregated setting must come to an end.

Due Process

The final principle which I wish to address relates to the effectiveness of the special education due process procedures. One of the most frequent complaints that the Commission has received from our regional advocacy offices is the lack of impartiality of hearing officers selected by local school districts. Although federal regulations stipulate that such persons should have no personal or professional conflict of interest, there is little guidance provided as to what constitutes such a conflict. Thus, school districts assign as impartial hearing officers retired employees, retired superintendents from a neighboring school district, law partners of the school district attorney, and the like. In some districts, the same person is repeatedly employed as the impartial hearing officer.

Given the lack of any clear federal policy on this matter, this would appear to be an issue which requires clarification if we are to provide parents with any confidence in the impartiality of our State's special education due process system. At the same time, I should note that it has been our experience that there has been a very fair and effective process of review conducted by SED when appeals have been taken to the Office of State Review.

However, reforming the impartial hearing system will not in and of itself be sufficient to safeguard the rights of students with disabilities. In our parent survey, we found that most parents used informal procedures to resolve problems they had with their child's special education program. Strategies such as conferences with a child's teacher (89 percent), meeting with the CSE (75 percent), or meeting with the school's principal (58 percent) were the most frequently used informal procedures. In contrast, only 11 percent of the parents requested an impartial hearing with litigation being used by only 3 percent of the parents. Based on the successes of several other states, New York has recently established a special education mediation demonstration program. This program, established as a result of legislation proposed by the Commission, has the potential for enabling parents to resort to a non-adversarial process for resolving grievances that reinforces the collaborative decision-making process between parents and school districts. Serious consideration should be given to expanding this program, now serving some 125 school districts, to ensure its availability statewide.

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earned and becomes a member of the "I Made It" club.

Almost no positive interaction is left unrecognized. The youngsters earn reinforcement for staying in class, for working on taking care of their personal hygiene and straightening up their rooms, for doing homework, and for being considerate and polite to staff and other patients. Even the child who is having a difficult time, but is working hard can win the "Most Improved" certificate awarded each week by the nursing staff on the unit.[Camille Petty, RN, Nursing Care Coordinator, 212-461-4506]

St Vincent's Hospital (Westchester)

The Adolescent Psychiatric Unit at St. Vincent's Hospital-Westchester is nicely accommodated with comfortable furnishings, attractive curtains, and decorative bedspreads in all of the adolescents' bedrooms. Framed poster-art hangs on all the common area and bedroom walls and, as an added touch, the adolescents are allowed to "decorate" the windows surrounding the patio with graffiti-like painting, reminiscent of the 1960's.

Cognizant that connections with families and friends are important, unit staff provide a long clip-type picture hanger in each bedroom for the adolescents to hang family photographs, postcards, and posters. Adolescents are also encouraged to bring some personal belongings along with them, which help make the bedrooms more homelike for the teens during their typically brief hospital stays (usually less than 30 days). Commission staff also found each bedroom carefully designed with a study space, which reinforces the unit's philosophy that keeping up with school work is important. [Richard D. Milone, M.D. Medical Director, 914-967-6500, ext. 311]

Making Discharge a Positive Experience

The Commission reviewed basic discharge planning practices at each of the ten hospitals visited. In general, the findings were not impressive. Although there were scattered notes about discharge plans for the child in 89% of the records reviewed, only 40% of the records included a single comprehensive document which referenced all the arrangements being made for the children.

Even in the minority cases where an actual discharge plan was present, in no instance had the child or the family member signed the plan. Additionally, few of the records indicated that staff had asked the child about his/her preferences (26%) or that staff had offered the child choices in aftercare services (13%). Staff at many hospitals qualified, however, that discussions about discharge were ongoing with the children and their families, but not documented in the record.

During the reviews, the Commission also noted one hospital which had developed several initiatives to address the sometimes difficult moment for children and adolescents as they end their inpatient stays. Although these efforts were not directed to "professional" standards, they clearly made a difference for the children.

Strong Memorial Hospital(Rochester)

Staff on the Adolescent Psychiatric Unit of Strong Memorial Hospital have developed some innovative activities to help their teenagers prepare for their discharge as well as the discharge of other teens with whom they have become friends during their usually brief hospital stays (about 20 days). Upon discharge, each adolescent makes a "Good-Bye Book," decorated with their own drawings and pictures from magazines, and other children and staff on the unit sign and sometimes write a personal note in it.

The children being discharged also have the option of doing "wishes" or "car wash" the day before leaving the hospital. During "wishes" all the staff and children get together and, going around the group, each person individually gives a message (i.e., offering good wishes, recounting good experiences, etc.) to the departing child. For some children this face-to-face encounter is too stressful, and they opt for a "car wash." During a "car wash," the children and staff line up in a hallway with their arms extended up over their heads to form an arc. The child goes through the corridor, stopping by each person and giving them a hug or a handshake to say good-bye.

Unit staff told the Commission that through these activities they hoped to give the adolescents a sense of closure for their inpatient stay and to show the teen that, although there will always be people coming and going in their lives, these changes can happen in a positive way. [Janice DeSocio, M.S., R.N., 716-275-1205]