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Patricia G. Anthony

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The challenge for federal fiscal policy remains in finding the proper balance: how to provide funding in the least obtrusive manner to accomplish the greatest good for those students who require the most assistance.

# The Federal Role in Special Education

Patricia G. Anthony

Since its inception, federal special education legislation has emerged virtually unscathed from various administrations' attempts to weaken its impact in the areas of funding and delivery of services. During the Reagan and Bush administrations, efforts to consolidate its funding with other entitlement moneys were averted, as were attempts to loosen the legal requirements of the law. However, two conditions—one predicated on funding and the other on policy—are increasingly in conflict with one another. This article will discuss these two conditions, and offer recommendations towards solutions. As part of the debate, the current federal appropriations for special education will be examined.

## Background on Federal Laws for Special Education<sup>1</sup>

On October 10, 1993, President Bill Clinton signed into law H.R. 2518, the appropriations bill for the Departments of Labor, Health and Human Services, and Education. Providing \$28.8 billion to education in general, P.L. 103-112 increases the federal share of special education funding by approximately 5%, from a 1993 level of \$2.96 billion to \$3.1 billion for FY 1994.<sup>2</sup>

With the overall cost of special education approaching \$20 billion, federal appropriations constitute only a modest portion of the total amounts of money expended. However, the federal role in special education looms large, with its influence cast through seminal legislation and landmark court decisions.

## Section 504 of the Vocational Rehabilitation Act

In 1973, the first of two major pieces of federal special education legislation was passed. Section 504 of the Vocational Rehabilitation Act<sup>3</sup> prohibited discrimination of any individual with a disability by those receiving federal moneys. Requiring that students with disabilities be afforded "a free appropriate public education . . . regardless of the nature or severity of the person's handicap[.]"<sup>4</sup> Section 504 made it mandatory that school districts—recipients of federal funds—

provide educational services for all students with disabilities or risk the danger of losing federal funding.

## Education for All Handicapped Children Act

In 1975, the Education for All Handicapped Children Act (EAHCA), P.L. 94-142, was passed by Congress.<sup>5</sup> Echoing Section 504's anti-discriminatory language, EAHCA provided federal funding to states willing to meet the standards the statute imposed in providing a free appropriate public education to students with disabilities. Currently, all fifty states participate in the federal funding program.

Prior to EAHCA, Congress estimated that 4 million disabled students received only part-time educational services and another 1 million received no education at all.<sup>6</sup> Currently, around 11% of the nation's student population has been identified as requiring special education services.<sup>7</sup> This percentage is expected to rise during the next decade, given the 1986 amendments to the law<sup>8</sup> and the escalation of societal factors conducive to the development of disabilities, i.e., parental substance abuse, poverty, child abuse and neglect, inadequate prenatal and medical care, and heroic medical procedures sustaining the lives of prematurely born and critically ill children.

Renamed in 1990 the Individuals with Disabilities Education Act or IDEA, the federal special education law contains several broad mandates. *First*, students with disabilities must be afforded a free appropriate education within a public school; or, if the school district is unable to furnish an appropriate education within the confines of its district, then the district must tuition the student out to a private school or residential setting. *Second*, any student identified as requiring special education services must be afforded those services. Special education services are defined as:

specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a child with a disability, including—(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (B) instruction in physical education. (sec.1401[a][16][A][B])

These services can be provided in any setting according to the individual needs of the child. *Third*, if the student has been identified for special education services, any other related services must be furnished free of charge, also. Special transportation, occupational, physical, or speech and language therapy, catheterization, psychiatric services, and medical diagnostic services are examples of some of the types of related services provided to students with disabilities. *Fourth*, an individual educational plan or IEP must be drawn up on each student identified as needing special education services. The IEP includes both long-term as well as short-term goals and should be representative of a comprehensive educational program for a student. At least one parent or guardian of the student must be present at the IEP meeting, and, if appropriate, the student as well. *Fifth*, to the maximum extent possible, all educational services should be provided in the least restrictive environment. This directive charges school districts with the responsibility of educating students with disabilities in settings that bring them in contact as much as possible with students who are not disabled. Most often, the least restrictive environment is the regular classroom or school. *Sixth*, the law stipulates that periodic re-evaluations must occur, and that all evaluations must be conducted in the native language of the student. *Finally*, all students falling under the law are afforded due process rights in pursuing the rights outlined in the law.<sup>9</sup>

## Amendments to the Law

In 1986, two amendments to EAHCA provided parents of children with disabilities two additional guarantees. Further amendments to the law were made in 1990.

Patricia C. Anthony is an Associate Professor at the University of Massachusetts/Amherst, 254 Hills South, Amherst, MA 01002, and Executive Editor of the *Journal of Education Finance*. Her recent book is: *Helping at Risk Students: What are the Educational and Financial Costs?* (Newbury Park, CA: Corwin Press, 1992).

*Early childhood amendments.*<sup>10</sup> P.L. 99-457 extended the law's reach to preschool students with disabilities by requiring states to serve all students with disabilities from ages three to five, or lose federal moneys targeted for this age group. States had until school year 1991-92 to comply with the law. Additionally, states were encouraged to serve children from birth to two years of age through Part H of the law. Serving this population of students is optional, however, states that choose to do so receive federal funding for up to at least five years contingent upon their implementation of an early intervention system. The amount of funding each state receives depends upon the state's infant and toddler population and the state's percentage of the national total of children within this age group.

Two features of Part H are aimed specifically at early diagnosis and remediation of problems arising from disabilities. First, states participating with this age group are called upon to establish a comprehensive intervention program, which is premised upon interagency cooperation. Second, in lieu of an IEP, children covered by Part H are provided with an individualized family service plan (IFSP), emphasizing supportive services for, and the participation of, the child's entire family.<sup>11</sup>

*Attorneys fees amendment.*<sup>12</sup> Also enacted in 1986 was the Handicapped Children's Protection Act (HPCA), P.L. 99-372. HPCA provides that if parents prevail in litigation or in administrative hearings where the services of attorneys are involved, school districts must engender the cost of any attorneys' fees. The passage of HPCA emanated from an earlier Supreme Court decision in which parents prevailed in court, but were unable to collect for attorneys fees under the then current language of EAHCA.<sup>13</sup>

There are several restrictions placed upon parents right to collect. First, if parents should decide to accept a school district's offer to settle concerning the placement or services for their child prior to a ruling by the court, then parents must decide within ten days of the school district's offer. Second, if parents reject an offer by the school district to settle prior to a court ruling, then parents must prevail in the final outcome of litigation.

*Amendments of 1990.*<sup>14</sup> Amendments to the law in 1990 created two additional categories of eligible students: those diagnosed as autistic, and students who have experienced traumatic brain injury. Additionally, with the 1990 amendments, the name of the law changed from EAHCA to Individuals with Disabilities Education Act (IDEA), and services for students transitioning from high school to vocational training and/or community living were included.

#### *Contrasts Between Section 504 and IDEA*

Often eclipsed by the recognition bestowed upon IDEA, Section 504 is currently regaining its status as a useful legislative tool in delivering services to disabled students. This is primarily due to growing recognition of the limitations of IDEA as far as eligibility is concerned. Under IDEA, any child with "mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities"<sup>15</sup> is eligible for services. Due to its specificity, children with other disabling conditions, i.e., AIDS, Attention Deficit Disorder, substance abuse, or childhood diseases, such as diabetes or asthma, are barred from receiving services. Under Section 504, these students are eligible for services and school districts must provide them or risk losing federal funding.

#### **Federal Role in Funding Special Education**

When the federal special education legislation was initially enacted in 1975, Congress pledged future annual appropriations amounting to 40% of the total costs of implementation. However,

this amount has never been realized. Instead, appropriations have remained under 20%, leaving states and local districts with the major burden of funding special education costs. States have responded to this challenge through a variety of funding mechanisms,<sup>16</sup> but even so, with the acceleration of special education costs, many states are finding it difficult to fund as much of the special education costs as they have in the past.<sup>17</sup> Consequently, local districts are picking up more of the costs.

This year's federal appropriations are illustrative. While the overall appropriation for special education for FY 1994 rose 4.7% over the preceding year, the \$3.1 billion dollar amount accounts for only 15% of the total cost of special education, leaving the other 85% for the states and local districts to fund. Table 1 provides final figures for FY 1993 appropriations, the President's 1994 funding proposal, both the House and the Senate's proposals, and the Conference Agreement finally reached.

Of the \$3.1 billion, the largest amount, \$2.1 billion, is earmarked under Part B, to provide funding to states for students identified for special education services. States are allocated varying amounts based upon the percentage of students identified.

The \$2.1 billion earmarked for state assistance represents a 4.9% increase or an additional \$97 million in Part B funding over the previous FY 1993 level of \$2 billion.

The appropriation also increased preschool grants funded under Part B by \$13.5 million to \$339 million for FY 1994, and Part H early intervention grants by approximately \$40 million to \$253 million for FY 1994. One area experiencing a decrease in funding was the Chapter 1 disabled program under the Elementary and Secondary Education Act. Funded during FY 1993 at \$126.4 million, this program was cut by \$9.5 million to \$116.9 million for FY 1994.

Aside from the federal appropriations not reaching funding level expectations, an additional fiscal problem demanding to be addressed is the intensifying need for compatibility between policy implementation and funding mechanisms. Since the law's enactment, the largest portion of the appropriations has been directed towards the state grant program (Part B). Individual state grants for this section have been premised upon headcount—the number of students identified as requiring special education services within each of the individual states. While initially this method for determining state funding allocations conformed with EAHCA's emphasis on identification of children receiving little or no services and the states' provision of services through categorical programs, recent changes in policy require a re-examination of how federal special education moneys are distributed.

#### **The Federal Role in Policy**

During the 1980s, a major policy shift occurred, initially at the grassroots level, over how services should be delivered to special education students. Pressing for the use of the regular classroom as the preferred placement for special education students rather than self-contained or pull-out programs, advocates called for an end to the "dual" system of education, i.e., one for regular students, another for special education students. By the middle of the 1980s, policymakers in the U.S. Department of Education were promoting the "Regular Education Initiative" or REI, citing its cost-effectiveness and student benefits in the form of higher self-esteem and exposure to more rigorous academic courses. Madeline Will, then head of the Office of Special Education and Rehabilitative Services, spoke of "the shared responsibility" of regular and special education teachers in working with students with disabilities.<sup>18</sup> Policymakers, special educators, and parents quickly aligned themselves on either side of the debate. Proponents charged that the then current system of educating special education students through pull-out

**Table 1. Federal Appropriations for Special Education Under the Individuals with Disabilities Education Act Comparisons between FY 1993 and FY 1994**

	1993 Appropriations	1994 President's Proposal (dollars in thousands)	1994 House Proposal	1994 Senate Proposal	1994 Conference Agreement
<b>State Assistance (IDEA)</b>					
States Grants Program (Part B)	\$2,052,728	\$2,163,708	\$2,108,218	\$2,163,508	\$2,149,686
Chapter 1 Disabled Program (ESEA)	126,394	113,755	113,755	120,000	116,878
Preschool Grants (Part B)	325,773	343,751	325,773	343,751	339,257
Early Intervention Grants (Part H)	213,280	256,280	243,769	256,280	253,152
<b>Subtotal, State Grants</b>	<b>\$2,718,175</b>	<b>\$2,877,494</b>	<b>\$2,791,515</b>	<b>\$2,883,539</b>	<b>\$2,858,973</b>
<b>Special Purpose Funds</b>					
Deaf-blind Projects (Part C)	12,832	12,832	12,832	12,832	12,832
Severely Emotionally Disturbed (Part C)	4,147	4,147	4,147	4,147	4,147
Severely Disabled Projects (Part C)	9,330	9,330	9,330	9,330	9,330
Early Childhood Education (Part C)	25,167	25,167	25,167	25,167	25,167
Secondary Transitional Services (Part C)	21,966	21,966	21,966	21,966	21,966
Postsecondary Programs (Part C)	8,839	8,839	8,839	8,839	8,839
Innovation and Development (Part E)	20,635	20,635	20,635	20,635	20,635
Media Services and Captioning (Part F)	17,892	17,892	18,392	18,892	18,642
Special Education Technology (Part G)	10,862	10,862	10,862	10,862	10,862
Special Studies (Part B)	3,855	3,855	3,855	3,855	3,855
Personnel Development (Part D)	90,122	90,122	90,122	92,555	91,339
Parent Training (Part D)	12,400	12,400	12,400	12,735	12,735
Clearinghouses (Part D)	2,162	2,162	2,162	2,162	
Regional Resource Centers (Part C)	7,218	7,218	7,218	7,218	7,218
<b>Subtotal, Special Purpose Funds</b>	<b>247,427</b>	<b>247,427</b>	<b>251,195</b>	<b>249,729</b>	
<b>Total, Education for the Disabled</b>	<b>\$2,965,602</b>	<b>\$3,124,921</b>	<b>\$3,039,442</b>	<b>\$3,143,734</b>	<b>\$3,108,702</b>

Source: Congressional Record—House, H7445 (October 5, 1993); Congressional Record, Daily Digest, D1146 (October 10, 1993); Special Education Report, p. 4 (October 20, 1993).

programs and self-contained classrooms had achieved relatively little success in providing most special education students with essential long-term skills, either academically or vocationally.<sup>19</sup> State and federal policymakers also argued that many students identified as needing special education services could be receiving assistance within the regular classroom, rather than through the more costlier special education programs. Citing the skyrocketing numbers of students identified as learning disabled, policymakers and educators alike, maintained that many of these students, if properly supported, would not require special education services.

Opponents countered that the REI or "inclusion" was little more than subterfuge for directing funding away from special education students and into general education programs.<sup>20</sup> They accused education officials of wanting to return special education to "pre-P.L. 94-142 days" by denying special education students the services to which they were entitled.

As the debate continues, many states and local districts are developing and implementing policies that focus on inclusion. However, inclusionary practices have presented policymakers with several dilemmas, both programmatically and fiscally.

#### **Programmatic Issues to Do with REI/Inclusion**

School officials restructuring their schools and classrooms to include students with disabilities find themselves faced with a three-pronged task. First, they must ensure that the students being included still receive the special education and related services outlined as in their IEPs. Second, administrators must provide on-going supportive services and professional development to regular teachers and principals who may be relatively inexperienced in working with students with disabilities. Third, both teachers and administrators must gauge the effect of inclusion upon the regular classes involved with the inclusion process.

Schools have attempted to meet these challenges, however, not without difficulty. In many school districts, regular teachers feel ill-prepared to deal with the academic, social, and physical problems accompanying some students with disabilities. With most states experiencing financial hardship in funding schools, there often is little or no money allocated for providing professional development to personnel involved in inclusion. Frequently, class size is already high and students with behavior disorders or learning disabilities are blamed for causing additional stress in the classroom.

Another problem concerns the use of special education teachers. In some districts, due to the lack of fiscal resources, special education personnel are stretched across too many classrooms, with resulting ineffectiveness. Other districts have reduced the number of special education teachers they employ and instead are replacing them with teaching aides in the regular classrooms to assist teachers. In each of these situations, there is a real likelihood that students with disabilities receive a reduced level of services.

The knowledge and expertise of the chief school administrator also affects the outcome of inclusion. In schools where inclusion has been successfully implemented, the school principal has been key to its success, offering the kind of leadership that is reflective of inclusion: participatory and collaborative. In cases where inclusion has been mandated by administrative decree, rather than through group input and thoughtful discourse, the consequences have not been encouraging.<sup>21</sup>

Finally, research is in its infancy stages regarding the effect of inclusion upon the learning of regular students. When interviewed, however, the majority of regular students express positive feelings about inclusion, citing the additional assistance they receive in the classroom from having two teachers available, and the increased orderliness that usually accompanies the second teacher's presence, i.e., "you can't fool around so much."<sup>22</sup>

Initial quantitative research on the impact of inclusion upon regular students' academic achievement is guardedly positive. In a study conducted in early elementary classrooms in Boston,<sup>23</sup> results indicated that achievement scores for regular students did increase, but not to a point of statistical significance. However, none of the regular students lost ground academically, and achievement scores for special education students did increase significantly in inclusionary classrooms, whereas scores for special education students in self-contained classrooms did not. Further, scores measuring changes in social behavior did increase significantly for both groups of students in the inclusionary classrooms.

### **Fiscal Issues to Do with REI/Inclusion**

Many of the problems associated with inclusion or REI emanate from the lack of financial resources. Districts strapped financially find themselves without the money to provide adequate professional staff development to teachers grappling with inclusion, or to fund the numbers of special education staff necessary for delivering services to students in the regular classrooms. Without appropriate in-services, workshops, and classes, teachers who are uncomfortable with the notion of teaching students with disabilities are not afforded the proper training necessary for being successful. Further, high student/staff ratios make it extremely difficult for the regular teacher to be successful in teaching not only students with disabilities, but the rest of the class as well. If, coinciding with large class size, special education staff are in short supply, then inclusion becomes a travesty destined to fail.

Fiscal constraint also impinges upon another aspect indigenous to successful inclusionary classrooms: collaborative planning. In districts where funds are available, teachers—regular and special education—are provided with summer stipends to effectively plan for their Fall inclusive classrooms. Fi-

nancially secure districts also are able to provide time throughout the school year for teacher collaboration, either through mini-grants to fund after school-hours meetings, or through the use of paid substitutes during the day.<sup>24</sup>

However, the single most pivotal issue concerning the financing of special education services under a policy of inclusion pertains to the distribution of federal funds. Under the current method of distribution, Part B funds—those moneys targeted for students identified as having a disability—are distributed to the states according to the percentage of students in each state requiring services. States cannot exceed a federal government cap of 12%; and children identified must fit the federal government's eligibility requirements.

With the implementation of state-wide policies and legislation<sup>25</sup> subscribing to inclusion, this current method for funding special education becomes obsolete. For one of the primary goals of inclusion is to provide students with a strong supportive environment in preschool and early elementary so that the need for special education services in later grades can be averted. States with the highest percentages of students in special education are especially sensitive to the need for providing additional academic support to young students. In Massachusetts, a comprehensive pre-referral system has been implemented to assist regular teachers in coping with students' academic and behavioral problems within their classrooms rather than immediately referring them out for special education services.<sup>26</sup>

This goal of inclusion is laudatory, but in order for it to be achieved the necessary resources must be provided. With the current system of funding special education, federal dollars are furnished to assist states with the education of identified special education students. If states truly practice inclusion and retain in regular classrooms students who formerly would have been referred to special education for services, then states will experience a decrease in special education student populations and a subsequent decline in federal special education dollars. However, the students, whether they remain in a regular classroom or are identified for special education, require some form of support. Under the current system, federal dollars would not be available to assist those students. Thus, the amount of federal funding states would have at their disposal would shrink, making it even more difficult for states and districts to adequately serve these students. Consequently, the outcome of the policy of inclusion is a double-edged sword. By providing assistance to students who require extra supportive services in order to remain in the regular classroom, the financial support for those students is discontinued, placing a larger fiscal burden upon school districts.

### **Recommendations for Financing Under a Policy of Inclusion**

If, at the federal level, special education programmatic initiatives are driven by a policy of inclusion, then this must be acknowledged by realigning the federal method for financing special education. This should affect three aspects of special education policy (1) the delivery of services within the regular classroom to students with disabilities; (2) the development of strong pre-referral systems in the states; and (3) the development of combined teacher education programs in our post-secondary institutions.

#### *A Delivery of Services Weighting System*

Current use of headcount as the basis for federal funding must be altered to reflect the *dual* goals of inclusion: delivery of services within the regular classroom to students with disabilities, and the reduction in the numbers of students requiring special education due to sound supportive assistance within the regular classroom.

While headcount can remain a basis for students who have already been identified as requiring special education services, there needs to be an adjustment in the amounts of funds allocated to reflect the increased staffing needs inclusion can generate. Depending upon individual student needs, additional staffing is often necessary in the regular classroom to ensure that all students are provided with a well-structured learning environment. Often, students with multiple disabilities require an aide or even a special education teacher to assist them if they are to succeed within a regular classroom.<sup>27</sup> Further, increased funding to properly support the number of specialists needed for implementing inclusion successfully does not serve the educational needs of special education students alone. Regular education students also benefit from increased teaching personnel in their classroom.<sup>28</sup> Additional federal monies should be targeted towards districts willing to implement inclusive practices within their schools. These monies should not take the form of supplemental or short-term grants. Rather they should be built into the existing Part B method for distribution through the use of a weight signifying the increased cost of implementing inclusion as far as personnel needs are concerned.

#### *Support Moneys for Pre-referral Programs*

The second goal of inclusion, to provide concentrated support systems within the regular classroom so that students do not have to be referred to special education, is one that is not attainable without additional moneys provided for those support systems. The federal government already provides preschool grants and early intervention moneys to states that are educating these students. However, additional funding is still needed to target students in the early elementary grades so that the appropriate supportive measures can be taken. For one of the problems with early intervention and preschool programs is that many children who need services never receive them, since it is up to the parents and or attending medical personnel to alert school officials that a child requires services. Further, not all districts are able to fund preschool programs; thus many children do not arrive at school until kindergarten or first grade. If pre-referral programs are to be successful, additional staff is necessary to provide the essential support in the regular classroom. Federal funding must reflect this need for additional support through separate funding programs targeted towards strong state pre-referral programs.

#### *The Need for Integrated Teacher Education Programs*

A radical change in the way in which teachers are educated is precipitated by the policy of inclusion. Currently, teacher education in the majority of universities and colleges operates as a dual system—one for students who desire to become regular classroom teachers, and another for students who wish to be trained as special education teachers. With the implementation of inclusion, teacher education programs must also become inclusive. The federal government is in powerful position to augment the success of inclusion by recognizing the need for a unified teacher education system. This can be accomplished by establishing grants to be allocated to colleges and universities which encourage the recasting of teacher education programs to conform with the goals of inclusion.

#### **Concluding Thoughts**

In 1992, a national longitudinal study researching the success of special education students in transitioning out of secondary school and into society published some disturbing findings: Only 57% of all special education students graduate from high school; only 49% of special education students are employed during the first two years after leaving high school;

and only 13.4% of special education students live independently two years after high school.<sup>29</sup> Equally disturbing are other statistics published on students who are not identified as special education students, but are considered at-risk.<sup>30</sup>

Perhaps it is time to discuss not only how federal special education moneys must be realigned to meet changing needs, but how all federal programs developed to serve children must be modified if they are truly to be effective in meeting the challenges present today in educating this Nation's youth. In the recent past, such notions of modifying children's programs arose out of cost-cutting measures rather than needs of the students. With inclusion as the vehicle driving current special education policy, discussions around how this policy can be expanded to other federal children's programs are proceeding. The challenge for federal fiscal policy remains in finding the proper balance: how to provide funding in the least obtrusive manner to accomplish the greatest good for those students who require the most assistance. The current policy of inclusion is conceivably one building block on which to build.

#### **Endnotes**

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23. C. E. Costello, *A Comparison of Student Cognitive and Social Achievement for Handicapped and Regular Education Students Who Are Educated in an Integrated versus a Substantially Separate Classroom*. Student dissertation completed at the University of Massachusetts, Amherst, Massachusetts, 1991.
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