

# Public Policy and the Education of Children with Special Needs

*Abstract: This paper reviews several programs for children with special needs, from historical perspectives, current involvements, and one particular orientation, called the "child development model." With respect to programs based on the child development model, it is recommended that each state consider planning toward the eventual organization of a child development agency, responsible for all children with special needs, irrespective of their characteristics, educational attainments, and prognoses. Further, it is recommended that, to the degree programs encourage and support the maintenance of children in community environments, they should be reworded in both specific and general ways; and for purposes of better guaranteeing human rights and due process, citizen advisory and other advocacy groups should be organized throughout a state and given such support as would be needed to make these groups active and responsive grass roots partners in policy and decision making.*

ALTHOUGH most citizens are committed to the principle of education for all, the corollary is not that all children are educated but, rather, that there is marked discrepancy between principle and practice. While each special interest group zealously advocates for particular "types" of children and while each proclaims its mission on behalf of all children, more and more these advocates unwittingly conspire to weaken the concept of guaranteed equal and free education. As terminologies are refined and new ones developed and as state statutes and regulations reflect differential support programs for different disability groups, the principle of education for all continues to remain more a commit-

ment in the breach that an accomplishment.

In many states, individuals, citizen groups, and their agencies have pledged their allegiance to the goal of equal and free education, have allocated hard resources, have recodified restrictive statutes, and, specifically, have accomplished significant legislative and programmatic reforms on behalf of children with special needs. However, in spite of the best intentions of Federal, state, and local officials, as well as grass roots citizen groups—with due regard for the not inconsiderable gains accomplished in the past—there remain too many children who are excluded or exempted or suspended from public schools; there remain too many children who are institutionalized but do not require institutionalization; there remain too many children who are denied both the school and clinic, who are effectively "clinically homeless."

### Origins of Labeling

In the two states with whose laws I am most familiar, New York and Massachu-

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setts, statutes on services for children\* with special needs, until recent years, have been enacted on an ad hoc basis. These responses were usually made after identification of each "new" disability and after sustained social pressure for legislation to permit or mandate services to ameliorate the effects of that disability. Therefore, through the years statutes for disability categories were enacted separately and each disability was evaluated as to its nature and severity, the number of children it affected, the kinds of services necessary to deal with it, the cost of such services, and the ability of state and local government to bear that cost. The result of this process was an array of disability categories, each with its unique structure of pupil eligibility and support and each effectively excluding all children who did not meet program entrance criteria, thus guaranteeing that some children would not meet criteria for admission to any program.

Recognizing its statutory inflexibility, New York State in 1967 amended its education law (Article 89, Section 4401) and redefined a handicapped child as "one who, because of mental, physical, or emotional reasons cannot be educated in regular classes but can benefit by special services . . .," leaving further categorization to the State Department of Education. However, children continue to be labeled and stigmatized—some to be placed in segregated programs, some to be excluded or exempted from public schools.

In order to support a global process of delabeling, New York State designed an educational aid formula that is based on general, not categorical, program support.

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\* Whenever used in this position paper, "child" refers to any person under 21 years of age; "child with special needs" refers to any child who, because of temporary or long term adjustment difficulties arising from intellectual, emotional, physical, perceptual, linguistic, or cultural factors, or any combination thereof, requires special services or support in order to achieve his fullest possible development. The term "child with special needs" is in consonance with our belief that labels emphasizing pathology and deviancy should be discarded. By virtue of their characteristics and current functioning, these children are eligible for inclusion in the categories of handicapped children as they have been defined in such relevant Federal legislation as Public Law 85-926 and its amendments.

Unfortunately, a general aid formula does not reduce the incidence or severity of stigma and prejudice but does reduce direct and tangible support of programs for children with special needs. Therefore, what may be required is a categorical aid formula (i.e. for children with special needs) administered in a noncategorical general manner.

Another problem is the structure and content of support for handicapped children for whom no programs are available in the public schools. In New York State the "Greenberg Law" (Section 4407, Article 89, Chapter 786) was enacted to enable these children to be educated. Since its passage in 1957, funds for the support of this program have been increased from \$12,000 to approximately \$12,000,000 in 1970. Amendments to this law have increased both the types of handicaps served and the number of private schools serving these children, both in New York State and elsewhere.

However, as Simches (1970) concluded, there have been both positive and negative consequences resulting from this legislation. While there are now many more children in some type of school, too many may be excluded needlessly from the community public school. Further, as liberalization of the law's original regulations broadened eligibility to include the mentally handicapped as well as the emotionally and physically handicapped, unanticipated problems arose. Rapid increases in numbers of eligible students and the subsequent growth in the number of private facilities in which eligible children were placed have created provocative consequences not yet resolved. One is the possibility that this law encourages local school districts to declare as "severely handicapped" children who would otherwise not be so labeled and who, under other conditions, might be more desirably placed in the normalizing environment of the community public school.

Several other problems deserve discussion, first because they are serious and pervasive and secondly because we hardly understand their ramifications, much less how to deal with them. These problems relate to standards for the delivery of services and program accountability, consumer par-

ticipation in policy making, and the development of more viable and meaningful relationships among all agencies and advocates responsible for children with special needs.

#### Methods of Service Provision

Of the several problems already identified, one—the purchase and delivery of services—cuts across and embraces all others. During this decade of the Seventies, we have embarked upon a new social-educational experiment, sometimes labeled the “tuition voucher system,” which is based on a concept of free choice. For some, attempts to secure a legislative mandate for private school aid are connected with parochial education and specifically the financial crisis now facing the Roman Catholic Church (Arons, 1971). Others hope that freedom to choose will create “free schools” or will force greater program accountability and, consequently, will enhance educational standards and products. For still others, the vision persists that some type of tuition voucher system will more effectively guarantee education for all children. Aid programs for private schools vary at least as much as the groups that support this system. Also, as support programs vary from state to state, criteria for eligibility vary—one state requiring that teachers hold state certificates, another state not having this standard.

#### *The Voucher System*

The plan now receiving the greatest general attention probably resulted from a study commissioned by the Office of Economic Opportunity. This plan permits parents of school aged children in certain experimental areas to receive vouchers approximately equal to the average per pupil expenditures for public education in those communities. Parents of disadvantaged children would receive vouchers of approximately twice the value of the base average per pupil expenditure. Students could enroll in any approved school, either public or private. The state would not mandate new regulations for private schools other than securing some minimum basic agreement on standards. As every child's educational program would be supported by

vouchers, irrespective of the school he attends, it is hoped that this system would obviate a number of the problems encountered in other private school aid programs.

This principle of free choice is appealing to many people. It encourages a family to seek for their child the best educational or residential program that money can buy, with some or all of that money allocated from public funds. In each state the program is somewhat unique, varying insofar as the kinds of children eligible, the amount of support, the criteria for participation as an approved agency, and the nature and scope of expected outcomes and benefits. However, among states some degree of uniformity or regularity exists: eligible families have a right to select from an approved list what they deem to be appropriate educational programs for their children; the local or state government contributes a certain amount of money for the support of enrollees; and cooperating private agencies must meet certain standards to qualify for participation. Insofar as New York's Section 4407 and Massachusetts' Chapter 750 are concerned, support legislation is focused on children who traditionally fare poorly in public schools.

#### *Problems with Free Choice Legislation*

In Massachusetts, Chapter 750 has become a problem of major proportions. With legislation whose initial appropriation of \$1,000,000 is today 10 times that amount, there is little citizen satisfaction as waiting lists of eligible children continue to expand while local communities increasingly resist pressure to inaugurate community based, publicly supported curricula for the emotionally disturbed. While these children are sent to private schools under the provisions of Chapter 750, rather than to community public school programs, they appear to remain there years longer than originally thought necessary. In the meantime, boards of education and their constituencies continue to neglect the development of facilities and programs that might have permitted those children to be educated in a more “normal” community environment. In effect, what was originally intended to be positive and liberal legislation on behalf of handicapped children may have become the in-

strument that now prevents or discourages local communities from meeting their obvious and historic responsibilities.

In New York State, the "Greenberg Law" has, de facto, led some communities to discontinue their special programs for the handicapped by encouraging families to "purchase" private schooling for eligible children. However, as New York's legislation currently allows no more than \$2,000 per year for each child in such a program and as quality private schools for the handicapped cost considerably more, poor families have far greater difficulty participating in and benefiting from this program than do the more affluent. Unfortunately, while the poor find greater and greater difficulty locating appropriate school facilities in the private sector, public educational alternatives may be decreasing. In effect, the New York State legislation, and that of Massachusetts, encourage institutionalization, the removal of children from their homes, the abrogation of community accepted responsibilities for the education of all children, and the further stigmatization of children and their families.

The New York State legislation may also encourage certain previously zealous child advocacy agencies to neglect their traditional missions as reformers, innovators, and forerunners of public policy. For example, local associations for retarded children are today placed in the somewhat awkward position of, on the one hand, conducting school programs under the auspices of the "Greenberg Law" and, on the other hand, advocating for the placement of retarded children in public schools. Truly, they are on the multifaceted horns of a serious educational and moral, as well as economic and political, dilemma. As the local Association for Retarded Children receives \$2,000 for each child admitted to its day care program, it must turn aside from its more compelling role as the "conscience" of the community and it must not seek too vigorously the placement of such children in the public school. Their advocacy and subsequent success may create new and expanded programs for the mentally retarded in the public schools while, with each new success, the local association approaches the brink of economic ruination.

For better or worse, the "Greenberg Law" provides the economic stability and major source of income for the associations for retarded children; to remove such support at this time may lead to disastrous consequences. Yet, in spite of such consequences, this problem must not be ignored any longer.

### ***Right to a Public Education***

It is possible that the right to public education is a higher principle and, consequently, of a higher priority than the principles which underpin the New York, Massachusetts, and other "free choice" legislation. It is possible that, if we examined our state and Federal constitutions, we would find there are clear mandates for local governments to provide suitable educational programs for all children within their geographic-political boundaries. Further, it is certain that serious discrepancies exist between the expectations held by the dispensers of "free choice" legislation and the actual experiences of particular children. It is possible that "free choice" legislation wrongfully assumes that *all* people have the freedom to take advantage of such legislation and can, in fact, make "free choices." It is discriminatory legislation at best and, at the extreme, is illegal or abusive.

The central purpose of this position paper is to discuss matters pertaining to labeling and stigma, support of programs, standards and accountability, grass roots involvement, and the effective coordination of all community resources, in the context of current legislation as well as the ideal models that can be developed for legislative and regulatory reforms in our states.

### **Current Programs**

By the turn of the first decade of this century, at least a few states had achieved justifiable recognition for their humanitarian concerns on behalf of the handicapped. New York, for example, was among the first to encourage school enrollment of the moderately mentally retarded, to organize secondary school classes for mentally retarded children over 16 years of age, to develop meaningful bridges with growing parent groups, and to develop a network

of Boards of Cooperative Educational Services (BOCES) to aid communities not large enough to warrant such services organized on local unitary levels.

Truly, New York State has a justifiably proud history for its leadership in the development of exemplary programs for handicapped children. By the term "exemplary" we mean the deliberate successful integration of agencies, classes, and activities into the total community and school setting and the extent to which a state, community, or school increases the possibilities that wholesome integration of children, classrooms, teachers, personnel, parents, and community agencies will occur.

However, in spite of the best attempts of man and amended legislation, most handicapped children have not been "de-labeled" and humanizing programs are not as numerous as we would wish them to be. Special classes are still viewed by many as the "one track" of special education; to many, the term "special class" is synonymous to the term "special education." There are resource rooms and resource teachers for the disturbed. However, although the goal of a resource room is to return children to the mainstream of educational practice, too many schools and teachers use it as a disciplinary room or as a siphon for disruptive children. Although there are itinerant teachers and crisis teachers in many of our schools, too few administrators know how to best use the power and flexibility these professionals offer school programs.

Although there are more levels of special education opportunities than ever before—more nursery and preschool classes, more primary classes, more secondary programs, more work-study programs—there are also more intact special schools and special centers; that is, we have done relatively little about reducing isolation and segregation of the handicapped. In fact, in some ironic and perverse way, some of the good of the BOCES network may have been mitigated by its influence in establishing segregated school systems.

There is no one standard program for the handicapped in New York or any other state. There are many standard programs and these depend on geographic area, size of community, and type and degree of handicap. Standard programs for

the mentally retarded and the emotionally disturbed in most sections of our country remain the special class, special center, or special school. The extent of segregation and isolation and, conversely, the extent of integration and normalization of children in these programs vary from community to community and state to state. However, in general, the more severe the handicap and the more obvious the stigma, the greater is the possibility that the child will be required to attend a separate school or center and the greater is the possibility that such children will be "locked in" a disability category and thus "locked in" a stigmatized life style.

To be specific, in both program content and availability there are major deficiencies in early education for all levels of handicapped youngsters, with probably the most severe needs for those children with serious emotional disturbance or mental retardation. Secondly, there are insufficient opportunities for deaf or blind children to be educated in community settings rather than in residential schools. Thirdly, there are almost no opportunities for children with serious multiple problems to receive educations commensurate with their needs while living at home. Therefore, although as in many other states, New York State's education law is broad enough to correct most, if not all, program inadequacies, it may be facilitating to consider new specific and pointed legislative reforms that would encourage the development of early educational programs—as these are now encouraged in such states as Connecticut, Maryland, and California—and would permit all handicapped youth to continue attendance in public schools until the completion of their education—such as in Kansas where the handicapped may receive special education services until they reach 24, or in Iowa to age 35, or in Ohio and Oklahoma where no maximum age is stated for the provisions of special education services (Abeson & Trudeau, 1970).

#### **Benchmarks for Planning**

Undoubtedly, legislative reform alone cannot guarantee an effective delivery of services to the handicapped. For example, the volume of special education legislation considered by state legislatures in 1966 in-

creased 115 percent over the previous year (Weintraub, 1969). However, who among us is satisfied that the lot of the handicapped has improved commensurately with this legislative activity or, for that matter, with the proliferation of new buildings, new labels, new slogans, and new causes? On the other hand, it should be recognized that comprehensive legislative recodifications and regulatory revisions may eliminate inconsistent and discriminatory statutes and those obsolete social values which are imbedded in such statutes. Possibly, planning in a particular state or region on behalf of children with special needs can profitably begin with legislative analysis and examination of the regulations and practices of departments charged with legislative implementation. Benchmarks for planning require:

1. An array of observational studies and other surveys designed to portray life in classrooms and other special settings for the handicapped, to identify and describe those children who are not known to be handicapped but who have demonstrable disabilities and special needs, and to analyze these observations bringing into a more workable relationship our current capabilities for delivering such services.
2. A review of relevant studies, especially those focused in the state or region, in order to better understand and conceptualize historical antecedents that have led to programs for children with special needs.
3. An analysis of the existing legislation and regulations which govern state and local services for children with special needs.
4. An analysis of the statutes, regulations, administrative handbooks, and long range plans and programs of other states.
5. An analysis of recently passed and currently pending special education litigation throughout the United States and, especially, in the state under study in order to determine need for reform which reflects constitutional requirements and considerations.

Drawing from experiences in Massachusetts and New York, the following consid-

erations for planning public policy in relation to the education of children with special needs have evolved.

### *Labeling*

In spite of the efforts of state legislatures and executive departments, there is widespread usage of systems for labeling children that dehumanize and stigmatize both these children and their families. For example, although Section 4401 removed specific labels from New York State's Education law, such labels as "educable," "trainable," "emotionally disturbed," and others continue to form the core language of special educators, psychologists, and other school officials associated with special education programs. This medical-pathological approach towards classifying children with special needs creates a number of serious problems, the emphasis of a child's deviancy being one of the most harmful.

Also, the use of categorical labels in the public schools exclude many children who deserve admission to certain programs and unnecessarily place other children whose needs are diagnosed in unidimensional terms and who should not be classified by a single label and forced into a single category. Such a system of inclusion-exclusion is clearly undesirable and should be remedied by a statutory framework which enables state and local communities to provide programs for all children with special needs. Although labels have been removed from New York State's statutes and the term "handicapped" is all that remains from an unworkable traditional nomenclature, viable programs that reflect this philosophical position should also be actively supported. To the degree that programs include all children with special needs and to the degree that these programs are integrated into the mainstream of education, a state should encourage their inception and support their development.

*It is recommended that, as labels are removed from the statutes of a state, appropriate state agencies should develop a system of regulations that define the special needs of children in ways which would emphasize each child's developmental needs rather*

than his "deviancy." Secondly, these new regulations should encourage and reward local school programs that seek to integrate and normalize educational opportunities for all children with special needs.

### **Services and Funding**

If the real issues—the mordant polemics and the compelling needs of a state or region—are confronted honestly, we must face questions relating to financing special programs and we must better understand the generic correlates of economics and education. As was discussed earlier, one issue concerns the possible oversupport of private schools to the detriment and expense of programs in public schools. On the other hand, state funding incentives that are tied to public school enrollment figures may unintentionally encourage local over-programing, which would needlessly place some children in special classes or special schools.

However, there are other issues and problems that have received scant attention yet are critical insofar as their influence and the potential dangers they represent. For example, project based support rarely has the desired effect, since few communities continue financial support after the state or Federal government withdraws its funds. Conversely, general aid formulas usually do not benefit children with special needs. Specifically, the general aid formula in New York State discourages school systems from either inaugurating or expanding special education programs. Therefore, although New York State does not have the inconsistent pattern for funding special services that is so common in other states (e.g. different funding formulas for different disability categories, as in Massachusetts), it does have problems with regard to encouraging development of special programs, especially those programs that make it possible for children to live at home and attend local community schools. Presently, greater support is given for a child's education in New York if he attends a school away from home, in another community, or in an institution, than if he attends a school in his neighborhood.

Other problems in New York, and not uncommon elsewhere, relative to services

and funding concern themselves with little recognition given to the quality and scope of local resources and the fiscal capabilities of communities to mount special education programs, with virtual absence of funding for pre- and postschool age children with special needs, and with legislative, as well as regulatory, restraints imposed on the Department of Education prohibiting their leadership or influence with respect to educational programs conducted by other state agencies in state schools and institutions. Handicapped children in state schools or state hospitals are educated in institutional environments, under the jurisdiction and supervision of the Department of Mental Hygiene. It is difficult to arrange educational transfers for these children from institutions to local public schools, even when such transfers are in the best interests of the children and are fully endorsed by institutional superintendents and local school officials. A joint program of supervision with the Department of Education, as well as incentives to local school systems, would encourage the placement of institutionalized children in community schools and possibly in community residential settings.

*It is recommended that statutes be revised and augmented to develop a comprehensive and flexible system of services and programs with mandatory services for all children with special needs, with incentives for cities and towns to provide neighborhood programs, with encouragement for institutions to place children in community public or private schools, with funding regulations which permit less affluent communities to develop quality programs, with incentives for joint programs between communities which are locally financed and supervised, with incentives for a full range of programs for children who are not of compulsory school age, and with effective statutory recognition to children with multiple disabilities.*

### **State Department Outreach, Parental Involvement, and Due Process**

State departments of education must develop sufficient "outreach" to administer

programs for children with special needs at the local level, with sufficient strength to coordinate such services at the state level. It is apparent that a strong state agency with regional and area outreach is the key to an effective delivery system. Removal of labels from the statutes, for example, would require an alternative system of defining the needs of children and this could only be accomplished by a well staffed state office. In addition, the setting of standards for educational programs in schools, institutions, and other settings in which children with special needs are placed would be meaningless without a system of enforcement. Such enforcement would have to come from a state agency with well developed regional and area outreach. Further, the establishment of programs for all children with special needs cannot be mandated effectively unless census requirements are rigorously enforced. Again, this would require a state agency which is well staffed at the regional and area levels.

In addition, any comprehensive system of services for children with special needs which coordinates educational programs with those of other agencies relating to the mission of the state department of education requires a state agency strong enough to bring about this necessary coordination and sharing of resources and programs. As a beginning step toward the eventual full coordination of all human services for children with special needs, consideration should be given to the establishment of strong state department of education regional offices.

There is a need for increased consumer-citizen involvement in the public schools and in the other programs for children with special needs. As used here, the term consumer-citizen involvement refers to community spokesmen, both professional and nonprofessional, who help constituent groups get more attention and response from local, state, or Federal agencies. Presently, there are few, if any, effective systematic schemes involving consumer advisory councils. Such councils would have the opportunity to greatly increase attention given to children's programs. In addition, because of the added citizen involvement, programs would be necessarily more

accountable to parents, thus diminishing the likelihood of their low quality. Furthermore, consumer-citizen councils would provide a forum of discussion among parents and others about common problems and frustrations. Such councils would also include teachers, administrators, and other persons directly involved or interested in providing services to children with special needs.

Lastly, and relating to the above recommendation on citizen involvement, procedures for placement of children in special programs and review of such procedures are often weak and lack the necessary resources and manpower to prevent misclassification and placement errors.

*It is recommended that the commissioner of education and his staff review procedures and alternate ways to establish regional and area "outreach" to provide comprehensive services to children with special needs in all settings, including public schools and institutions.*

*It is recommended that, within a reasonable period of time, either through the efforts of the commissioner of education and other commissioners of child related programs or through action of the state legislature a new agency be established which would be child oriented and responsible for any person under 21 years of age with special needs. This child development agency could replace the current major department serving handicapped children, could be under the joint administration of one or more other departments, or could be a separate department with responsibility to or jointly with other departments.*

*It is recommended that citizen advisory councils composed primarily but not exclusively of parents of children with special needs, be established in each region of the state. Such councils should have sufficient access to information and sufficient technical and financial assistance to make them effective and meaningful bodies.*

*It is recommended that a comprehensive due process procedure pursuant to*

which parents are given prior notice of placements and a preplacement opportunity for a hearing with the school committee be established.

#### Concluding Statement

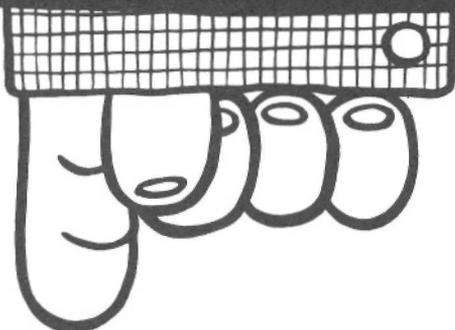
For too many years, while concerned special educators could do little more than beg ignorance and while the callous were less than indifferent, neglected and miseducated children asked only for solutions. If we have learned anything from the so-called efficacy studies of special education, we have learned that some truths are so unpopular as to become no more meaningful than myths and more derogated than lies. Possibly, inasmuch as special education was conceived less in reality than in hope, we must continue to believe that there are men who have not been tarnished by the past, who are not cowed by the future, and who will seek to study our ignoble history while they lead us to new and better ways.

In Massachusetts, 1971 was designated as the Year of the Child and, in New York, Governor Nelson Rockefeller recently convened a distinguished committee gathered to advise him on children's needs. However, the beginning—and the process and the ends—for children will not be sustained by states or committees. In the beginning, each man must ask: What have I done? To what am I committed? What shall I do? In the beginning, each of us must make promises to more than all children—to each child. And, our promises must be less on behalf of all men and more the declaration of one man, as each man must proclaim, "I promise, and I will do, or the world will not change."

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