

# RETHINKING SPECIAL EDUCATION IN WISCONSIN

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Special education is a term presently cloaked in ambiguity, and this ambiguity is negatively transforming special education policy in Wisconsin.

Wisconsin state statutes define “special education” as “specially designed instruction.”<sup>1</sup> This circular definition is terribly unhelpful, perhaps deliberately so. In a very real sense, “special education” is an euphemism, suggesting merely that special education programs employ pedagogical approaches tailored for particular purposes. But this understanding is clearly incomplete. Advanced placement courses in high schools and accelerated mathematics courses also employ pedagogy tailored for particular purposes, but they do not fall within the purview of special education. Instead, “special education,” in its truest sense, simply means the education of children with disabilities.

That use of the term may seem clear enough, but it introduces another problem. The concept of *disability* itself has changed in recent years. Once used to refer to serious physical impairments and retardation, it is now applied broadly to include students who simply are not performing well in school and



are deemed, therefore, to be marginally disabled — often under the “learning disabled” rubric. This strained definition operates on a slippery slope. As more and more students enter the ranks of special education, fewer and fewer of them manifest genuine disabilities based on factors beyond their control or the control of their families or teachers. Programs must expand to

serve the larger student population, and program costs increase accordingly. Therefore, while special education continues to serve the state’s limited population of children who suffer from serious mental and physical disabilities, its original goal is distorted by ongoing pressure to serve a large population of students who might benefit more from effective early instruction or targeted remediation.

The implicit danger in this development is that special education establishes a new legal entitlement for all children identified as disabled. Their rights under the law create concurrent obligations for school districts serving those students — obligations that are manda-

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tory, extensive, and extremely costly. Special education students do receive special treatment in the schools. Each one receives an individualized education plan, outlining his or her needs and prescribing special services to meet those needs — often including small-group or individualized instruction provided by one or more personal instructors or aides. Special education students are eligible for a battery of “related services,” including psychological support, social work and counseling services, and medical evaluations, all provided at public expense. In addition, special education students and their parents are accorded numerous legal rights to review and be involved in the determination of all elements of their or their children's education. Finally, school districts must meet special standards in applying disciplinary measures — especially those that might involve suspensions — to special education students. Given these special obligations, it is unsurprising that, on average, the cost of educating special education students is twice that of educating other students.

These developments raise important questions for Wisconsin's policy makers. Who decides which students are eligible for the special education entitlement? What guides their decisions? What sort of oversight operates to ensure that the system works reliably? Unfortunately, the current system for identifying children as in need of special education is open to subjective determinations by school staff. Moreover, staff members involved in these decisions may find it to be in their own interest to place more and more children in special education, especially children — the marginally disabled, or those whose low performance reflects simply poor early instruction — who will garner more state aid for the district even though they are not overly expensive to teach.

### **Determining Who Is Special**

The premise behind special education is simple: All children, regardless of disabilities, should receive an education that will enable them to learn effectively. Under special education law, the technical term for this policy is

the receipt of a “free and appropriate public education,” colloquially known by its acronym FAPE. Prior to the enactment of major federal legislation in the 1970s, many children with mental and physical retardation — disabilities that reduced their capacity to learn through regular methods of schooling — were being educated poorly or not at all. Special education laws were intended to ameliorate this inequitable condition in public schooling.

Early on, special education focused on teaching students who possessed obvious physical and mental impairments — mentally retarded students, for example, as well as the blind and deaf, those with acute health problems, and so forth. Educating these students according to the new legislation entailed designing and implementing plans to help the students learn to the greatest extent feasible, as compared to how other, non-disabled students might learn. That was a challenging task, but the task of determining *whether* a student was disabled, and in what way, seemed far less difficult, given the nature of the impairments in question.

Since the mid-1980s, however, educators have placed more and more children into special education programs. These include many children who simply are not performing well in school, whatever the reason for their failings. Enabling this trend is the current process by which children are selected for the entitlement of special education. It is a process dominated by school district staff members, usually special educators themselves, using eligibility criteria (issued by the Wisconsin Department of Public Instruction, or DPI) that are very nebulous.

Students referred as possibly in need of special education are assessed by evaluation teams (known as “M-teams,” to denote the teams' multi-disciplinary staffing) from the students' respective districts. Under state regulations and laws, these teams are supposed to use multiple, statistically valid evaluation materials and procedures to determine, in the case of each referral, whether the child in question is in fact disabled. To do that, M-teams decide whether the child fits within one or

more specifically defined disability categories. These categories, which are terms of art, are autism, cognitive disability, emotional behavioral disability, hearing impairment, learning disability, other health impairment, orthopedic impairment, significant developmental delay (for children aged 3-5 only), speech or language impairment, traumatic brain injury, and visual impairment.

In practice, this selection process fosters what would be called, in other contexts, “mission creep.” It provides at least three openings by which educators expand the scope of special education programs by identifying many students as disabled who are, at most, marginally disabled and not truly in need of special education as it was originally conceived.

#### **Eligibility Criteria**

First, the criteria used to define some disability groups are not precisely limiting, particularly those that define the learning disabled and emotionally disturbed categories. Many of the criteria are set out in the Wisconsin Statutes and Wisconsin Administrative Code and have thus come through consultative processes by which they might ostensibly have gained improved focus and validity. Despite this, the criteria remain terribly open, thus allowing district personnel to incorporate their subjective values into most determinations.

In July 2002, I wrote a report for the Wisconsin Policy Research Institute analyzing the potential for misidentification and over-identification of children from the state’s K-12 population into special education. Central to this analysis was an inspection of criteria for determining special education eligibility. The analysis showed that districts throughout the state, even those marked by similar demographics, vary widely in the rate at which they

identify students as disabled. This variation occurs for all disabilities (taken in sum) and for each of the ten disability groups currently recognized under Wisconsin law. The analysis showed further that the disability groups most open to subjective determination — namely, learning disabled and emotionally disturbed — are overwhelmingly driving the increase in Wisconsin’s special education population. Combined, these two disability groups account for more than 55 percent of all special education students in the state. Furthermore, from 1996-97 to 2000-01, increases in the number of learning disabled students accounted for 53 percent of the total increase of students in special education. Together, these findings suggest that M-teams are not governed by valid, reliable criteria in their identification of students for special education. If they were, we would see far less variation in placement rates from district to district, and the observed variation would be distributed more generally among the disability categories.

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program. Unlike other entitlements (conferred on the basis of objective criteria — age, income, or status as a veteran, for example) the special education entitlement is conferred in many instances for reasons to be found only in the eyes of the M-team beholders.

#### **Evaluation Teams**

Because the criteria used to define disabilities are subject to interpretations that vary widely from district to district, it is important to consider the human actors involved in the process. They include the child’s parents plus personnel from the child’s school district. At least two members of the team must be persons skilled in assessing disabled children, and

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at least one of those must be a person versed in the disability the child is suspected of having. In the case of students thought to have learning disabilities, the child's regular classroom teacher is ordinarily included. What this boils down to is that the primary members on M-teams are special educators who, not surprisingly, may be inclined to discover many children who are in need of their special services.

The upsurge in special education placements may also be influenced by the extra monetary aid that flows to districts when their special education enrollments increase. To grasp this point, it is necessary to distinguish between two different groups of special education students. Some are low-incidence, high-cost students — for example, the severely retarded or profoundly handicapped. The administrative, legal, and instructional costs associated with serving these students are high, and districts pay many of the costs without reimbursement from the state or federal government. School districts therefore have an incentive to guard against over-placement of students into these categories (which, coincidentally, are the ones least subject to opportunistic interpretation by M-teams).

Other special education students, by contrast, are high-incidence, low-cost. These include students identified as learning disabled (LD) and emotionally disabled (ED) — the categories most subject to opportunistic interpretation by M-teams. Total spending on these students is far from insignificant, yet for the respective districts the marginal cost of adding each new student to the LD and ED categories is relatively low. Districts therefore have a financial incentive to identify students into these disability groups. Districts that identify more low-cost disabled students will receive extra aid, yet in serving the added students the districts may not be overly financially burdened. This may occur because a significant portion of state aid for special education is categorical aid and, therefore, falls outside of the current revenue limits imposed by the state. Moreover, this categorical aid does not have to be equalized based on district wealth. Furthermore, some of the costs not covered by

categorical aid will be paid for in part by the state through equalization aid.

### **Disabled Does Not Necessarily Equal Special Education**

Third, placement decisions would be improved by a stricter reading of the law. Under Wisconsin and federal special education law, a student who is said to have a disability must *additionally* be deemed by the M-Team to have a disability that *requires* special education. In other words, the law does not require all students with a disability, even as broadly defined under the law, to be placed automatically in special education. Rather, the disability must also be such that the student in question cannot be adequately educated without special educational instruction and services. This point, so often overlooked in the special education policy field, deserves to be revisited and put into use. M-teams cognizant of it might find that many children who manifest a minor disability could be served well in regular education programs. Children served well in this way would be spared the stigma of the special education label, and taxpayers would be spared some costs.

Under present practice, however, the finding of a disability leads almost invariably to the conclusion that the disability requires special education accommodation outside of regular education. While it is true that even minor disabilities may require accommodations of some sort, it does not follow that all such students must be placed in special education. There is a continuum of accommodations by means of which educators can meet a child's FAPE requirement. Some third-graders who read poorly, for example, suffer from poor early instruction, not from a disability. For such children, the best remedy might be placement with a teacher known to be effective in teaching early reading. Not all such teachers are special educators.

Some signs suggest that the DPI is now attempting to refocus districts in their special education identification procedures. This is highly desirable. Recently produced "technical assistance guides" for school district personnel

contain language that at least on its face appears to emphasize caution in special education placements. For example, one document titled “Specific Learning Disability Assessment and Decision Making: Technical Assistance Guide” states that “delay or failure in general education, by itself, does not necessarily mean the student has [a specific learning disability] under IDEA.”<sup>2</sup> Similar language and directives also appear in guides for other disability categories. Nevertheless, unless a way can be found to provide better, more exacting oversight for districts’ placement practices, these admonitions are unlikely to have much effect.

Overall, the implication in the present system is that not labeling any low-achieving student as disabled thereby denies the child a free, appropriate public education. This is a plain error. It provides cover for the granting of entitlements to some children — increasingly at the expense of other, non-special education students. Such differential treatment is appropriate for the truly disabled, but is highly questionable for students who differ little in respect to disability from their classmates enrolled in regular education programs. This result shows how a poor assumption for the continuing purpose of special education can negatively affect the long-term survival of public education.

#### **Where to Go from Here?**

As Wisconsin lawmakers rethink special education, they would do well to focus first on the main purpose of special education as it was originally conceived — that is, to serve students who are clearly disabled, physically or mentally. That purpose has been distorted as special education has expanded to include students whose performance is unsatisfactory for a variety of reasons not related to disabilities.

These reasons may include, but are not limited to, poor instruction, lack of parental support, lack of effort or motivation on the part of the student, or simply poor testing ability by the student.

One can imagine why some educators and parents would seek to place students affected adversely by such factors into special education programs. The placements themselves create the impression of a professional, institutional response to widespread learning problems. Even when the children in question are retained in regular classrooms, moreover, the regular classroom teachers may feel that responsibility for teaching them has shifted, in

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part, to the specialists who will oversee and participate in the children’s classroom work. And parents may believe that special attention of any sort is better than the ineffective standard fare. The fact remains, however, that not all children who perform poorly in school are disabled, except by virtue of the institutional sleight-of-hand that so designates them. Pretending in these cases that the problem is one of widespread disability serves only to

deflect attention from other serious problems that bear on the situation.

Some might argue that, whatever a child’s learning problem is, he or she is likely to benefit from a special education placement. After all, once a student is identified as in need of special education by the district’s evaluation team, another team from the district meets to construct the child’s individualized education program (IEP). The IEP describes the specific special education needs of the child; it also outlines the child’s present level of performance, short-term and annual goals and instructional objectives, his or her ability to participate in regular classrooms, and criteria for measuring the success of the IEP. Once the

IEP is established, the child's schooling will revolve around the dictates of the plan. It sounds impressive. Every student, one might think, should have such a plan, regardless of his or her disability status. If special education is expanding by institutional sleight-of-hand, then, perhaps we should be pleased.

There are two obvious weaknesses in this argument. First, it is utopian. Even if we assumed that all children would benefit from across-the-board applications of the special education concept (a very big assumption), the costs of universalizing the concept would be enormous, and ordinary problems of scarcity would soon force policymakers to consider less expensive alternatives. Second, the argument is complacent about accepting public policy that says one thing and means something far different. Even if we were to seek a discounted utopia — mitigating the projected problem of high costs by providing IEPs and all that they entail merely for all low-achieving students (the population on which special education is now encroaching) — we ought to do so by arguing explicitly for such an initiative, on the basis of evidence about its likely effects, rather than seeking to smuggle it in behind the veil of special education. Education suffers enough now from the false fronts it has already put up.

Therefore, here is a modest proposal, with two main components.

First, students should not be placed into special education programs merely because they are not performing satisfactorily in school. Unless they are clearly seriously disabled, they should be accommodated instead in regular education programs through an emphasis on curricular programs and instructional practices known to be effective in improving student learning.

Second, an additional level of oversight is needed within special education at the stage when a child is determined to be disabled and in need of special education placement. M-Teams as currently constituted are dominated by school district personnel — most of whom are special educators — and the parents of the

children under consideration. Many parents push districts to place their children in special education. The placements seem to provide their children with more help and some advantages in school — including, for example, special testing procedures and extra time for the completion of college entrance exams — at no extra cost. And educators, as noted earlier, have an interest in finding ever more children who need their special services.

M-teams therefore should be augmented to include one or more persons who represent other interests. Many people could serve in this capacity, but perhaps one of the best options would be to include representatives from local school boards. The Madison Metropolitan School District has recently developed such a type of “centralized” evaluation system specifically for the purpose of increasing objectivity in the placement evaluation process. According to district personnel, this person will be someone outside of the district personnel, who has been trained in non-biased assessment.<sup>3</sup> Madison's effort looks like a good start — an innovation that might be adapted for use in other districts, particularly those with over-identification concerns.

The effective education of low-achieving students who are not mentally or physically disabled can and should be achieved without their placement in special education. Simply because a child is low-achieving and has trouble learning does not mean that he or she is “learning disabled.” Wisconsin educators and policymakers should be more attuned to this important distinction.

## Notes

1. Wis. Stat. § 115.76(15) (1999-2000).
2. Wisconsin Department of Public Instruction. *Specific Learning Disability Assessment and Decision Making: Technical Assistance Guide*, Working Draft, August 27, 2001, p. 11.
3. Doug Erickson, "Madison has highest percentage of black students in special ed," *Wisconsin State Journal*, July 31, 2002, 1A.