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Children with Special Needs in North Carolina



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North Carolina's Children with Special Needs: AN INTRODUCTION

by Mike McLaughlin



Nap time for preschoolers is winding down at the Governor Morehead School for the Blind in Raleigh. A visually impaired toddler leans over an older child and gently rouses her from sleep as the theme song to *Little Mermaid* plays in the background. The waking child rubs her eyes groggily while the mermaid, who longs for the human world, croons, "Just you and me, wish I could be, part of your world."

It's an apt metaphor for what is going on in the world of children with special needs — defined here as children with mental and/or physical disabilities that qualify them for special education services. Visually impaired children are struggling to be a part of the sighted world. Children with mental and physical handicaps are struggling to join the mainstream. Inclusion is the term of choice in the effort to integrate exceptional children into the general education classroom, and the public schools are the gateway through which children with impairments or disabilities must pass, whether their ultimate destination is a neighborhood school or a state institution like the Governor Morehead School for the Blind.

The state's responsibility under federal law is to provide children with special needs a free, appropriate public education in the least restrictive environment.¹ And state law carries this requirement a step further, declaring that it is the "policy of the state to ensure every child a fair and full opportunity to reach his full potential."²

All together, the state has identified nearly 160,000 children ages 3 through 21 as eligible for special services to help them pursue an education. More than \$320 million annually is spent educating these students, whether at a neighborhood school or in a state or community institution. For all of these children, the first stop is the public school system. "The local school system is the portal of entry," says David Mills, section chief for areas of exceptionality in the Exceptional Children Division of the N.C. Department of Public Instruction.

Under federal law, each child must have an individualized education program (IEP), developed by an IEP team that includes a parent, a special education teacher, a general education teacher if the child is or may be participating in general education, another local education agency representative,

and, where appropriate, the child. The committee formulates a plan to provide the child an individualized education program designed to address his or her special needs. The plan consists of a set of annual goals, with short term objectives or benchmarks in areas of special education that enable the child to reach those goals.

Once goals and objectives are established, the committee addresses the question, "Where can these goals and objectives best be met?" says Mills. The learning environment could wind up being a regular public school classroom, or it could be a state hospital for students with mental illness. "You don't necessarily say, 'All students with hearing impairments should go to a special school,'" says Mills. "That's where least restrictive environment kicks in. You want to get as close to general education as possible." The needs of the child, however, are key to the placement, says Mills.

Mills sees the range of placements available as points on a continuum, with the topmost point being the general education classroom and the objective being to place the student as close to the topmost point as possible. "You move down the continuum only as far as necessary, and you move up the continuum as quickly as possible," says Mills. "We need a continuum of services as students need them, but students' needs should come first."

While this goal seems straightforward, there is plenty of room for disagreement over what best serves the child. And aside from making a plan, there's the issue of how well the plan is carried out. "The IEP can be well written and not carried out or it can be poorly written and carried out. Either way, the results are the same. The student gets to the ninth grade and is reading on a third or fourth grade level because he has not received special education services according to his needs," says Pat Lillie, state administrator for the Learning Disabilities Association of North Carolina.

In addition, cost comes into play. The Department of Public Instruction estimates that the cost of educating a special needs child is 2.3 times that of educating a child without an impairment that affects learning.³ For the 1997-98 school year, the state provided \$2,248.39 in additional funding per special education student, while the federal government pitched in \$488 per student. The federal government, while initially promising to fund 40 percent of special education costs for the states, is in reality only funding about 7 percent of the total cost, says Lillie. "Three years ago, we were \$145 million behind intended funding. It's had an incredible impact on services."

Mike McLaughlin is editor of North Carolina Insight. Excerpts on pp. 5, 27, 62, 70, 93, and 101 reprinted from *Staring Back — The Disability Experience From The Inside Out*, Kenny Fries, editor, New American Library, New York, New York, 1997.

With the cost of educating special needs children an increasing drain on school system budgets, demands on educators increasing, and the public schools struggling to meet the needs of *all* children, advocates say there is a temptation to give exceptional children short shrift. Thus, some parents have turned to the courts in an attempt to try to force the schools to do more.

Deborah Greenblatt is director of Carolina Legal Assistance — A Mental Disability Law Project, of Raleigh, N.C., a private, nonprofit legal assistance program which practices exclusively in the field of mental disability law. One of the program's areas of expertise is special education under the Individuals with Disabilities Education Act. Greenblatt says the Individualized Education Plan, while designed to assure a free, appropriate public education, often doesn't live up to its billing. "The process is supposed to be friendly [to parents and children], but it's not," she says. Less educated parents in particular are subject to being intimidated when they walk into a room full of profes-

sional educators. "They get there, and there are 10 people in a room. They're presented with a form and told to sign it and take it or leave it."

By definition, the programs are designed to be individualized to meet the needs of the student. However, Greenblatt says in one case where Carolina Legal Assistance became involved, all of the students in the classroom had the same IEP.

Mills and Exceptional Children Division Director Lowell Harris acknowledge that the IEP process has flaws. "It's difficult to be perfect," says Harris. Giving the example of a student with a speech problem, Harris says the student's IEP could prescribe a certain number of sessions with a speech-language pathologist as critical to reaching the child's learning goals. Then the speech-language pathologist resigns. "You have a plan, but it's not working well, and the student fails."

By design, the IEP is updated annually so that it addresses a child's needs over time. "You have a process you go through where you continuously evaluate what you do," says Harris. "It's a team

A School for the Blind student on a walk in Raleigh



Karen Tam

approach." Every three years, the child's status must be reevaluated, although the parents must consent to renewed rounds of testing and must be invited to participate in determining what process will be followed.

The ultimate goal in educating children with special needs is to move away from the "trailer out back" mentality in which exceptional children are shunted into segregated classrooms and have little interaction with regular classroom students. By all accounts, North Carolina has a long way to go before reaching this goal. Still, there are glimmers of promise. The Rockingham County Schools are pioneering the concept of serving all children grades pre-kindergarten through 12 in the regular classroom.

The Governor Morehead School for the Blind provides another model of this kind of inclusion with its innovative preschool. "It's an integrated preschool," says George Lee, director of instructional services at the school. "Half [the preschool class] are visually impaired, and half are not."

The Morehead School also is becoming more innovative in how it serves its K-12 students. The residential student population on the tree-shrouded campus near downtown Raleigh has dwindled from about 200 students in the late 1970s to about 100 students today. "We think it's better for kids to be with their parents," says Lee. "Plus, it's a lot more cost-effective."

The school serves children ages 3 and 4 in their home counties using field staff, and also provides services for public school students in 12 rural counties. These counties, Lee says, rarely have enough visually impaired students to justify hiring a teacher at the local school system. Eventually, Lee says, the school hopes to expand this program to all of the state's rural counties. Urban counties, Lee says, often have the resources to educate visually impaired students in the local school system with the support of short term programs at the Governor Morehead School.

Students come to the Raleigh campus for what school officials hope will be a relatively "quick dip" of intensive services such as learning Braille or picking up travel skills. That is a change. "Some kids will come and maybe only spend a year with us, and maybe that's all they need," says Lee. "Kids used to come and stay from kindergarten through graduation."

Advances in assistive technology are one development helping to return more students to their local school systems and, in some cases, to the regular classroom. "A good way to think of

**Words slow dance
off my tongue, never leap
full of grace. . . .**

**I practiced the sounds th, sh, sl
for years, a pianist playing endless
hours of scales. I had to learn
the muscle of my tongue.**

—ELIZABETH CLARE,

"LEARNING TO SPEAK"

from Staring Back—The Disability Experience From The Inside Out

assistive technology is, it's a tool for a child or an adult," says Annette Lauber, funding specialist for the N.C. Assistive Technology Project, a state and federally funded program in the Division of Vocational Rehabilitation Services, N.C. Department of Health and Human Services. The program provides assistive technology services statewide across all ages, disabilities, and areas of technology. Services include demonstration and tryout of equipment, technical consultative services, short-term loan of equipment, training and awareness, information and referral, and funding resource consultation. "It helps individuals be more independent and function better in their learning and in their work and in their play," says Lauber.

At school, she says, the technology can be used to help a child be a more productive student. "You look at the person, first, not the technology," says Lauber. "What are the child's capabilities? What does he or she need to do to fulfill those capabilities? Where is he or she going to be doing it? Given those parameters, what are the tools to help him or her do that?"

Assistive Technology Centers are located in Charlotte, Winston-Salem, Greenville, and Raleigh. The technology these centers introduce can be as simple as a plate with a rim around it that simplifies the task of loading green peas on a fork, or it can be as complex as word prediction software that lessens the number of key strokes required to do word processing, says Lauber.

Mills, the section chief for areas of exceptionality in the N.C. Exceptional Children Division, notes that technological leaps are allowing more children to function in the regular school setting. "Assistive technology is opening many doors," says Mills. "It's a very good support and service to help

kids be integrated as nearly as possible into the regular classroom," says Mills. "You might have a feeding machine at the cafeteria for a child who can't move anything but his head," says Mills. "Before, that child would not have been in school. . . . The more you come toward the mainstream, the more you prepare for a pluralistic society."

The notion that children with disabilities belong in the regular classroom is a major change for a nation in which little more than two decades ago children were routinely turned away from the public schools, and parents who persisted were threatened with legal action. "Until 1975, the law was that if a child was not doing well in school, send them home, and if the parents insist, take them to court," says Harris.

But North Carolina had been serving children with special needs in the public schools well before 1975. In 1948, the N.C. Exceptional Children Division was established in the state Department of Public Instruction, says Harris. In the 1949-50

school year, the General Assembly provided state funding for 25 teaching positions. In addition, local systems employed 30 special education teachers, which provided for 55 classes or programs statewide.

Initially, services were offered for the crippled, the educable mentally retarded, the speech impaired, the hearing impaired, and the vision impaired, says Harris. In 1957, a program was added for the trainable mentally retarded, and in 1961, for children identified as gifted and talented. In 1968 the state's gifted and talented program was merged with its program for children with disabilities under the N.C. Exceptional Children Division.

A major milestone was the passage of the federal Rehabilitation Act of 1973, which states that no person with a disability shall, because of that disability, be denied participation in a program that receives federal funds.⁴ This was followed at the state level by the 1974 state Equal Education Opportunities Act, which specified that "no child

Staff member Annette Lauber demonstrates a communications device at the N.C. Assistive Technology Center in Raleigh.



Karen Tam

What's in a Name?

Special education jargon is rife with disputes over labels — right down to what to call a child with a disability. The confusion over the terminology regarding special education students parallels the complexity of other issues in special education. There are a number of words to choose from, including: disabled, exceptional, special needs, and handicapped. The choice can be very important as some labels are very offensive to special education teachers, advocates, parents, or others in the field.

Indeed, some advocates object to use of the term “special” in special education. “[L]abeling the needs of disabled children as ‘special’ creates the emotional environment that infers ‘different,’ ‘other,’ and ‘less than’ — educational needs that people assume are foreign to those they have,” says Joy Weeber, a disability counselor educator in Raleigh. “This language of difference carries a negative connotation, as in ‘special interest groups’ and can contribute to the resistance to providing for the educational needs of disabled children.”

The term found in federal and state law is disabled. Parents and advocates prefer to make

the terminology less hurtful and more child specific by rephrasing it as “children with disabilities.” Ann Brady, director of special education at the Rockingham County schools, points out that putting the word “children” first creates and important distinction between a child with a disability and a disabled child.

Not everyone accepts disabled as the preferred term, however, even if the child comes first. David Lillie, an education professor at the University of North Carolina at Chapel Hill, prefers the term “special needs” for the simple reason that these children do indeed have special needs. Lillie believes terms like disabled are too vague to be used as a general definition. Other labels — like “handicapped” — have been replaced by more specific terms like educable mentally disabled or behaviorally-emotionally disabled.

In conclusion, the general trend in the terminology surrounding special education has been to put the child first, instead of the disability or need that qualifies the child for special education. This reflects the changes made in public education itself as the schools work to meet the diverse needs of children with special needs.

— Anna Levinsohn

Anna Levinsohn was an intern at the North Carolina Center for Public Policy Research in the summer of 1998.

shall be excluded from service or education for any reason whatsoever.”⁵ Then came the 1975 federal Education of the Handicapped Act,⁶ which required states to provide a “free and appropriate public education” to all children with disabilities with an “individualized education program” in the “least restrictive environment.” In 1977, the North Carolina General Assembly passed the “Creech bill (named after its sponsor, Sen. William Creech, D-Wake),” which brought the state into compliance with federal law.⁷ The state law was amended in 1996 to separate education for gifted children from education for children with disabilities.⁸

The federal law was overhauled most recently in 1997.⁹ Highlights of the overhaul included: a requirement that children with disabilities be included in state assessment testing or an alternative assessment; increased opportunity for parental participation in individualized education pro-

grams; greater access to the general curriculum for children with disabilities; and requirements for providing alternative education when students with disabilities are suspended from school.¹⁰

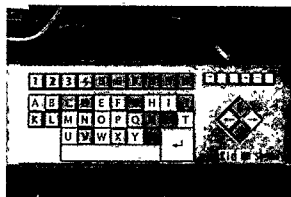
Harris says this and prior legislative action has made a huge difference in how children with special needs are educated in the public schools today. “There’s more money, personnel, know-how, and the parents are more involved,” says Harris.

Still, even officials in the N.C. Exceptional Children Division would check “needs to improve” on the public schools’ report card where educating children with special needs is concerned. “Quality of service is a big issue,” says Mills. “All children are being served, but not all are being served in terms of what everyone would consider quality.”

Given its policy of ensuring every child “a fair and full opportunity to reach his full potential,” what can the state do to assure that children

Alphabet Soup: A Glossary of Terms and Acronyms in Special Education

Assistive Technology:* “Any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities. Any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device.”



Evaluation:* “A full and individualized evaluation of a child’s needs must be conducted before any action is taken with respect to the initial placement of a child with special needs in a special education program. Eligibility of children must be determined by using multiple sources of data and must not be dependent upon single test scores. Evaluation procedures may include, but are not limited to, observations, interviews, behavior checklists, structured interactions, play assessment, adaptive and developmental scales, criterion-referenced and norm referenced instruments, clinical judgment, and tests of basic concepts; or other techniques and procedures as deemed appropriate by the professional(s) conducting the evaluations.”

Free Appropriate Public Education (FAPE):* “. . . the term ‘free appropriate public education’ means special education and related services which:

- 1) are provided at public expense, under public supervision and direction, and without charge;
- 2) meet the standards of the state education agency; and
- 3) are provided in conformity with an individualized education program for students with disabilities, group education program for the academically gifted or written educational program for the pregnant.”

Inclusion: Inclusion refers to the use of support services such as a revised curriculum or additional teachers in order to place special education students in a regular classroom setting.

Individualized Education Plan (IEP): Once a child has been identified as having a learning disability, an Individualized Education Plan is developed which establishes learning goals for the child and describes the services the school will provide. By law, the IEP should be reviewed every year and should be individualized to meet the needs of the student.

Individuals with Disabilities Education Act (IDEA): Federal law passed by Congress that requires that all states must provide individuals aged 3–21 with a “free appropriate education” in the “least restrictive environment.” IDEA also defined the process for identifying students with learning disabilities and determining if they are eligible for receiving special education services.

Least Restrictive Environment (LRE):* Least restrictive environment means that every effort should be made to include children with special needs in regular classroom settings with general education students. “After examining all alternatives for placement within an educational system, children with special needs shall be placed where they can obtain the appropriate educational services which meet their individual educational/developmental needs as close to and as nearly like a regular classroom setting as possible.”

Local Educational Agency (LEA):* “. . . , the term ‘local educational agency’ refers to the following:

- 1) All 118 city and county school administrative units as separate local educational agencies;
- 2) Department of Health and Human Services as one local educational agency. All schools, hospitals and agencies providing educational programs and/or services will be considered

schools or programs under this local educational agency; and

- 3) Department of Correction as one local education agency. All prisons providing educational programs or services will be considered programs under this local educational agency."

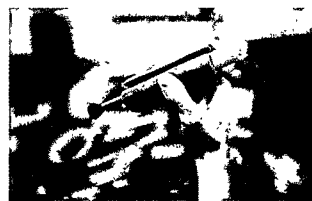
Mainstreaming: Mainstreaming refers to placing special education students in a regular classroom setting without any support services such as a revised curriculum or additional teachers.

Pull out programs: Programs that call for special education students to be removed from a regular classroom setting and placed in classes with other special education students.

Special Education*: "Special education is a specially designed instruction, at no cost to the parent, to meet the unique needs of the exceptional child, including classroom instruction, instruction in physical education, home instruction, instruction in hospitals and institutions, and instructions in other settings."

Transition*: "Transition is a coordinated set of activities for a student, designed within an outcome-oriented process, which promote movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation."

—Anna Levinsohn



* Source: *N.C. Department of Public Instruction, Procedures Governing Programs and Services for Children with Special Needs, May 1998.*

with special needs receive high quality services? How can the needs of these children be balanced against the needs of children who do not have diagnosed disabilities that interfere with learning? The Center explores these issues in depth in this theme issue of *North Carolina Insight* on children with special needs.

John Manuel, a Durham free-lance writer who has a son with a learning disability, explores a range of issues in educating children with special needs, including implementing least restrictive environment requirements through inclusion of special needs students in the regular classroom, issues involving identification of children with special needs, teacher training, the impact of the state's new ABC school accountability program on children with special needs, and issues concerning how special needs children are disciplined. Ann McColl, a Raleigh lawyer concentrating on education law, policy, and government relations, discusses and evaluates dispute settlement processes that are available when parents and school officials disagree about how a special needs child can best be educated. And S. D. Williams, a former staff psychologist and special education teacher at John Umstead Hospital in Butner, N.C., discusses cost issues in educating children with special needs, including how dollars are allocated between state institutions and community-based organizations with regard to the number of special needs children served. Finally, *Insight* editor Mike McLaughlin writes about school systems, individual schools, or other programs that seem to be doing an exceptional job in educating children with special needs.

A question that threads its way through all of these articles is this: What lessons can be learned that will give more children with special needs "a fair and full opportunity" to reach their full potential through public education?

FOOTNOTES

¹ Public Law 105-17, codified in 20 U.S. Code Chapter 33.

² N.C.G.S. 115C-106(a).

³ Frederick West, *Addressing the Challenge of Special Education Finance Reform in North Carolina*, N.C. Department of Public Instruction, November 1994, p. 1 ff.

⁴ Public Law 93-112.

⁵ Chapter 1293 of the 1977 Session Laws (2nd Session, 1974), now codified as N.C.G.S. 115C-106(a).

⁶ Public Law 94-142, now codified as 20 U.S. Code Chapter 33, Section 1412(a)(1)(A).

⁷ Chapter 927 of the 1977 Session Laws, now codified as N.C.G.S. 115C-106 *et seq.*

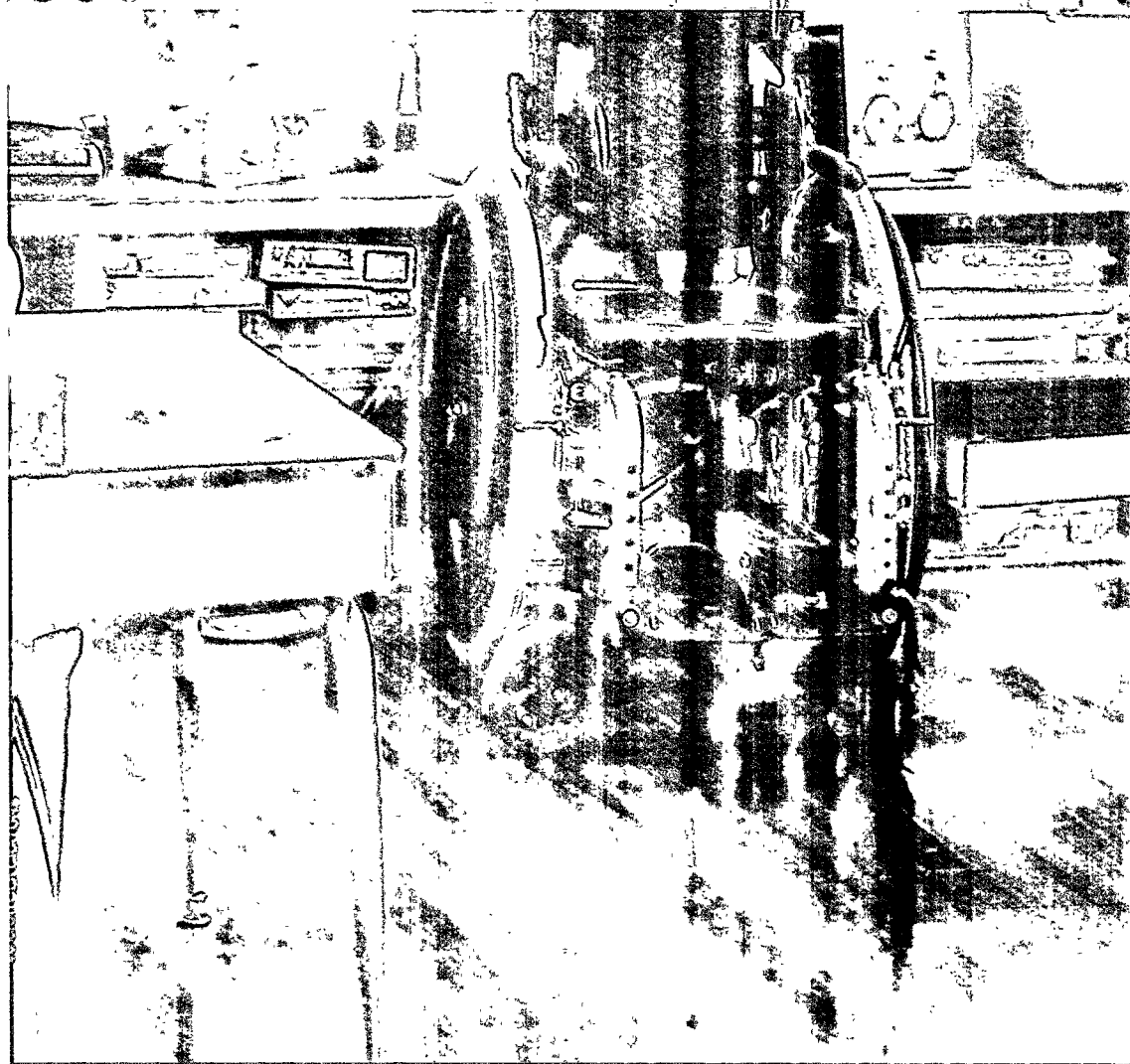
⁸ N.C.G.S. Chapter 115C, Article 9B.

⁹ Public Law 105-17, now codified as 20 U.S. Code Chapter 33, Section 400 *et seq.*

¹⁰ 34 Code of Federal Regulations, Part 300.

Special Education in North Carolina: ROUGH WATERS AHEAD?

by John Manuel



Karen Tam

Summary

North Carolina spends more than \$321 million annually educating nearly 160,000 children and young people ages 3–21 identified as having one of 13 disabilities recognized by the state and federal government. But how good a job are the schools doing in identifying and serving children with special needs? Are special needs students better off in the regular classroom, or should they be taught in separate classrooms? Are the state's universities training enough special needs teachers, and are the public schools providing the teachers with sufficient resources to accomplish their objectives? And how do policies promoting safety and accountability affect attempts to include special needs children in the regular educational community? This article attempts to address these questions.

Despite identifying and serving tens of thousands of children, some advocates argue that the state is not identifying all North Carolina children with special needs. Approximately 13.3 percent of the state's children and young people ages 3–21 have been officially identified as having one of 13 disabilities, and thus are eligible for special services. State law currently caps the total number of students who can be funded at 12.5 percent per school system, and 53 of the state's 118 local school systems are above the cap, meaning they don't receive state funding for all of their identified children.

Whether the state is over-identifying or under-identifying children is an open question. In many cases, the decision regarding whether a child is eligible for special services appears somewhat arbitrary. But as for serving those students who are identified, the public schools' report card might be marked "needs to improve." While most school systems are attempting to some degree to include students with disabilities in regular classroom settings — the "inclusion" approach — education officials acknowledge that they could go much further, particularly in the upper grades.

The state clearly is not training enough teachers, indicating a crisis ahead as more special education teachers age out of the classroom and retire. And many argue that special education is underfunded, yet providing the proper level of services is increasingly expensive and demands are escalating.

Two other themes voiced by teachers and administrators are that North Carolina is on a collision course with the federal government with respect to state mandates on testing and discipline. Everyone in education acknowledges the need for accountability, but no one who works with special needs children thinks progress is easy to quantify through a standardized test. And the state's desire to test may run into the federal mandates for inclusion and entitlements for children with disabilities. Likewise, there is concern about what will come of the very different legal standards in effect for disciplining disabled versus non-disabled children. The state's goal for discipline and getting violent children out of its schools may conflict with the federal preference for keeping special needs children in school. In short, everyone agrees that special needs students have a right to a free and appropriate public education in the least restrictive environment possible. As to how to provide that, there is still a lot of sorting out to do.

Pacing back and forth in front of her eighth grade algebra class in Reidsville, North Carolina, Lynn Thomas loudly describes the formulas for finding the areas of circles and parallelograms. The majority of students appear to follow her explanations, raising their hands when asked a question, offering answers that are close if not exactly right. To one side of the room, a second teacher whispers to a trio of boys who are clearly engaged in different tasks. One, a multi-handicapped boy in a wheelchair, struggles to place paper coins over matching diagrams of pennies, nickels and dimes. Another boy adds a column of numbers. The third is coloring a picture of a ship.

To some, the algebra class at Reidsville Middle School is a case of special education gone awry. Severely disabled students who have no hope of learning the core curriculum are placed into a general education class simply for appearance's sake. A special education teacher who could be teaching a dozen disabled children in a separate room is instead struggling to instruct a third of that number in the regular class. To others, Reidsville offers a vision of the future. Age group peers of all abilities are joined together as a learning community. Mildly disabled students pursue the core curriculum, while the severely disabled pick up related skills. By virtue of being together, all the students learn from each other.

With the passage in 1975 of the Education of Handicapped Children Act — reauthorized as the Individuals with Disabilities Education Act (IDEA) in 1990 and reauthorized again in 1997 — Congress has called on the states to embark on a bold, new approach toward educating the handicapped. IDEA calls for providing everyone aged 3–21 with a “free appropriate public education”¹ in the “least restrictive environment.”² State law echoes these federal requirements and makes the further promise “to ensure every child a full and fair opportunity to reach his full potential.”³

For the severely disabled, IDEA has opened the doors to traditional schools and classrooms from which they were long banned. For millions of children with milder disabilities — conditions that might never have even been identified in the past — the law provides for educational services and supports that can mean the difference between academic success and failure.

John Manuel is a free-lance writer living in Durham. He previously wrote for North Carolina Insight about incentives offered to new and expanding industry.

In June of 1997, President Clinton signed into law an amended version of IDEA that relaxes some provisions of the original law and strengthens others.⁴ At the same time, North Carolina has passed its own series of laws that hold school administrators responsible for safety on campus⁵ and for the continuous academic improvement of all students.⁶ Some people feel that these diverse laws have put public schools in an impossible situation with respect to special education. They worry that the demands being put on the educational system will bust budgets and drown educators and administrators in a sea of red tape and unrealizable goals. Others argue that the public schools aren't doing enough to fulfill the requirements of state and federal law and, more importantly, to meet the needs of children with disabilities. To understand the debate, it is necessary to know the details of how special needs children are identified, placed, and served within the educational community.

What's in a Name?

In order to receive special education services through the public schools, children must first be identified as possibly having a disability, and then professionally screened and evaluated. State and federal law hold local education agencies responsible for implementing the proper procedures to identify, screen, and evaluate such children. To guide local school districts in carrying out their responsibilities, the State Board of Education has adopted rules and regulations titled *Procedures Governing Programs and Services for Children with Special Needs*.

While complex, the procedures state in part that if a teacher, parent or other involved person recognizes a child having difficulty in learning, he or she is to prepare a written description of the child's specific problem, along with the child's current strengths and needs.⁷ This information — called a referral — is presented to the principal of the school, the child's teacher, the school system superintendent, or another school system professional designated to receive it. If an evaluation is recommended, parental consent is obtained, and a variety of assessment tools and strategies are used to determine if the child has a disability.⁸

State and federal law list thirteen categories of disability under which children may be eligible for special education services, and North Carolina also provides special education for pregnant students. The categories covered under both state and federal law are: autistic, behaviorally-emotionally dis-

abled (BED or BEH), deaf-blind, hearing impaired, mentally disabled, multihandicapped, orthopedically impaired, other health impaired, preschool developmentally delayed/atypical, specific learning disabled (LD), speech-language impaired, traumatic brain-injured, and visually impaired.

Students identified with attention deficit disorder or attention deficit hyperactive disorder can be served under the learning disabled, behaviorally emotionally disabled, or other health impaired categories, depending on meeting the criteria for these categories. Academically gifted students were initially covered under the state's law, but now are covered under a separate law.⁹ Gifted students are not covered under federal law.

Clinically, the types of disabilities that would qualify students for special education cover a broad range. Even within categories, students exhibit a broad range of need. Students identified as autistic, for example, may be profoundly mentally disabled or may be of normal or near-normal intelligence, according to the N.C. Department of Public Instruction. Yet all show the problems with language and social relationships characteristic of autism sufferers. Behaviorally emotionally disabled students may range from very low to very high in intelligence, yet without intervention, they fall several grades behind in school. Severely or profoundly mentally disabled students have cognitive disabilities that interfere with learning to such a degree that they require different learning goals

than students in general education. Educable or trainable mentally disabled students, on the other hand, may share the same learning goals as their general education peers but need help with self-care, personal development, and vocational education.

Some of the categories are more clear-cut than others. For example, it's easier to determine if a child is visually impaired than to determine if he or she is behaviorally emotionally disabled. The law requires that no single procedure be used as the sole criterion for determining whether a child falls into one of these categories. School districts must also be sure that the tests they select and use are not culturally or racially discriminatory. If a parent disagrees with the results of the evaluation performed for or by the school, he or she may request an independent evaluation performed by a professional not employed by the school. That evaluation must be paid for by the school, unless the school requests a hearing at which the hearing officer decides the school's evaluation was appropriate. In the latter case, the parent still has a right to an independent evaluation, but at his or her own expense.

If the evaluation indicates that the child has one or more of the qualifying disabilities and needs special services or placement, a committee is assembled to write an IEP that establishes learning goals for the child and describes the services the school district will provide.¹⁰ Parents must be given

Of course, they thought I was just ashamed of being in a wheelchair, which was partly true, but I was slowly getting over that by then. Twice a week, since I'd come home from the hospital, Mom had been carting me over to Lake Placid for physical therapy at the Olympic Center, where there were lots of kids and young people who were even worse off than I was, and some of them had made friends with me, so I was beginning to see myself in the world a little clearer by then. I didn't feel so abnormal anymore, and I didn't worry so much about whether I was lucky or unlucky. I was both, like most people.

—RUSSELL BANKS, *THE SWEET HEREAFTER*

the opportunity to attend the IEP meeting, which must be held within 30 days of the school's initial determination of the child's eligibility for special services.¹¹ The IEP committee must review the child's plan at least once a year to assess the child's progress and to develop a new IEP for the upcoming year.¹²

How good a job is the state doing in identifying students with disabilities? Mardie Meany, Section Chief for Policy Monitoring and Audit with the N.C. Department of Public Instruction (DPI), says the only statistic by which the state can measure that is the annual certified headcount for special education mandated by IDEA. That headcount has risen steadily, prompting Meany to say the state "must be doing a pretty good job."

In 1983, North Carolina served some 120,400 special needs students, including 118,000 in programs supervised by the N.C. Exceptional Children Division, 1,800 in state institutions under the Department of Human Resources, and 600 in Department of Correction programs. In 1993, North Carolina counted 135,087 students as qualifying for special services under IDEA. By 1997, that count had risen to 159,697.

As a means of limiting expenditures and discouraging over-identification of children with special needs, the General Assembly has imposed a cap of 12.5 percent on the number of special needs children that will be funded by the state in any county (\$2,248.39 per child for the 1997-98 fiscal year). That policy — in place since the early 1980s — serves as a disincentive to school administrators to identify more special needs children than will be funded by the state. Not surprisingly, local school administrators often measure how good a job they are doing in identifying exceptional children by where their system stands in relation to this cap.

"Based on percentages, we're labeling more kids than we should," says Jack Nance, director of special education for Wake County Public Schools. "The North Carolina cap is 12.5 percent, and we are approaching or exceeding that." Yet Nance does not believe the cap influences whether children are identified as needing special education in Wake County.

Funding limitations do not dictate physical, mental, or social conditions, and some parents, educators, and mental health professionals feel that significant numbers of children who have legitimate disabilities are not being properly identified by the schools. In 1980, a survey commissioned by the N.C. Department of Public Instruction established an expectancy norm for handicapped children of

16.3 percent of the total school age population. North Carolina's 1997 headcount of 159,667 constitutes 13.3 percent of the total K-12 enrollment. On that basis, it is possible that the state could be under-identifying the number of disabled students.

This sentiment is frequently expressed by advocates for children with learning disabilities (LD). IDEA defines learning disabilities as "disorders in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to think, speak, read, write, spell or to do mathematical calculations."¹³ LD comprises the largest identified group of disabled children in the state (39 percent), but because of the tendency to ascribe a child's weakness in reading, writing, or math to a lack of intelligence or effort, many children with learning disabilities may yet be unidentified.

One of the criteria used to define a learning disability is a discrepancy of 15 points or more between a student's ability as measured by an IQ test and achievement as measured by various reading, written language, and math tests. Some people feel this measurement is arbitrary, leaving out children who have legitimate learning disabilities but do not qualify under the "15 percent" rule.

"Kids are being identified as learning disabled by child psychologists, but if they don't have that 15 point discrepancy, the school may not qualify them," says Pat Lillie, executive director of the Learning Disabilities Association of North Carolina. "Federal law says you should not make a determination based on just one test, but I think a lot of school systems do that."

The Durham Public School System recently settled 21 lawsuits from parents who feel the system was not providing their children with the special education services required under the law. Marie Hawkins, past president of the Durham chapter of the learning disabilities association and an outspoken critic of the school system, says a lot of the lawsuits were filed by parents who suspected their children have learning disabilities but were not being provided the free testing by the schools.

"The schools will not provide [special education] services if they think the parents don't know anything," Hawkins says. "I had a child who was failing and who turned out to have a 40 point differential between IQ and achievement. The school system never offered to test my child. I had to pay \$2,000 for a private test that they should have done."



Karen Tam

*North Carolina Categories in Which Students Are Eligible for Special Education Services**

Autism: "Autism is a developmental disability which significantly affects verbal and non-verbal communication and social interaction, generally evident before age three, and adversely affects educational performance."

Behaviorally-emotionally disabled (BEH) [The federal term is serious emotional disturbance.]: "A behavioral-emotional disability is evidenced by one or more of the following characteristics which cannot be attributed primarily to physical, sensory, or intellectual: an inability to achieve adequate academic progress (not due to a learning disability); an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems."

Deaf/blind: "Deaf/blind students have concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children."

Hearing impaired: "Hearing impaired children are those with hearing losses which are disabling educationally and developmentally and who, with or without amplification, may require various instructional modifications and related services in order to make full use of their learning opportunities."

Mentally disabled: "For school-age students, mentally disabled refers to significantly sub-average general cognitive functioning and a reduced rate of learning. This condition exists

concurrently with deficits in adaptive behavior, is manifested during the developmental period, and adversely affects the student's educational performance."

North Carolina also includes three different categories under this term: educable mentally disabled (EMD), trainable mentally disabled (TMD), and severely/profoundly mentally disabled (S/PMD) in order to distinguish among the severities of mental handicap.

Multihandicapped [multiple disabilities is the federal term.]: "Multihandicapped students have a pervasive primary disability that is cognitive and/or behavioral in combination with one or more other disabilities, . . . the combination of which causes such developmental and educational problems that the children cannot be accommodated in special education programs that primarily serve one area of disability."

Orthopedically impaired: "School-age orthopedically impaired children possess a severe orthopedic impairment which adversely affects their educational performance. The term includes impairments caused by congenital abnormalities and impairments from other causes."

Other health impairments: "Other health impaired students have chronic or acute health problems which cause limited strength, vitality, or alertness to such an extent that special educational services are necessary."

Pregnant students: "Pregnant students with special education needs are those who, because of their pregnancy, require special education and/or related services other than that which can be provided through regular education services."

Preschool developmentally delayed / atypical: "Children identified in this area are those who are ages three and four or those five-year-olds who are ineligible for kindergarten and whose development and/or behavior is so significantly delayed or atypical that special education and related services are required."

Specific learning disabled (LD): "Specific learning disability is an inclusive term used to denote various processing disorders presumed to be intrinsic to an individual (e.g., acquisition, organization, retrieval or expression of information, effective problem-solving behaviors)."

Speech-language impairment: "A pupil who has a speech-language impairment has a disorder in articulation, language, voice, and/or fluency."

Traumatic brain injury: "Traumatic brain injury means an acquired open or closed head injury caused by an external physical force that impairs a student's cognitive, communicative, perceptual, behavioral, social-emotional, and/or physical abilities to the extent that the student requires special education."

Visually impaired: "... functionally blind children are those who have so little remaining vision that they use Braille as their reading medium, ... partially seeing school-age children are those who have a loss of vision but are able to use regular or large type as their reading medium, ... children who are legally blind are those who have a visual acuity of 20/200 or less in the better eye after correction or a peripheral field so contracted that the widest diameter subtends an arc no greater than 20 degrees."

* Source: *N.C. Department of Public Instruction, Procedures Governing Programs and Services for Children with Special Needs, May 1998.*

Along with their alleged failure to seek out and test children with suspected learning disabilities, the Durham Public Schools faced a host of other complaints being filed by parents of disabled children. These included a failure to inform parents of their rights under IDEA, a lack of confidentiality in discussion of cases, failure to provide related services such as speech therapy, denial of parents' access to records, inadequate and/or untimely provision of services related to IEPs, placement of children based on resources available rather than educational need, and failure to notify parents of the opportunity to mediate problems.

Ann Majestic, a lawyer with the Raleigh-based firm of Tharrington & Smith, which represents many local school boards in North Carolina, defended the Durham Public Schools against these actions. "I'm sure there are a few instances where kids have not been provided with everything they're entitled to under the law, but most of these claims are completely unfounded," Majestic says. "Some of the things these parents are demanding are ridiculous — one-on-one aides in every class, laptop computers, study guides before every test, retesting for every grade below a C. The problem with special education law is that there is no clear definition of 'appropriate.' As a result, anyone can bring a case that wants to, and you have to go through an arduous, expensive, and lengthy process of litigation to sort it out." The school system changed leadership in its special education department in the summer of 1998 and has pledged to provide stronger services for children with special needs.

Aside from the concerns about schools failing to identify children with disabilities, others worry that children are being mislabeled or unfairly labeled due to the inadequacy of testing mechanisms and/or racial prejudice. John Wilson is executive director of the North Carolina Association of Educators. He also taught special education for 14 years. "Poor kids, especially blacks, tend to get labeled EMH [educable mentally handicapped or disabled], whereas middle class kids tend to get labeled LD," Wilson says. "You're considered mentally disabled if you score below 70 on the IQ test, but I have taught kids with that label who in no form or fashion were mentally retarded. They were simply way behind due to the environment they were brought up in."

The behaviorally emotionally disabled classification is another that is rife with racial overtones. The categorization recently got a name change to update language, but students who get the label

still are widely known as BEH children, for behaviorally emotionally handicapped. Educators interviewed for this article say the majority of behaviorally emotionally disabled students in their schools are black males. Critics say that rather than being a legitimate medical condition, the classification is often used by teachers as a way of removing students whom they can't handle from the regular classroom. Bermadeen George is the former chair of the Special Services Department at Chapel Hill High School and now lead teacher at the Lincoln Center Alternative School.

"Much of the decision to classify someone as BEH is based on the teacher's write-up," says George. "At Chapel Hill High, we have predominantly white, female teachers asking that black, male students be classified [as BEH] and self-contained. I think there is a general misunderstanding of the black male child in this society. A lot of them are simply high-spirited, but that's being seen as aggressive. I don't blame the teachers entirely. These kids can be big and scary. And the teachers are not getting the training they need. But we need to do something different, or these kids are going to be lost."

Does the special education label damage a child's self-image? "That depends on the label," George says. "In Chapel Hill, being labeled LD or ADD [attention deficit disorder] is almost a status symbol. A lot of parents work to get their child labeled so they can qualify for special services. But

BEH is another matter. These kids are seen as being aggressive, almost criminal. People assume that the parents didn't raise their children well. And BEH kids certainly see themselves differently. Most of them are pulled out of the regular classroom and never get the opportunity to return to the mainstream. That's the real tragedy."

"Is there unfairness in identification? Of course, there is," says Jack Nance, Wake County schools' special education director. "The measurement tools are imprecise and probably always will be. As long as we try to play this game—although we try to get everyone right—we probably never will."

"Society is going through this whole sociological phenomenon to think that if we label something, we can fix it," Nance continues. "A real disability can't be fixed. We try to help find routes around it so that it does not impede educational success. It's something the children are going to have to deal with all of their lives."

Lowell Harris, director of the Exceptional Children Division in the N.C. Department of Public Instruction, agrees that labeling can be good or bad, depending upon how it is used. In his opinion, labeling should strictly be viewed as a means to an end. "Most parents say I don't care what you call my child, just get him services," Harris says. "If you took away labels, how would you allocate special services? Labels get us funding."



Karen Tam



Karen Tam

The Hard Road to Inclusion

Once a child has been identified as qualifying for special services, the IEP committee and the parents must determine what type of instruction the child will receive, what support he or she needs, and where the instruction will take place. IDEA mandates that children with disabilities be provided with a “free appropriate public education” in the “least restrictive environment.”¹⁴ State law provides similar guarantees. The North Carolina General Assembly in 1974 enacted the Equal Education Opportunities Act, which specified that “no child shall be excluded from service and education for any reason whatsoever.”¹⁵ In 1977, the legislature passed what has become known as the “Creech bill,” which guaranteed an appropriate, individualized education to all handicapped children.¹⁶ But what exactly the law means by “appropriate” and “least restrictive environment” is open to wide debate.

While segregating children with disabilities in separate classrooms or institutions is what led to the spate of legal changes in the first place, the tendency to isolate these children persists even today. During the first decade or so after the passage of the law now reauthorized as IDEA, many educa-

tors continued to resist the idea of mainstreaming and inclusion. The belief persisted that the appropriate way to teach special education children was to segregate them in a separate class, where they could be provided with special services. Children with moderate learning disabilities might be “pulled out” for only a few classes to be given assistance in reading, writing, or math. The severely disabled, however, were segregated into what were called self-contained classes, except perhaps for non-academic or non-core activities and classes such as lunch, recess, art, and music. Parents and advocacy groups occasionally filed suit to gain fuller access, but the courts tended not to side with their interpretations of the law’s integration mandate.¹⁷

During the 1980s, research conducted by special education departments and institutes in universities began to cast doubt on the efficacy of over-reliance on self-contained classes or “pull out” programs, suggesting that segregated students suffer in areas of socialization, language, and academics.¹⁸ At the same time, other research suggested that both disabled and non-disabled students benefit from being together in the regular classroom setting.¹⁹ Meanwhile, teachers and researchers were developing strategies and technologies for modifying and adapting standard curricula to meet

disabled students' needs in the regular classroom.

Backed by these findings, more parents and educators began to push for full inclusion of disabled children in the regular classroom. Courts began to interpret the law's "least restrictive environment" clause to mean full inclusion in the regular classroom setting. In a 1989 case, for example, a federal court held that states must make a strenuous effort to "mainstream" disabled children into the regular classroom, providing supplementary aids and services and modifying the regular education program when necessary.²⁰ The only limitations to these accommodation requirements were that the regular education teachers not be required to devote all or most of their time to the disabled child, and that the regular education program need not be modified beyond recognition.

With the passage of the Americans with Disabilities Act (ADA) in 1990, advocates for full inclusion gained further support. Title II of ADA states that it is illegal for a qualified individual with a disability, by reason of the disability, to be excluded from participation in or denied the benefits of services, programs or activities of a public entity, which includes public schools. Public services cannot be provided in a segregated fashion simply because it is administratively or fiscally more convenient.²¹

Another provision cited to gain inclusion, particularly for children not covered under IDEA, is the Rehabilitation Act of 1973. Section 504 of this act states, "No otherwise qualified . . . individual with a disability . . . shall solely by reason of his [disability], be excluded from participation . . . in any program or activity receiving Federal financial assistance. . . ."²²

What exactly is meant by inclusion? Definitions abound in the literature. The National Center on Educational Restructuring and Inclusion (NCERI) is a research and advocacy institute housed at the City University of New York and established "to promote and support educational programs where all students are served effectively in inclusive settings." According to NCERI, inclusion means "providing to all students, including those with significant disabilities, equitable opportunities to receive effective educational services, with needed supplementary aids and support services, in age-appropriate classes in their neighborhood schools, in order to prepare for productive lives as full members of society."²³ Advocates for inclusion distinguish it from "mainstreaming" on grounds that the latter refers to placing special education students in the regular classroom *without* the

necessary support services while inclusion recognizes the need for those services. Not all educators recognize this distinction.

What is North Carolina's stance on inclusion? Virtually every administrator and teacher interviewed for this story voiced support for the concept of inclusion. However, they then went on to describe the difficulties of incorporating it in a meaningful way. N.C. Exceptional Children Division head Lowell Harris, for one, seems ambivalent.

"We don't have definitive studies to say that inclusion does much good, but we don't have research that says special education classes do much good either," says Harris. "I have had parents and teachers tell me that special education children were meeting their IEP goals more quickly in a regular class setting. I've also heard that their (disabled children's) language use shoots way up when they're in the general education classrooms. But it's not something you can accomplish overnight. It takes years for a school to make the transition."

Harris says his opinion of inclusion has been buoyed by a recent (1996) study conducted by the School of Education at the University of North Carolina at Chapel Hill. The study compared various outcomes (such as academic performance, social skills development, classroom participation, and adjustment to post-school living) of LD, BEH and S/PH (severely/profoundly handicapped or disabled) students placed in three different instructional settings and given three different curriculum programs. While findings in many of the categories were not statistically significant, the study did find that LD students attained significantly higher scores on "enabling" skills (such as social interactions, print communications, and personal responsibility) and higher academic outcomes as measured by North Carolina end-of-grade test scores in reading and math in regular class settings than in resource room or self-contained settings. It also found that LD students receiving the North Carolina Standard Course of Studies had significantly higher enabling outcomes than students receiving a modified standard course of study, and those receiving a special services curriculum.²⁴

But David Lillie, a special education professor at the University of North Carolina at Chapel Hill, says the study did little if anything to buttress the case for inclusion. "Sure, the students in the regular classroom did better than the students in self-contained classroom or resource [pullout] classes, but that's mainly because of the way they were selected to begin with," says Lillie. "They were placed in the regular classroom because they were



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better students. That study really doesn't demonstrate the efficacy of the regular classroom at all."

Lillie says data on the efficacy of inclusion are largely inconclusive. For students whose disabilities are so severe that they are not pursuing the standard course of studies, inclusion can be very helpful in developing social skills. For the less severely disabled, Lillie says, quality of instruction and accommodations to address the individual student's special need are more important than the setting in which that instruction takes place. "It's not the setting," says Lillie. "It's the instruction and the extent that teachers are providing specific, explicit instruction in the basic skills."

So the debate rages on about inclusion, which some see as a basic civil right. But Lillie is skeptical of inclusion for inclusion's sake. "What's more important is giving kids a chance to graduate, to

succeed, and to keep to grade level as much as possible. To the extent that inclusion helps that, good."

How far has inclusion progressed in the North Carolina public schools? "Every school system has some degree of inclusion," says Harris. "We've had the most success in elementary schools — that's where it's easiest to incorporate. Beyond that, we haven't had much success."

In fact, Harris can point to only one school system in North Carolina as having successfully adopted the philosophy *and* practice of inclusion beyond the elementary level — the Rockingham County School System. Rockingham began its venture into inclusion in 1991 when Ann Brady, Director of Exceptional Children Programs for Rockingham County, returned from a workshop on inclusion convinced that the concept could work. Brady presented the inclusion model to ex-

"Special education students are expected to participate at their level of ability. . . . The goal is to figure out how they can be a member of the class community."

—JOY NANCE,

INCLUSION FACILITATOR, ROCKINGHAM COUNTY PUBLIC SCHOOLS



Karen Tam



Karen Tam

ceptional children staff at Moss Street Elementary School in Reidsville, N.C. The staff agreed to start by bringing three orthopedically impaired students into regular education classes with the support of a special education teacher and assistant. That arrangement worked well enough that the school proceeded to incorporate other disabled children in regular classes, and the practice is now well established.

Also in 1991, Reidsville Intermediate School (grades four and five) decided to target its entire exceptional children population, which included approximately 10 severely impaired and a larger number of mildly disabled students. Careful planning is considered the key to making inclusion work. At Moss Street Elementary and Reidsville Intermediate, special education students are clustered into a few regular classrooms to simplify planning and coordination. Special education and regular classroom teachers plan out curriculum and intervention strategies ahead of time and work together in the regular classroom. This can involve team teaching, where the special education and regular teacher share equally in leading the class, or it can involve strategic interventions by the special education staff. Exceptional children pursue a continuum of participation ranging from the same activity as their non-disabled

peers to activities that are only marginally related.

"Special education students are expected to participate at *their* level of ability," says Joy Nance, inclusion facilitator with Rockingham County Public Schools. "They don't have to learn the core curriculum, but they can learn something. The goal is to figure out how they can be a member of the class community."

In 1992, Reidsville Middle School (grades six to eight) decided to follow in the footsteps of Moss Street Elementary and Reidsville Intermediate. Fifteen percent of the students at Reidsville Middle School are labeled as disabled. Even students with severe disabilities, including Nance's son, Jordan, attend the same classes as their peers and eat together in the cafeteria. As evidenced by the group of students congregating around Jordan in the cafeteria, there is a true give-and-take between disabled and non-disabled peers. For some students, the advantages of sharing classes together are a little less obvious, at least for the severely disabled, as these students — with the help of special education teachers and assistants — pursue a far different set of tasks than the students following the core curriculum.

Joy Nance says some included students are able to pursue the standard course of studies and perform on grade level, with accommodations and

"If the child's primary need is for socialization, inclusion in the regular classroom usually helps to fulfill that goal. If it's an academic need that requires remediation or direct teaching, pull-outs work better."

—PAT LILLIE, DIRECTOR,
LEARNING DISABILITIES ASSOCIATION OF
NORTH CAROLINA

modifications to address their disabilities. Others function at a much lower level. "It depends on if their disabilities are physical or cognitive," she says, and in many cases, it's both.

Yet Rockingham County education officials believe strongly in this approach. Inclusion is now practiced to some degree in all of the system's 25 schools. As Nance is quick to point out, however, it is still a work in progress.

"Don't call us a model," Nance says. "That implies we've got everything figured out. We don't. The one thing that sets us apart is the belief that all children are valued and have an opportunity to reach their potential. We believe that should happen as much as possible in regular classrooms."

After seven years, Reidsville teachers and administrators have acknowledged several limitations to the full inclusion model. Special education students at all grade levels continue to be pulled out on a case-by-case basis for assistance with reading and math, and the policy on pull-out classes varies by school. There is a continuum of services, and the program is individualized to meet the needs of the child. In fact, some parents and advocates for the learning disabled prefer pull-out classes for their children.

"For some children, full inclusion works well, but for others, it does not," says Pat Lillie, director of the Learning Disabilities Association of North Carolina. "If the child's primary need is for socialization, inclusion in the regular classroom usually helps to fulfill that goal. If it's an academic need that requires remediation or direct teaching, pull-outs work better."

The Reidsville schools also have been plagued by a lack of adequately trained special education teachers and support personnel. In

many cases, the schools have been forced to rely on assistants who don't have any special training in a child's disability.

Inclusion also is dependent on the commitment — and the chemistry — of those involved in teaching and leadership roles. This is especially true of team teaching situations, where the regular education teacher shares planning and teaching more or less equally with the special education teacher.

"Inclusion is very sensitive to the people leading it," Brady says. "If two teachers don't get along, it's not going to happen."

And there is the issue of cost. While Nance says just as much staffing would be needed to teach self-contained classes, Andy Thacker, principal of Reidsville Middle School, disagrees. "I could serve all of my LD kids with three teachers in pull-outs," Thacker says. "As it is now, I've got seven special ed teachers and 13 assistants [to serve all of the school's special education students]. I do think *all* the kids do better with inclusion. The question is where do we get the money?"

Does inclusion cost more? Comparing the costs of providing services under an inclusion model to services provided prior to inclusion is complicated by the fact that budgeting for special education is done differently than for regular education. Adding to the difficulty is the fact that many resources, including teacher time, are shared between disabled and non-disabled students. Further, costs can vary greatly depending upon the type of disabilities and the types of equipment and services that students need.

Lastly, there is the issue of backlash on the part of parents of regular students who may feel that their children are being held back by the presence of disabled children in the classroom. Nance says Rockingham County parents generally have been supportive of the inclusion effort, but elsewhere there are signs of parental rebellion.

"The most horrifying experience I've ever had was attending a PTA meeting where parents were celebrating getting the disruptive kids out of the classroom," says Karen Hamilton, program specialist for the Wake County Public Schools. "They were saying the next step was to get the slow readers out."

Despite the barriers, teachers, administrators, and staff at the Rockingham Schools remain convinced of the benefits of full inclusion and committed to seeing the program through. Teachers say that both disabled and non-disabled students appear to enjoy being in each other's presence. They say the disabled students' socialization and language



skills have definitely improved since being included in regular classes. And in classes where team teaching is the norm, both disabled and regular students appear to perform better academically.

"A few years ago, we did a study looking at the scores of our fourth grade students on end-of-grade tests," Brady says. "We sorted the students based on whether they were or were not disabled, and then by whether they were in a pull-out class, an inclusion class, or a class without disabled students. In both math and reading, the students in the inclusion classes outperformed the students in the non-special and the pull-out classes."

Brady says this study counters the argument made by parents of regular students that inclusion may be better for disabled children, but not for their children. In fact, Brady says that even without disabled children in their classes, teachers today are serving students with such a tremendous range of abilities that an inclusion-style model is almost a necessity.

"I do an activity with teachers where we look at a typical sixth grade class," Brady says. "What you see are students with IQ's ranging from 75 to 125 and functional ages ranging from minimal third grade to ninth or 10th grade. A teacher who teaches to the middle of that class is not going to reach a lot of these students. A team composed of a regular education and special education teacher will. In reality, the inclusion concept goes well beyond helping just exceptional students."

Too Few Teachers, Too Little Funding

Lack of trained personnel and lack of funds — the two factors cited by Rockingham educators as the greatest barriers to inclusion — also are roadblocks to the larger field of special education. Fred Baars, consultant in special programs employed by the Department of Public Instruction, says North Carolina currently has only 8,617 licensed special education teachers to serve a population of 160,000 students — a ratio of roughly 1 teacher per 18.5 students. While this is a smaller student-teacher ratio than is typically found in the regular classroom, special education students need greater assistance and support. And 10 to 11

percent of these special education teachers have only provisional licenses. Related service personnel, which include paraprofessionals, administrative staff, and specialists such as speech therapists, number another 8,287. Distribution of trained personnel across the state is uneven, with rural areas lacking some professionals altogether and even some urban areas having trouble filling positions.

Special education jobs go begging in rural counties like Wayne and Craven in the East. Counties like Johnston and Franklin — adjacent to Wake — and Gaston, adjacent to Mecklenburg, have trouble filling positions due to competition from higher paying urban school systems. And even urban counties like Guilford are not immune from the shortage of teachers and administrators.

"We are woefully short of special education teachers and administrators, and the projection for the future is dismal," Baars says. "We have a lot of teachers who started in special ed 20 to 25 years ago who are getting ready to retire. Teaching, in general, and special education, in particular, has had such a bad reputation that there are not enough young people going into the field. We hope that is starting to change."

Marlene White, an assistant professor of special education at East Carolina University, isn't optimistic. "It's a national problem," notes White. "It's not just unique to North Carolina. It has to do with burnout among special education teachers. They have an impossible job to do. In rural areas, it's particularly a problem. The salary supplements are small. The working conditions are less than terrific."

And White sees the movement toward inclusion — which she describes as "a new buzzword" — potentially making the problem worse. She says she has seen special education teachers with 15 to 20 years of experience leave the classroom when the model is adopted without the necessary parent buy-in and training for teachers and support personnel.

"It's more fuzzy, less defined, and a lot more difficult to meet the needs of children," says White.

Until the late 1980s, there was no requirement for general education teachers to have any competency in special education. Senate Bill 44, passed in 1988, requires some coursework

"We are woefully short of special education teachers and administrators, and the projection for the future is dismal."

—FRED BAARS,

CONSULTANT, SPECIAL PROGRAMS,
DEPARTMENT OF PUBLIC INSTRUCTION

***In my world of mental anarchy
the task "to clean the house"
breaks into ten
and ten again
like a seven breaking into two and five
one and six then three and four
each another sum of parts
so that I might wash a dish
dust three shelves
read one page
and return a phonecall
before I finally settle
into sweeping half the stairs
or scouring one sink
with a ferocity of purpose***

—EMMA MORGAN, "ATTENTION DEFICIT DISORDER"

from Staring Back — The Disability Experience From The Inside Out

related to learning disabilities as part of a general education degree.²⁵ However, Baars says graduates with only a general education certificate typically say the coursework has not prepared them to teach LD children in the classroom.

The Excellent Schools Act passed in 1997 reinforces the requirement that teachers have competencies in identifying and coping with children with learning disabilities. However, this still leaves unaddressed the many students with disabilities other than LD. For example, East Carolina University turns out more special education teachers than any program in the state, but only two 1998 graduates majored in behavioral and emotionally handicapped (BEH) — a difficult and challenging group of students to teach.

The Department of Public Instruction provides in-service training in the area of special education for teachers willing and able to take advantage of it. However, these courses are offered only during the summer break and must compete with the workshops covering many other skills that teachers are being asked to master.

Baars sees one positive trend in the development of CD ROMs and distance learning programs that allow teachers to pursue further training on their own time. And he thinks with further inclusion, the image of the special education teacher will

evolve from "the person who works in the trailer out back" to a more positive image as a vital member of the teaching profession.

Lack of money to meet the requirements of special needs children is another chronic complaint of school systems in North Carolina. Funding for special education comes from diverse sources and is widely viewed as inadequate to cover the full cost. North Carolina currently receives \$75 million from the federal government under IDEA. The federal government sends the state another \$9.9 million for pre-school programs. The legislature appropriated \$321 million to the Department of Public Instruction for disabled children for the 1997–98 fiscal year, plus \$5.9 million to the Department of Health and Human Services for the Willie M program that serves violent youth. Local governments may provide additional funds for special education. In the 1996–97 school year, 75 of 118 N.C. school districts provided earmarked local funds for special education. The totals ranged from a high of \$7.2 million in Wake County to 0 in many other counties, including Alleghany, Bertie, and Catawba.

How much should the state be spending on special education? In 1994, the General Assembly commissioned a study on alternative approaches to funding services for disabled children. That study,

conducted by the private Institute for Educational Development and Training in Raleigh, concluded that the average daily cost of serving a disabled child was approximately 2.3 times that of serving a regular child. Exceptional children may need special aides, special equipment and curriculum materials, and smaller classes than students in the regular classroom. All of these factors drive up costs. In addition, there may be extra transportation costs, extra spending for staff development to serve children with special needs, and other cost factors. The study concluded that an additional \$145 million would be needed to fully cover the costs of special education in North Carolina, and recommended that the state phase in this spending over five years.²⁶

Lowell Harris, the director of the N.C. Exceptional Children Division, says the State Board of Education has requested an additional \$25 million in special education funds each year since the report was issued, but the legislature has failed to increase its appropriation to any significant degree. "I think the General Assembly understands there's a need for more funds, but they've preferred to spend it on teachers' salaries and the ABC program," Harris says.

In addition to an overall lack of funds for special education, critics complain that state monies that are available are not distributed equitably. Currently, the state allocates special education funds to local education agencies on a per child basis up to a cap of 12.5 percent of the Average Daily Membership (ADM). For the 1997-98 school year, 53 school systems were over the cap, 62 under, and two right at 12.5 percent. Critics say this cap effectively penalizes school systems that have higher percentages of disabled children than others. Harris doesn't disagree.

"I've pushed to have that cap removed for years, but the General Assembly wants a limit on how much they spend," says Harris. "Their fears are that kids will be overidentified just to draw down extra funds."

Disputes about funding for special education are not unique to North Carolina. Pennsylvania, for example, in 1991 abandoned as too expensive its policy of fully reimbursing local school districts

"I think the General Assembly understands there's a need for more funds, but they've preferred to spend it on teachers' salaries and the ABC program."

—LOWELL HARRIS,
DIRECTOR, N.C. EXCEPTIONAL
CHILDREN DIVISION

for all extra costs associated with educating special needs students. The legislature instead opted for a funding cap formula that reimbursed costs for up to 1 percent of students as severely disabled and 15 percent as mildly disabled. Now a bipartisan coalition of lawmakers is calling for additional spending, saying that the formula — though more generous

than North Carolina's 12.5 percent cap — is too stingy.²⁷

Sen. Leslie Winner (D-Mecklenburg) believes North Carolina's 12.5 percent cap serves its purpose as a protection against over-identification of children. The larger problem she says, is the amount of funding per child, which she says is too low. "The consensus is, it doesn't pay the full average freight," says Winner.

Rep. Gene Arnold (R-Nash) agrees that there may be a need for additional funding for special education. But he also believes some of the categories under which students are identified as needing extra services are "a little loosely defined," which could lead to over-identification of children. He says it may be time to revisit the issue of the 12.5 percent cap. "We probably should give it a good legislative look," Arnold says.

Harris has proposed that systems that exceed the cap should be eligible for additional funds, but should also be audited to ensure they aren't over-identifying children. To date, that proposal has not been acted upon.

The State ABC Plan and Inclusion

What effect are special services having on the academic outcomes of the disabled? It's a question for which there are no clear answers at present, but one that is increasingly being asked as state and local budgets are stretched to provide the services being asked for by the schools and demanded by the law. In fact, accountability for showing academic progress of *all* students now has been placed squarely on the shoulders of public school educators and administrators in this state. Responding to business and community leaders' criticisms about high school graduates who lacked basic reading, writing, and math skills, the 1995

General Assembly passed Senate Bill 1139, the School-Based Management and Accountability Program.²⁸ SB 1139 implements the State Board of Education's ABCs plan (short for Accountability, Basics, and Local Control), which rewards schools that meet or exceed annual performance goals and offers help to those that fall short. This program has been hailed by many as the kind of tough love needed to bring North Carolina's schools up to the standards its citizens deserve and need. Others say this program will actually *discourage* principals and teachers from including special education students in the regular course of study and punish many that try.

The ABCs Program establishes annual performance goals for individual public schools based on students' scores on end-of-grade and end-of-course tests. Students are rated at a level of I, II, III or IV — the former two reflecting performance below grade level and the latter two reflecting performance at or above grade level. Certified teachers at

"The new high school standards are in direct conflict with the needs of special education kids. Special education kids who are trying to get a diploma want and need to take these tests, but they will pull the scores down."

—ANN BRADY, DIRECTOR,
EXCEPTIONAL CHILDREN PROGRAMS,
ROCKINGHAM COUNTY PUBLIC SCHOOLS

schools that reach their expected level of growth can receive bonuses of up to \$750 each, and teaching assistants up to \$375 each. Teachers at schools that exceed their expected level of growth can receive bonuses of up to \$1,500 and teaching assistants up to \$500. Conversely, principals of schools that fall well below their minimum growth standards may be subject to dismissal, and teachers do not earn bonuses.

End-of-grade tests, administered in grades 3 to 8, measure students' proficiency in reading comprehension and mathematics. ABCs growth expectations are based on the degree of a student's

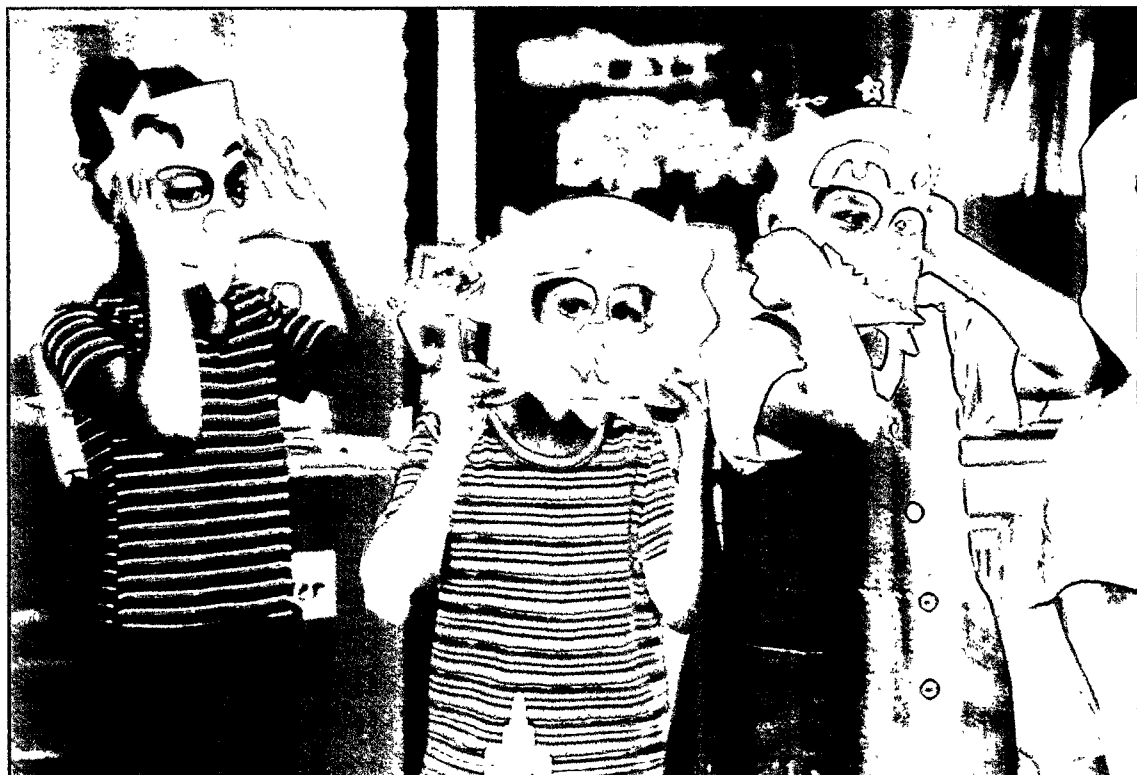
improvement from one grade to the next (pre- to post-testing). Thus, low-performing students are not penalized if they can show progress. End-of-course tests, administered in grades 9–12, assess students' performance in Algebra I, Biology, English, U.S. History, and Economic, Legal, and Political Systems. There is no pre- to post-course measurement. If a school is low-performing, it may be assigned an assistance team. Principals (at a low-performing school assigned an assistance team) who have been assigned to the school more than two years are suspended with pay for 60 days until a hearing is held to determine dismissal. Special educators say the measurements used to evaluate high schools will totally defeat their efforts to incorporate special education students in the regular course of study.

"The new high school standards are in direct conflict with the needs of special education kids," says Rockingham County's Ann Brady. "Special education kids who are trying to get a diploma want and need to take these tests, but they will pull the scores down. When teachers and administrators realize that this [testing disabled students] will cost them money and possibly their jobs, they will counsel the special education students not to take the standard course of study. And that is not in special education kids' best interests."

Brady's fears about low scores by disabled students on end-of course tests are borne out by data gathered by the Department of Public Instruction. For the 1996–97 school year, no category of disabled student scored better than 44 percent proficient in Algebra I. None scored better than 48 percent proficient in U.S. History. And none scored better than 50 percent proficient in Biology.²⁹ These scores were posted by the relatively small numbers of students taking the test in the speech and language impaired category. In the much larger learning disabled category, only 18 percent of students taking the test scored proficient in algebra, 33 percent in history, and 13 percent in biology.

Regardless of whether they take the end-of-course tests, special education students may be unwelcome in regular education classes if teachers think they will take time away from preparing other students. This presumption may bode ill for the movement to include disabled children in the regular classroom. "The ABCs program will kill inclusion," says Andy Thacker, principal of Reidsville Middle School.

Yet not everyone believes the ABCs program bodes ill for special education students. David Lillie, the UNC-CH special education professor,



believes the accountability movement will bring more attention to the fact that students with disabilities are not performing well on end-of-grade tests. The result may be that schools will actually train more resources on these students to keep them from pulling down overall school scores. But key to special education students benefiting from this extra attention is keeping the students involved in the ABCs accountability system, says Lillie.

Nationally, that has been a concern, as school accountability movements gain momentum. "A lot of people feel more kids are exempted so they don't have to be included in scores," says Lillie. "There's not a lot of good data on that. It's just a feeling a lot of people have."

DPI's Lowell Harris bristles at the notion that the ABCs Plan runs counter to the needs of special education students. "I think ABCs is great," Harris says. "It works for most children and schools, and it can work for exceptional children, as well. I think we underestimate what exceptional children can do. We should require as many as possible to take the tests, and if there are a few that can't, we'll come up with some alternative measures of progress."

Harris points out that under the 1997 federal IDEA reauthorization, students who are exempt from taking standard tests must be given some al-

ternative form of assessment starting in the year 2000.³⁰ The N.C. Board of Education has assembled experts from various fields to come up with alternative assessments, but given the wide range of disabilities covered under IDEA, that won't be easy.

"For a mildly disabled student, you might be able to give them the standard tests with a few modifications," says Louis M. Fabrizio, director of DPI's Division of Accountability Services. "But for a severely disabled child, their goal for the year might be learning to tie their shoes. What kind of assessments do you come up with to cover that range of abilities?"

"I'm concerned that it (ABCs) only measures part of what children learn," says Wake County's Jack Nance. "We need to be concerned about the whole child development process and not just some factual information that can be measured on an end-of-grade test."

Discipline and the Disabled

Along with the trend towards greater accountability for academic performance, legislators have demanded that schools be more accountable for the safety of students, teachers, and administrators. This prompted the General Assembly to pass

the Safe Schools Act (a special provision contained within the budget bill) in 1997.³¹ State law now allows local education agencies wide latitude to suspend students who do not follow the school code of conduct and expel students whose presence constitutes a threat to the safety of other students and employees. This get-tough policy is hailed by many as long overdue, but in spirit, if not in letter, it is in direct conflict with the disciplinary provisions spelled out in the federal IDEA legislation of 1997.

G.S. 115C-391 of the Public School Laws of North Carolina allows principals to suspend for 10 days or less any student who willfully violates policies of conduct established by the local board of education. With the prior approval of the superintendent, principals can suspend students for such conduct for the remainder of the year. Students aged 14 years or older can be expelled if their behavior constitutes a clear threat to the safety of other students or employees. If a student brings a weapon onto school property, state law says that student shall be suspended for 365 days. Further, local boards of education may remove to an "alternative educational setting" any student age 13 or older who physically assaults a teacher or other adult or student. If no appropriate alternative educational setting is available, then the board may suspend the student for up to 365 days.³²

All of these conditions, however, can be overridden by federal law. Part (g) of Section 115C-391 states "Notwithstanding the provisions of this section, the policies and procedures for the discipline of students with disabilities shall be consistent with federal laws and regulations." And under IDEA, a whole different set of discipline rules applies to students with disabilities.

As amended in 1997, IDEA allows a disabled student who violates a school rule or code of conduct to be sent to an "appropriate interim alternative educational setting," or suspended, but for no more than 10 school days in a school year. A child who brings a weapon to school or possesses or uses illegal drugs may be removed to an alternative education setting, but not for more than 45 days. A child deemed likely to cause injury to him/herself or others may also be removed to an alternative educational setting, but not for more than 45 days and only if the hearing officer determines that the alternative setting enables the child "to continue to participate in the general curriculum" and "to continue to receive those services and modifications . . . that will enable the child to meet the goals set out in [the child's] IEP."³³

If the school considers removing a disabled student to an alternative setting or suspending the student for more than 10 days, the IEP team must conduct a review ("manifestation determination") to determine the relationship between the child's disability and the behavior subject to the disciplinary action. If the review determines that the behavior was a manifestation of the child's disability, the student's placement cannot be changed unless the IEP team determines that would be appropriate. If the review determines that the behavior was not a manifestation of the child's disability, the student may be subject to normal discipline, including suspension or expulsion, but the school must continue to provide the child with a free appropriate public education, which includes special education, general curriculum, and services to ensure that the behavior does not reoccur.³⁴

The disciplinary exemptions provided disabled students under IDEA have enraged many in the education community, including some special education administrators. "These regulations set up an incredible double standard for disabled and non-disabled students," says Nancy Spencer, former director of the exceptional children's program for the Durham Public Schools. "If two kids assault a teacher and one is labeled an exceptional child, the labeled student continues to receive services, while the other one gets suspended or expelled. This is very hard for teachers to understand and sends the wrong message to students."

Another issue concerns the ability of schools to provide disabled students with a free appropriate public education outside of the regular school setting. "Many school systems don't have an alternative program that meets IDEA's requirements," says DPI's Mardie Meany, Section Chief for Policy Monitoring and Audit. "They say they can't suspend disabled students because they can't

***"There's a lot of confusion
out there about what principals
can and can't do with
kids who break the rules."***

—PAM RILEY, EXECUTIVE DIRECTOR,
N.C. CENTER FOR THE PREVENTION
OF SCHOOL VIOLENCE,
NORTH CAROLINA STATE UNIVERSITY

provide a free and appropriate public education.”

DPI has set up a committee to examine the issues of discipline in the schools with a particular focus on dealing with IDEA provisions as they relate to disabled students. Pam Riley, executive director of the N.C. Center for the Prevention of School Violence at North Carolina State University, sits on that committee and runs workshops for schools explaining their rights under the various laws. “There’s a lot of confusion out there about what principals can and can’t do with kids who break the rules,” Riley says. “Our message is that you have to follow the law, but if there is a situation where you have a violent student, your first obligation is to protect the safety of everyone in the school.”

Riley says the state needs to gather statistics on school violence and crime to determine what kind of students are committing what acts. Then, she says, more appropriate policies can be devised. “We need to find out if, in fact, the more violent situations are being caused by special education students and if current laws are a barrier to resolving those,” she says. “At this point, we don’t know that that is the case.”

Some teachers believe the different disciplinary standards for special needs students are contributing to difficulty in maintaining order in the classroom. According to a report in the *Fayetteville Observer-Times*, students classified as behaviorally emotionally disabled in the Cumberland County Schools accounted for a disproportionate number of assaults reported to law enforcement officials during the 1997–98 school year.³⁵ Despite representing only 1 percent of special needs students in the Cumberland County Schools, behaviorally emotionally disabled students accounted for 21 percent (3 of 14) of assaults with a serious injury, 28 percent (19 of 68) of assaults on school officials, and 27 percent (3 of 11) of assaults involving weapons.

While some feel IDEA is promoting a wrong-headed approach toward discipline, others feel its mandate to continue providing children with educational services no matter what, is preferable to the zero tolerance approach fostered by the Safe Schools Act.

“I have a daughter in school, and I want her to be safe,” says Ann Brady, director of exceptional children’s programs for the Rockingham County Schools. “But just putting kids [with severe discipline problems] on the street doesn’t solve anything. My daughter will interact with them there, as well.”

Conclusion:

Clear Sailing or Collision Course?

After interviewing dozens of parents, teachers and public school administrators for this article, several overriding themes emerge with respect to special education. One is that there is strong support for including disabled children in the regular school community. This does not mean that disabled students should be included in every class and activity with regular students. It means that they should be accepted into the regular school community and given the opportunity to pursue a meaningful education. It means that we all have something to learn from each other, regardless of the shape of our limbs or the inner workings of our minds.

“We need to stop seeing special education children for their differences,” says Jack Nance. “We are all a set of arms and legs trying to get through life.”

Or as David Mills with DPI’s Exceptional Children Division says, “All of us can be labeled something. Some of us are LD, some of us are BEH, and some of us are TAB — Temporarily Able Bodied. We are all just one fall down a flight of stairs, one drug overdose, one pull-out on the highway away from being classified as a person with special needs.”

Educators also emphasize that the majority of disabled students can and are being included in the regular course of study. Those who require a high degree of special services or those who exhibit violent behavior are relatively few in number. In sum, the public schools seem to be on the right track in seeking to include disabled children in the larger school community.

Two other themes more likely to be voiced by teachers and administrators than by parents are that North Carolina is on a collision course with the federal government with respect to state mandates on both testing and discipline. And the state’s desire to test may run into the federal mandate for inclusion and entitlements for disabled children. Everyone in education acknowledges the need for accountability. No one who works with special needs children thinks that is easy to quantify. Likewise, there is concern about what will come of the very different legal standards being promoted for disciplining disabled versus non-disabled children. The state’s goal in discipline and getting violent children out of the schools may conflict with the federal preference for keeping special needs children in school.

**"We are all just one fall
down a flight of stairs, one
drug overdose, one pull-out
on the highway away from
being classified as a person
with special needs."**

—DAVID MILLS, SECTION CHIEF,
N.C. EXCEPTIONAL
CHILDREN DIVISION

"We are creating two separate classes of children in the eyes of the law," says Ann Majestic. "I don't think that's what Congress intended and I don't think that's right."

Lastly, there is the feeling that there may simply not be enough money to provide all the services for disabled students that society wants and the law demands. "I could see spending another \$15 million to hire people to do all the things the law requires, to improve pre-school diagnostics, to provide more special ed teachers and offer students more reading help," says Jack Nance. "But I wonder if we are doing the right thing by providing more services and spending more money only on special education. Would it not be wiser to spend these additional dollars to meet the needs of all children?"

In the coming years, it's clear that a new balance will have to be struck with respect to the state's services for the disabled. Cases will be tried in court to clarify the intent and priority of various laws, and limits to resources will be tested in courts, legislatures, and county commissioners' chambers. Laws may have to be revised, and either spending increased or expectations lowered. Amidst the inevitable strife, one can only hope that teachers and administrators understand and respect the needs and aspirations of disabled children and their families, and that parents likewise understand the obligation of public educators to meet the diverse needs of all children using a limited amount of time and money.

FOOTNOTES

¹ 20 U.S. Code Chapter 33, Section 1412 (a)(1)(A).

² 20 U.S. Code Chapter 33, Section 1412 (a)(5)(A).

³ N.C.G.S. 115C-106 (a).

⁴ Public Law 105-17, now codified as 20 U.S. Code, Chapter 33, Section 1400 *et seq.*

⁵ G.S. 115C-105.45-47.

⁶ G.S. 115C-105.20 *et seq.*

⁷ *Procedures Governing Programs and Services for Children with Special Needs*, Public Schools of North Carolina, May 1998, Section .1503.

⁸ *Ibid.* at Section .1504 (C).

⁹ G.S. 115C-150.5.

¹⁰ *Procedures Governing Programs and Services for Children with Special Needs*, Section 1505 (B)(2),(3).

¹¹ *Ibid.* at .1505 (D)(3). *Procedures Governing Programs and Services for Children with Special Needs*, Section .1505(B)(2).

¹² *Ibid.* at .1505(D)(2).

¹³ 34 Code of Federal Regulations Sec. 300.7 (b)(10).

¹⁴ Public Law 94-142, now codified as 20 U.S. Code Chapter 33, Section 1400 *et seq.*

¹⁵ Chapter 1293 of the 1973 Session Laws (2d Session 1974), now codified as N.C.G.S. 115C-106(a).

¹⁶ Chapter 927 of the 1977 Session Laws, now codified as NCGS 115C-106(b).

¹⁷ D. Lipton, "The Full Inclusion Court Cases: 1989-94," *NCERI bulletin*, National Center on Educational Restructuring and Inclusion, The City University of New York, New York, N.Y., Vol. 1, No. 2, Fall 1994, p. 1.

¹⁸ See, for example, C.E. Meyers, *et al.*, "Regular class education of EMR students, from efficacy to mainstreaming: A review of issues and research," in *Educating mentally retarded persons in the mainstream*, University Park Press, Baltimore, Md., 1980, pp. 176-206.

¹⁹ For a thorough discussion of this issue, see M. Will, *Educating students with learning problems — a shared responsibility: A report to the Secretary*, U.S. Department of Education, Office of Special Education and Rehabilitative Services, Washington, D.C., 1986.

²⁰ *Daniel R.R. v. State Board of Education* 874 F.2d. 1036 (5th Cir. 1989).

²¹ 42 U.S. Code 12131, Section 35.102.

²² 29 U.S. Code 794, Section 504.

²³ D.K. Lipsky and A. Gartner, "Common Questions About Inclusion," *Exceptional Parent*, Psy-Ed Corp., Oradell, N.J., September 1995, p. 36.

²⁴ *Final Report: A Study to Determine the Current Levels of Outcome Attainment of SLD, BEH, and S/PH Students* (no author indicated), N.C. Department of Public Instruction in Collaboration with the University of North Carolina at Chapel Hill, November, 1996, pp. 17-20.

²⁵ G.S. 115C-296(b).

²⁶ J. Frederick West, *Addressing the Challenge of Special Education Finance Reform in North Carolina*, Institute for Educational Development and Training, Raleigh, N.C., November 1994, p. 70.

²⁷ Robert C. Johnston, "Pa. Revisits Tough Special Education Funding Issues," *Education Week*, Bethesda, Md., April 8, 1998, p. 16.

²⁸ G.S. 115C-105.20 *et seq.*

²⁹ "1996-97 End-of-Grade Test Results: Performance of Students with Disabilities or Limited English Proficiency," N.C. Department of Public Instruction, Table 5.

³⁰ 20 U.S. Code Chapter 33, Section 1412(A).

³¹ G.S. 115C 105.45-47 (contained within S.B. 352 in the education section of the state budget bill).

³² G.S. 115C-391(d).

³³ Public Law 105-17 Section 615(k)(2) and (3), now codified as 20 U.S. Code Chapter 33, Section 1415(2)(B)(i).

³⁴ *Ibid.*, Section 615(k)(5).

³⁵ Steve Jones, "Teachers fight for protection," *Fayetteville Observer-Times*, Fayetteville, N.C., May 27, 1998, p. 1A. Figures cited are through May 13, 1998.

Table 1. Students Served by Special Education Programs in 118 N.C. Local School Districts, by Category of Disability, 1996-97*

School District	Category of Disability*						
	AU	DB	EH	EM	HI	LD	MU
Alamance County	35		140	167	33	1,100	33
Alexander County	9		36	74	6	240	4
Alleghany County	1		2	28	1	104	2
Anson County	5		111	226	5	217	3
Ashe County	3		9	59	3	181	5
Avery County	4		20	46	1	195	3
Beaufort County	2		76	237	12	482	5
Bertie County	4		2	127		54	6
Bladen County	4		29	219	3	176	11
Brunswick County	2		33	148	13	547	20
Buncombe County	61		266	227	28	1,227	80
Asheville City	14		41	101		196	20
Burke County	16		103	243	32	615	17
Cabarrus County	10		241	297	24	733	29
Kannapolis City	6		44	115	9	194	14
Caldwell County	5		122	206	14	582	11
Camden County	1		4	17		38	1
Carteret County	7		129	128	7	637	10
Caswell County	3		15	91	3	189	
Catawba County	21		192	186	15	640	21
Hickory City	12		94	113	2	163	8
Newton-Conover City	2		69	39	2	143	3
Chatham County	11		32	157	14	279	1
Cherokee County	1		13	50	1	285	2
Chowan County- Edenton City	11		6	55		92	6
Clay County			3	24		31	

Table 1, continued

OH	OI	SI	SP	TM	VI	TB	PD	Total
180	21	614	9	26	10	8	74	2,450
7	7	134		10	1	2	12	542
1		44	2	2	2		19	208
14	1	110	4	34	3	2	59	694
15	4	77	1	13	2	1	22	395
7	1	158	3	6	2	1	29	476
21		302	10	30	3	1	20	1,201
8	1	105	4	19	2		25	357
104	2	93	4	22	1	2	38	708
25	3	254	2	24	5	2	53	1,131
235	18	867	17	35	9	6	70	3,146
15	6	226	1	7	3		22	652
227	20	559	9	47	8	3	32	1,931
74	13	509	11	37	5	8	65	2,056
12	1	136		11	1		24	567
33	5	454	12	39	6	1	24	1,514
4	4	37		3		1	10	120
96	5	197	6	11	4	1	44	1,282
21		125	5	14			13	479
54	27	417	14	36	5	4	81	1,713
15	4	161	4	8	1		37	622
8	3	94	2	5	2	1	12	385
54	3	276	4	25	6	2	30	894
10	6	169	3	9	4		55	608
5	1	82	1	13		1	12	285
2	1	58		6	2	1	10	138

—continues

Table 1, continued

School District	Category of Disability*						
	AU	DB	EH	EM	HI	LD	MU
Cleveland County	2		16	169	17	453	2
Kings Mtn. City	9		19	88	6	216	
Shelby City	1		3	108	2	172	
Columbus County	5		33	263	11	181	17
Whiteville City	8		29	113	4	102	
Craven County	13	7	164	314	24	641	14
Cumberland County	103		572	491	90	1,953	21
Currituck County	2		25	29	1	274	5
Dare County	3		40	28	8	202	5
Davidson County	14		86	210	35	1,029	14
Lexington City	1		40	86	4	122	13
Thomasville City	2		10	119	1	121	
Davie County	9		89	56	6	207	
Duplin County	1		40	284	10	187	26
Durham County	70		421	475	70	1,331	27
Edgecombe County	7		30	260	7	276	10
Forsyth County	47		217	625	54	1,769	41
Franklin County	9		68	221	14	310	3
Gaston County	47		174	661	57	1,607	62
Gates County	4		15	61	1	64	3
Graham County	4		5	36		50	7
Granville County	6		41	199	7	267	2
Greene County	5		54	117	3	187	5
Guilford County	96	1	212	579	82	3,554	70
Halifax County	10		60	346	5	129	6
Roanoke Rapids City	6		29	68	4	85	4
Weldon City	1		21	47		21	1

Table 1, continued

OH	OI	SI	SP	TM	VI	TB	PD	Total
39	19	331	12	52	8	4	61	1,185
19	7	216	7	16		1	27	631
4	4	307	10	15	1		25	652
17	4	184	8	16	5	3	54	801
49	5	79	6	16	2		21	434
64	17	381	71	69	7	4	88	1,878
582	52	873	46	113	22	21	276	5,215
4	2	92		8	2		10	454
62	2	118		3	5	1	5	482
81	40	507	1	51	7	1	64	2,140
11	5	106	18	6	1	1	45	459
	4	47		5		1	36	346
24	6	208	3	13	3	3	12	639
39	1	221		30	3	1	15	858
156	19	813	22	68	12	9	147	3,640
73	7	271	6	41	1	1	59	1,049
248	74	1,603	31	132	15	20	187	5,063
24	6	176	5	20	2	2	37	897
265	14	821	24	108	18	3	115	3,976
		91		3			4	246
7		87		3	3	1	1	204
20	6	211	12	27	2	1	52	853
11	3	83	8	15	1	3	26	521
851	91	1,586	53	110	53	9	245	7,592
10		158	9	39	3		55	830
8	3	73		13			9	302
		39		11			11	152

—continues

Table 1, continued

School District	Category of Disability*						
	AU	DB	EH	EM	HI	LD	MU
Harnett County	22		91	166	27	967	8
Haywood County	9		59	110	6	491	1
Henderson County	22		185	128	11	547	16
Hertford County			7	180	2	67	6
Hoke County	1		58	231	4	264	
Hyde County	1		13	13	1	42	
Iredell County—Statesville	7		90	266	18	798	14
Mooresville City	5		18	35		139	3
Jackson County	9		30	47	2	210	2
Johnston County	19		131	548	31	865	8
Jones County	6		14	50	1	61	
Lee County	5		45	116	25	249	2
Lenoir County	9		85	383	5	368	71
Lincoln County	3		41	199	15	435	1
Macon County	6		18	40	1	217	4
Madison County	2		24	51	3	159	11
Martin County	6		86	137	5	116	8
McDowell County	4		40	56	5	366	10
Mecklenburg County— Charlotte City	164	1	656	957	136	3,554	89
Mitchell County	2		7	24	1	184	4
Montgomery County	4		30	136	2	288	16
Moore County	24		86	187	13	350	14
Nash County— Rocky Mount City	30		138	516	27	707	23
New Hanover County	36	1	139	216	43	1,180	34
Northampton County	4		29	147	4	119	5
Onslow County	23		144	352	15	906	35

Table 1, continued

OH	OI	SI	SP	TM	VI	TB	PD	Total
58	17	278	6	34	7	2	69	1,752
37	13	194	10	17	1	2	42	992
38	6	332	9	17	6	2	69	1,388
		99	6	19	4		20	410
8	1	249	2	18			32	868
2		35		2			2	111
105	15	515	17	33	7	5	81	1,971
17	2	157	4	9	2	1	17	409
27	2	152	13	8	3		31	536
146	28	408	10	65	5	7	101	2,372
3	1	61	1	4	1		13	216
22	8	331	17	27	2	3	29	881
9	3	256	7	38	2		88	1,324
32	11	367	9	35	4	1	68	1,221
8	7	198	3	8		1	38	549
24	3	108		2	1	1	9	398
17	4	203	3	20	1	1	64	671
34	11	144	5	16	8	5	34	738
295	100	2,149	135	191	26	18	244	8,715
11	2	75		4	1	1	14	330
29	5	66	1	11	2	2	39	631
30	12	430	2	36	13	1	115	1,313
43	5	497	4	75	4	3	63	2,135
125	28	457	16	47	7	12	130	2,471
5		145	3	25	7		10	503
49	13	451	20	54	12	3	93	2,170

—continues

Table 1, continued

School District	Category of Disability*						
	AU	DB	EH	EM	HI	LD	MU
Orange County	13		65	72	7	407	10
Chapel Hill-Carrboro City	48		95	62	8	474	12
Pamlico County	5		11	79	3	77	
Pasquotank County	23		51	141	11	241	11
Pender County	7		35	170	9	319	1
Perquimans County	4		17	39	1	49	4
Person County	14		57	112	3	355	6
Pitt County	27	1	187	680	21	926	37
Polk County	2		17	21	4	101	1
Randolph County	10		97	193	31	1,085	21
Asheboro City	4		31	48	4	279	8
Richmond County	9		63	303	10	218	20
Robeson County	11		59	709	36	870	43
Rockingham County	21		66	280	21	661	4
Rowan County-Salisbury City	20		164	522	34	1,100	16
Rutherford County	8		64	390	8	411	9
Sampson County	3		11	215	3	479	2
Clinton City	1		2	100		71	1
Scotland County	8		44	384	15	208	9
Stanly County	10		71	91	15	598	11
Albemarle City			25	86	3	126	1
Stokes County	2		28	95	24	422	4
Surry County	2		43	161	17	530	10
Elkin City			5	14	2	70	2
Mount Airy City	1		8	27	1	148	3
Swain County	2		24	13		147	3
Transylvania County	11		39	59	5	157	5

Table 1, continued

OH	OI	SI	SP	TM	VI	TB	PD	Total
101	7	253	4	18	2	4	20	983
123	7	149	11	11	5	2	33	1,040
18	1	82	1	2	2		16	297
21	4	191		28	2	2	33	759
8	1	170	1	32	1	1	33	788
3		102		12			15	246
38	6	167	1	19	4	3	46	831
165	15	422	27	87	7	5	147	2,754
13	5	71	1	4	1		8	249
152	12	479	7	41	11	6	32	2,177
43	2	163		14	2	2	13	613
87	11	217		21	7	1	111	1,078
26	5	985	15	118	7	5	92	2,981
153	21	1,099	10	23	6	1	52	2,418
37	16	509	15	62	7	2	68	2,572
20	7	336	17	48	6		51	1,375
19	3	220	14	37	2	1	38	1,047
1		106	3	10			24	319
23	1	168	8	27	2	3	71	971
41	6	212	6	11	3	1	34	1,110
4	1	68	1	6			22	343
29	2	335	6	17	3	2	35	1,004
35	3	308	3	20	3	3	20	1,158
5	1	37	2		1		2	141
15	1	80	1	6			15	306
11		63		1	1	2	20	287
8	5	123	1	4	2	1	30	450

—continues

Table 1, continued

School District	Category of Disability*						
	AU	DB	EH	EM	HI	LD	MU
Tyrrell County	1		11	20	1	33	1
Union County	17		155	133	33	1,197	6
Vance County	12		66	241	5	292	3
Wake County	211	1	770	648	130	5,077	67
Warren County	7		12	81	4	70	1
Washington County	2		6	105		75	6
Watauga County	1		7	35	1	319	9
Wayne County	37		96	539	58	732	30
Wilkes County	9		66	157	9	560	15
Wilson County	25		115	380	14	450	15
Yadkin County	1		41	72	9	267	10
Yancey County	4		2	45		182	3
TOTAL	751	12	9,235	22,246	1,714	58,282	1,478

*** Key to Category of Disability**

AU – Autistic
 DB – Deaf/Blind
 EH – Emotionally Disabled
 EM – Educable Mentally Disabled
 HI – Hearing Impaired
 LD – Specific Learning Disabled
 MU – Multi-Disabled
 OH – Other Health Impaired
 OI – Orthopedically Impaired
 SI – Speech-Language Impaired
 SP – Severely/Profoundly Mentally Disabled
 TM – Trainable Mentally Disabled
 VI – Visually Impaired
 TB – Traumatic Brain Injured
 PD – Preschool Developmentally Delayed

Table compiled by: Center intern Anna Levinsohn

Table 1, continued

OH	OI	SI	SP	TM	VI	TB	PD	Total
2		48	1	2			4	124
332	10	498	12	39	14	9	100	2,555
30	6	197	6	29		3	57	947
1,050	76	1,904	35	139	45	20	532	10,705
10		154	4	11		1	23	378
16	2	177		23			17	429
25	6	199	6	12	3		33	656
65	21	469	29	71	12	1	129	2,289
48	27	317	13	28	7	2	47	1,305
54	7	302		43	10	3	70	1,488
28	1	311		8	4	1	19	772
12	3	58	2	6	1		17	335
7,960	1,147	36,046	1,046	3,400	572	296	6,223	151,408

Source: N.C. Department of Public Instruction. Categorical breakdowns by school system were not available for the 1997–98 school year. The total number of special needs students served for the 1997–98 school year was 159,697.

Resources for Children with Special Needs

The Arc of North Carolina

16 East Rowan Street
Raleigh, NC 27609
919-782-4632

Advocacy group for people with mental and developmental disabilities.

Carolina Legal Assistance — A Mental Disability Law Project

224 South Dawson Street
P.O. Box 2446
Raleigh, NC 27602-2446
919-856-2195

Legal advocacy for people with mental disabilities.

Child & Family Services Section

Division of Mental Health, Developmental
Disabilities & Substance Abuse Services
Department of Health and Human Services
325 North Salisbury Street
Raleigh, NC 27603
919-733-0598

State mental health agency for children and youth.

Clearinghouse on Disability Information

Office of Special Education and
Rehabilitative Services (OSERS)
Room 3132, Switzer Building
330 C Street SW
Washington, DC 20202-2524
202-205-8241

Information center for people with disabilities.

Client Assistance Program

PO Box 26053
Raleigh, NC 27611
919-733-6300

State-run client assistance program.

Developmental Disability Services Section

Division of Mental Health, Developmental
Disabilities & Substance Abuse Services
Department of Health and Human Services
325 North Salisbury Street
Raleigh, NC 27603
919-733-3654

State developmental disabilities program.

Family Support Network of North Carolina/ Central Directory of Resources

CB #7340
University of North Carolina at Chapel Hill
Chapel Hill, NC 27599-7340
919-966-2841/1-800-852-0042
E-mail: cdr@med.unc.edu
URL: <http://www.med.unc.edu/commedu/familysu>
Directory of resources for parents of children with disabilities.

Governor's Advocacy Council for Persons with Disabilities

Bryan Building
2113 Cameron Street, Suite 218
Raleigh, NC 27605
919-733-6300

State government protection and advocacy agency for people with disabilities.

Learning Disabilities Association of North Carolina (LDANC)

PO Box 3542
Chapel Hill, NC 27515
919-493-5362

An advocacy group for children with learning disabilities.

National Center for Learning Disabilities

381 Park Avenue South, Suite 1401
New York, NY 10016
212-545-7510

Information on special education legislation.

National Information Center for Children and Youth with Disabilities

PO Box 1492
Washington, DC 20013-1492
1-800-695-0285

Resource for parents of children with disabilities.

North Carolina Council on Developmental Disabilities

1508 Western Boulevard
Raleigh, NC 27606
919-733-6566

State developmental disabilities planning council.

North Carolina Exceptional Children Assistance Center

PO Box 16
Davidson, NC 28036
704-892-1321

North Carolina training and information center for parents of children with disabilities.

—Anna Levinsohn





Red Tape and Raw Nerves: SPECIAL EDUCATION DISPUTES IN NORTH CAROLINA

by Ann McColl

Summary

North Carolina's dispute resolution process regarding exceptional children comes into play when parents have a concern about their child's special education placement in the North Carolina public schools that cannot be resolved through other means. In this article, the Center takes an in-depth look at the dispute process and finds the system to be time-consuming, adversarial, and expensive to both school systems and parents. In cases that end up in litigation, federal law envisions a final resolution within 45 days. The state's Office of Administrative Hearings meets this standard in only about 10 percent of its cases. Due to the complexity of the cases and other factors, these disputes often take more than a year to resolve. Meanwhile, the child is held in his or her current educational placement until the issues at stake are settled. The Center advocates a series of reforms that would smooth the process and better serve the needs of the child.

Two hypothetical cases are examined: Stuart, who has a learning disability that interferes with his ability to process math concepts, and Michael, a teenager with behavioral and emotional disabilities. The two cases illustrate the kinds of issues that can escalate into formal complaints or hearings over how best to serve the needs of the child. While hypothetical cases are used due to student confidentiality issues, these cases are based on situations actually seen in North Carolina and elsewhere.

The right to a free and appropriate public education for children with disabilities is of fairly recent vintage. Indeed, the 1965 General Assembly passed a law that took the opposite position. "A child so severely afflicted by mental, emotional, or physical incapacity as to make it impossible for such a child to profit by instruction in the public schools shall not be permitted to attend the public schools of the state," the law stated. "If the parent or guardian of such a child persists in forcing his attendance after such a report has determined that the child should not attend the public schools, he shall be guilty of a misdemeanor and upon conviction shall be punished at the discretion of the court."

State law changed in 1974 to give every child the right to an education in the public schools, and federal law changed soon thereafter. Today, every child has the right to a free and appropriate public education in the least restrictive environment possible for that child. This guarantee has changed the way children with special needs are educated and led to legal wrangling between parents and educators over what constitutes an appropriate educational placement for the special needs child. Parents have the right to due process hearings under certain circumstances when their complaints cannot be resolved by other means, and in North Carolina, those hearings are conducted by the Office of Administrative Hearings. The hearings are a form of civil litigation, and all rules of evidence apply. More than six times as many requests for due process hearings were filed in 1997 as in 1989, with 74 requests out of a population of 159,697 students, a ratio of one claim for every 2,158 students with identified disabilities. This compares to a ratio of one in every 9,713 students with identified disabilities in 1989.

Since 1992, almost eight of every 10 cases have been resolved before a decision is made by an administrative law judge. The majority (57 percent) of the cases resolved before a decision are withdrawn, voluntarily dismissed, or dismissed by an administrative law judge as deficient in some respect; an additional 21 percent are settled or a consent order is entered. A final decision is rendered in the remaining cases. Although these decisions are subject to appeal, most are not. Of 39 final decisions rendered from 1992 to 1997, only 12 were appealed for further review. There are no legal consequences for the parties involved in the dispute if the case is not concluded within 45 days, and extensions are routinely requested at the request of either party. Some 30 percent of the cases have taken more than a year to decide.

In addition to *due process hearings*, parents may use a *formal complaint process* within the N.C. Department of Public Instruction to address some of their concerns. Whereas *due process hearings* require discovery procedures and witnesses, *formal complaints* may require only a review of documents, although *on-site investigations* also can be conducted when necessary. The number of *formal complaints* filed with the Department of Public Instruction over the past five years has ranged from 59 in 1993-94 to 43 in 1997-98. A decision on a submitted complaint must be reached within 60 days, absent exceptional circumstances. The Department of Public Instruction usually meets or just misses the 60-day requirement. In the 1996-97 fiscal year, for example, 30 of 49 cases were resolved within the 60-day time limit, while 35 of 49 (71.2 percent) were resolved within 70 days.

Yet another means of resolving disputes is *mediation*. In a study conducted for the U.S. Department of Education, at least seven states that collect data on mediation programs — Arizona, California, Colorado, Illinois, Massachusetts, Minnesota, and Vermont — reported high rates of conflict resolution (at least

80%). Information collected by the Minnesota Department of Education found that 96 percent of mediation participants in special education disputes would use mediation again and would recommend it to others.

The law requires the state to maintain a list of qualified and trained mediators. More than 50 mediators have been trained by the N.C. Department of Public Instruction and the Institute of Government at the University of North Carolina at Chapel Hill. In April 1998, the Department of Public Instruction notified local school districts that these mediators are available, but no information has been collected thus far on whether the new mediation process has been used or on its effectiveness. Some state departments of education aggressively advocate the use of informal dispute resolution such as mediation. These include Michigan and Illinois, which has trained mediators on staff.

Communication between parents and educators is key to avoiding disputes and resolving them quickly once they occur. A program that has worked effectively in the San Diego Schools is the deployment of **parent facilitators**. The program hires parents of special needs children and provides extensive training to them. Facilitators help parents find resources, link parents with other parents with similar issues and concerns, provide information about rights and the educational process, and accompany parents to meetings to discuss the child's education plan.

Yet another option that prevents special education disputes is **conflict resolution** training. In Michigan, the Community Dispute Resolution Program and the Michigan Special Education Mediation Program regularly provide training on conflict resolution. In North Carolina, all special education directors in the state have received mediation training. In addition, some school districts provide training for staff, such as the Lee County Schools. However, currently there is no organization providing training to parents and staff on a systematic basis in North Carolina.

The Center's research on dispute processes in special education leads to two firm conclusions: due process disputes should be resolved on a more timely basis, and North Carolina needs a more fully developed continuum of dispute resolution options so that fewer cases get to the formal due process hearing stage. In California, grants are given to regional education agencies for creating their own continuum so that programs may be developed that best suit local needs.

Two clear lessons from the Center's research are that due process hearings should be resolved on a timely basis, and that a variety of approaches should be developed and deployed to avoid these divisive, expensive, and time-consuming hearings. Given these findings, the Center offers two recommendations: (1) The Office of Administrative Hearings should resolve due process hearings on a timely basis, with a goal of reaching a decision in the majority of these cases within the 45-day period established in federal law. Further, the Office of Administrative Hearings and the Department of Public Instruction should be required to report annually to the legislature's Government Operations Committee on progress in improving performance on this standard; (2) The Superintendent of Public Instruction and the State Board of Education should create a task force in 1999 that brings together representatives in the various dispute processes to evaluate options and make recommendations to the N.C. General Assembly by the year 2000 toward the development of a continuum of dispute processes in North Carolina. The goal of the continuum to be developed by this task force would be to reduce the number of dispute process hearings by providing more opportunities to resolve conflicts before they reach the litigation stage.

A child so severely afflicted by mental, emotional, or physical incapacity as to make it impossible for such a child to profit by instruction in the public schools shall not be permitted to attend the public schools of the state.

—1965 N.C. LAW

Imagine a nine-year-old named Stuart with a learning disability that affects the way he processes math concepts. His school has responded by providing Stuart with group tutoring sessions for children who have similar learning disabilities. Stuart's parent is not satisfied with his progress since the tutoring began and wants the school to provide an individual tutor to be with Stuart during the math class. The school team does not think the school can afford to have an assistant in the classroom just with Stuart and has told Stuart's parent that, given a reasonable period of time, Stuart's needs will be addressed through the tutoring sessions. As the parent's frustration builds, the parent begins to view the educators as arrogant and callous. The educators, in turn, start to perceive the parent as unreasonable and inflexible.

Now think of a 13-year-old — let's call him Michael — with behavioral and emotional disabilities. He does not control his anger and has repeatedly hit and verbally abused other students and teachers. The principal is getting numerous complaints about Michael from other parents. The school team plans to remove Michael from the regular classroom setting and place him in a contained classroom with limited interaction with other students. Michael's parents do not want Michael removed and believe that Michael's behavior can be controlled in the regular classroom if the teachers have the right training and use appropriate interventions. The pressure to maintain a safe environment is creating mounting tension between the school, Michael's parents, and other parents and students in the school community.

How will these disputes be resolved? The answer lies in a web of federal and state laws and

regulations that establish requirements for serving children with disabilities. The answer also lies in the skills and knowledge of the parties in using conflict resolution techniques to avoid the need for litigation. This article explores how North Carolina has responded to legal requirements for due process procedures for parents, and it provides recommendations for a more comprehensive approach to dispute resolution that would mean less litigation, less expense for both parents and school systems, and better relationships between the parties in dispute. In addition, parents and school systems could settle their differences more quickly, which would benefit the child caught in the middle of the dispute.

Legal Requirements

The right to a free and appropriate public education for children with disabilities is of fairly recent vintage. Indeed, the 1965 General Assembly passed a law that took the opposite position. "A child so severely afflicted by mental, emotional, or physical incapacity as to make it impossible for such a child to profit by instruction in the public schools shall not be permitted to attend the public schools of the state," the law stated. "If the parent or guardian of such a child persists in forcing his attendance after such a report has determined that the child should not attend the public schools, he shall be guilty of a misdemeanor and upon conviction shall be punished at the discretion of the court."¹

That posture toward disabled children changed drastically with the N.C. General Assembly's passage of the Equal Education Opportunities Act of 1974 and passage of the federal Education for All Handicapped Children Act of 1975. The North Carolina law specified that "no child shall be excluded from service and education for any reason whatsoever."² The federal act couples substantive rights to education and related services with procedural protections to provide parents with an ability to enforce those rights. The law, later reauthorized as the Individuals with Disabilities Education

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Act (IDEA), was enacted in response to congressional findings that children with disabilities were given inadequate services to address their special needs or were excluded entirely from the public schools.

The IDEA requires certain conditions to be met in order for states to receive federal funding that is passed on to local education agencies (school districts or "LEAs") for serving students with certain mental, physical, or emotional disabilities. These children are referred to in North Carolina law as children with special needs. As a procedural protection, parents may challenge the identification, evaluation, educational placement, or provision of a free appropriate public education ("FAPE") to a child.³ For example, a parent of a child with a learning disability may challenge the sufficiency or types of services provided to the child. Or a parent may seek to have a child with disabilities spend more time with non-disabled peers in the classroom

and during non-instructional activities.

Federal law specifies the types of mediation and due process hearings that must be made available. Federal regulations also require states to provide a formal complaint process as part of their activities for monitoring compliance. States have flexibility in designing dispute processes so long as the federal requirements are met. So far, the Office of Special Education Programs in the U.S. Department of Education has accepted how North Carolina has met the federal requirements. (See Table 1 following.)

While the focus of this article is on the effectiveness of dispute processes when parents want to contest school decisions, local education agencies also can utilize due process procedures to assert their rights to serve the child. LEAs also may seek intervention by hearing officers or the courts in order to change the placement of a child for a limited period of time based upon safety concerns.

No child shall be excluded from service and education for any reason whatsoever.

—1974 N.C. LAW



Karen Tam

**Table 1. Federal Requirements for Mediation
and Due Process with Corresponding N.C. Dispute Processes**

**Federal Requirements for
Mediation and Due Process**

Mediation at the expense of the state must be made available, at a minimum, whenever a due process hearing is requested. *20 U.S.C. 1415(e)*

An impartial due process hearing must be conducted by the local education agency or the state education agency with a decision within 45 days after receiving the complaint unless specific extensions are granted. *20 U.S.C. 1415(f), 34 C.F.R. 300.512*

Appeal of due process hearing to the state education agency must be allowed if the hearing is conducted by the local education agency with a decision made within 30 days. *20 U.S.C. 1415(g), 34 C.F.R. 300.512*

Civil action may be brought in state court or federal district court by any aggrieved party. *20 U.S.C. 1415(I)(2)*

North Carolina Dispute Processes

Informal mediation is available prior to filing a request for formal administrative review with the consent of both parties. The mediator is selected by the parties: the Exceptional Children Division of the Department of Public Instruction maintains a list of qualified mediators. *G.S. 115C-116*

Mediation after the filing of a due process hearing request is available in the Office of Administrative Hearings. The administrative law judge assigned to the case may require parties to attend a mediated settlement conference. *G.S. 150B-23.1*

Due process hearings are conducted and a final decision is rendered by an administrative law judge of the Office of Administrative Hearings. *G.S. 115C-116(d)-(h)*

Decisions of the administrative law judge may be appealed to a review officer appointed by the State Superintendent of Public Instruction. *G.S. 115C-116(I)*

Civil actions are brought in North Carolina state court or federal court. *G.S. 115C-116(k)*

**Federal Requirements for
Formal Complaints**

The state agency shall provide a complaint procedure which includes on-site investigations if necessary and a written decision within 60 days absent exceptional circumstances. The agency's decision is appealable to the U.S. Secretary of Education. *34 C.F.R. 300.660-662*

North Carolina Complaint Process

The Division of Exceptional Children in the Department of Public Instruction conducts investigations of formal written complaints. *Public Schools of North Carolina, Handbook on Parents' Rights, November 1997.*

North Carolina's Experience with Due Process Hearings

States are required to provide impartial due process hearings. By federal law, the hearing must provide the parents and the school district with the right to consult with counsel and specialists; the right to present evidence and confront, cross-examine, and compel the attendance of witnesses; and the right to a record of the hearing and findings of fact and decisions.⁴ These rights suggest a lengthy process, but federal regulations also require that the hearing officer (in North Carolina, an administrative law judge) render a decision within 45 days of receiving the complaint unless specific extensions of time have been granted at the request of either party.⁵

Since 1989, the N.C. Office of Administrative Hearings (OAH) has served as the hearing officer for special education disputes. Special education disputes are addressed in the same manner as other issues heard in the office. The North Carolina Rules of Civil Procedure and the North Carolina Rules of Evidence apply, meaning that all the rules regarding how evidence is collected and testimony offered that are used in formal court settings also are used in these disputes.⁶ While using rules designed for formal proceedings can make a process more elaborate, the administrative law judge has considerable discretion in controlling the nature of the hearing, including the authority to "regulate the course of the hearings, including discovery, set the time and place for continued hearings, and fix the time for filing of briefs and other documents."⁷

The Office of Administrative Hearings has maintained data on due process hearing requests since 1989. Most of the analysis below is based on requests filed beginning in 1992 since there was a shift in 1992 to change the administrative law judge's decision from a recommendation to a final decision appealable to a review officer.⁸

Cases Filed

More than six times as many requests for due process hearings were filed in 1997 as in 1989. (See Table 2.) While this is a substantial increase, the number of requests is small relative to the size of the population served in North Carolina schools. In 1997, there were 74 requests for a due process hearing made from a total of 159,697 students with identified disabilities for a ratio of one claim for every 2,158 students. Some of the state's school districts have never had a due process hear-

ing request, while others regularly face hearings. Durham County alone accounted for 29 of the 74 cases (34 percent) filed in 1997.

The increase in requests is consistent with the national trend, though more dramatic. Although some states had a decrease in hearing requests from 1992 to 1995, overall, the number of requests increased nationally each year by 7.5 percent.⁹ (See Table 3.)

How Cases Are Resolved

Since 1992, almost eight of every 10 cases have been resolved before a final decision is made by the administrative law judge. (See Table 4.) The majority (57 percent) of the cases resolved before a decision were withdrawn, voluntarily dismissed, or dismissed by the administrative law judge as deficient in some respect. Twenty-one percent of the cases were settled or a consent order was entered. Administrative law judges rendered final decisions in 21 percent of the cases. Cases that have been withdrawn or dismissed signal that

Table 2. Due Process Hearing Requests in North Carolina Public Schools By Year, 1989-1997

Year	Cases Filed	Special Education Population in N.C. Public Schools
1989	12	116,556
1990	6	120,434
1991	2	125,364
1992	17	130,599
1993	25	135,087
1994	28	139,803
1995	31	147,313
1996	48	152,819
1997	74	159,697

Source: N.C. Office of Administrative Hearings for numbers of cases, N.C. Department of Public Instruction for special education populations.

Table 3. Number of Due Process Hearing Requests Filed in Public Schools in the U.S., 1992-1995

Year	Hearings Requested	Growth in Number of Hearings Over Prior Year	Percent Increase	Number of States with Increase	Number of States with Decrease	States Remaining the Same
1992	4,323	198	4.8%	29	16	0
1993	4,781	458	10.6	24	22	0
1994	5,321	540	11.3	36	5	4
1995	5,497	176	3.3	27	18	2
Average	4,981	343	7.5	29	15	1.5

Source: Due Process Hearings: An Update, National Association of State Directors of Special Education, Alexandria, Va., 1997. Number of states does not add to 50 due to incomplete reporting.

some agreement has been worked out between the parties or that a decision was made by the parent not to go forward with the claim, regardless of whether the issue in dispute had merit or was sufficiently addressed.

Most decisions of an administrative law judge are not appealed to a review officer. Of the 39 final decisions rendered from 1992 to 1997, only 12 (31 percent) were appealed for further review.

How Long It Takes To Reach a Decision

While federal regulations require final decisions to be made within 45 days absent specific extensions granted by the hearing officer, decisions are made within this time frame in only about 10 percent of cases. (See Table 5, p. 54.) There are no legal consequences for the parties involved in the dispute if the case is not concluded within 45 days, and extensions are routinely granted at the request of either party. Some 30 percent of the cases have taken more than a year to decide. Administrative law judges typically take longer to reach a final decision in cases that are appealed than in cases in which the administrative law judge's final decision is not appealed. This may suggest that the more difficult or complex cases are the ones that are appealed.

Half of the cases that were resolved by withdrawal or dismissal (voluntary withdrawal by the parents or dismissed by the administrative law

judge) occurred within the first 90 days from when the case was filed. (See Table 6.) Although the withdrawals or dismissals may reflect some sort of agreement between the parties, the agreements in the form of settlements and consent orders appear to take longer, with the vast majority (82 percent) occurring between three months and one year from the date of filing.

Table 4. Resolution of N.C. Special Education Disputes, 1992-1997

How Cases Are Resolved	Number	Percentage*
Withdrawn, dismissed voluntarily, or dismissed by Administrative Law Judge	104	57%
Settled or consent order	39	21
Final decision by Administrative Law Judge	39	21
	182	

*Percentages do not total 100 due to rounding.

No Patterns Over the Years in the Amount of Time Needed To Resolve Cases

There is no clear pattern in the amount of time taken to resolve cases since 1992. From one year to another, the cases fluctuate in whether they have been resolved more quickly or slowly than the preceding year. (See Table 7, p. 56.) The proportion of cases resolved in 45 days has not improved from 1992 to 1997. There is still one case pending that was filed in 1996, and there are 39 cases filed in 1997 that were still open as of May 1, 1998 — well beyond the 45 day federal time limit.

Assessment of the Costs, Efficiency, and Effectiveness of Due Process Hearings

A process that routinely goes beyond 45 days appears to be contrary to the intent of the federal law and regulations. There are other results as well. Attorneys representing parents and students assert that a process that is complex and lengthy is inaccessible to most parents. "When you hear one of these cases, it is painful to see the raw nerves caused by the case," says Tom West, a former administrative law judge and now an attorney and mediator. "With all the money spent in litigation, you think how many teachers could have been hired or mortgages paid."

Frank Johns, a private attorney who represents parents and students, says that he consults with hundreds of parents each year and warns them of the potential cost if attorney fees are not paid by the school district and of the amount of time they may need to be away from work. Deborah Greenblatt, executive director and attorney for Carolina Legal Assistance — A Mental Disability Law Project, says that even though the law may provide extensive procedural protections, low or moderate income parents have no process available to them as a practical matter. Without a lawyer, Greenblatt notes that it is very difficult for parents to be on a level playing field with a school district that has educational expertise and is represented by an attorney.

While low cost and efficiency are important in order to make the process more accessible, the most critical reason for reducing the time spent in these hearings is the child. The child's education is on hold while the hearing takes place. By law, the child must remain in the current educational placement during the hearings unless the parties agree otherwise. Yet, the child and his or her needs often continue to change. If the changes are introduced

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—TOM WEST, FORMER ADMINISTRATIVE LAW JUDGE, NOW AN ATTORNEY AND MEDIATOR

as evidence, the dispute becomes a constantly shifting array of legal and educational issues. The issues that caused the dispute might not even be relevant by the time the decision is rendered.

There are a number of factors that contribute to the lengthiness of these hearings. Various participants in the process say these disputes are a blend of the complexity of medical malpractice cases and the emotional intensity of domestic cases. The complexity is apparent in the way the cases are prepared and presented. Under the regular rules of civil procedure that are employed in these cases, discovery can become virtually unlimited with extensive interrogatories, depositions, and record requests. Ann Majestic, attorney for several school districts, says that cases often are becoming a battle of expert witnesses brought in from across the country. The use of experts drives up the cost, length, and complexity of the cases.

The emotional side of a dispute also can lengthen the proceedings. Parents especially may want to vent their frustrations by telling the full story to an impartial observer. Former administrative law judge Tom West identifies the tension between providing a full hearing and an affordable hearing. "Parties might want to have a Cadillac lawsuit on a Chevrolet budget . . . there needs to be a balance between the need to tell the story with the reality of most people's budget."

Stuart's case requires a complex and lengthy trial. Experts discuss Stuart's particular difficulties in processing math concepts and the value of the school's group tutoring sessions versus his parent's desire to have an individual aide during the class. There are issues of law as to whether the choice to use tutoring sessions is "educational methodology" and therefore is a decision to be left to the school or whether the use of group tutoring

Table 5. Time Required To Decide N.C. Disputes, 1992–1997

Length of Time	Final Decisions Not Appealed	Final Decisions Appealed	Total	Percentage of Total*
Up to 45 days*	4	0	4	10%
46 to 90 days	7	1	8	21
91 to 180 days	4	2	6	15
180 to 365 days	7	2	9	23
Over 365 days	5	7	12	31

* Federal law requires decisions to be made within 45 days.

Source: N.C. Office of Administrative Hearings, Raleigh, N.C.

is denying Stuart a “free appropriate public education.” The parent goes into a lengthy explanation of the child’s history, in part because the parent did not feel respected or heard by the educators.

Michael’s case also leads to lengthy legal disputes. The school district avails itself of processes to remove the child from the regular classroom setting temporarily based upon safety concerns. The due process hearing includes extensive testimony regarding the nature of Michael’s behavioral and emotional disability and whether there are interventions the school district could have tried that would have helped Michael control his behavior in the regular educational setting. The legal issues regarding whether a self-contained classroom for Michael is the “least restrictive environment”¹⁰ — the environment most like a regular classroom setting possible given his educational needs — also are complex and require each side to be represented by an attorney to argue the issues, thus driving up costs, lengthening the process, and adding to friction between the parties.

Parents’ Option of Using Formal Complaints

In addition to due process hearings, parents may use a formal complaint process with the N.C. Department of Public Instruction to address some of their concerns. Federal regulations require each state to have a process for receiving, investigating, and responding to complaints by parents.¹¹ The complaint process stands in contrast to due process

hearings. Whereas the due process hearings require discovery procedures and witnesses, formal complaints may require only a review of documents, although on-site investigations also can be conducted when necessary. The number of formal complaints about special education filed with the Department of Public Instruction has been fairly consistent over the past five years, ranging from 59 in 1993–94 to 43 in 1997–98.¹² (See Table 8, p. 58.)

Priscilla Maynor, consultant for due process and parents’ rights with the Exceptional Children’s Division, says that while the number of complaints has been relatively steady, the nature of the complaints has changed. Complaints used to be primarily regarding procedural irregularities that could be identified on paper — like not getting the proper signatures for an individualized education program. Now, she says, the complaints often are more complex and are more related to concerns about programs the child should be receiving. More complaints are addressing failure to implement agreed-upon services such as speech therapy, occupational therapy, or physical therapy.

If a local school district is found to be out of compliance with federal requirements, the N.C. Department of Public Instruction requires the school district to address the issue for the particular child and how it will ensure that any systemic problems have been resolved. For example, if a school district was not providing speech therapy services because of the scarcity of speech therapists, the remedy for a particular child would be to begin providing the services and any compensatory

**Table 6. Time Spent Deciding N.C. Special Education Disputes
By Outcome of Case, 1992-1997**

Length of Time	Withdrawals/ Dismissals	Settlement/ Consent Orders	Totals	Percentage of Total
Up to 45 days	27	0	27	19%
46 to 90 days	25	4	29	20
91 to 180 days	21	18	39	27
181 to 365 days	20	14	34	24
Over 365 days	11	3	14	10
Totals	105	39	143	

Source: N.C. Office of Administrative Hearings, Raleigh, N.C.

services needed for the child. The response to the systemic issue would include notifying other parents of children whose services may have been affected by the violations found.

A decision on a submitted complaint must be reached within 60 days, absent exceptional circumstances. The Department of Public Instruction usually meets or just misses the 60-day requirement. (See Table 9, p. 59.) In the 1996-97 fiscal year, for example, 30 of 49 cases were resolved within the 60-day time limit, while 35 of 49 (71.2 percent) were resolved within 70 days. Maynor says that exceptional circumstances have justified delays when on-site investigations must be conducted, or when additional documents are submitted by the parents or the school and the other party must be given the opportunity to respond.¹³

Maynor notes that many parents would like to use the complaint process rather than seek due process hearings because the complaint process is quicker, simpler to use, and less costly. The complaint process also does not necessitate hiring an attorney to protect legal interests. However, the complaint process cannot address many of the issues raised in due process hearings, such as the appropriateness of the education plan or services, says the Department of Public Instruction in its interpretation of what federal law allows complaint processes to address. Thus, even though parents might want to address their concerns through the complaint process, the due process hearing may be the only avenue for resolving the legal issues raised. For example, the formal complaint process could

not be used to determine whether providing Stuart with group tutoring sessions rather than an individual assistant was adequate. For Michael, the complaint process might be helpful if there were procedural irregularities in any disciplinary action taken for his hitting students and the teacher, but it would not be able to address whether certain interventions would be sufficient for Michael to remain in the classroom.

Another impediment to using the process is simply lack of awareness of the process and how it works. The complaint process is specified in federal regulations. It does not appear in state or federal law. The *Handbook on Parents' Rights* created by the Department of Public Instruction provides a brief description but not a full explanation of when complaint processes are appropriate. Sometimes parents file complaints with the Department of Public Instruction and the U.S. Office of Civil Rights, as well as requesting a due process hearing. While this may be a deliberate strategy to find the best avenue or to get the school district's attention, it also may be an indication that parents are not always sure what is the most appropriate process for a particular issue.

The Promise of Mediation

There may be a better approach—mediation and dispute resolution. "Ninety percent of [special education] disputes could have been headed off if people were willing to talk to each other," says Margaret Meany, chief of the policy,

monitoring, and audit section in the Division of Exceptional Children of the N.C. Department of Public Instruction. What if, for example, instead of a due process hearing, Stuart's parent and the educators sat down together to generate options for addressing Stuart's difficulties with math? And what if Michael's parents and the educators were able to agree on behavior interventions and a temporary setting for Michael that would address both the parents' and the school's concerns? If these parties could agree, they would save valuable resources and begin to establish a more productive relationship for addressing the child's special needs.

Joe Walters, a professor of education at Western Carolina University who serves as a mediator as well as a state level review officer, says, "From my perspective, mediation is the first time they have been honest with each other. They quit playing games. Mediation comes closer to what was intended when the law was originally passed by Congress — two parties sitting down and working it out. Congress had in mind a much friendlier process than what our due process hearings have become." In a study conducted for the U.S. Department of Education, at least seven states that collect

data on mediation programs — Arizona, California, Colorado, Illinois, Massachusetts, Minnesota, and Vermont — reported high rates of conflict resolution (at least 80 percent).¹⁴ Information collected by the Minnesota Department of Education found that 96 percent of mediation participants in special education disputes would use mediation again and would recommend it to others.¹⁵

Mediation can be an answer to the time and expense of litigation. Judge Meg Scott Phipps, an administrative law judge who mediates many of the disputes for the Office of Administrative Hearings, estimates that the average length of a hearing is one to two weeks, whereas a mediation lasts one to three days.

Mediation also enables the parties to address the real issues of concern and not just the legal issues. "Sometimes I use the procedural violations as a way to get the school district's attention, but what I really want to do is improve the child's education," says Christine Heinberg, attorney with Carolina Legal Assistance — A Mental Disability Law Project in Raleigh. "Getting a piece of paper that said I won is a hollow victory if the child's education is not improved."

**Table 7. Fluctuation in Times Spent Resolving N.C. Cases
By Year, 1992–1997**

	Days Required To Resolve						Percentage of Total*					
	To 45	46–90	91–180	181–365	Over 365	Totals	To 45	46–90	91–180	181–365	Over 365	
1992	0	4	4	6	4	18	0%	22%	22%	33%	22%	
1993	8	4	2	3	9	26	31%	15%	8%	12%	35%	
1994	6	8	4	8	2	28	21%	29%	14%	29%	7%	
1995	4	6	13	3	5	31	13%	19%	42%	10%	16%	
1996	9	7	12	12	8	48	19%	15%	25%	25%	17%	
1997	4	10	10	11	0	35	11%	29%	29%	31%	0%	
1997 w/open cases*	4	10	15	40	5	74	5%	14%	20%	54%	7%	

* Row percentages may not add to 100 due to rounding.

** Open cases are calculated as the difference between the filing date and May 1, 1998.

Source: N.C. Office of Administrative Hearings, Raleigh, N.C.

Mediation also can provide the opportunity to improve rather than further strain relationships and to reach an agreement that sets a plan for the future rather than merely identifying the wrongs of the past. "In mediation, a catharsis takes place," says Joe Walters. "The parties start out attacking each other. After a couple of hours, they are ready to look at it seriously and can come up with something neither party had proposed."

Special education disputes also offer some real challenges to the mediation process. Sometimes there may not be a level playing field between the parties. Mediation is less likely to be successful where one party is more powerful or knowledgeable than the other. In special education disputes, school districts generally will have more expertise on the issue and are more likely to retain a lawyer to advise them on settlement options. Deborah Greenblatt, executive director and attorney with Carolina Legal Assistance, says she always advises parents to have at least an advocate with them in a mediation. Depending on the circumstances, parents also may need to consult with an attorney to make sure the agreement is consistent with their legal rights and may need to be advised by a consultant with relevant expertise to review proposed educational plans or services.

Another challenge is the complexity of the cases. Often the disputes have many interwoven legal issues and educational decisions. Instead of merely writing a check, a settlement agreement in special education often involves writing a detailed educational plan. Sometimes the breakdown occurs not at the mediation, but in efforts to implement the agreement. Unless the communication issues have been resolved, the parties are likely to resume relationships that lack trust and collaboration.

All of these factors combined with the emotional intensity present in many of these disputes can result in parties being unable to negotiate effectively with each other. Ann Majestic, an attorney representing school districts, says that mediation does not work in the very difficult cases where the parties are locked into positions by the time mediation is attempted. This sometimes creates a "Catch-22." Many advocates feel that it takes fil-

"Ninety percent of [special education] disputes could have been headed off if people were willing to talk to each other."

—MARGARET MEANY,
N.C. DIVISION OF EXCEPTIONAL CHILDREN

ing a request for a hearing to get the school district's attention that they are serious. However, by this stage, the parties are more likely to be entrenched in positions and have a need to be proven right.

Mediation also is not an option where the parties want to clarify a

point of law. Sometimes cases are brought to challenge a particular educational methodology or other systemic issue. Success in these cases is not viewed by the settlement of one child's rights but rather whether the school district's approach or the parent's demands will prevail for future cases.

North Carolina Mediation Programs

In North Carolina, mediation has been available after the filing of a due process claim with the Office of Administrative Hearings in the form of a mediated settlement conference.¹⁶ Some of the administrative law judges also are certified mediators and serve as mediators in cases to which they are not assigned as a judge. Data are not kept specifically on the success of these attempts; however, only about twenty percent of cases filed reach a final decision: the rest are withdrawn, dismissed, or settled.

A much newer process is mediation prior to requesting a due process hearing. Until the law was changed in 1997, the process provided by state law gave the parent the right to request that the superintendent of the school district where the complaint arose mediate the dispute. However, the superintendent or designee was not likely to be perceived as an impartial mediator, and the process was rarely used. Although the parties would not have been precluded from selecting another mediator, there was not a clear mechanism to invoke until the law was changed in 1997. State law now provides for voluntary mediation, meaning that either the parents or the school district may request mediation, but the other party must consent. The law sets out a number of provisions to clarify the relationship between the mediation and due process hearings.¹⁷

The law also requires the Department of Public Instruction's Exceptional Children Division to maintain a list of qualified and trained mediators.¹⁸ The Department plans to have the list include both mediators associated with the community dispute

**Table 8. Formal Complaints
to the N.C. Department
of Public Instruction,
1993-94 to 1997-98**

School Year	Number of Formal Complaints
1993-94	59
1994-95	52
1995-96	45
1996-97	49
1997-98	43

Source: N.C. Office of Administrative Hearings, Raleigh, N.C.

settlement centers established across the state and mediators certified and listed with the North Carolina Dispute Resolution Commission. Since the law was enacted, the Department of Public Instruction and the Institute of Government provided a training session for mediators from these community dispute settlement centers. More than 50 mediators were trained on issues specific to special education disputes. Scott Bradley, executive director of the Mediation Network of North Carolina, says the centers will use a co-mediator model where two mediators will work together with the disputing parties. In April of 1998, the Department of Public Instruction notified local school districts that these mediators are available. No information has been collected so far on whether the new mediation process has been used or on its effectiveness. Bradley predicts that it will take some time for parties to avail themselves of the process and that this is the beginning of a long-term effort to encourage mediation.

While mediators have been trained, there is little information to assist potential participants — parents and educators — in understanding this option. The Department of Public Instruction produces a parent handbook that is distributed by schools to parents as a means of providing the legally required notice of the parents' and child's rights. Although the current handbook identifies

the options of resolving concerns through formal complaints, due process, and mediation, the book does not attempt to help parents understand how to choose the most appropriate option or how to participate effectively in the process. Some state departments of education, including the Michigan Special Education Mediation Program, aggressively advocate the use of informal resolution. Illinois also strongly encourages mediation and has trained mediators on staff. Beth Jones, an educator who works with children with behavior disabilities in Illinois, says that the state often tells school districts to mediate and that the state's mediation programs are one of the best things Illinois has done to help resolve special education disputes.

The Money Issue

Although the requirements for special education are found in the federal legislation, the federal government only funds a fraction of the additional costs associated with serving special needs children. School districts get most of their funds from the state. In 1997-98, for example, the federal government provided North Carolina \$488 per child aged 5 to 21 in special education. The state provided an additional \$2,248.39 for each of these K-12 students, or 82.2 percent of total state and federal funding. This is in addition to appropriations for regular classroom students. But state funds also may not be sufficient, and many school districts seek additional funding from county boards of commissioners. When these combined funding sources still are not sufficient, educators may try to find ways to use resources from the regular educational program to meet the federally mandated programs for children with special needs. The amount of funding added at the local level varies in part because of the amount of property wealth available to be taxed in the county and the willingness of the county commissioners to fund these programs (tax effort).

Deborah Greenblatt, executive director and attorney for Carolina Legal Assistance, says the dollar issue is important because many special education disputes stem from a scarcity of resources. "Money becomes an issue in whether the child gets the needed services," she says.

Other Elements of a Dispute Process

In North Carolina, special education disputes can be addressed through a formal process with the Department of Public Instruction, through media-

tion before or after filing a due process hearing, and through a hearing with a right of appeal. All of these processes are established by law. However, in addition to asking how well these programs are working, an equally important question is what other programs should be in place in order to resolve disputes expeditiously and with as little wear and tear as possible on the relationship between the parents and the school. There are no other processes or programs established by law; however, there could be a more fully developed continuum of dispute processes that would provide parents and school systems various approaches to settling their differences amicably before resorting to due process hearings.

In California, such a continuum is referred to as a "multi-door approach." The multi-door approach, or continuum, includes processes to prevent conflicts as well as informal and formal dispute processes. The continuum is premised on the concept that parents should be well informed, and communication should be open between the parents and educators. Processes which provide a means for parents to be better informed can help parents participate in generating realistic options for addressing the child's needs, which can lead to a quicker and better resolution of the dispute. Communication is an ongoing issue for resolving disputes quickly and maintaining an effective relationship between educators and parents for providing the educational program to the child.

As one example, a program that has worked effectively in the San Diego Schools is the deployment of **parent facilitators**. Besieged by parent

complaints and due process hearing requests, the school district implemented a parent facilitator program in 1979. The program hires parents of special needs children and provides extensive training to them. Facilitators help parents find resources, link parents with other parents with similar issues and concerns, provide information about rights and the educational process, and accompany parents to meetings to discuss the child's education plan. The facilitators do not represent the parents in mediation, although they are expected to inform the parents of their right to use mediation. Kay Bowdinger, team leader of the special education parent facilitation program, says the program has continued since 1979 at least in part because it has proven to be cost effective for the school district by reducing the number of due process hearing requests. Georgianne Knight, a special education consultant with the California Department of Education, says that while schools that have implemented such programs may initially have been worried about using parent advocates within the system, they have found that "good things happen when parents feel welcome." There is no comparable program in North Carolina.

Another option on the preventive end of the continuum is **conflict resolution** training. In Michigan, the Community Dispute Resolution Program and the Michigan Special Education Mediation Program regularly provide training on conflict resolution. As a participant in a training session offered by the Dispute Resolution Center of Central Michigan states in an evaluation, "I think all staff could use mediation methods for conflicts

Table 9. Time Spent in Resolving Formal Complaints to the N.C. Department of Public Instruction, 1996-97 to 1997-98

School Year	60 days or less*	Within 70 days	Extension Given	Complaint Removed**	Total
1996-97	30	5	9	5	49
1997-98***	14	6	5	2	27

* Law requires a decision within 60 days.

** Includes circumstances where a due process request was also filed, the complaint was withdrawn, or the complaint was suspended pending investigation by the U.S. Office of Civil Rights.

*** Includes only complaints which required a response by May 27, 1998.

Source: N.C. Office of Administrative Hearings, Raleigh, N.C.

within the building.” In North Carolina, all special education directors in the state have received mediation training. In addition, some school districts provide training for staff, such as the Lee County Schools. Linda Marsal, former Lee County Schools exceptional children’s director, says that principals and assistant principals received conflict resolution training, although it was an ongoing effort to provide training for new staff and to provide follow-up training. There are organizations in the state that can provide such training to parents and educators, including some of the dispute settlement centers located across the state. However, currently there is no organization providing training to parents and staff on a systematic basis in North Carolina.

Other approaches along the continuum include the use of **neutral facilitators**. A neutral facilitator can help the participants overcome poor communications patterns so that they may reach a resolution. One proponent of using neutral facilitators is Butch Elkins, executive director of the Governor’s Advocacy Council for Persons with Disabilities. “Time and time again, I’ve seen situations where the parents and educators have another five years together and they’ve gotten off to a bad start and can’t be in the room together,” says Elkins. He tells parents that his strongest suggestion is to agree to a mediator and work with the person through the IEP meetings and other times the educators and parents must work together. When they do it, says Elkins, parents rarely get in touch with his office with further complaints. Currently, there is no organized program in North Carolina for the use of facilitators. Rather such use has depended on the initiative of the people involved in the dispute.

Another option along the continuum is **impartial review**. The review is conducted by knowledgeable professionals who spend one or two days on site and provide a non-binding second opinion on the issues in controversy. Such a program has proven successful in Michigan.

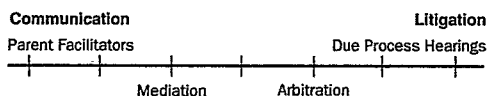
Binding or non-binding arbitration is another means of resolving the issue short of a due process hearing. Arbitration can operate like a miniature trial with limited records and testimony. Unlike mediators, arbitrators render a decision. The decision can bind the parties, or it may be an advisory opinion that helps the parties decide

whether to pursue a due process hearing, or it may help craft the terms of an agreement. Arbitration may be appropriate where the parties cannot identify settlement options and one party’s point of view must prevail over the other. For example, there is no middle ground in a dispute over whether a school district should place a child in a private, residential setting. Tom West, a former administrative law judge and now a private attorney, has conducted due process hearings and at least one arbitration. He says that the time spent in arbitration may be closer to the intent of the IDEA in providing an expeditious decision. Although nothing now prevents school districts and parents from electing to use arbitration, no processes or guidelines are in place to assist parties in using this form of dispute resolution or to train hearing officers (whether private attorneys, professionals, or state officials) in conducting arbitrations.

North Carolina currently does not have a continuum or multi-door approach as state policy. While individual school districts may provide conflict resolution training or may seek arbitration, there is no statewide effort to offer a variety of approaches to preventing or resolving disputes. In California, grants are given to regional education agencies for creating their own continuum so that programs may be developed to suit local needs. There is little research beyond anecdotal evidence to suggest what approaches are the most cost-effective or likely to achieve the greatest results. Yet the extraordinary costs of due process hearings for parents and school districts create an incentive to look beyond the processes that are required by law.

So what if North Carolina had a continuum of dispute resolution processes? Again, a look at the hypothetical cases of Stuart and Michael is instructive. Both boys’ parents would be able to address their concerns as early as possible — before they reached the point of having irreconcilable differences with the school system. Stuart’s parent might have a better understanding of the options facing him after the parent facilitator helped him get in touch with parents of children with similar learning disabilities. The parent facilitator also could accompany Stuart’s parent to meetings to help him learn how to express his concerns and be a more effective part of the team. Michael’s parents might utilize an impartial review team to gain more information about how Michael’s disruptive and assaultive behavior could be addressed. After a non-binding arbitration, the parents might be willing to remove Michael from

A Dispute Resolution Continuum





Karen Tam

the regular classroom environment while the school implemented the desired behavior interventions. The end result could be that both educators and Stuart's and Michael's parents are satisfied that these children are receiving a free and appropriate public education — without the time, expense, and vitriol of a due process hearing.

Conclusion

The general consensus among participants is that due process procedures in North Carolina have become too cumbersome, lengthy, and complex to serve the purpose of providing an accessible means for parents to resolve disputes. Cases may take well over a year to resolve rather than the 45 days intended by federal law. The answer for resolving this problem may lie in reworking the process to expedite these cases. However, most participants also agree that it is at least as important to provide effective alternatives to the due process hearing for resolving disputes.

The formal complaint process is one alternative. It has proven effective for its limited purposes, such as addressing whether the school district is providing agreed-upon services. But when the issue is more complex — there is, in fact, no agreement about service — then the participants must look to other alternatives. While mediation before the filing of a complaint is too new to evaluate fully, it holds the promise of providing a less expensive alternative that can resolve complex disputes and perhaps even improve the relationship between the parents and educators. What is missing in North Carolina is a state policy encouraging or requiring a broad array of other options to

try to resolve the disputes along a continuum from conflict resolution to arbitration. The preventive measures aimed at better communication could prove to be the most important missing link, since they may enable parties to work through issues before becoming entrenched in positions and determined to settle their differences in court.

FOOTNOTES

¹ Chapter 584 of the 1965 North Carolina Session Laws.

² Chapter 1293 of the 1973 Session Laws (2d Session 1974), now codified as N.C.G.S. 115C-106(a).

³ 20 U.S. Code 1415(b)(6).

⁴ 20 U.S. Code 1415(h).

⁵ 34 Code of Federal Regulations 300.512.

⁶ N.C.G.S. 1A-1, 26 N.C. Administrative Code 3.0112(b).

⁷ N.C.G.S. 150B-33(b)(4).

⁸ Data fields were provided by the Office of Administrative Hearings to the NC Center for Public Policy Research in the form of a spreadsheet. The data are current as of May 1, 1998. All calculations were performed by the author.

⁹ Eileen M Ahearn, *Due Process Hearings: An Update*, Report to the Office of Special Education Programs, U.S. Department of Education, Project FORUM, National Association of State Directors of Special Education, Alexandria, Virginia, 1997, p. 5.

¹⁰ 20 U.S. Code 1412(a)(5)(A).

¹¹ 34 Code of Federal Regulations 300.660-62.

¹² Unpublished data maintained by the Exceptional Children Division of the N.C. Department of Public Instruction.

¹³ Unpublished data maintained by the Exceptional Children Division of the N.C. Department of Public Instruction, calculations made by the author.

¹⁴ Judy Schrag, Ed.D., *Mediation and Other Alternative Dispute Resolution Procedures in Special Education*, Report to the Office of Special Education Programs, U.S. Department of Education, Project FORUM, National Association of State Directors of Special Education, Alexandria, Virginia, 1996, p. 19.

¹⁵ *Mediation and Other Alternative Dispute Resolution Procedures in Special Education*, p. 27.

¹⁶ N.C.G.S. 150B-23.1.

¹⁷ N.C.G.S. 115C-116.

¹⁸ N.C.G.S. 115C-116.

What differentiates the oppression and discrimination of the disabled from other traditionally marginalized groups is that in one quick instant — a slip in the bathtub, a virus-borne disease — anyone can join us, the disabled (currently estimated at 49 million in the United States). In fact, at some point in our lives, each and every one of us, sooner or later, will be, whether for short term or long, in some way disabled.

—KENNY FRIES

STARING BACK — THE DISABILITY EXPERIENCE FROM THE INSIDE OUT

Recommendations for More Expeditious Resolution of Special Education Disputes

One clear finding in the examination by the North Carolina Center for Public Policy Research of dispute processes in special education is that the state exceeds the time allowed in federal law to resolve due process hearings. A second clear finding is that North Carolina could offer a broader array of options that provide the opportunity to resolve special education disputes before they reach the stage that a due process hearing becomes necessary. Thus, the Center offers recommendations with the following two policy goals: (1) to provide timely resolution of due process hearings in accordance with the law; and (2) to provide a process for developing a continuum of dispute resolution processes that would prevent due process hearings if at all possible.

Federal law and regulations indicate special education due process cases routinely should be resolved in 45 days. North Carolina's Office of Administrative Hearings fails to meet this standard in 90 percent of its cases. Nearly a third of these cases (30 percent) take more than a year to resolve. While slow resolution of due process cases is a problem in other states, North Carolina is even slower than most, perhaps because it houses its dispute processes within the quasi-judicial Office of Administrative Hearings instead of the Department of Public Instruction or perhaps because the toughest cases end up in due process hearings. Extensions in concluding the hearings are almost always at the request of one party and with the consent of both attorneys, so the Office of Administrative Hearings is not purposefully delaying the cases. But it needs to be part of the solution because otherwise children can remain stuck in an inappropriate education.

Within OAH, these cases are tried like court cases, using the same rules of civil procedure and evidence as are applied in North Carolina's courts. The result, not surprisingly, is that these cases take as long as some civil litigation, even though federal law is clear in setting an expectation that cases be resolved much

quicker. Meanwhile, the child is held in his or her current educational placement while the dispute is being resolved. While OAH may not be violating the letter of the law in taking so long to resolve these cases, it does violate the spirit of the law. Therefore, the Center recommends the following:

(1) The Office of Administrative Hearings should resolve due process hearings on a timely basis, with a goal of reaching a decision in the majority of these cases within the 45-day period established in federal law. Further, the Office of Administrative Hearings and the Department of Public Instruction should be required to report annually to the legislature's Government Operations Committee on progress in improving performance on this standard. Clearly, some cases will exceed the time limit due to special circumstances, and the law allows for these *where both parties agree*. But federal law and regulations indicate special education due process cases routinely should be resolved in 45 days. As mentioned above, North Carolina's Office of Administrative Hearings fails to meet this standard in 90 percent of its cases. Nearly a third of the cases (30 percent) take more than a year to resolve. Virtually every case should not be an exception to the rule.

It may be that some reforms will be necessary to speed the process. One possibility might be pursuit of modification of the rules of civil procedure to give administrative law judges greater authority to place limits on discovery and the hearing. Yet another solution might be the creation of a special subdivision within the Office of Administrative Hearings to deal only with special needs disputes and thus expedite these cases. Most states resolve their special education disputes within education departments. North Carolina is unusual in that it uses its Office of Administrative Hearings. One positive feature of this system is that it creates a greater sense of impartiality. A negative is that

the process takes a great deal of time, which adds to the expense and frustration for all parties concerned. Rather than create a special subdivision, judges might consider using their existing discretion to speed the resolution of cases. Ultimately, however, performance must be improved.

Yet it also is readily apparent that the best way to avoid a long and time-consuming due process hearing is to resolve the dispute before it reaches the point that the two parties are ready to tear out each others' hair in frustration and are resolved to go to court. Of course, the best way to do this is at the school level, with a caring principal, teachers, and parents working together to meet the educational needs of the child. But above the school level, state and local education officials should provide a more fully developed continuum of options for solving the problem short of the Office of Administrative Hearings or court proceedings. Therefore, the Center also recommends the following:

(2) The Superintendent of Public Instruction and the State Board of Education should create a task force in 1999 that brings together representatives in the various dispute processes to evaluate options and make recommendations to the N.C. General Assembly and state agencies by the year 2000 toward the development of a continuum of dispute processes in North Carolina. The goal of the continuum to be developed by this task force would be to reduce the number of dispute process hearings by providing more opportunities to resolve conflicts before they reach the litigation stage. Models for such opportunities to resolve conflict abound. In the San Diego City Schools, parent facilitators are helping parents resolve conflict with educators before it reaches the stage that both sides are entrenched in position and more rigorous forms of dispute settlement are required. In Michigan, impartial review by an outside party has been used successfully to settle disputes. Mediation provides yet another option for preventing expensive and divisive due process hearings. In a study conducted for the U.S. Department of Education, at least seven states that collect data on mediation programs — Arizona, California, Colorado, Il-

linois, Massachusetts, Minnesota, and Vermont — reported high rates of conflict resolution (at least 80 percent). Information collected by the Minnesota Department of Education found that 96 percent of mediation participants in special education disputes would use mediation again and would recommend it to others.

A continuum for North Carolina would place preventive measures at one end of the spectrum — such as encouraging better communication between parents and educators. At the other end would lie due process hearings and civil litigation. In between? Formal complaints to the Department of Public Instruction, impartial review, mediation, dispute resolution, and arbitration. The objective would be to have as few complaints as possible reach the due process and litigation side of the continuum. Should this objective be realized, there is potential for saving parents, educators, and taxpayers considerable expense and frustration. But the ultimate beneficiaries will be North Carolina's children with special needs if disputes involving their education are resolved more amicably, quickly, and effectively.

The task force should include representatives of the Office of Administrative Hearings, the Department of Public Instruction, hearing officers, disability advocates and lawyers, school district lawyers and directors of special education, principals, teachers, parents, and representatives of the mediation and alternative dispute resolution centers. Such a task force should commission research, gather information, carefully evaluate the options for improving the dispute resolution process, and then make recommendations to the N.C. General Assembly by the year 2000 where legislation is required and to the Office of Administrative Hearings and the Department of Public Instruction where simple changes in agency policy will suffice.

The task force should seriously consider stepping up North Carolina's efforts in parent facilitation, conflict resolution, and mediation. Results of the task force's recommendations should be monitored, and a report evaluating effectiveness given to the State Board of Education three years after implementation begins.

—Mike McLaughlin

Response to the Center's Article on Special Education Disputes in North Carolina

Thank you for providing the Office of Administrative Hearings an opportunity to comment on issues raised in the preceding article on special education disputes in North Carolina. For the last several years I have been involved in special education dispute resolution in the Office of Administrative Hearings. It is a topic of great interest to me. Beyond its personal relevance to me, it is, more importantly, a topic of great interest to many of our citizens, particularly those struggling with children with special needs in the public school systems of our state.

As with any policy which affects the public interest, the first inquiry must always be how well is the public being served under the existing federal and state law. Defining the public interest is a difficult task because it involves striking a balance between competing interests. The public is served where agencies are responsive to and correctly implement the public policy; the public also is served where agencies ensure that only those citizens who qualify for public services actually receive them. It is particularly important to maintain this balance in the field of special education.

IDEA (Individuals With Disabilities Education Act), the implementing Code of Federal Regulations and North Carolina's Special Education Act (Article 9 of Chapter 115C of the General Statutes) enunciate Congress' and the General Assembly's special education public policy. This legislation provides extremely broad-based remedies (entitlements) which can literally amount to the transfer of thousands of dollars from a school system to parents for the benefit of their children with special needs. All of us long for the paradigm of simplicity contained in the original special education legislation. These statutory procedures contemplated a very simple informal hearing. However, the remedies granted to litigants under these laws also provided the source of a much more formal structure.

The concept of a simple due process procedure in special education cases is reflected in the 45-day rule. The 45-day rule suggests to the state agencies that are involved in the special education due process litigation that a final decision should be issued in 45 days from the filing of the petition and that the hearings should be completed in 30 days, giving 15 days to write the decision. This provision applies to all states. In North Carolina, like several other states, a central hearing agency, which has no connection to the state education agency, conducts the administrative hearing. Federal law requires that no employee of a state education agency can serve as a hearing official. North Carolina's regulatory scheme of administrative hearings which was finally put in place through Article 9 of Chapter 115C was a result of a compromise reached after protracted federal litigation. Although the 45-day rule was a well-intended and a laudable goal of due process, I have found that this is a very difficult requirement to meet in today's legal environment. The failure to consistently meet the 45-day rule does not rest with the administrative law judge who presides at the hearing. All of the special education cases in the Office of Administrative Hearings are calendared for hearing within the required time limit. The administrative law judge is routinely prepared to conduct the administrative hearing within that time requirement. I am aware of no judge who has on his or her own motion requested that this time period be extended. The extensions have always been at the request of a party or their representatives and nearly always with the consent of both attorneys in the case. The Code of Federal Regulations, 34 CFR 300.512 (c), specifically provides that this 45-day rule may be waived upon a meritorious request and because of its importance, I will quote the regulation: "A hearing or review officer may grant specific extensions of time beyond the period set out in paragraph (a) and (b) of this section at the request of either party."

What then causes the delay? In my opinion the delay is spawned by the complexity of the administrative hearing and the complexity of the administrative hearings is spawned by the magnitude of the monetary relief in these administrative hearings. Essentially, the complexity arises from three sources: (1) prehearing discovery, (2) expert witnesses, and (3) reimbursement of parents' attorney's fees. By analogy to tort litigation in the civil courts, very little prehearing discovery or expert witnesses are utilized in litigation where the relief sought is minimal. However, the Rules of Civil Procedure which permit discovery and expert witnesses are available at all Civil Superior and District Court litigation and even from appeals to the District Court from the Small Claims Division. But, where there is little monetary value, my experience has been that there is very little discovery requested in these types of cases. However, in any case where there are large sums of money involved in any type of litigation, the parties will seek and demand prehearing discovery. This phenomenon is also true in administrative litigation. Not all administrative litigation involves significant monetary remedies. Many cases tried in OAH, particularly hospital certificate of need, environmental cases, public employment cases and others do involve substantial amounts of monetary relief. Significant monetary relief is also available in special education litigation, not only in the remedy that the parents are seeking, but also in the provision in the federal law that permits the recovery of attorney's fees.

Recently, some have speculated that the monetary value of certain special education cases that have been tried in the Office of Administrative Hearings have ranged in value from one hundred thousand to over one million dollars. To provide for dispute resolution procedures for this type of monetary relief under very relaxed rules of procedure, does not meet the expectations of the litigants; however, it is possible. Therefore, if the public policy of this state were to become that our citizens want resolution of these cases within the 45 days contemplated by the federal regulations, then the provisions for prehearing discovery, expert witnesses and attorney's fees, in my opinion, must be

modified or eliminated. Naturally, before such a measure is taken, an informed discussion should lead to a debate over the necessity for the value of prehearing discovery, expert witnesses, and attorneys' fees in all major litigation. The Rules of Evidence, the Rules of Civil Procedure and the Rules Governing Administrative Hearings were enacted to ensure that a hearing would be fair. Prehearing discovery, as you know, is designed to prevent "ambush" at the hearing and to assure that both sides have divulged relevant information to the other side so that neither side will be surprised during the litigation. With the free exchange of information prior to hearing, there will be a more orderly presentation of evidence and the litigants will not be unduly surprised by information disclosed for the first time at the hearing. Most crucial in this disclosure is the need to depose expert witnesses in litigation so that both sides will know how the experts will testify at the hearing. Of course, these procedures were enacted to meet these objectives but meeting these objectives is not always what occurs in the litigation. As is the case with tort litigation, litigants abuse their discovery rights and drive up the cost and delay trials. Specifically, with special education, school systems and parents are often represented by some of the best lawyers in the state and to suggest to these lawyers that they cannot engage in prehearing discovery or that they cannot review documentary evidence prior to trial or they cannot utilize expert witnesses is simply not consistent with other complex litigation. The same arguments for tort reform transfer to hearings in administrative forums. However, again, if the intent of the public policy is to reduce the amount of time in special education litigation, it can be accomplished with the enforcement of the 45-day rule. To reiterate a point made earlier, I have not found administrative law judges on their own motions continuing cases for no good reason. The lawyers in this type of litigation urge the judges for continuances and often for very good reasons.

One of my principle concerns since reaching the Office of Administrative Hearings has been to implement efficiency measures in administrative litigation. Implementing a case

flow management system is critical to serving the public's interest and due process. Normally, our goal at the Office of Administrative Hearings is to have a resolution of the administrative litigation within six months, which requires that the hearing be completed within 120 days and the recommended decision filed and the record transferred to the agency within that time frame. The 45-day rule for special education cases requires that we provide a differentiated case management system for special education cases. As far as I am aware, the Office of Administrative Hearings, within the last five years, has never failed to calendar a special education case for hearing within the 45-day rule.

In addition to the efficiency measures implemented as described in the article, this office has been recognized nationally for its system and has participated in a national study sponsored by the American Bar Association and the National Center for State Courts. This study involved delay reduction and cost reduction in all courts across the United States. OAH was the only general jurisdiction administrative law forum in the United States selected for participation in this study. North Carolina's OAH has made valuable contributions to this study and also is consistently operating within the American Bar Association's Time Standards for Disposition of Civil Cases. In your recommendation for more expeditious resolution of special education cases, there is a hint in the language employed in this recommendation that OAH has been dilatory in its disposition of special education cases under the 45-day rule. I find this conclusion troubling in light of our long standing commitment to reducing delay in administrative litigation in this state.

OAH is not in control of the number of special education petitions that are filed in this one cause of action nor in the number of cases which reach hearing. However, I think upon examination of the statistical information as contained in this area of cases, you will see that the number of cases actually being litigated is fairly small in light of the total number that are filed (arguably even the total number of filings are small in comparison to the special education student population) and that, by and large, most of

these special education cases are withdrawn, settled by the parties, settled through mediation, or settled through an ALJ facilitator. The cases that are not settled often lead to a very complex and litigious hearing. Some of these cases have lasted two, three, four, and five weeks. But, these cases are an exception to the rule when considered in light of the total number of special education cases filed. So, how are these other cases which do not reach hearing resolved?

By statute, OAH can appoint certified mediators to all administrative law contested cases that are referenced to mediation. There are mediation expenses charged to the parents when a certified mediator is used because of the fees that are required to be paid directly to the mediator. We find that these fees are often objectionable to the parents in special education litigation; however, these mediators can be highly effective because of the settlement skills that are brought to bear by these trained individuals as evidenced by the success of mediation in civil litigation and in litigation before the Industrial Commission. The other path that OAH has followed is to provide certified mediation training to OAH's administrative law judges. All of the judges in this office have taken training in mediation and more than half of the judges have completed the 40 hour mandatory mediation training which is a prerequisite to certification. Under the ALJ system, the parents are not charged any fees and many of the cases are settled or withdrawn after conference with an ALJ. As your article discussed, new laws have provided for pre-contested case mediation. This office has also experimented with arbitration. OAH has in place alternative measures for trial under special rules which permit the lawyers to try cases in an abbreviated hearing procedure much like the procedures that govern the special business court in our state.

As you are probably aware, recently more than 25 special education cases were filed in OAH, all arising out of the Durham County School System. Again, this office is not in control of the number of special education petitions that are filed. If all of the 25 cases had been pushed into hearing under the 45-day rule, I am certain that the OAH administrative law judges

could have accomplished this assignment and issued 25 different decisions with multiple and extensive findings of facts and conclusions of law. In all likelihood, these cases would not have been tried with any degree of accuracy to support an informed decision for review by the officers at DPI and the judges in the Superior and Federal District Courts. This litigation, in my opinion, would have lasted for at least five years before there would have been final resolution in the courts. However, the cases were referenced to an ALJ Settlement Conference within the Office of Administrative Hearings and with the skillful work of the school officials, the parents and their attorneys, these cases were resolved prior to litigation and prior to hearing.

I am hopeful that you have reviewed the procedures that are in place in the Office of Administrative Hearings. I believe that these cases and the services that OAH is trying to render to the public are among the highest quality in the United States. My concern in the area of special education has been transferred to national forums. The National Association of Administrative Law Judges is sponsoring almost a full day of training at its National Conference in Portland, Oregon, this year on the issue of special education. The purpose of this training is to assist hearing officials and adjudicators throughout the United States, whether they are in central panels or in other organizations, to better equip them to deal with the complex issues that arise in these hearings. I have written to every state public education department in the United States asking them to send their hearing officials to this training and to see if the training might not be of some help to the hearing officials who are in the front line of this decision making process. Part of this training will focus on the issue surrounding the requirements of the 45-day rule.

In summary, like many other in this field, I am very concerned about disposition times. Some of the necessary delay which comes to these cases is to give neutral facilitators and lawyers an opportunity to find avenues of resolution. There is no better evidence of this than in the resolution of the cases which were filed in Durham County. However, I must assert that if every special education petition that is filed is

required to be in trial within 30 days (in certain cases, the trial would have to start on the day the petition is filed to be completed within that time frame), and the decision within 15 days, all the public is likely to receive is some very poorly prepared lawyers and some very poorly tried cases, all of which will result in a flawed decision.

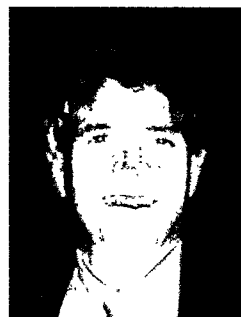
By acceding to an appropriate request from attorneys and parents, which again, is almost always with the consent of the parties, each case may be marginally delayed, sometimes no longer than two months, to permit adequate focus on complex issues and an opportunity to try to resolve them. However, if the General Assembly were to decide to adhere to a strict 45-day rule, then the exception for continuances found in the Code of Federal Regulations must be amended. Also, a great deal of the delay is found in prehearing discovery and in deposing expert witnesses. Serious consideration must be given to addressing whether these are appropriately needed in this complex litigation or whether they must be reduced or eliminated. Resolution often comes about after prehearing discovery because of a greater understanding of both sides of the case which is produced through discovery. I want to assure you that no matter what the ultimate recommendation is that is translated into public policy, this office is committed to the swift resolution of special education litigation.

Thank you for permitting us the opportunity to comment.

Very truly yours,

THE OFFICE OF
ADMINISTRATIVE
HEARINGS

By: Julian Mann, III
Chief Administrative
Law Judge



Special education decisions may be reviewed at the Office of Administrative Hearings website: www.STATE.NC.US/OAH.

Legal Issues Affecting People with Disabilities

by Anna Levinsohn and Ran Coble

In the spring of 1997, when Sam Stroud, a blind man, appeared in court for a custody hearing, Person County Judge Pattie S. Harrison ordered his seeing eye dog removed from court. The judge then ruled that Stroud must be accompanied by a sighted person whenever he visits his children. Shocked by the judge's behavior, Stroud said, "These were my civil rights and things like this can't happen in a court of law."¹ He brought suit against the judge claiming violations of his civil rights and of the Americans with Disabilities Act which guarantees access to public buildings for people with disabilities. Stroud later had his day in court and was allowed to have his dog in the courtroom. In addition, Stroud brought along three friends who also were accompanied by their guide dogs.²

Stroud's case is just one instance of discrimination. People with disabilities often have to wage legal battles to secure their rights. This is especially true for those receiving or in need of special educational services. Due to changes in state and federal legislation, the legal issues around special education have grown more numerous and complex

than ever before. There are more cases being brought to trial and more parties are involved in these trials. What follows is a summary of some of the more important issues in law and government currently facing people with disabilities.

Failure To Accommodate Students with Disabilities

When the Individuals with Disabilities Education Act (IDEA) was passed, it required that all states provide individuals aged 3 to 21 with a "free appropriate education"³ in the "least restrictive environment."⁴ Most special education cases are brought in order to determine if the public schools are fulfilling these federal regulations.

In Illinois, for example, a federal court ruled that the state had failed to monitor properly the Chicago school system's treatment of special education students and therefore was liable in charges of segregation of special education students. In his decision, Judge Robert W. Gettleman wrote, "The school system has repeatedly placed disabled students in 'separate and unequal educational environments,' and the Illinois state board abdicated its responsibility to force the district to change its procedures to comply with the federal law."⁵

Anna Levinsohn is a Center intern. Ran Coble is executive director of the North Carolina Center for Public Policy Research.

Under IDEA, states are required to supervise school districts to ensure they are following federal regulations. The Chicago school district had violated federal regulations by unnecessarily confining the majority of special education students to segregated classrooms and thus failing to provide the "least restrictive environment." The ruling stems from a class action lawsuit filed in 1992 against both the Chicago Board of Education and the Illinois State Board of Education. The Chicago board had settled its portion of the lawsuit in January 1998, agreeing to spend \$24 million to train teachers and to include more children with disabilities in the regular classroom. The ruling holding the state of Illinois liable will force other states to monitor their districts more closely for compliance with IDEA.

Universities also are being charged with not properly accommodating learning disabled students. The most noted case of late has been against Boston University, where President Jon Westling was widely criticized for his remarks about students with learning disabilities. The university was found guilty of violating the Americans with Disabilities Act by creating new regulations that made it more difficult for students to qualify for special services and was ordered to pay a total of nearly \$30,000 to six of the 10 students

who brought the lawsuit.⁶ However, the judge found that the university did not have to allow learning disabled students to substitute other courses to fulfill a foreign language requirement because the requirement is a vital part of the university's liberal arts curriculum. The most significant aspect of the judge's ruling involved the university's process of documenting a student's disability. She ruled that Boston's requirements were "'high hurdles' that created emotional and financial burdens."⁷ This ruling should result in less of an emphasis placed on documentation of a disability in order for a student to qualify for special services.

In North Carolina, these legal trends are reflected in the cases brought against the Durham County school system and allegations of violations of the Americans with Disabilities Act at North Carolina State University. The Durham County Public Schools recently settled 21 of the more than two dozen lawsuits pending against its special education department. Ironically, one of the parents who sued, Regina George-Bowden, recently became a member of the Durham County school board. Some board members had voiced concerns that this represented a conflict of interest. Other lawsuits were brought by parents who charged that the schools failed to educate their special needs stu-

Disabled characters shaped by the old moral and medical models of representation have filled the stage for generations. . . . Consider the ease of signaling Good vs. Evil by the addition of a hook, peg leg, or eye patch. Introductory guides to screenwriting actually counsel fledgling authors to give their villain a limp or an amputated limb. The seductive plot possibilities of the medical model with its emphasis on overcoming and cures are irresistible in creating [conventional] dramatic structure. . . . The medical model also serves as terrific PR for one of the most powerful American myths: the rugged individual who pulls himself up by his own bootstraps. . . . We Americans want our characters to exist outside the forces of history and economics, making it easier to fix things and achieve a happy ending, which, in the case of disabled depiction, translates into the cheerful cripple who overcomes all obstacles by sheer willpower.

—VICTORIA ANN-LEWIS

QUOTED IN *STARING BACK — THE DISABILITY EXPERIENCE FROM THE INSIDE OUT*

dents as required under the law. Some parents sought reimbursement for the cost of sending their children to private school.

In a settlement agreement, the parents of 21 of these students accepted an award \$105,000 in exchange for dropping their claims. The Durham Public Schools did not admit liability in the agreement, but did agree to continue through December 1998 the operation of a superintendent's task force studying issues involving children with special needs.

In a February 11, 1998, letter sent to university officials, Joy Weeber, a disabled student activist, charges that North Carolina State University has committed several violations of the Americans with Disabilities Act, and has been lax in providing services to its disabled students. She specifies NCSU's lack of computer facilities for the vision impaired and failure to perform a self-evaluation of university compliance with ADA, which Weeber says should have been carried out by 1992.⁸ Although Weeber singled out NCSU in her letter, she writes, "While my experience has only been on one campus, communications with disabled people on other campuses in the system have confirmed that such problems are not confined to NCSU."

In response to Weeber's claims, N.C. State University issued a statement saying, "The university spends more than \$1 million each year—including staff salaries—to modify facilities and programs to accommodate students and others with disabilities. . . . Technologies and services on campus and for distance learning are evaluated on a case-by-case basis to ensure that students who request and need accommodation have access to all of the university's educational programs. N.C. State widely disseminates information throughout the campus community addressing its services for students, staff and others with disabilities and responds to each individual request. To our knowledge, all students with vision or hearing impairments who have requested accommodations have received the assistance necessary to access our programs. In addition, the university adds software to equipment in our computer laboratories to serve our students as needed." University officials also indicated that a full-time position of ADA Coordinator, which will be filled by the end of 1998, has been created ". . . to focus exclusively on the coordination of all disability services."⁹

Weeber questions whether the university has adequately addressed the issue of whether North Carolina State University's computer laboratories

are accessible to visually impaired students. "No blind student can walk into even one lab and expect to be able to do their work, as seeing students do," she says. "This is systemic discrimination that requires systemic change. The fact that they claim a 'case-by-case' response denies the systemic intent of the law and is grounded in the medical and charity model of disability—'Of course we will help you, the handicapped person, with anything we decide you need!'"

Shortage of Certified Special Education Teachers

Another obstacle that prevents schools from successfully meeting the needs of special education students is the need for more certified special education teachers. The recent reauthorization of the Individuals with Disabilities Education Act partially helped to ease the burden on schools seeking to fill special education vacancies. Schools in areas with shortages are now allowed to hire the most qualified people who are working toward certification, and the new hires have up to three years to obtain their certification.¹⁰ The federal government also has made discretionary funds available for states to write certification standards corresponding to other states' standards. Presently, states have widely differing requirements for certification, and this would make it easier for special education teachers to move from state to state. However, these provisions cannot help create more qualified teachers, and special education students continue to suffer because of this shortage.

In North Carolina, very little special education training is required of regular classroom teachers. General education teachers are required to have coursework only in learning disabilities, just one area of special education, in order to receive certification. This may cause problems both in identifying and teaching special needs students. One parent of a child with moderate to severe learning disabilities writes, "Children with learning disabilities are mainstreamed for the most part, and I think this is as it should be. However, I have found that classroom teachers are not prepared to teach children with learning disabilities. Our family has by now invested thousands of dollars in private learning consultants to help me understand the problem so that I could teach the teachers how to teach my daughter or for them to provide consultation directly to teachers. . . . The consequences of this inadequate preparation for teachers are severe. It has been my experience

that teachers fail to recognize or believe that a child's failure to learn is because of learning problems. Instead, they act on a belief that if the child will just work harder, [he or she] will succeed. Only after many failures which crush the child's spirit does the teacher become open to learning that all children do not learn the same way."¹¹

A study which appeared in *Exceptional Children*, a special education research journal, on the use of instructional aides presents evidence to support parents' dissatisfaction.¹² The study found that general education teachers often put untrained instructional aides in charge of the curriculum and instruction of the special education students who have been mainstreamed into their classroom. This causes the students to become segregated from the class and defeats the goal of mainstreaming students. An investigation of the Durham County Public Schools revealed that 18 special education classes exceeded the state specified number of students as of May 7, 1998, and the schools were employing 10 teachers who were not certified to work with special education students.¹³ The school stated these problems had arisen from a lack of special education teachers and growing numbers of special education students, but they were working to correct the situation by increasing efforts to recruit special education teachers and predict areas of special education where more teachers would be needed in the future. Until schools find better ways to cope with the shortage of qualified special education teachers, parents will continue to be dissatisfied, and some will attempt to resolve their dissatisfaction in court.

Discipline for Special Education Students

One issue that has parents, policymakers, and educators equally perplexed is the law pertaining to the disciplinary process for special education students. Federal laws state that a disabled student can be suspended for no more than ten days or sent to an "appropriate interim alternative educational setting" for not more than 45 days if the student is found to be in possession of weapons or drugs or determined by an administrative law judge to be a danger to himself or others.¹⁴ Due to the high cost and difficulty of locating an alternative educational setting, many special education students are quickly returned to their home school even for an offense as serious as drug or weapon possession.

According to Gene Adams of the student due

process office for the Wake County Public Schools, long-term suspensions were recommended for 259 special education students during the 1997-98 school year. Of that total, 156 suspensions were found by a multi-disciplinary team to be related to the child's disability and in each case the child was readmitted to school with an adjustment to his or her special education program.¹⁵ All of the students, including those suspended, were offered alternative special education services.

This can create a double standard for disciplining students since regular education students can be suspended with no obligation to provide educational services for these students while they are on suspension, though Adams points out that many schools do offer alternatives to prevent students from falling behind in their classwork. The difference in disciplinary standards and the obstacles the law poses for educators trying to ensure the safety of their schools is troubling to many educators and policymakers. Some school systems, including Wake and Durham Counties, have registered formal objections to the federal regulations, but it remains to be seen whether the law on which the regulations are based will be changed. Most advocates for special education students disagree with the schools' position, saying that suspending any student's education is wrong, and alternatives should be provided for both general and special education students.

Identifying Students with Disabilities

Many lawsuits now are being brought against schools for failure to identify and evaluate students believed to be disabled. In one example, the Mount Lebanon, Pa., school district recently settled a suit by awarding \$300,000 to the parents of a former student with visual and neurological impairments.¹⁶ The parents charged that the school failed to evaluate their child as disabled and held the school responsible for the cost of sending the boy to private school. The attorney for the school stated that the school chose to settle because of procedural mistakes that had been made, although she contended that the services provided to the student were excellent.

In California, a federal court granted permission for students in the Ravenswood City School District to sue the district for violations of special education laws.¹⁷ Among other allegations, the students charge that the school did not provide proper evaluations and did not identify students for special education services. The group also plans to

include the state of California in its suit for not enforcing federal regulations.

National figures show wide discrepancies in the number of students identified as eligible for special education services among various school districts. There are also wide differences in identification of special needs students by state. For instance, Hawaii identifies only 8.6 percent of its

population for special education, while Massachusetts identifies 17.2 percent. (See Table 1 below.) Some see a pattern of identifying more children in affluent school districts than in poor districts that can afford little by way of special services. Joetta L. Sack, writing in *Education Week*, compares the Compton, Calif., school district with the Greenwich, Conn., school district.¹⁸ In Compton, an

Table 1. Percentage of Special Education Students by State, 1995-96.

State	Percent of Students	State	Percent of Students
Alabama	13.2%	Montana	11.1%
Alaska	13.8	Nebraska	13.5
Arizona	10.2	Nevada	10.6
Arkansas	11.9	New Hampshire	13.0
California	10.2	New Jersey	16.5
Colorado	10.6	New Mexico	14.4
Connecticut	14.7	New York	14.0
Delaware	14.4	North Carolina	12.4
District of Columbia	8.8	North Dakota	10.4
Florida	14.3	Ohio	12.4
Georgia	10.3	Oklahoma	11.6
Hawaii	8.6	Oregon	12.3
Idaho	9.8	Pennsylvania	11.8
Illinois	13.2	Rhode Island	16.7
Indiana	13.7	South Carolina	13.4
Iowa	13.1	South Dakota	10.7
Kansas	11.6	Tennessee	14.1
Kentucky	12.6	Texas	11.8
Louisiana	11.4	Utah	11.0
Maine	14.9	Vermont	10.6
Maryland	12.5	Virginia	13.1
Massachusetts	17.2	Washington	11.2
Michigan	11.5	West Virginia	15.1
Minnesota	11.8	Wisconsin	12.2
Mississippi	13.2	Wyoming	12.6
Missouri	13.6		

Source: U.S. Department of Education.

impoverished area, only 8 percent of students are classified as disabled whereas in Greenwich, a wealthy suburb of New York City, more than twice that percentage are classified as disabled.

Such discrepancies raise troubling issues. Are some districts over-identifying students and incorrectly placing damaging labels on them that will last throughout their school years? Are large numbers of students going undiagnosed who really need special education services? Are districts that over-identify students devoting too many resources to special education at the expense of students in the regular classroom?

Despite clear discrepancies in the identification of special needs students according to wealth in school districts across the nation, no clear pattern emerges for North Carolina. (See Table 2 below.) Indeed, the state's wealthiest county, Mecklenburg, has identified a lower percentage of special education students than Hoke, its poorest county. Hoke identified 15.1 percent of its average daily membership as needing special education services for the 1996-97 school year, while Mecklenburg only identified 9.8 percent. Among the state's five poorest counties, only Warren identified a relatively low percentage of special education students. Yet Warren's 12.1 percent identification rate was similar to the 13.1 percent of students receiving special education services in Wake, the state's second richest county on a per capita income basis.

While under-identification of special needs students may be a problem in some high-poverty areas, critics of special education programs also point to over-identification of African-American students, usually for behavioral disabilities. It long has been a contention in special education that minority children are more frequently referred to special education because of cultural misperceptions. In the Wake County schools, for example, 60 percent of students classified as having behavioral disabilities are African-American, and almost 70 percent of the students in classes for those with mild mental disabilities are African-American, while African-Americans make up only 26 percent of all students.

At a May 1998 public meeting in Raleigh conducted by officials from the U.S. Department of Education and its Office of Civil Rights, parents stated that a lack of diversity training led teachers to unnecessarily refer African-American children to special education classes, and the low quality of these classes prevents the children from advancing academically.¹⁹ Officials are evaluating Wake County as part of a larger review process that includes other states. If evidence of racial bias is found, they will work with school officials to resolve those issues. Jack Nance, director of special education for Wake County schools, says the review was not in response to any charges or formal complaints, and he believes the issue is economic

Table 2. Comparison of Percentage of Special Education Students in North Carolina's Five Wealthiest Counties and Five Poorest Counties

N.C.'s Five Wealthiest Counties	Percentage of Special Education Students	N.C.'s Five Poorest Counties	Percentage of Special Education Students
1) Mecklenburg	9.8%	100) Hoke	15.1%
2) Wake	13.1	99) Tyrrell	15.5
3) Forsyth	12.4	98) Warren	12.1
4) Guilford	13.3	97) Cherokee	17.7
5) Orange	17.4	96) Yancey	13.7

Source: Calculations for percentages of special education students based on figures supplied by the North Carolina Department of Public Instruction. Wealth rankings for North Carolina counties are based on 1995 per capita income figures provided by the Labor Market Information Division of the North Carolina Employment Security Commission.

rather than racial. "More poor people tend to be over-identified in every 'bad' category," Nance says. "People with resources get other labels put on themselves."

The High Cost of Special Education Programs

A major source of litigation in the special education field is money — or rather the lack of it. The costs of special education programs have been soaring to new levels, and the funding for these programs has not increased at the same pace. In Michigan, 84 school districts received \$211 million from the state after winning a lawsuit brought 18 years ago.²⁰ The school districts had sued the state for failing to fund their special education programs sufficiently. However, districts say that this is only a portion of the amount they would have received if the state had paid its full share all along. A second lawsuit filed by the school districts charged the state of Michigan with continuing to underfund special education but was rejected by a state appeals court, so the districts' struggle to receive adequate special education funding has not yet ended.

School systems that have a large population of special education students also are struggling with the large financial burden this imposes on the schools. Massachusetts, which long has drawn praise for its special education programs, attempted to revise its special education laws by giving local school districts more flexibility in choosing placements for special education students.²¹ Massachusetts's special education program is very costly because more than 17 percent of students aged 3 to 21 are identified as disabled. Those in favor of the changes say the current system allows even those with mild disabilities to be classified as disabled and thus receive special services, which takes money away from more severely disabled students. The state withdrew its proposal to revise its special education laws after drawing criticism from lawmakers, parents, and advocacy groups but plans to carry out a study to see how changes in the law would affect special education students.

At the university level, schools are clashing with states over costs related to special education. Since the passage of the Americans with Disabilities Act in 1990, some states have argued that the act relieved them of paying for auxiliary services for disabled college students who also participate in state-run vocational rehabilitation programs.²² However, the U.S. Department of Education holds that the Rehabilitation Act of 1973 still requires

states to pay for clients of vocational rehabilitation programs. With the costs of providing services to disabled students skyrocketing, underfunded state agencies are searching for any way possible to cut expenses. One way is to pass on costs to universities. The U.S. Education Department began looking into the issue after receiving a letter from university officials claiming that 30 state agencies are refusing to make payments to universities. Meanwhile, disabled students have become caught in the disputes between state vocational rehabilitation agencies and universities over too few dollars. Many educators and advocates worry that universities will stop recruiting disabled students if they have to pay for auxiliary services.

Related Educational Services Versus Medical Services

Distinguishing between related educational services and medical services is another area of special education funding that has become a source of legal conflict. Under the federal Individuals with Disabilities Education Act, schools currently are exempt from paying for medical services, but they are responsible for related educational services, which can include school health services that facilitate a child's education.²³ A case has been brought before the U.S. Supreme Court to determine whether a school in Iowa is responsible for paying for a full-time nurse for a student who uses a ventilator and bladder catheterization and requires constant medical attention after being paralyzed from the neck down in a motorcycle accident. A federal court recently had ruled that because a doctor was not providing the services, they qualified "as supportive services necessary to enable him to enjoy the benefit of special education."²⁴ Yet, the U.S. Department of Education stated in a letter to an Illinois district that most federal courts have distinguished between medical and related services on the basis of whether the care required was constant or intermittent.²⁵ The U.S. Supreme Court was expected to hear the case in November 1998.

The Waiting List in North Carolina

In North Carolina, scarce funding for the needs of special education students and others with disabilities has manifested itself in a number of ways. One of the most glaring problems is the waiting list for services for people with developmental disabilities. Families across North Carolina have been waiting years to receive services offered by

**Table 3. Number of People on Waiting List for Services
by N.C. Area Mental Health Program, October 1998.**

Area Programs	Number of People on Waiting List
Alamance/Caswell	121
Albemarle (Camden, Chowan, Currituck, Dare, Pasquotank, Perquimans)	66
Blue Ridge (Madison, Buncombe, Mitchell, Yancey)	337
Catawba	148
Center Point Human Services (Davie, Forsyth, Stokes)	311
Cleveland	202
Crossroads (Iredell, Surry, Yadkin)	166
Cumberland	184
Davidson	176
Duplin/Sampson	65
Durham	113
Edgecombe/Nash	97
Foothills (Alexander, Burke, Caldwell, McDowell)	228
Gaston/Lincoln	290
Guilford	408
Halifax	163
Johnston	35
Lee/Harnett	108
Lenoir	99
Mecklenburg	321
Neuse (Carteret, Craven, Jones, Pamlico)	117

Area Programs	Number of People on Waiting List
New River (Alleghany, Ashe, Avery, Watauga, Wilkes)	111
Onslow	379
Orange/Person/Chatham	274
Piedmont (Cabarrus, Rowan, Stanly, Union)	241
Pitt	94
Randolph	50
Roanoke/Chowan (Bertie, Gates, Hertford, Northampton)	64
Rockingham	14
Rutherford/Polk	56
Sandhills (Anson, Hoke, Montgomery, Moore, Richmond)	153
Smoky Mountains (Clay, Cherokee, Graham, Haywood, Jackson, Macon, Swain)	237
Southeastern Area (Brunswick, New Hanover, Pender)	299
Southeastern Region (Bladen, Columbus, Robeson, Scotland)	222
Tidelands (Beaufort, Hyde, Martin, Tyrrell, Washington)	77
Trend (Henderson, Transylvania)	185
Vance/Granville/Franklin/Warren	103
Wake	691
Wayne	76
Wilson/Greene	137
Total:	7,178

Source: North Carolina Developmental Disabilities Consortium, Raleigh, N.C. Care of Easter Seal Society of N.C., 2315 Myron Drive, Raleigh, NC 27607. Phone: (919) 783-8898.

the state to assist people with developmental disabilities. These services are designed to help the developmentally disabled remain in their communities rather than going to an institution away from home. However, due to a lack of funds, North Carolina's waiting list is the sixth longest in the country and some families have been waiting for more than two years. (See Table 3.) One family of a 29-year-old mentally handicapped man has been waiting for seven years for its request for limited assistance to be met. The services requested vary from physical or occupational therapy to residential care and respite services. All of these services can make a huge difference in the quality of life for families and individuals with developmental disabilities. Karla Ewald, director of the Association of Retarded Citizens in Greensboro, says, "These are life essential needs. They are not frills or extras. They are the basics — a place to live, a place to work."²⁶

The North Carolina Developmental Disabilities Consortium, a coalition of 37 advocacy organizations, has begun a campaign to educate people about the needs of those on the waiting list and to push the General Assembly for additional funds for the program.²⁷ The campaign has had some success as Governor Hunt's proposed budget and the 1998 House budget allocated \$12 million in additional funds to ease the \$30.9 million backlog in services for the developmentally disabled.²⁸ The final budget included the additional \$12 million. Michelle Cotton, of the Mental Health section of the North Carolina Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, attributes the extra money in the budget to the efforts of the consortium and other advocacy groups. However, Cotton, whose agency oversees the wait list, says that it only will be a start in meeting the needs of those on the waiting list.

The number of legal battles over special education and other issues involving people with disabilities shows no sign of decreasing in the future. In order for this to happen, society must make a firm commitment to finding and funding new and successful ways to accommodate the needs of people with disabilities. The public schools are but one front in the battle. While they must work to improve the way they serve students with special needs, parents and advocates also must realize that schools are attempting to meet the disparate needs of a large student population on a limited budget. ▢▢▢

FOOTNOTES

¹ Deidra Jackson, "Blind man wants another day in court — this time with his dog." *The News & Observer*, Raleigh, N.C., August 2, 1997, p. 1A.

² Deidra Jackson, "Dog in court for hearing on dogs in court." *The News & Observer*, Raleigh, N.C., October 7, 1997, p. 1C.

³ 20 U.S. Code 33, Section 1412 (a)(1)(A).

⁴ 20 U.S. Code 33, Section 1412 (a)(5)(A).

⁵ As quoted in Joetta L. Sack, "Court Faults Illinois in Chicago Spec. Ed. Case." *Education Week*, Bethesda, Md., March 4, 1998, p. 7.

⁶ Jeffrey Selingo, "Judge Says Boston U. Violated Rights of Learning Disabled." *The Chronicle of Higher Education*, Washington, D.C., September 5, 1997, p. A65.

⁷ *Ibid.* at p. A66.

⁸ 42 U.S. Code 32, Section 204

⁹ Statement from Joe Sanders of N.C. State Public Affairs Office, August 12, 1998.

¹⁰ 20 U.S. Code 33, Section 1412 (a)(15)(C).

¹¹ Letter to Ran Coble, executive director of North Carolina Center for Public Policy Research. November 11, 1997. Name of author withheld to protect confidentiality.

¹² Michael F. Giangreco, "Helping or Hovering? Effects of Instructional Assistants' Proximity on Students with Disabilities," *Exceptional Children*, Vol. 64, No. 1, Fall 1997, pp. 7-18.

¹³ Michelle Kurtz, "Shortcomings found in special ed.," *The News & Observer*, Raleigh, N.C., July 21, 1998, p. 7B.

¹⁴ 20 U.S. Code 33, Section 615(k)(ii).

¹⁵ Figures supplied by Gene Adams, Wake County Special Education Department.

¹⁶ "Spec. Ed. Lawsuit Settled," *Education Week*, Bethesda, Md., June 3, 1998, p. 4.

¹⁷ Joetta L. Sack, "Federal Court Reinstates Spec. Ed. Suit Against State of Calif., School District," *Education Week*, Bethesda, Md., October 15, 1997, p. 12.

¹⁸ Joetta L. Sack, "Spec. Ed. Designation Varies Widely Across Country," *Education Week*, Bethesda, Md., June 24, 1998, p. 1.

¹⁹ Todd Silberman, "Federal officials hear concerns of special-ed bias," *The News & Observer*, Raleigh, N.C., May 13, 1998, p. 1B.

²⁰ Robert C. Johnston, "Mich. Districts Chart Course After Spec. Ed. Rulings," *Education Week*, Bethesda, Md., June 24, 1998, p. 22.

²¹ Joetta L. Sack, "Lawmakers Advance Proposal To Change Mass. Special Ed. Law," *Education Week*, Bethesda, Md., January 21, 1998, p. 22.

²² Jeffrey Selingo, "States and Colleges Wrangle Over Paying for Services to Disabled Students," *The Chronicle of Higher Education*, Washington, D.C., June 19, 1998, p. A37.

²³ 20 U.S. Code 33, Section 602 (22).

²⁴ *Cedar Rapids School District v. Garret F.*, 106 F.3d 822 (8th Cir. 1997).

²⁵ Mark Walsh, "Supreme Court Agrees to Hear Spec. Ed. Case," *Education Week*, Bethesda, Md., May 27, 1998, p. 1.

²⁶ Teresa Killian, "Arc officials move to cut waiting time," *Enterprise*, High Point, N.C., June 26, 1998, p. 1B.

²⁷ Gayle Butzgy, "Families seek help for their children," *County Lines*, N.C. Association of County Commissioners, Raleigh, N.C., May 27, 1998, p. 5.

²⁸ Senate Bill 1366 (the 1998-99 budget bill), section 2. Wade Rawlins, "House rolls out budget proposal," *The News & Observer*, Raleigh, N.C., July 21, 1998.

Prayer for the Children

*We pray for children
Who sneak popsicles before
Supper,
Who erase holes in math
Workbooks
Who can never find their
Shoes.*

*And we pray for those
Who stare at
Photographers from
Behind
Barbed wire,
Who can't bound down the
Street in a new pair of
Sneakers,
Who never "counted potatoes,"
Who are born in places we
Wouldn't be caught dead,
Who never go to the circus,
Who live in an X-rated
World.*

*We pray for children
Who bring us sticky kisses
And fistfuls of dandelions
Who hug us in a hurry and
Forget their lunch money.*

*And we pray for those
Who never get dessert
Who have no safe blanket
To drag behind them,
Who watch their parents
Watch them die,*

*Who can't find any bread
To steal,
Who don't have any rooms
To clean up,
Whose pictures aren't on
Anybody's dresser
Whose monsters are real.*

*We pray for children
Who spend all their
Allowance before Tuesday
Who throw tantrums in
The grocery store and pick
At their food,
Who like ghost stories,
Who shove dirty clothes
Under the bed,
And never rinse out the tub,
Who get visits from the
Tooth fairy,
Who don't like to be kissed
In front of the carpool,
Who squirm in church or
Temple and scream in the
Phone,
Whose tears we sometimes
Laugh at and whose smiles
Can make us cry.*

*And we pray for those
Whose nightmares come in
The daytime,
Who will eat anything,
Who have never seen a
Dentist,
Who aren't spoiled by
Anybody,
Who go to bed hungry and
Cry themselves to sleep,
Who live and move, but
Have no being.*

*We pray for children who
Want to be carried
And for those who we
Must,
For those we never give up
On and for those who
Don't get a second chance.*

*For those we mother . . . and
For those who will grab
The hand of anybody kind
Enough to offer it.*

—AUTHOR UNKNOWN

SOURCE: THE HUNT ALTERNATIVES FUND, DENVER, COLO.

From Institutions to Communities:

WILL MORE DOLLARS FINALLY FOLLOW SPECIAL NEEDS CHILDREN TO THE LOCAL LEVEL?

by S.D. Williams



Karen Tam

Summary

Children with special needs require a broad range of services — from accommodations to keep them in regular school classrooms to institutionalization to meet psychological, social, or physical health needs. Costs vary greatly for these services, and the case of Dre Smith provides an example of the way expenses can escalate when a child's problems require high-level services in both community and institutional settings. While Dre's name has been changed to protect his identity, his family's challenges are very real.

For those children with difficulties as severe as Dre's, are there savings that can be realized through greater reliance on community-based programs? Is the community equipped to serve a child with needs as great as Dre's? The number of people served by community mental health programs in North Carolina grew thirty-four fold — 3,400 percent — from 8,196 to 277,043 between the years 1960–61 and 1996–97, a period during which the state's population grew by 61 percent. In 1960–61, community-served clients represented 26 percent of all people served by public mental health, developmental disability, or substance abuse services. In 1996–97, they represented 93 percent. Meanwhile, the number of persons receiving institutional care in state-operated facilities actually dropped during the 36-year period, from 23,327 in 1960–61 to 20,979 in 1996–97.

Yet community mental health programs — while serving 93 percent of clients — received only 57 percent of the \$1.4 billion spent for mental health services through the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services in the N.C. Department of Health and Human Services last year. Other imbalances exist, as well. Training schools accounted for 44 percent (\$40.1 million) of the budget of the department's Division of Youth Services, compared to the 43 percent share (\$38.9 million) allocated for community alternative programs. Taking out federal funds, the state actually spent \$39.4 million on the schools, and taking out federal, local, and other funding, the state spent only \$30.2 million on community services for almost 48,000 youth served. But training schools housed only 3.4 percent (1,930) of the 56,344 juvenile offenders served during the course of the year. The state's three schools for the deaf provide another good example. Twenty-two million dollars (78 percent) of the Division of Services for the Deaf and Hard of Hearing's \$28.1 million budget goes to North Carolina's three schools for the deaf, which serve less than one-third of the state's hearing-impaired students. For each deaf K–12 student at these schools, the cost is \$40,472 to \$42,159 annually, depending on which of the schools the student attends. Hearing-impaired students served in their home school districts typically are educated for less than half that amount annually. The 1996–97 state appropriation for the Governor Morehead School for the blind was \$7,764,000. It cost \$21,070 to educate a student there in 1997–98 — exclusive of residential costs. That's less than the per-student cost at the schools for the deaf, but still more expensive than the public schools. No attempt is made here to address the acuteness or severity of problems faced by persons served at the state institution or community level. Rather, the pivotal question is this: How can the state make sure that its funds more often support the needs of people rather than the needs of programs, and are sufficient dollars flowing to the community level where the majority of the clients are served?

Dre Smith (not his real name) has an enormous smile. In the family room of Greenhouse, the Durham group home in which the 12-year-old has been living, he jokes with staff and other residents, happy because he is about to visit his mother. As Dre jokes with staff and fellow residents, the counselor on duty has to remind him several times not to interrupt others and to keep his hands to himself.

The administrative director of the group home and Dre drive across town to a small white-framed house in a modest neighborhood. Dre leads the way inside and calls for his mother. Three of his brothers or half-brothers are in the living room, in which clothes are draped on hangers hooked over curtain rods and door frames so that they will dry in the warmth from the portable heater. The vinyl sofa upholstery is cracked with age and use, but the worn, rented room is clean, and the children are well behaved, at least for this visit. In one corner stand four Easter lilies in large pots wrapped in foil. They came from the funeral service for Dre's stepfather, who died of AIDS a week-and-a-half before.

Gladys (not her real name) walks slowly into the living room ten minutes after Dre and the director's arrival. She is a large woman in her early thirties who is simultaneously cautious and friendly. She is also tired. More than a year before, she had tested positive for human immunodeficiency virus (HIV), the cause of AIDS. Her husband, who had helped get her children off to school in the mornings after she left for her early-shift job in Research Triangle Park, had introduced her to intravenous drug use and the disease. She makes social small talk, then settles back and begins to tell Dre's story as one of the other boys leans against her legs and reads *Sports Illustrated for Kids*.

"I wish that when I asked for help with Dre when he was a lot younger somebody had taken me seriously," Gladys says, adding that she had told a case worker at the Durham County Department of Social Services about Dre's behavioral problems. "He had meningitis as a three-day-old baby, and I've often wondered if that was where his problem started."

Dre sometimes seemed simply out of control as a baby and toddler, different from Gladys' other children, although he could be loving and attentive also, as he is on this day. Occasionally he

interrupts his mother's story to talk about a girl he's met on the school bus.

In 1990, as a rising first grader, Dre was accepted into Fast Track, a study under way at Duke and three other universities funded by the U.S. Department of Education, the National Institute of Mental Health, and the Center for Substance Abuse Prevention. The project attempts to prevent violence, substance abuse, and school failure or dropping out through a variety of in-school and individual services for at-risk children. It continues to provide Dre with a mentor, tutoring, social and emotional skills training, family counseling, and consultations with teachers, among other things. The cost is estimated at \$4,000 per child per year.

Dre's propensity to act impulsively and aggressively, sometimes violently, led to outpatient therapy starting in 1994 at the Durham Child Guidance Clinic, a contract service provided by Duke University to Durham County. Dre is a Medicaid patient, and his family is able to pay little of the \$105 per hour that the clinic charges. He has been given diagnoses of Attention Deficit Disorder and Delayed Expressive and Language Disorder.

Meeting Dre's Special Needs in School

Also during his elementary school years, Dre was labeled Behaviorally-Emotionally Handicapped (BEH). This diagnosis and his language disorder give him access to special education services in the public schools through the federal Individuals with Disabilities Education Act (IDEA). He was one of 159,697 identified children with special needs in North Carolina in the 1997-98 school year, up 5 percent from 152,819 in 1996-97. (Because of statewide special education "head counts" during December and April of each school year, the number of special education students noted in this article are more current than the numbers of children being served by other programs. The latter are compiled after the end of each state fiscal year, which ends June 30). The group of special needs children in North Carolina "includes, without limitation, all children who, because of permanent or temporary mental, physical or emotional disabilities, need special education, are unable to have all their educational needs met in regular class without special education or related services, or are unable to be adequately educated in the public schools."¹ Children may receive special education services if they qualify for one or more of thirteen eligibility categories: autistic, behaviorally-emotionally handicapped, deaf-blind,

S.D. Williams is a former staff psychologist who worked at the Alcoholic Rehabilitation Center in Butner, N.C., and a former special education teacher at John Umstead Hospital in Butner.

hearing impaired, mentally handicapped, multi-handicapped, orthopedically impaired, other health impaired, pregnant, specific learning disabled, speech-language impaired, traumatic brain injured, and visually impaired.

According to Nancy Spencer, who was the director of special education in the Durham Public Schools until leaving in summer 1998, the Durham system had a special education budget of \$19,587,421 for 1997–98 and 4,253 qualified students on April 1, 1998. The Durham system thus averaged \$4,680 per student for the 1997–98 school year.²

Mardie Meany, section chief for policy monitoring and audit of the Exceptional Children Division of the Department of Public Instruction, says that the number of special education students in North Carolina has been growing at about 4 to 6 percent annually for several years. The rates of population growth for North Carolina's general population and its population of children have ranged between 1 and 2 percent during the 1990s.³

Meany offers several explanations for the disproportionate growth in the number of special needs students, although she is careful to note that these have not been documented through research:

- 1) Educators are doing a better job of identifying students in need of special education;
- 2) The increasing recognition of Attention Deficit Disorder (ADD) and its companion, Attention Deficit Hyperactive Disorder (ADHD), has given a credible psychological label to what were once thought of as simple behavior problems. ADD and ADHD are not categories under the federal IDEA legislation, however. Students with these disorders who receive special education services usually are classified in the "specific learning disability," "behaviorally-emotionally handicapped," or "other health impaired" category.
- 3) North Carolina's ABC accountability program provides an unintended incentive for schools to identify special needs students. Some of these children are exempt from taking state-mandated tests. Because schools receive a yearly report card based on the testing performance of their students, it is to the advantage of administrators and teachers to exempt low-achieving students from the process.
- 4) Finally, because of increased recognition of these special needs, the stigma attached to them has diminished, making more parents and children willing to come forward for help.

In 1997–98, says Meany, the federal government provided North Carolina \$488 per public school student aged 5 to 21 in special education.⁴ The state provided an additional \$2,248.39 for each of these K–12 students. Multiplying by the December 1, 1998, state head count, Meany says these figures come to \$437 million in direct state and federal funds for special education. Local funds and various state, federal, and private foundation or corporate grants can increase this figure significantly in local systems.

Dre was fortunate to attend school in a system that provided him an additional \$1,900 in services for the year. Some school systems (such as Alleghany, Clay, and Madison counties) provide no local funds at all for special education.

Public schools face a dilemma in dealing with special needs children like Dre. While most professionals in the schools have the best interests of special needs children at heart, they are under significant pressure to raise the academic performance of all students. Becoming better "counselors" while they are being told to become better educators will be extremely difficult for teachers. Penalizing schools for low achievement scores that result from educating significant numbers of special needs children only makes the burden greater.

Dre Is Placed in an Institution

Life for Dre started on a downhill slide in winter 1996–97. Gladys informed the children that she had become addicted to narcotics and had contracted HIV. It was a blow to the solar plexus of an already troubled family. "I know that's when Dre really started worrying," Gladys says. She turns to look at Dre, who has been sitting beside her on the sofa, talking softly about the girl he has met on the school bus, not like a disturbed child in another world but like a knuckle-headed boy hoping to get some attention. Now he quiets, and although he still wears a slight smile, he looks off thoughtfully. "Yeah," he says, "I worried."

His behavior went from bad to worse, and when he started middle school in the fall of 1997 at the Durham Arts Magnet, where he and his problems were new to the faculty and staff, things fell apart. His mother entered drug rehabilitation at a state institution in Butner, and Dre started lashing out in school, verbally and physically. He says that one day he finally broke down and told a teacher about his mother's addiction and HIV. The teacher called Dre's social worker. Ultimately, Dre's behavior led to involuntary commit-



N.C. Division of Archives & History

Dorothea Dix Hospital, main entrance, 1938

ment to the Children's Psychiatric Unit at John Umstead Hospital.

The police picked Dre up at the home of relatives, where he had been staying since his mother entered rehab. They brought him to the emergency room at Duke University Medical Center, and he struggled most of the way there and after arrival, so that he was put in a secure room. Given a meal, he threw his tray and food against the wall. His mother was in an institution and would probably die from AIDS, he feared, and his own problems spiraled out of control.

His psychiatric report noted "chronic neglect, chaos, and violence" in Dre's family. He was found to be a danger to himself and/or others, taken to Butner, and admitted to the Children's Psychiatric Unit at John Umstead Hospital.⁵

No one can be institutionalized as a result of a classification under the Individuals with Disabilities Education Act. The IDEA categories are simply the list of conditions that make one eligible for special education services. In some cases, such as for the deaf and the blind, eligibility can open the doors to state-operated residential schools. Dre's IDEA eligibility had nothing to do with his involuntary commitment, although once

hospitalized, he did receive special education services at the Children's Psychiatric Unit's Pine Valley School. Dre remained at the unit from September 12, 1997, until January 30, 1998.

John Umstead Hospital is one of several major state-operated facilities that serve either children exclusively or children and adults. These facilities include:

- four regional psychiatric hospitals (Broughton Hospital in Morganton, Cherry Hospital in Goldsboro, Dorothea Dix Hospital in Raleigh, and John Umstead Hospital in Butner)
- two schools for emotionally disturbed children (Wright School in Durham and Whitaker School in Butner)
- five youth-services training schools (C.A. Dillon School in Butner, Dobbs School in Kinston, Juvenile Evaluation Center in Swannanoa, Samarkand Manor in Eagle Springs, and Stone-wall Jackson School in Concord)
- three schools for hearing impaired children (Eastern North Carolina School for the Deaf in Wilson, Central North Carolina School for the Deaf in Greensboro, and N.C. School for the Deaf in Morganton)
- one school for visually impaired children (the

Governor Morehead School in Raleigh)

- five mental retardation centers (Children and adolescents are rarely served in these centers. They are Black Mountain Center in Black Mountain, Caswell Center in Kinston, Murdoch Center in Butner, O'Berry Center in Goldsboro, and Western Carolina Center in Morganton)

All of these are operated by divisions within the N.C. Department of Health and Human Services (DHHS). The state also operates a Willie M. facility at John Umstead Hospital — the Butner Adolescent Treatment Center and another at the N.C. Special Care Center in Wilson. (The Willie M. program, while structurally within DHHS, has an independent budget and presents a special case. Created as the result of a class action suit filed in 1979, the Willie M. program provides services for children with mental, emotional, or neurological disabilities and accompanying violent or assaultive behavior.) DHHS, rather than the Department of Public Instruction (DPI), runs the educational programs in all of these facilities, although DPI is responsible for overseeing their compliance with state educational requirements. The only funding coming from the Department of Public Instruction to these institutions' educational programs is the \$488 (1997-98) per child of federal money.

Dre's stay at the Children's Psychiatric Unit in late 1997 and early 1998 cost \$336 per day.⁶ Like him, 98 percent of children who are patients at the hospital have a special education as well as a mental health diagnosis.

The Psychiatric Hospital Debate

North Carolina's four state psychiatric hospitals have been the topic of debate for more than a generation, for both financial and clinical reasons. With the advent of psychiatric medication in the 1950s, the movement to treat people with mental illness in local communities grew. Community-based treatment was considered more humane and often more effective than the "warehousing" of patients in institutions. The desire to cut state budgets further fueled the deinstitutionalization trend, and while deinstitutionalization has been the accepted policy and the reality since the early 1980s, issues surrounding it continue to surface. A recent study commissioned by the N.C. General Assembly called for replacing the state's four psychiatric hospitals with smaller, less expensive facilities. The report also suggested that children should not

be treated in the hospitals.⁷ That suggestion prompted protests from numerous professionals.⁸ Nevertheless, the legislature acted on the report by appropriating \$2 million to plan a smaller but modern mental hospital on the Dorothea Dix Hospital campus in Raleigh and appropriating \$750,000 to the State Auditor's Office to study how the four psychiatric hospitals and 40 mental health centers can better work together to provide high quality services.⁹

According to Allan Spader, executive director of the North Carolina Council of Community Programs, North Carolina spent about \$1.4 billion for services through the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (MH/DD/SAS) of the Department of Health and Human Services in 1996-97. Approximately 57 percent of this went to communities, and the remainder paid for state-operated programs. (See Figure 1.)¹⁰

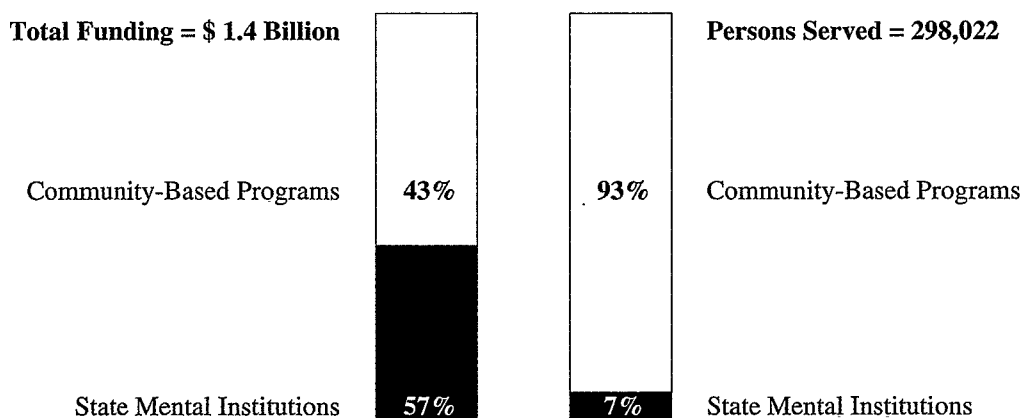
State and federal mental health funds flow through MH/DD/SAS to 40 area mental health, developmental disability, and substance abuse authorities (that administer the funds that cover all 100 counties), and thus to the state's community-based programs. Although local area programs received a larger direct state appropriation (\$296.3 million) in 1996-97 than did the four psychiatric hospitals (\$146.0 million), they served disproportionately more people, a trend evident in most services through MH/DD/SAS. The boards of the area authorities are appointed by county commissioners, and Spader's Council of Community Programs is the professional association of these authorities.

Mike Pedneau, director of Dorothea Dix Hospital in Raleigh, says that discrepancies in cost between institutions like state mental hospitals and community programs are to be expected because patients admitted to hospitals have more serious problems that require more expensive treatment. "Virtually all the adolescent admissions to the state hospitals occur following failure of community

"The real financial and clinical challenge for the state in years to come, lies in the number of people served in the community."

—ALLAN SPADER, EXECUTIVE DIRECTOR
N.C. COUNCIL OF COMMUNITY PROGRAMS

Figure 1. Proportion of Funding of State Mental Institutions and Community-Based Programs versus Number of Persons Served, 1996-97



Source: N.C. Council of Community Programs for total spending on mental health, N.C. Division of Mental Health, Developmental Disabilities and Substance Abuse Services for clients served in residential and community-based programs.

services to one degree or another," says Pedneau. "Most such failures occur because of the degree of acting out and dangerousness and/or the clinical complexity of the child's emotional disturbance." Pedneau draws the analogy of a patient receiving care at the office of a family practitioner's office versus a hospital. "Clearly, acute psychiatric inpatient care in both state and local public and private hospitals is going to be, and should be, more costly per person served. I dare say you or I would not expect to have a gall bladder removed, acute pneumonia treated, or a heart bypass procedure done in a physician's office."

The real financial and clinical challenge for the state in years to come, says Spader, lies in the numbers of people served in the community. As shown in Table 1, the number of people receiving institutional care at state-operated residential facilities has declined over 36 years: from 23,327 in 1960-61 to 20,979 in 1996-97. While the decline in actual numbers was small, it came at a time when the state's overall population grew by 61 percent. In 1960-61, approximately one-half of 1 percent of the state's population was served in these institutions. If that rate held true, the state facilities would have served 37,100 people in 1996-97 rather than

20,979. The small decline in absolute numbers at the facilities is only the tip of the iceberg in terms of the shift from institutional to community care. The facilities are serving a dramatically decreasing portion of the state's clientele.

The number of people served by area authorities grew thirty-four fold — 3,400 percent — between 1960-61 and 1996-97, from 8,196 to 277,043. In 1960-61, community-served clients represented 26 percent of all people helped by public mental health services in North Carolina; in 1996-97 they represented 93 percent. The number of children served annually by public mental health programs rose from 32,000 in 1992 to 58,000 in 1997, an average of about 5,000 per year. Before 1992, their number rose between 2,000 and 3,000 a year.¹¹

Who pays for community-based services? Funds come from a variety of sources, but the state picked up the largest share, 38.9 percent, in 1996-97. (See Table 2, p. 88.) Medicaid funding was a close second at 33.6 percent. Other federal funds, county appropriations, and miscellaneous other funds made up the remainder for a total of \$762.8 million in 1996-97. Medicaid requires the state to provide a match of approximately 35 percent for

Table 1. Number and Percentage of People Served by Community Mental Health and State Division of Mental Health, Developmental Disabilities, and Substance Abuse Services Institutions in North Carolina, 1960-61 to 1996-97

	People Receiving Institutional Care		People Receiving Community-Based Care		Total Persons Served
	Number	Percent of Total	Number	Percent of Total	
1960-61	23,327	74%	8,196	26%	31,523
1970-71	30,019	32	63,791	68	93,810
1980-81	25,658	13	171,712	87	197,370
1993-94	21,825	9	225,167	91	246,992
1996-97	20,979	7	277,043	93	298,022

Note: The figures for state-operated institutions include psychiatric hospitals, mental retardation centers, alcoholic rehabilitation centers, and other special care institutions.

Sources: Information provided to the author by Mark Botts, Institute of Government, University of North Carolina at Chapel Hill. Original sources: Data for FY 1960-61, 1970-71 and 1980-81 derived from *Strategic Plan 1983-89*, vol. 1, Quality Assurance Section, N.C. Division of Mental Health, Mental Retardation and Substance Abuse Services (Raleigh, N.C.: 1981), 39. FY 1993-94 figures provided by Deborah Merrill, Data Support Branch, N.C. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, memorandum to M. Botts, December 8, 1994. Data for FY 1996-97 from *North Carolina Area Programs Annual Statistical Report*, Management Support Section, N.C. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (Raleigh, N.C.: 1997).

its portion.¹² Traditionally, the Medicaid system has allowed North Carolina to count as its match state funds that were already being spent for a variety of reasons and on a variety of clients by the 40 local area programs. With a change in accounting procedures this year, however, the matching funds must be set aside as a direct match, which will result in a shortfall of state funds to non-Medicaid clients. The Council of Community Programs advocated for an additional \$38 million to make up for this shortfall, and the General Assembly adopted legislation to provide the required matching funds.¹³

Schools for Emotionally Disturbed Children

Although he was not referred, Dre might have been a candidate for Wright School, the North Carolina Reeducation Center. Located in

Durham, Wright School is a state-operated program. Officially, Wright School serves all of North Carolina, but because the program's five-day-per-week schedule can pose weekend transportation problems for families, according to Director Deborah Simmers, the students generally come "from Charlotte to close to the coast." Each of the approximately 75 children ages 6 to 13 that attends the school during the year arrives after "communities have exhausted all their resources and are at their wits' end," says Simmers. "We are a diagnostic setting — we're very good at identifying strengths and special needs," she says. "Our real job is to work closely with the home and local school, teaching parents management skills for dealing with these kids."

Most children who come to Wright School already have an IDEA label. All come for medical/psychiatric diagnoses, the most common of which are Attention Deficit Hyperactive Disorder and Bi-

polar (manic depressive) Disorder. The school is not run as a psychiatric unit, however. It focuses on social and educational skills. The goal for the children is not a "cure" but rather increased capacity to have success in their education and in social relationships in the community.

Simmers says her staff, which consists mostly of "teacher-counselors," begins conducting liaison work with each child's local school upon the child's admission. Ideally, each child would visit his or her regular classroom periodically during a Wright School stay. The reality is somewhat different. "The way the schools work is that, after the child has given up his desk, another student is often assigned to that class in our student's place. And often, instead of forging a stronger relationship with us, many schools say, in effect, bring him back when he's ready." She adds that schools are under increasing pressure from many quarters to raise overall performance and that any lack of attention to these children is unintentional.

Wright School's budget for 1997-98 was \$1,517,395. That breaks down to a cost of \$278.53 per day per bed.

Whitaker School, in Butner, offers similar

services for adolescents. It was established in 1979 as part of the *Willie M.* lawsuit settlement. In fact, the child Willie M. himself was treated there, but it has always treated other, non-Willie M. children as well.

"Our group tends to need longer term care than many troubled adolescents do," says Joseph Murphy, the school's executive director. "Children stay at the psychiatric hospitals for weeks, usually because they pose an imminent danger to themselves or others or there is some kind of crisis. Our average stay is eight months."

Whitaker, like Wright School, works to involve a child's community in his or her treatment. Numerous meetings are held with family, community mental health counselors, Willie M. and court counselors if applicable, and others. The program is more expensive than training school. Whitaker's 1996-97 budget was about \$2 million. That year, it treated 51 children, and Murphy placed the per-bed, per-day cost at \$250 to \$260. All of the funds are provided by the state, and in 1998 a proposal to close the school was discussed, then dropped, within the N.C. Department of Health and Human Services. In the 1998-99 state



Jim Bounds, The News & Observer

budget is \$250,000 to design a new, 33-bed Whitaker School.¹⁴

Murphy points to a recent study to emphasize the success achieved by Whitaker's long-term program. In 1997, groups of students who had been out of Whitaker for 6 months, 12 months, 18 months, or 24 months were contacted and interviewed. Averaging across these groups, 80 percent had not been in any new trouble with the law, 79 percent were continuing their education, and 87 percent had not been in any psychiatric or detention facility more restrictive than Whitaker.¹⁵

Youth Services

Dre is not in trouble with the law, but many of his contemporaries are. In 1987, there were 10,587 youths under the age of 16 arrested in the state; in 1996 there were 21,668, a 104 percent rise. (The state counted 15-year-olds in a 15-to-19-year-old grouping for general population purposes in the 1980s, so an accurate figure for the rate of population growth from 1987 to 1996 for children 1 to 15 cannot easily be ascertained, and thus the rate of rise in the general youth population cannot easily be compared to the rising rate of youth arrests. The general youth population certainly did not rise by

104 percent, however. The state's overall population grew by less than 17 percent from 1987 to 1996.)¹⁶ The rate of arrests per 1,000 juveniles has risen steadily for a generation, from a low of 6.48 in 1982 to an all-time high of 10.6 in 1996.¹⁷

The Division of Youth Services in the Department of Health and Human Services served 56,344 children with a budget of \$89.9 million in 1996-97. More than \$40 million (44 percent) of that budget went to the division's five training schools, which served 1,930 children. Twelve percent of the funding went to detention centers, which served 6,495 children. Just under \$40 million (43 percent) of the budget supported 47,919 children in a variety of community-based services, but some of that funding came from nonstate sources. The state's cost for community services was \$30.2 million. (See Table 3, p. 90.)

Only 3.4 percent of the children served by Youth Services spent any time in a training school. Asked why these schools used such a disproportionate amount of the budget, Richard F. Rideout, Youth Services' deputy director, replied, "We serve the overwhelming majority of these children in communities, but there are some whom the courts decide should be in training schools. Building, maintaining, and staffing facilities is simply expen-

Table 2. Mental Health, Developmental Disabilities, and Substance Abuse Services Area Authority Revenues by Source: Amount and as a Percentage of Total Revenues, 1996-97

Revenue Type	Amount (millions)	Percentage of Total
State General Fund	\$296.3	38.9%
Medicaid		
Federal	150.6	
CAP-MR/DD*	106.2	
Medicaid Subtotal	256.8	33.6
Non-Medicaid Federal	85.5	11.2
County	73.3	9.6
Other	50.9	6.7
Total	\$762.8	100.0%

*Community Alternatives Program for Persons with Mental Retardation/Developmental Disabilities. Funds in this column include federal, state and local money.

Source: Philip Hoffman, Management Support Section, N.C. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, memo to the author, August 10, 1998.

sive, whether they're training schools, hospitals, mental retardation centers, or anything else."¹⁸

The juvenile justice system in North Carolina is split between the judicial and executive branches of the government. The Juvenile Services Division of the Administrative Office of the

Courts provides court intake services, probation services and aftercare services. The Division of Youth Services provides community services to youth seen by the courts, operates 8 of the 12 juvenile detention centers in the state (the others being operated by their home counties: Mecklenburg, Forsyth, Guilford, and Durham), and operates North Carolina's five training schools. Its programs broke down as follows for 1996-97:

- Nearly 600 nonresidential programs tailored by localities served 35,041 children at an average per-child cost of \$923 per year.
- Sixty-one Governor's One-On-One Programs in 65 counties matched mentors and adult volunteers to 1,823 youth at an average yearly cost of \$1,690.
- Five Eckerd Therapeutic Camps received 281 new admissions and graduated 240 youth at an average cost of \$27,335 per child.
- Multi-purpose Group Homes, run by nonprofit organizations on contract to the Division of Youth Services, had 238 new admissions and 232 terminations and an average cost per child of \$8,510.
- There was a total of 5,546 admissions to detention services — short-term alternatives to adult jails for children awaiting hearings. The average annual cost of operating a bed in these facilities was \$47,165.
- There was an average daily on-campus population of 836 at the state's training schools, which are designed to bring about behavioral changes in youth who have violated the law, been adjudicated delinquent, and been assigned to these schools. The annual per bed cost was \$48,411, or between \$134 and \$135 per day. (Seventeen percent of the students in these schools receive special education services.)¹⁹

"Building, maintaining, and staffing facilities is simply expensive, whether they're training schools, hospitals, mental retardation centers, or anything else."

—RICHARD F. RIDEOUT, DEPUTY DIRECTOR,
N.C. DIVISION OF YOUTH SERVICES

Referrals from juvenile courts and law enforcement agencies to Youth Service's community-based programs rose 43 percent from 1993-94 to 1996-97, to 12,079. Like Dre, these children pose a challenge to their communities, and their increasing numbers intensify that challenge.

The Governor's Juvenile Crime Initiative has proposed, among other things, adding 208 beds to the training schools. Out of an overall request of \$43.2 million, the proposal earmarks \$11.5 million for construction in 1998-2000 and \$10.4 million for operating the new beds in 2000-01. As this article went to press, the Senate and House had whittled the \$43.2 million down to \$17 million and \$6 million, respectively, and the actual budget contained only \$1 million for planning and design.²⁰

Schools for the Deaf and for the Blind

Unlike the number of children with social, emotional, or mental health problems, or youth in trouble with the law, the number of deaf, hard-of-hearing, blind, and visually impaired children in North Carolina does not rise and fall with any social indicators except for the overall population of the state. There is, for example, about a one-tenth of 1 percent general incidence of blindness in the U.S. population.

The Division of Services for the Deaf and Hard of Hearing operates three residential schools — one each in Morganton, Wilson, and Greensboro. In the 1996-97 school year, they served 736 residential students, of which 277 were preschoolers, 331 were residential students in grades kindergarten through 12, and 128 were kindergarten day students. That same year, 2,299 hearing-impaired children were educated in the public schools.

The Schools for the Deaf operate both as schools that must offer the state's standard course of study and as centers for deaf culture. This dichotomy has been the cause of debate over several years. At a January 13, 1998, meeting with legislators, a group of parents of deaf children stated: "Barriers to an emphasis on education in the Schools for the Deaf appear to be related to the eagerness of the Division of the Deaf and Hard of

Hearing to hire ‘politically correct’ deaf and hearing teachers, institute ASL [American Sign Language] voice-off strategies, and [to promote] deaf culture.”²¹

Deaf culture is, in fact, a formidable force. It is not simply a subculture of the American mainstream but is a culture with its own language — American Sign Language — which is not a visual representation of English. Like any culture, it can seem foreign to those who are not part of it — to people who can hear — yet it provides a richness of experience, folklore, history, etiquette, art, and other factors that can enhance the lives of the deaf and hard of hearing, many of whom feel that they have been treated paternalistically and poorly by the culture of the hearing.

Numerous challenges face those who educate the deaf, and those challenges have not always been met. The 1988 Presidential Commission on Education of the Deaf stated that “the present status of education for persons who are deaf in the United States is unsatisfactory.”²² A recent report issued by the Eastern North Carolina School for the Deaf (ENCSD) in Wilson noted that people with hearing impairments on average read at a third-to-fourth grade level and that “on average, ENCSD students are performing below the national average of students who are deaf and hard of hearing.”²³

End-of-grade test results from 1994 through 1997 have left both parents and educators at the N.C. Schools for the Deaf dismayed. The reading passing rate rose, but only from 3.9 percent to 5.2 for these schools’ students who took the test; math

scores rose from 13.4 percent to 18 percent but then fell to 11.3 percent. Scores dropped yet again in 1997–98, with 4.5 percent of students taking the reading test passing and a passing rate of 6.5 percent for those math students taking the test.

“The numbers have dropped, but a lot of things have changed,” says Rachael Ragin, coordinator of early intervention and accountability for the three schools at the division level. In 1995–96, for example, only 56 percent of students who took the test were tested at the appropriate grade level. That number rose to 78 percent in 1996–97 and 100 percent in 1997–98. The percentage of students taking the test also rose, from 42 percent in 1995–96 to 78 percent in 1997–98. “We’re testing about twice as many children, and we’re testing them on grade level,” says Ragin. “To me, those are significant improvements in the program, but I would like to see more children passing. I’d like to see all of the children passing.”

An internal division report notes that mainstreamed hearing-impaired students who are not exempted from testing have a passing rate of less than 35 percent.²⁴ The report cautions that differences in these two groups other than academic ability and educational environment may affect the scores, but does not elaborate.

Division leaders are straightforward in saying that “the results are not pretty”²⁵ and say they have taken steps to correct them. The leadership has been changed at each of the schools, but an extensive assessment of student performance started only in 1997 as a basis for strategic planning. Some par-

Table 3. State Funding for Training Schools and Community Services, 1996–97

	State Spending (millions)	% of Total Spent	Children Served	% of Total Served	Unit Cost
Training Schools	\$39.4	57%	836 average daily population — total number served, 1,930	4%	\$48,411 per bed per year
Community Services	\$30.2	43%	47,919	96%	\$631 per child

Note: Community service programs also receive nonstate funds. Total spending from all sources for these services in 1996–97 was \$51.8 million, or \$1,079 per child. The state received \$681,819 in federal funds for training school use in 1996–97. This nonstate figure is not included in the \$39.4 million above.

Source: Richard F. Rideout, *Division of Youth Services Sourcebook: 1997*, Raleigh, N.C., pp. 5, 29, and 34.



Karen Tam

ents have called for the schools to be placed within the Department of Public Instruction, but division leaders believe the problem has to do with longstanding “paternalistic” efforts to maintain rather than educate students, and that these are being addressed. Also, these three schools, like the Governor Morehead School for the Blind, are part of a cradle-to-grave health care and assistance continuum for people with these disabilities and may not mesh with DPI’s mission.

The Schools for the Deaf and the Governor Morehead School have been exempt from the state’s ABCs of Public Education program, under which all of North Carolina’s other public schools operate. The ABCs program charts student and school progress in core subjects in lower grades and progress in content areas in upper grades. Educators are given incentives — financial bonuses — to surpass their school’s mandated progress rate, and students who perform poorly on tests may be held back or required to attend summer sessions. Even within the ABCs, special needs students may be exempted from testing, but that decision must be reached jointly by the members of the student’s Individualized Education Plan committee, which includes parents.

In 1998, the General Assembly passed House Bill 1477,²⁶ sponsored by Rep. Gene Arnold (R-Nash), which will require these and all of North Carolina’s state-operated schools to be a part of the ABC program. It also will provide teachers with higher pay but cut administrators at the Schools for the Deaf by half. In addition, it requires closer supervision of students, a requirement growing out of spring 1998 reports of student-on-student sexual abuse at the Schools for the Deaf.

Twenty-two million dollars (78 percent) of the Division of Services for the Deaf and Hard of Hearing’s \$28.1 million budget goes to the three schools, which serve less than one-third of the state’s hearing-impaired students. A 1993 study recommended that, because of the cost, one or all of the schools be closed, but the report eventually was shelved.²⁷ The total cost per K–12 student ranges from \$40,472 to \$42,159, or approximately \$27,000 exclusive of residential costs. (See Figure 2, p. 92.) The cost for preschoolers ranged from \$10,547 to \$14,348. For both groups, the costs at Central North Carolina School for the Deaf in Greensboro were highest. The Division of Services for the Deaf and Hard of Hearing estimates that the cost of educating a hearing-impaired student for

one year in the public schools ranges from \$16,000 to \$23,000, depending on how much funding the local school system can allocate to this population. The Department of Public Instruction puts the figure far lower.²⁸

The schools also operate a network of early intervention services and preschools within their geographic areas. Most deaf children in North Carolina arrive at school — whatever that school might be — with a language delay of two to four years, a developmental period that is never regained. A later lack of educational achievement results at least partly from this loss.

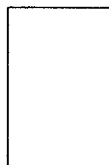
The Governor Morehead School is the center of the state's services for the blind. It is home to only about 100 residential students each year, but it operates preschools around the state that serve 300 visually impaired children, serves as a conduit for continuing education for educators, oversees a master's degree program in blind services, undertakes student assessments in the public schools, and coordinates other services. Over the years, it has educated a number of notable people, including folk singer and guitarist Doc Watson, country singer Ronnie Millsap, and jazz pianist Paul Montgomery.

**Figure 2. Cost of Attending
N.C. Schools for Deaf versus
Public Schools for Hearing-
Impaired Students**

Schools for the Deaf
\$27,000 per year*



N.C. Public Schools
\$16,000–23,000
per year**



* Minus residential costs.

** N.C. Division of Services for the Deaf and Hard of Hearing estimate. The Department of Public Instruction considers this estimate too high. See note 28, end of article, for more.

Source: N.C. Division of Services for the Deaf and Hard of Hearing.

Eighty-four percent of the Governor Morehead School's residential students qualify for free/reduced price lunches, and 60 percent have multiple disabilities. Similar to students at the schools for the deaf, they generally score significantly lower on end-of-grade tests than do their visually impaired mainstreamed peers. In 1996–97, for example, 5.9 percent of Governor Morehead students taking tests passed end-of-grade reading tests in grades three through eight, while statewide 34 percent of visually-impaired students passed. End-of-course scores for high school students were similarly lower at the Governor Morehead School. In 1997–98, the Governor Morehead School came under the state ABCs plan as a pilot project. Test scores increased significantly, with 42.9 percent of students in grades three through eight passing the reading test. High school students showed similar improvements, and one re-mainstreamed Governor Morehead School student made the honor roll at the Wake County Public Schools' Broughton High School.

Governor Morehead students represent a subgroup of visually impaired students with stronger needs than many of their peers. A report by the N.C. Division of Services for the Blind notes that the school "is doing the job it was set up to do . . . meeting the needs of those students with visual impairments *whose needs cannot be adequately met by local school districts*" (emphasis added) but that the Governor Morehead School and the public schools are not adequately preparing visually impaired students for the future.²⁹

Part of the solution has been to make the Governor Morehead School the center of a hub of services rather than an isolated campus. For example, the school is one of 12 sites in a collaborative effort with the Department of Public Instruction to create alternative tests for special needs students, not just those who are visually impaired. It also is actively exploring the opportunities that new technology will open for the visually impaired, having successfully competed for \$373,000 in federal and University of North Carolina-General Administration grants for distance learning technology in 1997–98.

Charles M. Bernardo, hired as the school's new superintendent in June 1997, had been, among other things, superintendent of the Montgomery County, Maryland, school district, one of the nation's largest. He brought a regular education background to the job.

"My background would have led me to believe that the school should be administered through the Department of Public Instruction, but

In time — I don't know how many days or weeks or months it was — my stylus finger grew, my hand grew, my strength grew, and I learned to align the paper on the slate properly and write Braille correctly. I remember that in order to memorize which dots stood for which letters I would think of combinations of dots as telephone numbers, and of the letters formed by the combinations as standing for members of my family. When I punched (or dialled) one, three, six, I got "u," for Umi; when I punched one, two, three, four, I got "p," for Pom; when I punched one, three, four, I got "m," for Mamaji. The Braille letters would race through my fingers into the stylus, along the guide, and down the slate, filling the paper with simple English words, like "cat," "mat," and "sat."

—VED MEHTA FROM "BELLS"

from *Staring Back — The Disability Experience From The Inside Out*

we work very closely with the people there, so where we fall on the administrative chart doesn't really matter," Bernardo says. "There is a structural but no operational divide."

He adds that the school has maintained the support of parents by being part of a cradle-to-grave care program and by assuring them that the school operates like a standard public school but with special services. The school works closely with DPI on teacher licensure, training, and design and delivery of the curriculum.

The 1996-97 state appropriation for the Governor Morehead School was \$7,764,000.³⁰ It cost \$21,070 to educate a student there in 1997-98 — exclusive of residential costs. The school served 1,447 clients directly, although most of these were educators of the blind. Of the children it served directly, 100 were students at the school, 300 were enrolled in satellite pre-school programs, and 30 were part of a new, short-term skills program for visually impaired, public school students in grades K through 8. By contrast, a total of 572 visually impaired students were taught in the state's public schools in 1996-97. The most rapidly growing part of the school's enrollment is its satellite pre-school program, where enrollment is expected to exceed 500 by the year 2000.

The numbers of hearing and visually impaired children are not increasing at the same rate as those of other special needs children, but those numbers rise as the state's population grows, and even inter-

nal reports indicate dismay with the educational progress of deaf and blind children. Rep. Arnold's bill holding these schools accountable under the state ABCs plan will provide at least a basis for comparing educational achievement at these schools with similarly impaired children statewide and with the general population.

Children with Developmental Disabilities

A primary issue for children with developmental disabilities is the backlog of people awaiting services. Currently, 7,178 people are on the waiting list statewide, including 2,138 children. (See "Legal Issues Affecting People with Disabilities," pp. 69-77, for more on this topic.) Also of concern are how services will be delivered and paid for and where people will receive these services. (See "A Tale of Two Funding Streams," pp. 95-97 for more on this topic.) The vast majority of state appropriations in the developmental disabilities area are spent on community-based services. In 1996-97, \$93 million of a \$115 million state appropriation went to community-based programs, and 31,522 people were served in community programs, while 2,200 were served in five state mental retardation centers. Almost all children under age 18 were served in community programs, with only 24 children under age 18 in the state's five retardation centers in 1996-97.

Willie M.

Dre is not a Willie M. child, but if the level of his aggressive behavior had been a little higher, he might have been. The term *Willie M.* comes from a class action suit filed against North Carolina in 1979 on behalf of four named children but for the benefit of a larger group: those with a mental, emotional or neurological handicap and accompanying violent and assaultive behavior who had already received some state-funded treatment and had been recommended for residential treatment or had been adjudicated delinquent and had received subsequent treatment or had been assigned to a psychiatric hospital.³¹

In North Carolina, a citizen does not have a constitutional right to mental health treatment like he or she does to a public education.³² However, under a series of federal and U.S. Supreme Court decisions, if the state intervenes in the life of a family to remove a violent child from the community, it must provide treatment, and if a child is judged delinquent and taken from his or her home, whatever subsequent action is taken by the state must be done in the best interest of the child. Unfortunately, the state had no programs to treat these specific children in the late 1970s, and thus the suit was filed.

The court-appointed review board and the state agreed that Willie M. funds would go directly to the program rather than pass through the Department of Health and Human Services (then the Department of Human Resources). That funding system, coupled with the state government's initiation of a unit-cost reimbursement system for accounting purposes in 1983, allowed the Willie M. Section to monitor its costs and outcomes far better than most programs. The suit was finally resolved in early 1998, and a recent report indicates that, while the program was costly, it has been effective at treating these children, for the most part at the community level:

- The total Willie M. budget for 1996-97 was \$82.3 million, of which 68 percent came from state funds and 32 percent from federal Medicaid funds. (Of the 68 percent, \$50.5 million came from the Department of Health and Human Services and \$5.6 million came from the Department of Public Instruction.)
- \$73.8 million (90 percent) of the Willie M. program's total budget went for treatment and habilitation services, of which 57 percent went to group residential services or secure facilities such as hospitals.

- Eighteen hundred children were served at an average cost of \$40,000 each.
- 42 percent of the children cost less than \$20,000 each to treat, while 10 percent (in secure residential settings) cost more than \$100,000 each.³³

"Yes, it's expensive," says Marci White, former Willie M. section chief, "but these are kids for whom we have a legal responsibility." She cites the following as evidence of the program's success:

- 80 percent of Willie M. children are living in their communities.
- Of the 1,500 children served in 1996-97, fewer than 30 were in training schools.
- 86 percent of Willie M. kids are enrolled in school.
- Most had not been physically violent (59 percent) or in contact with the law (75 percent) within the three months prior to the most recent survey.³⁴

The Willie M. program assesses how many risk and protective "factors" these children have, both when they are admitted to the program and regularly thereafter. The factors are drawn from extensive research into social pathology. Any child with four or five of the risk factors (such as physical or sexual abuse or poverty) is considered "high risk;" Willie M. children generally have 12 or 13. Protective factors (an intact family, for example) are bulwarks against the risks. Willie M. children, who receive extensive social and emotional treatment, add four protective and two risk factors a year on average, according to White. She submits that while no program can guarantee success in life, the Willie M. program has succeeded at its mandate and within its budget.

Dre Returns to the Burgeoning Numbers of Children Being Served in Communities

The explosion in the number of special needs children being served by community-based services will continue. The state's desire for people to be treated in community programs has led to an expansion of local resources. At the same time, the number of people identified as having special needs has increased. The state budget is likely to see greater overall costs as the numbers of people receiving community services grows, although the per-person cost will remain lower for community services than for institutionalization.

Developmental Disabilities: A Tale of Two Funding Streams

The history of Medicaid funding and services for the developmentally disabled differs significantly from that for the mentally ill and others in North Carolina. It includes two Medicaid funding streams: Intermediate Care Facilities/Mental Retardation (ICF/MR) and Home-Community Based (HCB) Services, the North Carolina version of which is called the Community Alternatives Program for Persons with Mental Retardation/Developmental Disabilities (CAP-MR/DD). Essentially, ICF/MR funds residential services, while CAP-MR/DD was intended to help people living at home and supports community-based services. It does not provide room and board funds. For each dollar of funding in these streams, 32 cents comes from the state.¹ The difference between the treatment options supported by the two funding streams — and the costs of those options — is marked.

A study published in 1997 and updated in June 1998, "Where Does North Carolina Stand?" notes that in 1997, North Carolina had more people in mental retardation institutions per capita than the national average, at 28.8 persons per 100,000 residents compared to 20.0 persons per 100,000 residents nationwide. It stated that in 1997, 2,141 individuals with developmental disabilities were served in large (16 beds or more), "state-operated" facilities.² Holly Riddle, executive director of the North Carolina Council on Developmental Disabilities,³ a state-established council that advocates for people with developmental disabilities, says that while the number of persons per capita served in these facilities has been going down both at the state and national level during the past decade, the percentage reduction in population in North Carolina's Mental Retardation Centers has been significantly below the U.S. average.

While agreeing with Riddle that the trend to move developmentally disabled people from institutions to communities must continue to move forward, Patricia Porter, chief of the Developmentally Disabled Section of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, disagrees with

some of the 1997 study's assertions. The state operates five regional retardation centers, and the study's inclusion of facilities with more than 16 beds includes many that are privately run. The private facilities are largely funded, however, through the ICF/MR stream.

Porter says that 2,200 (5 percent) of the state's 41,000 people with developmental disabilities receiving services through the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services were served in the state's five retardation centers in 1996-97.⁴ That group included only 24 people under the age of 18. The average cost per bed per day in these centers was \$255.

In 1997, according to "Where Does North Carolina Stand?", it cost on average \$31,558 to support an individual for a year in the community under the Community Alternatives Program (CAP).⁵ It cost \$88,695 to keep a person in an intermediate care facility under ICF/MR.⁶ This includes room and board and comprehensive 24-hour care and services, while the Community Alternatives Program costs do not include these services. Despite these costs, and the state's long history of advocacy for serving people with developmental disabilities in communities, North Carolina treated only 52.3 developmentally disabled people out of 100,000 in the general population through the community-based funding stream (CAP MR/DD) compared to the national rate of 88.5 per 100,000.⁷ In addition, North Carolina is providing home and community-based waiver services to 39.6 percent fewer people per 100,000 residents (50.6) than is the case nationally (83.8), and its percentage of Medicaid dollars spent on Intermediate Care Facilities (77.4 percent) is disproportionate to the percentage of Medicaid recipients housed in these facilities (56.2 percent).⁸

Riddle says eligibility for the two programs is the same. A key difference in how the funding streams work, she says, is that the Intermediate Care Facilities program attaches funds to facilities, while the Community Alternatives

—continues

But back to Dre. After leaving the Children's Psychiatric Unit at John Umstead Hospital, he was admitted to Greenhouse, the residential youth home in Durham, and attended public schools. He stayed for about three months, was discharged briefly when he became disruptive, and returned to Greenhouse. The per-person, per-day cost of a Greenhouse bed is a little more than \$150.

Let's estimate the costs of public service Dre received in the first half of 1998, rounding some numbers and making reasonable assumptions about attendance at sessions:

- \$2,000 for Fast Track;
- \$18,000 for a 120-day stay at the group home;

- \$2,100 for weekly individual therapy (assuming he attended twenty sessions over the course of six months);
- \$2,340 for special education; and
- \$10,416 for thirty-one days in the Children's Psychiatric Unit at John Umstead Hospital.

These total to \$34,856 worth of publicly funded services provided by public or nonprofit organizations over six months. It's a ballpark figure but a reasonable one based on actual costs-for-services and realistic assumptions. Of course, the past year was a particularly difficult one for Dre. Prior to 1997, he had not required any in-house

A Tale of Two Funding Streams

—continued

Program allows funds to follow people, creating options for people to be supported in their own homes or in very small (1-3 person) settings.

Despite providing waiver services to fewer people than is the case nationwide, Porter says that the CAP/MR-DD funding stream has grown by 650 percent in North Carolina over the past five years. She adds that for 1998-99, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services will add 1,700 federally allocated CAP/MR-DD "slots" (roughly equivalent to people) to CAP/MR-DD with \$15 million in new federal funding, of which the state's share is \$6 million.

Porter also notes that the CAP/MR-DD funding stream is not the only source for community funding available in North Carolina for serving people with developmental disabilities, as is the case in some other states. North Carolina actually spends the lion's share of its own money on community programs. In 1996-97, out of a total appropriation of \$115 million, the state spent about \$9 million on the five retardation centers and \$93 million on community programs. One report cites North Carolina as one of 15 high-growth states in fiscal effort to fund community services for people with developmental disabilities between 1992 and 1996. Unlike most of the 15 states, North Carolina's funding growth did not come in the face of law-

suits.⁹ In North Carolina's communities, 31,522 people with developmental disabilities were served in 1996-97, compared to the 2,200 in the five retardation centers. Still, 5,830 people were on waiting lists for services that year.

Porter and Riddle agree that there is an extensive waiting list. In fact, 7,178 developmentally disabled people are currently on Area MH/DD/SAS program waiting lists for services in North Carolina. Of those, 2,138 (30 percent) are children. About 2,200 (30 percent) of the people on waiting lists, according to Porter, are not eligible for either Medicaid stream, because they are not sufficiently disabled. These people are dependent primarily on state funds for services.

The 1997 study, "Where Does North Carolina Stand?" concludes by stating: "Considering only Medicaid-reimbursable services, North Carolina's level of fiscal effort is comparable to other states. However, the concentration of above average ICF/MR and below average HCB [home-community based, or the CAP/MR-DD program] waiver utilization means that fewer people are supported per Medicaid dollar expended in North Carolina than in the nation as a whole." Porter says this will change with the addition of the 1,700 new "slots."

In 1996, according to the study, it cost an average of \$57,123 per year to serve a developmentally disabled North Carolinian who is eligible for long-term services. The U.S. average was \$47,711, although Porter cautions that different states use different criteria for determin-

treatment, but there is no guarantee he will not need it again. As he moves into adolescence, any outbursts will be deemed more dangerous by those around him.

Building a Better System

The state faces at least three major challenges in serving children with special needs and their families: (1) the number of children requiring special education and/or other special services is growing; (2) more treatment options are needed to serve them; (3) and finally, it is in the interest of the federal, state, and local governments to provide

ing their costs and that figures may not be comparable.

In its final report of October 1997, the North Carolina Managed Care Customer Leadership Initiative — a diverse group of people with disabilities and their families, funded as a project of the N.C. Council on Developmental Disabilities — has called for the pilot demonstration of a capitated system. In it, people with developmental disabilities and their families would have significant control over the public funds that provide their services and supports. The group recommends the development of an “individual budget.” This budget, translated into a voucher, would allow a person with a developmental disability to purchase in an open market the services and supports called for in a person or family-centered plan.

“Customers” — as the report labels people with disabilities or their families — would be assisted in this process, at their election, by a “support broker” or “community guide,” accountable to the individual or family as opposed to the service provider sector. This approach, the report contends, would allow a customer to tap the informal supports of family and friends, along with generic community and specialized services, to create a package that meets his or her unique needs.

As it is, Developmental Disabilities Council director Riddle says, the ICF-MR system provides each person with a full menu of costly services that, in many cases, sets the boundaries of choice and exceeds the standard of “no more

services as cost effectively as possible. Addressing these three issues is the immediate and long-term challenge facing the state. For the past several years, it has been crafting what it hopes will be a viable solution.

Carolina Alternatives (CA) is a Medicaid pilot program under way since 1992–93 at 10 of the state’s 40 area mental health authorities, covering 32 counties.³⁵ It serves children exclusively and is a mental health program rather than a program serving children with developmental disabilities. At its core is a waiver of traditional Medicaid fee-for-service provisions and guidelines as to what services may be provided for clients and by what

or no less than what is needed.” Even the Community Alternatives Program, Riddle says, has long narrowed customer choice to pre-approved providers. “This often significantly decreases customer access to services and supports essential to achieving life goals and outcomes consistent with increased economic productivity and full citizenship,” Riddle says. “A system such as that outlined by the Customer Leadership Initiative promotes self-determination.” Systems based on principles and practices of self-determination will, Riddle believes, ultimately enhance customer satisfaction. This, she says, will decrease overall costs and promote inclusive schools, workplaces, and communities for those affected by developmental disabilities.

—S.D. Williams

FOOTNOTES

¹ Patricia Porter, section chief of Developmental Disabilities, telephone interview with the author, August 8, 1998.

² Gary Smith, *Where Does North Carolina Stand?* N.C. Managed Care Customer Leadership Initiative, Raleigh, N.C., June 1998, pp. 3–4.

³ Statutory authority for the Council on Developmental Disabilities is found in G.S. 143B-177.

⁴ Patricia Porter, memo to the author, August 10, 1998.

⁵ Smith, p. 11.

⁶ *Ibid.*, p. 4.

⁷ *Ibid.*, p. 6.

⁸ *Ibid.*, p. 11.

⁹ David Braddock et al., *The State of the States in Developmental Disabilities*, fifth edition, American Association on Mental Retardation, Washington, D.C., 1998, p. 50.

providers. A full year of Medicaid funds are given at the beginning of the fiscal year to the 10 local authorities, based on standard projections and history of previous need. These "block grants" become the basis of a public-private system of managed care, overseen by the local authorities. They may use the money as they feel best and are responsible for spending within their limits.

Because it is a newer program and because its children utilize a variety of services in order to achieve myriad outcomes, Carolina Alternatives cannot track success or failure at the client level as easily as the Willie M. system. The financial end of the concept, however, is simple: the area authorities are directly responsible for their Medicaid payments. Under the traditional nonwaiver system, if a county decides to send a child to a state hospital, Medicaid pays the fee directly to the hospital, with no consequences for the area authority's budget. In Carolina Alternatives counties, that money comes directly from the local budget. Thus, community-based treatment and fiscal responsibility are rewarded. According to the N.C. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, total annual Medicaid expenditures and average Medicaid expenditures decreased substantially in 1996 and 1997, while the same expenditures rose dramatically in non-Carolina Alternatives counties.

But what about quality of treatment? Carolina Alternatives is, after all, managed care and easily prone to the same fiscally motivated restrictions that some complain about in private medical managed care.

So far, Carolina Alternatives is getting good marks from people in the mental health field. "We like working with Willie M. and Carolina Alternatives-county kids, because they have more comprehensive support and treatment services available to implement the new strategies we recommend to support successful community-based care in their communities," says Wright Schools director Deborah Simmers.

"As soon as a client of ours goes to a state institution, we assign a case manager to work with the social worker at the institution and with other community providers," says June Kersey, the Carolina Alternatives coordinator at Orange-Person-Chatham Mental Area Authority. "It makes good sense to do this even in a non-CA county, but we've strengthened our case management because of the increase of our overall responsibility under the waiver."

Under Carolina Alternatives, Kersey says, the

Orange-Person-Chatham Area Authority has the flexibility to contract with a broader range of service providers. Thus, Carolina Alternatives can pay for paraprofessional counselors to conduct regular home visits as well as, for example, private clinical social workers for therapy. "Our provider panel has grown to 90 types of agencies, facilities and individual providers," Kersey says, "so we can more easily treat kids with special diagnostic needs."

Carolina Alternatives also has succeeded in increasing the numbers of people who receive mental health services. The *penetration rate* in Carolina Alternatives counties — that is, the percentage of people served out of all people estimated to be eligible for services — was 5 percent in 1992 and 8.5 percent in 1997. The 1997 rate for non-Carolina Alternatives counties was 6.4 percent.

The N.C. Division of Mental Health, Developmental Disabilities and Substance Abuse Services plans to extend Carolina Alternatives to all 100 counties for mental health services and to include adults as well as children and non-Medicaid patients, says Judy Holland, former head of the division's Carolina Alternatives Branch. But because of the ramifications of the accounting change for the state's match of Medicaid funds, the expansion has been postponed.

Finally, Carolina Alternatives may offer a way to moderate the state's costs for institutionalization. When asked her opinion about studies suggesting that children not be treated in the state's psychiatric hospitals, June Kersey said, "Get real. The hospitals provide an invaluable service and for the most part do an excellent job. What we need are more, not fewer, treatment options for children."

The traditional, nonwaiver Medicaid system, however, financially rewards hospitals for admitting and keeping patients, although the system has become more restrictive over the years. Carolina Alternatives takes the opposite approach. Local communities — not the state or federal governments — are the purchasers of hospital services, and their demand for services could determine the extent and nature of the supply of those services. Because the funding for these hospital services comes out of local budgets, there is an incentive not to overuse those services.

Conclusion

The numbers of children requiring special educational, psychological, and/or other special services is growing at a faster rate than the general population and the youth segment of that popu-

lation. Why? The reasons are numerous and complex. Here are a few: educators are doing a better job of identifying students in need of special education, with attention deficit disorder and its companion, attention deficit disorder hyperactive, fueling growth in at least three categories that entitle children to special education services — specific learning disability, behaviorally emotionally handicapped, and other health impaired. There also is less stigma attached to special needs, making more parents and children willing to come forward for help.

Many more children with special needs are being treated in their communities than in institutions. The number of people served by community mental health programs in North Carolina grew by more than 3,000 percent — from 8,196 to 277,043 between the years 1960–61 and 1996–97, a period during which the state's population grew by 61 percent. Meanwhile, the number of persons receiving institutional care at state-operated facilities actually dropped during the 36-year period, from 23,327 in 1960–61 to 20,979 in 1996–97. Yet community mental health programs — while serving 93 percent of clients — received only 57 percent of the \$1.4 billion spent for services through the Division of Mental Health, Developmental Disabilities, and

Substance Abuse Services in the N.C. Department of Health and Human Services during the 1996–97 fiscal year.

Granted, most of the individuals served in the state's five regional mental retardation centers are much more disabled (and thus more costly to serve) than those persons living in the community. The same may be true of individuals housed in the state's mental hospitals. But this fact does not account for the entire imbalance in state funds going to these institutions in relation to the number of persons they serve.

The N.C. Center for Public Policy Research found similar discrepancies in proportion of total state expenditures compared to number of persons served at other types of state institutions serving children with special needs. Examples include training schools in the Division of Youth Services, and the N.C. schools for the deaf and blind. In the Division of Youth Services, the state spent \$39.4 million on training schools compared to \$30.2 million on community alternative programs. But training schools housed only 3.2 percent (1,930) of the 56,344 juvenile offenders served during the course of the year, while almost 48,000 youth received services through community programs.

The state's three schools for the deaf provide another good example. Twenty-two million dollars (78 percent) of the Division of Services for the Deaf and Hard of Hearing's \$28.1 million budget goes to North Carolina's three schools for the deaf, which serve less than one-third of the state's hearing-impaired students. For each deaf K–12 student, the cost is \$40,472 to \$42,159, depending on which of the schools the student attends. Students served in their home school districts are educated for an estimated \$16,000 to \$23,000 annually.³⁶ Such cost discrepancies might be justified if students at these state schools were receiving stellar services. But consider these facts: on end-of-grade test results, deaf students lag far behind their hearing-impaired peers educated in local school districts; books in the schools' libraries are out of date; and recently reported instances of sexual abuse of students have raised serious questions about the quality of residential care. While it may be that students with the most serious disabilities are the ones enrolled in state institutions, it's equally clear that these students' needs are not being fully met.

As to the imbalance of funding for state institutions versus community-based organizations, clearly it is due in part to the operating costs associated with large, state residential facilities housing clients with the toughest problems. The



challenge to the state, however, is this: How can it make sure that its funds serve the needs of people rather than the needs of programs?

The answer to this question is less than clear. Cutting funds to the state psychiatric hospitals, special schools such as Wright and Whitaker, training schools, and the schools for the deaf and blind could free money for community programs, but simple budget-shifting or cost-cutting presents problems. First, residential facilities do serve a need. Like Dre, some children benefit greatly by receiving services in secure settings. When not only he but his family is in crisis, there really is no place else for him to go. The group home in which Dre lived for much of the first half of 1998 provides supervision, but it is not a secure facility and is not designed to keep children when their behavior becomes dangerous. In the mental health field, many community programs are not able to accommodate children who are violent or suicidal, and children in state facilities often have been in and out of numerous local programs, with limited success. Treatment and education in a secure facility can at times be the best hope for certain children. At mental hospitals, training schools, and state schools for the deaf and blind, a higher level of service or care sometimes is required than is available at the community level.

The second argument against a simple "cost cutting" solution is even more straightforward. If funds to state facilities are cut, there is no guarantee that the money then will flow to communities — in current parlance, there's no guarantee that the money will "follow the children." In the early 1980s, when deinstitutionalization in the mental health field was put into practice in North Carolina, community mental health practitioners essentially were given responsibility for a growing number of discharged mental health patients and other clients but without increased funds or plans to accommodate the increased population. In other words, the funds did not follow people to the local level.

Institutions such as the schools for the deaf and training schools for children in trouble with the law face similar difficult questions. Does the state need three schools for the deaf? A 1993 study by KPMG Peat Marwick for the legislature's Government Performance Audit Committee recommended closing one or all of the schools. Are students who attend these schools receiving an adequate education and the necessary life-skills training to be productive citizens, or can more of these students be served more effectively and at less expense in their local school districts? Can more funds be allocated to

community-based juvenile justice programs versus training schools in the face of the Governor's juvenile justice initiative?

Recommendation

While it is true that some children need the higher levels of service that can be provided at state institutions such as mental hospitals, training schools, and special schools for the deaf and the blind, the imbalance in the amount of money spent at these residential institutions versus the number of persons served should give policymakers pause. Clearly, this is an issue that calls for further study. Thus, the North Carolina Center for Public Policy Research offers the following recommendation:

The North Carolina General Assembly should establish a study commission to examine the imbalance of dollars going to state institutions in relation to the number of persons they serve. The commission should comprise not only legislators but voting representatives from the Department of Health and Human Services' divisions of Mental Health, Developmental Disabilities, and Substance Abuse Services, Youth Services, Services for the Deaf and Hard of Hearing, Services for the Blind, and the Willie M. Services Section.

The study commission should be charged with examining three questions: (1) *First, it should look closely at the question of whether the amount of dollars flowing to state institutions is appropriate relative to the number of children with special needs served there.* Is institutional care too expensive or are costs justified due to the expense of maintaining buildings and administering programs? A corollary question to examine is whether community-based programs receive sufficient funding to meet the needs of their varied and growing clientele. Are costs for room and board reflected in reported community-based program costs? (2) *Second, the commission should examine ways to measure the effectiveness of both residential and community programs with a three-year trial period so that future funds can be directed to the most effective programs, whether residential or community-based.* (3) *Third, the study commission should examine ways to reduce the waiting list further for services for persons with developmental disabilities.* The study commission should report to the 2000 session of the N.C. General Assembly with specific findings and recommendations.

Neither the heroic foot-borne relief efforts, anticipation of the horrors ahead, nor the brilliance of the scenery around me struck home as much as the rhythm of the donkey's forelegs beneath my hips. It was walking, that feeling of groping and climbing and floating on the stilts that I had not felt for fifteen years. It was a feeling no wheelchair could convey. I had long ago grown to love my own wheels and their special physical grace, and so this clumsy leg walk was not something I missed until the sensation came rushing back through my body from the shoulders of a donkey. Mehmet, a local Kurd and the owner of the donkey, walked ahead holding a harness. I had rented the donkey for the day. I insisted that Mehmet give me a receipt. He was glad to oblige, I submitted it in my expense report to National Public Radio. The first steps I had taken since February 28, 1976, cost thirty American dollars.

It was a personal headline lost in the swirl of news and refugees. I had been in such places before. In my wheelchair I have piled onto trucks and jeeps, hauled myself up and down steps and steep hillsides to use good and bad telephones, to observe riots, a volcano, street fighting in Romania, to interview Yasir Arafat, to spend the night in walk-up apartments on every floor from one to five, to wait out curfews with civilian families, to explore New York's subway, to learn about the first temple of the Israelites, to observe the shelling of Kabul, Afghanistan, to witness the dying children of Somalia. For more than a decade I have experienced harrowing moments of physical intensity in pursuit of a deadline, always keeping pace with the rest of the press corps despite being unable to walk. It is the rule of this particular game that it be conducted without a word of acknowledgment on my part. To call attention to the wheelchair now by writing about it violates that rule. My mind and soul fight any effort to comment or complain, even now, years after the events I write about.

This quiet, slow donkey ride was easily the farthest I had gone, out onto a ledge that was never far from my mind during the fifteen years I had used a wheelchair.

—JOHN HOCKENBERRY

"WALKING WITH THE KURDS"

from *Staring Back — The Disability Experience From The Inside Out*

FOOTNOTES

¹ N.C.G.S. 115C-109.

² Nancy Spencer, interview with the author, Durham, N.C., April 1998. The actual average amount per child is slightly less than that stated. Spencer said that some of the budget also went toward a summer program for special ed students but did not provide a figure for this activity. The decrease in the average, she noted, would not be significant, as the summer program is a small part of her budget.

³ Demographic information from North Carolina Office of State Planning website at www.ospl.state.nc.us.

⁴ The federal government also provided \$600 per student in special needs preschool funding.

⁵ N.C.G.S. 122C-262 governs involuntary commitments to mental institutions.

⁶ Office of the Director, John Umstead Hospital, memo to the author, May 1998. A study by an outside consultant in spring 1998 put the cost of serving a child at Umstead at \$442 per day. See MGT of America, *Efficiency Study of the State Psychiatric Hospitals*, Executive Summary, Final Report to N.C. Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, March 2, 1998, p. iii.

⁷ MGT of America, p. vii.

⁸ Every person interviewed for this article with whom the topic was raised, while advocating community-based services in general for children and adolescents with mental illnesses, stated that the psychiatric hospitals provided an essential service for children in need of acute care and that closing children's units would remove a treatment option at a time when increasing the diversity of services is needed. Lenore Behar, chief of child and family services in the state's Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, says child advocates and child welfare professionals from across the state began to oppose the suggestion as soon as the report was released. Lenore Behar, telephone interviews with the author, April 1998.

⁹ Senate Bill 1336 (the 1998-99 state budget bill), Section 29, Section 22.

¹⁰ Allan Spader, telephone interview with the author, April 1998.

¹¹ Lenore Behar, telephone interview with the author, April 1998.

¹² The rate of the state match varies from month to month and state to state, depending on a state's overall economic health, numbers of people served, and other factors. North Carolina's rate has been slightly more than one-third for decades.

¹³ Chapter 166 (HB 900) of the 1998 Session Laws.

¹⁴ Senate Bill 1366 (the 1998-99 state budget bill), Section 29.

¹⁵ Stephen R. Hooper, "The Ecological Outcomes of Adolescents in a Psychoeducational Residential Treatment Facility," draft article, University of North Carolina School of Medicine, Chapel Hill, N.C., 1998, table 4.

¹⁶ N.C. Office of State Planning website at www.ospl.state.nc.us.

¹⁷ Richard Rideout, *Division of Youth Services Sourcebook: 1997*, Raleigh, N.C., pp. 24 and 25.

¹⁸ Richard F. Rideout, telephone interview with the author, April 1998.

¹⁹ *Ibid.*

²⁰ Senate Bill 1336 (the 1998-99 state budget bill), Section 8.1(a)(1).

²¹ Sandy Heffinger, Lorraine Gregory, Patricia Salmon, et al., statement read to legislators and the Commission on the Public Schools, Raleigh, N.C., January 13, 1998.

²² Cited in "The North Carolina Schools for the Deaf: A Presentation to the Legislative Commission on the Public Schools, January 13, 1998" Division of Services for the Deaf and Hard of Hearing, Raleigh, N.C., p. 3.

²³ "ENCSD [Eastern North Carolina School for the Deaf] Strategic Plan Zoned for Learning," Wilson, N.C., July 1997, p. 8.

²⁴ "The North Carolina Schools for the Deaf," note 22 above, p. 10.

²⁵ *Ibid.*, p. 6.

²⁶ Chapter 131 (H.B. 1477) of the 1998 Session Laws.

²⁷ KPMG Peat Marwick, *GPAC Pathways*, prepared for the Government Performance Audit Committee, Raleigh, N.C., 1993.

²⁸ David Mills, section chief for Areas of Exceptionality, Division of Exceptional Children, N.C. Department of Public Instruction, believes the average cost of educating a hearing-impaired student in the public schools would be significantly less than \$16,000 to \$23,000 per year. The total would include a federal allocation of \$488, a state appropriation of \$2,248.39, any local funds allocated for special education, and any additional per pupil expenditures for children receiving a regular public school education. These figures rarely would total \$16,000 to \$23,000 per student.

²⁹ "The Governor Morehead Schools for the Blind: A Presentation to the Legislative Commission on the Public Schools, January 13, 1998," Division of Services for the Blind, Raleigh, N.C., p. 2.

³⁰ Charles M. Bernardo, telephone interview with the author, May 1998.

³¹ Marci White, former chief of the Willie M. Section, Mental Health, Developmental Disabilities, and Substance Abuse Services, telephone interview with the author, May 1998. For more on the genesis and structure of the Willie M. program, see Kendall Guthrie and Bill Finger, "'Willie M.' Treatment for Disturbed Youngsters — Ambitious Community-Based Service System Lurches Forward," *North Carolina Insight*, Vol. 6, Nos. 2-3, October 1983, pp. 56-68. The Willie M. court case was *Willie M. et al. v. James B. Hunt, Jr., et al.*, "Complaint for Declaratory and Injunctive Relief," filed in the U.S. District Court for the Western District of North Carolina, Charlotte Division, October 1979, p. 1, Civil Action No. CC 79-0294.

³² Article I, Section 15 of the North Carolina Constitution states, "The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right," and N.C.G.S. 115C-107 states that "all children" can learn and that the state has a "duty" to provide children with special needs a "free and appropriate public education."

³³ "Report to the Governor and the General Assembly on the Willie M. Program, 1997-98," (reporting for FY 1996-97), Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and Department of Public Instruction, Raleigh, N.C., pp. 37-46.

³⁴ *Ibid.*

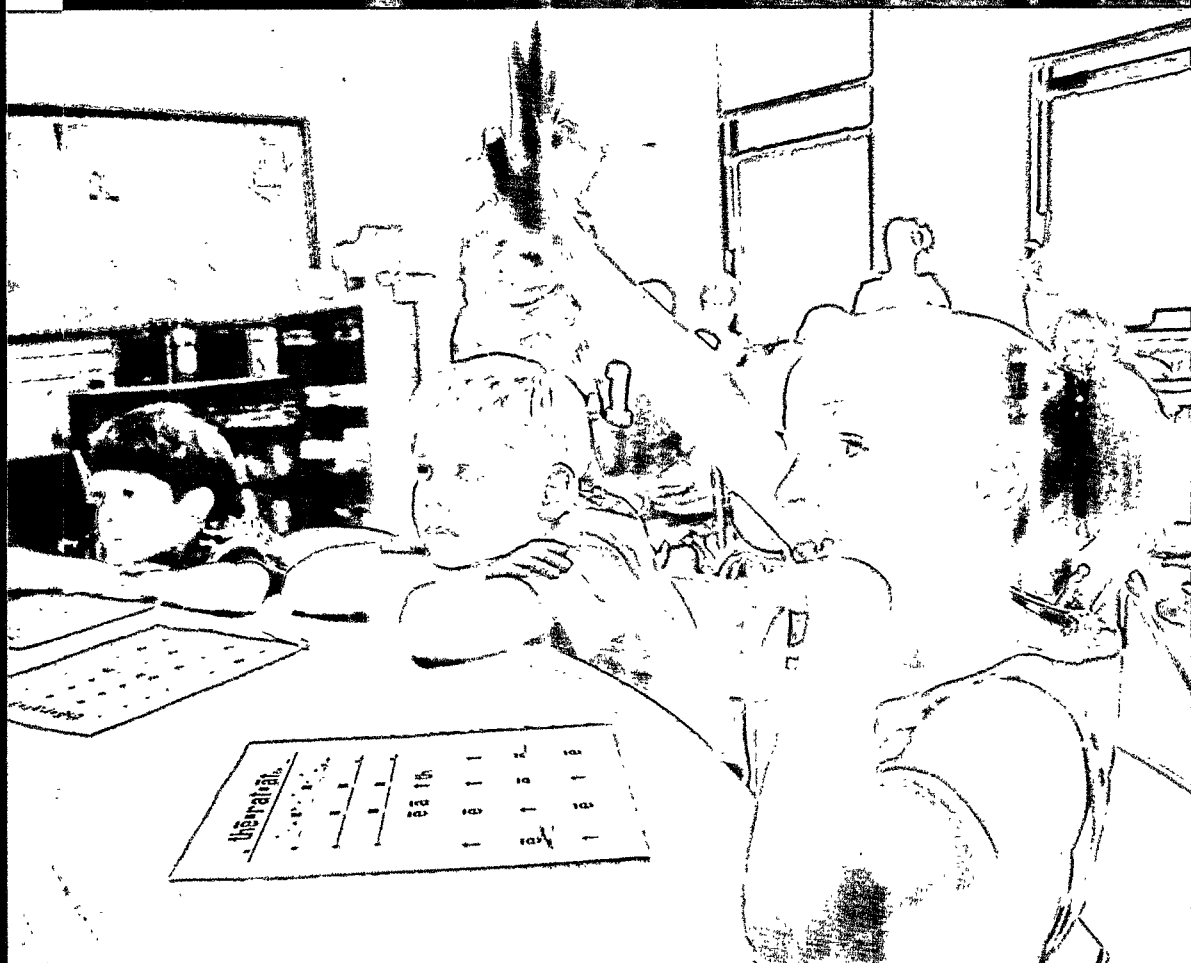
³⁵ The ten area mental health authorities are Blue Ridge Center, Smoky Mountain Area Program, TREND Area Program, Gaston-Lincoln, Centerpoint, Orange-Person-Chatham, Vance-Granville-Franklin-Warren, Wake, Southeastern, and Foothills Area Program. Judy Holland, head of the Carolina Alternatives Branch, MH/DD/SAS, telephone interview with the author, April 1998.

³⁶ The Division of Exceptional Children in the N.C. Department of Public Instruction says the average cost of educating a hearing-impaired child in the public schools is less than \$16,000 to \$23,000 per student. See note 28 above for more.

What Works?

MODELS FOR SUCCESS IN SPECIAL EDUCATION

by Mike McLaughlin



Gray Laughridge Wells

Educators face a number of challenges in working their magic with children with special needs. The primary challenge is the disability itself, which makes learning more difficult for these students. Other issues include legal mandates and budgetary constraints that often force service delivery into a less-than-ideal world. Yet educators across North Carolina are struggling to make special education work, and some are doing quite well at it.

Given the increasing attention to what doesn't work in education, the North Carolina Center for Public Policy Research wanted to call attention to what works. Thus, we looked at four special efforts to serve children with special needs. They include: an innovative special education director in New Hanover County who brings a refreshing attitude toward problem-solving in special education disputes; a private school, the Hill Center in Durham, that successfully educates children with learning disabilities and wants to share its knowledge with the public schools; a statewide nonprofit with offices in Davidson, Raleigh, and New Bern that helps parents stand up for their rights when their children need special education; and the Rockingham County Public Schools, a relatively low-wealth school system that is moving aggressively to include special needs students in the regular classroom.

Wrapped up in all of these profiles is this question: Are there lessons for other North Carolina educators? Can the results be replicated by others who want to address the myriad challenges of special education? In almost every case, the answer is yes, though perhaps not in the exact form discussed here. The challenge lies in applying one solution to another situation. But then, educators of special needs children are accustomed to addressing difficult situations. Below are four examples of programs that work.

A Special Approach to Special Education: The New Hanover County Public Schools

When Bill Trant graduated from Tulane University in 1971 with a degree in sociology, jobs were scarce. But Trant managed to land a job as a bus driver taking special education students to public schools in the Illinois suburbs. The first day on the job, Trant wrecked the bus.

More than a quarter of a century later, Trant

has gained a reputation for keeping the traffic flowing smoothly as special education director for the New Hanover County Schools. Part of Trant's secret is that he believes in the committee approach advocated in the Individuals with Disabilities Education Act and its reliance on an individualized education program developed by parents and educators working together. "At the core is the idea that multiple heads proposing a way for a child to be successful are better than one head," says Trant. "There's a lot of teamwork. . . . Everybody has to give up something, but you're moving toward an end. It's like a football team. If you can't agree on a play, you can't score."

Trant's willingness to listen leads him to a willingness to try new things: a model school where every child with a disability is included in the regular classroom; a new school that is fully accessible to the disabled and promotes itself as a place for children with special needs. But as important as what is going on in the New Hanover County Schools is what is not going on — litigation. In three years on the job serving more than 2,400 special needs children, Trant has received only seven complaints that resulted in any outside intervention. Those seven cases were resolved through mediation.

"We haven't had a family seek administrative relief in seven years," says Trant. "A half dozen times, we've used formal mediation through the Dispute Settlement Center of the Cape Fear. It's successful because it values the interests of all parties and tries to bring those interests together in a similar direction."

Trant says he learned the value of mediation through working for a school system where litigation came first. "We won 13 cases in a row," says Trant. "After we were done, we still had to sit down with the parents and figure out what we were going to do together." In essence, says Trant, the school system won, but there were no winners because the parents were embittered. With mediation, Trant says, both sides win. "I think that's the strongest way to resolve conflict," he says.

In the New Hanover Schools, however, school officials work to resolve disputes before they reach the stage where mediation is necessary. At Codington Year-Round Elementary School, for example, a mother of a 7-year-old girl with moderate developmental disabilities became concerned about foul language and inappropriate behavior her child was learning from classmates. "The little girl was picking up attributes the mother had never seen before, and she knew the only place the child was

Mike McLaughlin is editor of North Carolina Insight.

exposed to that was at school," says Codington Principal Adelaide Kopotic. "She wanted to solve it by moving her to another school — to a teacher she'd been successful with."

Since the old school was 25 miles away, Kopotic thought that solution impractical. She proposed a compromise, and the mother accepted. The child was moved from a special education classroom to a regular classroom with children her own age. "We chose to put her on grade level with a different classroom teacher who was mature, competent, compassionate, and willing — with other supports," says Kopotic.

Codington is a new school offering a year-round schedule — so popular in New Hanover County that the student body was chosen by lottery.¹ To assure that any students who wanted could participate in the lottery, it was decided that special education services at the school would be determined after the student body was selected. A few students were moved to the school once services were determined, but most came to Codington

through the lottery process. The school's students performed adequately on state end-of-grade tests during its first year of operation, according to ABCs test results provided by the N.C. Department of Public Instruction. However, Codington was not among the top performing elementary schools in the New Hanover County system.²

Codington promotes itself as an all children's school, promising universal access and honoring the gifts and needs of all students. In the old days, Trant notes, special education might have been carried out in the old school downtown or in the trailer out back of a new school, so being able to choose a bright, new school building is important for special needs students.

"What's emerged here is inclusiveness," says Trant. Yet Trant knows inclusion — or placing the child in a regular classroom setting with appropriate supports, isn't for everyone. "You can have two children with identical needs, and one parent doesn't want that child in a typical setting, and the other wants that kid fully in there. They value that



Gray Laughridge Wells

kids learn from one another. . . . You've got to have the ability to respond to both."

At Codington, there are two self-contained classrooms. Marlyn Stillions teaches seven children with severe multiple handicaps, including cerebral palsy. Two teaching assistants — called para-educators — help meet the physical needs of the children. Stillions' students can neither walk nor talk, so their needs are great. One student lies on a mat on the floor, his arms and legs drawn up in a fetal ball, emitting a low moan.

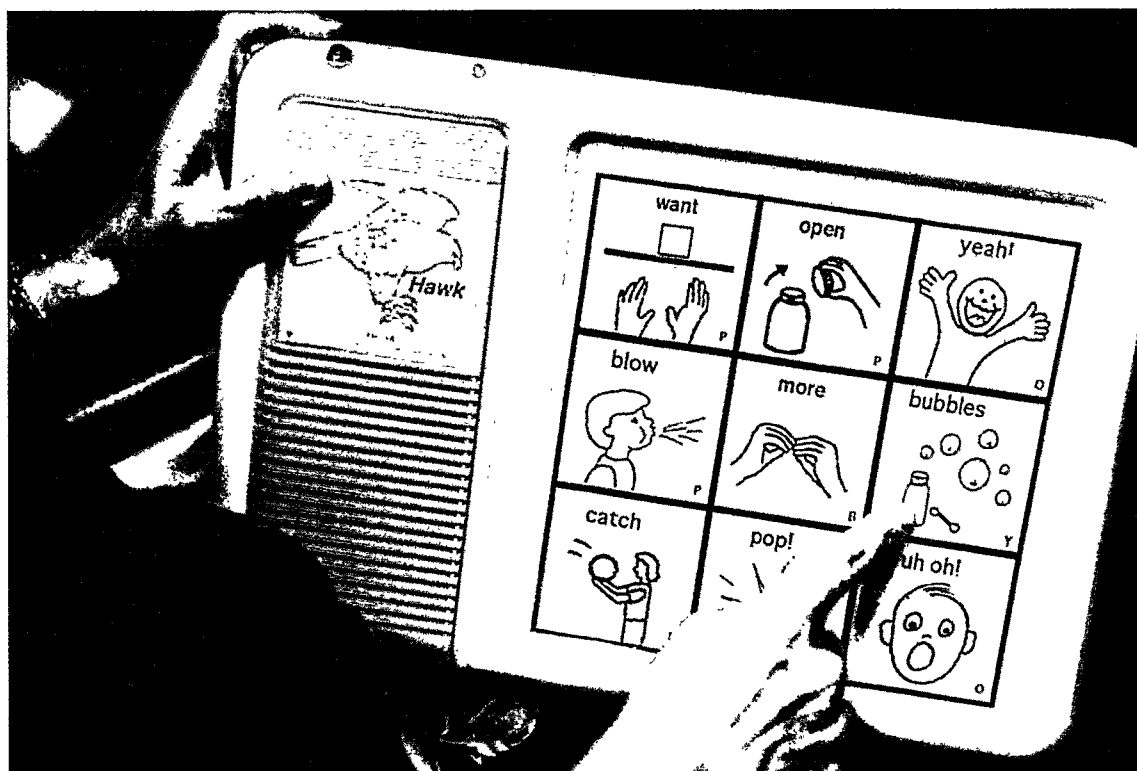
The room is filled with the devices and equipment intended to help these children learn — some specifically designed for special needs students, some pieced together from garage sales and discount stores. One piece of equipment common to children with communications difficulties is the Big Mack Switch, a fat, hamburger-like device that children can press to give simple responses to questions. Depending on where the student presses, the answer can be yes, no, or maybe.

By use of such devices, educators can get an idea of how much communications-impaired children are comprehending. "Receptive language is first, rather than expressive," says Stillions. "Maybe they are able to understand, but they just aren't able to tell you they understand." For a lesson in gender identification, for example, Stillions would hold up pictures of male and female children. "Are you a girl or a boy?" she would ask. "Eventually, she would look at the girl picture." Other devices range from the high-tech — such as special touch screens for a computer — to a toy farm set Stillions bought at a yard sale for a dollar.

The learning goals are different for these students. Students work on communications skills, gross and fine motor skills, self-help skills, and daily living skills. "Anywhere from being able to feed themselves to being able to tolerate someone feeding them," says Stillions. "You work toward these goals and after a year you say, we've done some things," she says. Academic goals could in-



Gray Laughridge Wells



Karen Tam

clude learning to use a switch for communications and learning about cause and effect by touching a window on a computer touch screen.

And while these children are in a self-contained classroom, they do have some interaction with students without disabilities. As many as 18 fourth and fifth graders volunteer in the classroom every day. "Four parents told us their child has already told them they want to be a special education teacher," says Stillions.

Stillions says it's remarkable how well the general education students at Codington accept her special needs students. "The children eat at the cafeteria every day. It takes us about an hour and a half, so we're in contact with almost every child who eats at the cafeteria."

While Stillions' students have contact with other students at lunchtime and with student volunteers in the afternoons, many Codington students with disabilities are included in the general education classroom for most or all of the day. A third-grader with birth defects and physical and mental disabilities participates in a first and second grade combination classroom. She is small for her age, and her abilities make her a good fit with the other students. Another student with cerebral palsy — formerly in a self-contained classroom

and a separate school — blossoms when placed in a general education classroom. "He has more potential than he was ever given credit for," says Janice Fineburg, a special education teacher who works with the included students. "So much attention was paid to the physical, but he's been with an ace teacher who has just pushed all year." Another student who is included is classified as mildly autistic. Yet another suffered encephalitis and has an IQ of 57 but is functioning well in the regular classroom.

For these students, inclusion in the regular classroom has led to academic and social gains, yet Trant believes some students may be better off in self-contained classrooms with more limited interaction with regular classroom students. The key is to retain the flexibility to meet the needs of each individual student. The danger in special education, notes Trant, is expectations can be lowered due to the student's disability. "We're celebrating all kinds of successes," he says.

While Codington School is doctor's office modern, Winter Park is an old-fashioned two-story school house, renovated and reopened to relieve school crowding in New Hanover County. Despite the fresh paint and disinfectant, one can almost smell the decades of chalk dust hanging in the air.

But if Winter Park is an old school, it's still a place of new ideas. And the school has gone the extra mile to accommodate students with special needs.

While the school is not fully accessible to the disabled — which leaves out some students with mobility impairments — it has fully embraced the idea that all students can learn. All of the special needs students who attend the school are included in regular classes, and the school employs two special education resource teachers to work with these and other students who may need extra help. "All of our students are in the regular classroom," says special education teacher Janet Rogers. "There are no self-contained classrooms in the entire building. It's a brand new staff serving all children."

Trant says Winter Park is a model school. "They showcase the best teaching practices in the school system," says Trant. The school draws from a socio-economic cross section of Wilmington, and some employees, including the principal, the assistant principal, and some teacher assistants — ride the bus back and forth to school with students to help maintain order and get the school day off to a good start. "Their philosophy is the school day starts from the moment [the children] get on the bus until the moment they get off in the afternoon," says Trant. "So do the learning opportunities. The staff

provides the support to make that happen."

The Winter Park approach to learning seems to be working. In 1997–98, the school had the highest end-of-grade test scores of any New Hanover County elementary school. The N.C. Department of Public Instruction recognized Winter Park as a school of distinction showing exemplary growth.³

And despite some accessibility issues, Winter Park has made a strong effort to welcome as many children with special needs as possible. When the attendance zone was determined, education officials scoured the neighborhoods to find children with special needs who could attend school closer to home. In the 1996–97 school year, nine specially equipped buses coursed the district, picking up 13 students with disabilities and hauling them to nine different schools. Now all of those students are served in their home school area, using no special buses.

Once the students arrive at school, they go to regular classes. Rogers and her colleague Marianne Lare move through the building, working mostly — but not exclusively — with children with special needs. Students who fall behind may be pulled aside for what is called regrouping. "The curriculum is designed to work with kids wherever they are," says Rogers. "In the first grade, I might take



Gray Laughridge Wells



Gray Laughridge Wells

four children. Two are labeled, two are not. But there's still a need."

The work load for the two special educators varies by grade, with few students identified as needing special services in the early grades and the numbers getting fairly heavy by grades four and five. Fundamental to the model, however, is making sure that the proportion of special needs to regular classroom students does not get out of balance. If it doesn't, the model works beautifully, these educators say. "We need so much less time than in a separate classroom," says Lare.

While much remains to be done to accommodate special needs students in the New Hanover County Public Schools, much has been accomplished. And Trant's willingness to listen and try new things is part of the reason. Also to be credited are the front-line educators who work directly with the students, and the principals of individual schools who provide a listening ear and problem-solving skills. The reliance on mediation when disputes cannot be resolved more informally also provides a model approach. Behind all this is a philosophy: "Children with special needs are children first," says Trant. "The education system

should teach them in this way. Special education is a means to get this done."

A Private School Goes Public with Its Teaching Methods

The Hill Center is a small (133 students), independent school and a division of Durham Academy with a 4:1 student teacher ratio (compared to a ratio of roughly 18.5 special education students per special education teacher in the North Carolina public schools) — and a mission to help children with learning disabilities achieve academic success. The school's reputation is such that it recently launched a \$5 million capital campaign to make room for more students. But besides pushing for bricks and mortar, the school has embarked on another campaign: to build a partnership with North Carolina's public schools.

Armed with a \$1 million grant from the Glaxo Wellcome Foundation, the Hill Center is pushing to share its techniques with other North Carolina teachers. The chief vehicle is a week-long summer institute at which participating public school teachers get a full-immersion introduction to Hill Center

methods that can be adapted to the larger classes of the public schools. However, the effort is a collaborative teacher training initiative that also involves the University of North Carolina and the education research organization SERVE (Southeastern Regional Vision for Education), a federally funded education research laboratory based at the University of North Carolina at Greensboro. Participating public school systems are paired with public universities in their regions to provide support for special education efforts, and SERVE is evaluating the effort to see how successfully the Hill Center methods can be replicated in the public schools.

A question any educator might ask is, are the methods worth copying? Educators who have scrutinized the program say yes. "They have a good model," says David Lillie, a special education professor at the University of North Carolina at Chapel Hill with expertise in learning disabilities. "It works. It's effective."

Since its founding in 1977, the Hill Center has served more than 1,000 children from 65 schools in seven different counties. Students with learning disabilities such as attention deficit disorder and dyslexia spend a half-day at the Durham campus, then return to their home schools for the remainder of the day. Current annual cost is \$9,300 per student for the half day program, which focuses almost exclusively on academics. Expensive extras like food services, sports programs, and extracurricular activities get taken care of at the students' home campuses. "Most of our dollars go entirely into teachers so we can keep our student-teacher ratio down," says Hill Center Director Shary Maskel.

Relying on its small number of students per teacher, the school follows a philosophy of using drill, repetition, and overlearning so students can achieve mastery of material in reading, writing, and math.

Maskel says one area where students sometimes get off track early is reading. Since reading is fundamental to all aspects of school performance, the reading problem spills over to other areas, leading to frustration, failure, and damaged self-esteem. The school focuses on catching reading problems early, using what is called a "structured language" approach, in which students learn to attack and decode words by detecting consistent patterns in the language. This is in contrast to the whole language approach, which immerses the student in the literature without focusing so much on drill and practice in sounding out words. "Research shows that about

80 percent of kids will learn to read no matter what," notes Maskel. The other 20 percent, she says, need help with decoding the language.

Through the Hill Center approach, many students get their first taste of academic success, and the school tries to build on this success to promote the self-esteem of students. Often, the results are dramatic, particularly for younger students. "It's much easier to remediate a third grader than it is an eighth grader," says Maskel. Maskel's research shows students of elementary, middle, and high school age advancing in grade level from a half-year to as much as three-years after a year of intensive study at the Hill Center, with the younger students making the most dramatic gains.⁴ The goal is to help students regain their academic footing so that they may return to their regular school full time.

Some 30 educators attended the 1998 Hill Center Teacher Training Institute, conducted at Glaxo Wellcome training facilities in Research Triangle Park. Among them were 17 public school teachers and administrators, including a contingency from Bunker Hill High School in Catawba County. Bunker Hill, located in the town of Claremont in the heavily industrialized Catawba River Valley near Hickory, is a far cry from the Hill Center, a division of the exclusive Research Triangle area prep school Durham Academy. Yet the two schools do share some common ground; both serve a lot of students with learning disabilities.

Bunker Hill High School Principal John Stiver believes there are lessons to be learned from the Hill Center staff. He sent seven teachers and staff members to the summer institute — including regular and special education teachers — and believes the benefits will be many. "They're being treated as professionals in a first class training facility. They're away from the school, developing comradery. They can support each other when they go back to school."

Aside from a field trip to an outlet mall and a Durham Bulls baseball game, the teachers turned students spent their days learning and sharing ideas. Among the activities were a few exercises intended to help the teachers learn what it is like to be on the perception end of a learning disability — the pupil's perspective. One drill involved trying to trace a star while looking in a mirror that reversed the image. Another got at auditory attention issues through a tape-recorder simulation of a mail-order sales transaction. The teachers were to write down a complicated sales order while the tape recorder filled the room with distracting sounds.

At least one regular classroom teacher said the exercise was an eye-opener. "It's making me have a much better understanding," says Bunker Hill science teacher Rebecca Wilkinson, who acknowledges her frustration with students who never seemed to "get" the material, no matter how it was delivered. "It's making me much more aware. I'm going to be much more patient and compassionate with them."

Stiver says the Catawba County school has a high number of students at risk of school failure and a high number of students with special needs. One particular area of difficulty is reading, and Stiver worries that many of his students will not pass the competency test required for high school graduation. "Many of our students come from homes where they don't have large vocabularies. They don't have people reading to them at home. They have a lot of reading problems."

While Stiver does not expect to be able to duplicate the Hill Center's success, primarily due to its smaller class sizes, he does expect the teaching methods to work. Stiver hopes teachers can implement strategies such as vocabulary building word attack exercises, oral drill, reteaching, and classroom management. He also hopes Bunker Hill teachers can learn to improve their recognition of learning disabilities among regular classroom students in order to implement strategies to help these students learn.

Teachers who attended the Hill Center Institute will pass along what they learned to their colleagues at Bunker Hill High. Further support will

come from the collaborative tie-in with Appalachian State University and its School of Education. "We'll bring out one or two things and let it go one or two weeks, then we'll bring the staff back together and discuss successes and failures," says Stiver. "Then we'll bring out one or two more techniques." Stiver sees this as a sort of peer education for teachers. "Teachers learn better from other teachers."

Other participating public schools included a Greenville middle school and a Durham elementary school. The Hill Center teacher training institute traces its roots to 1993, but the 1998 institute represented the first step in a five-year plan to create model programs in the Catawba County, Durham County, and Pitt County school districts where the Hill Center methods are used and the results are evaluated. The plan is to have an elementary, middle, and high school in each of the three participating school districts adapt the Hill Center model to the public school setting so students can be exposed to these teaching methods through a kindergarten through grade 12 feeder system.

Hill Center officials do not expect to be able to produce an exact replica of the school's approach on a large scale in the public schools, primarily due to cost and class size. At \$9,300 annually for a half-day program, the cost far exceeds the extra \$2,736 in state and federal funds allocated to local school systems for each special needs student. It's doubtful local appropriations can make up that kind of difference.

Lillie, the special education professor, believes

Q: Many famous people were childhood stutterers, from Moses to Marilyn Monroe. I'd like to know how journalist John Stossel and actor James Earl Jones overcame the problem.

A: Both Stossel, 51, a correspondent on ABC's 20/20, and Jones, 67, perhaps best known as the voice of Darth Vader in Star Wars, were so ashamed of their stuttering that they often did not speak as children. Jones was aided by a teacher who, among other things, encouraged him to read poetry out loud. Stossel credits a three-week course in language skills in 1977 called the Hollins Fluency System, given in Roanoke, Va. "I still practice these techniques," Stossel tells us, "especially when I read to my children."

—"WALTER SCOTT'S PERSONALITY PARADE," *PARADE*, JUNE 14, 1998.

Special Olympics To Bring Thousands of Mentally Disabled Athletes to Triangle

North Carolina's Triangle area will play host to the 1999 Special Olympics World Summer Games. Special Olympics officials say the games represent the largest multi-sport event in the world in 1999 and the biggest international sporting event in North Carolina history.

The Special Olympics feature 7,000 athletes with mental disabilities from more than 150 countries, along with 2,000 coaches and 15,000 family members and friends. Special Olympics officials expect to activate an army of

35,000 to 40,000 volunteers for events attracting as many as 400,000 spectators.

The games, operating on a \$35.5 million budget, include nearly 20 sports, such as aquatics, gymnastics, and track and field. Events will take place in Raleigh, Durham, Chapel Hill, and Cary. For volunteer, sponsorship, or other information, contact the 1999 Special Olympics World Summer Games office at 1-888-767-1999 or 919-831-1999, or visit the Special Olympics Web site at www.99games.com.

Women's soccer star Mia Hamm gives a soccer clinic for Durham County Special Olympics team members



Blake Tsai

the public schools can duplicate some of the Hill Center's success by adapting some of the Hill Center's methods. But he believes it's going to take more than just teacher training.

"The schools have got to commit to restructuring how they work with kids," says Lillie. His idea

of a successful model would use accommodations in the regular classroom to help students keep up with content, combined with resource rooms and tutoring to give them structured, explicit instruction and frequent feedback in the basic skills of math, reading, and writing. Such strategies are hard

to implement in the larger classroom, Lillie says. While the half-day Hill Center model may not be feasible, students could get this kind of attention for a shorter period of time three or four times a week, Lillie says.

But Jean Neville, director of the Hill Center's teacher training institute, believes many of the lessons in helping children with learning disabilities will transfer to the larger classrooms of the public schools. "This institute is designed to be more focused on what would work in larger group settings," she says. "They can take components of ours but do it in a way that fits their structure." These include helping the students get more organized, imparting good study habits, and incorporating drill and practice into the daily routine. The workshops also attempt to help teachers recognize when a student may have a learning disability and to better accommodate these students in the classroom.

While attempting to improve how public school teachers recognize and reach children with learning disabilities may seem ambitious, the Hill Center staff approaches the task with gusto. "We're kind of a small agency to have such big dreams," says Maskel, "but the challenges are not insurmountable."

Parents Helping Parents: The Exceptional Children's Assistance Center

Connie Hawkins doesn't look for advanced educational degrees when hiring staff for the Exceptional Children Assistance Center in the Mecklenburg County town of Davidson. The only degree she looks for is a M-O-M — someone who is the parent and advocate of a special needs child. Of course, Hawkins also would consider hiring a D-A-D, but few have applied.

The ECAC is a training and information center for parents of special needs children. "Under IDEA (Individuals with Disabilities Education Act), every state must have at least one (parent assistance center)," says Hawkins. "We help families understand the law, provide them information about disabilities, and help them work collaboratively with school systems. Much of the work is done by telephone, since the ECAC covers the entire state with 16 employees in the main office at Davidson and two branch offices at Raleigh and New Bern. "All of my parent educators on the phones are parents [of special needs children]," says Hawkins.

And the phones stay busy. The center logs approximately 14,000 contacts a year, including workshops, telephone calls, and orders to the ECAC library. "It's everything from a mom who is pregnant and found out she is carrying a child with a disability to a mom whose principal has said, 'That child can never darken my door again' [due to behavioral difficulties]," says Hawkins. "The vast majority are educational." In addition, ECAC publishes a newsletter that reaches more than 20,000 people.

Because of their life experiences, these staff members are quite empathetic to the concerns of parents trying to negotiate the best education possible for their children in the public schools. Beverly Roberts, the center's outreach coordinator who makes sure ECAC programs reach a broad range of parents, has a 17-year-old son, Charles, with mild autism and mild to moderate mental retardation. Charles has spent most of his academic life in a self-contained classroom. Now he is being included a little more with regular classroom students as he prepares to make the transition from school to work. "He's going to one class now — successfully," Roberts says. In addition, Charles is working part-time to prepare for a job after high school. "He's doing some community-based training at the Pizza Hut," says Roberts.

Roberts says her son's experience with the public schools has been mixed. "He's had some incredibly good years and some incredibly bad years — and some spots in between years," says Roberts. Like any parent, she remembers the trials and tribulations of rearing a challenging child and trying to make sure he got an education. "As a kid, he was always getting away," she says. "He didn't like to be hugged, and he was always moving." Charles had trouble communicating with and relating to others. He also had talents, such as ice skating, roller skating, and bouncing on a trampoline. "Special Olympics really expanded that for Charles," says Roberts.

Despite in some ways functioning like a younger child, Charles is a teenager with a mind of his own. That can lead to the inevitable parent-child conflicts. Take the time Charles was participating in a summer program that required him to don a swimsuit each day.

"No swimming," Charles declared.

Roberts pleaded with him to participate.

"No swimming," Charles insisted.

Roberts packed the swimsuit with his school things anyway. "Charles threw the swimming trunks out the window of the bus — in the bushes,"

says Roberts. The experience taught Roberts that it is important to teach and encourage children with disabilities, but parents can learn too. "Sometimes we need to listen," she says.

Cheryl Strupe, ECAC's administrative assistant at the Davidson office, has a 10-year-old daughter Jessica with spina bifida. Jessica also has been identified as having a learning disability due to attention deficit disorder. For Jessica, the issues have been around access to school facilities. "The buses aren't equipped with lifts (for field trips). There's nothing on the playground she can play on. We wanted a swing. They ordered one, and now we have a swing and no frame." Yet on the whole, Strupe believes the school system has been supportive. "I haven't had any problems that haven't just taken a phone call or a letter to address," she says.

Strupe takes her involvement further than would many parents. She even has started an athletics program for children with disabilities. It's called Structured Athletics for Challenged Kids. The program features five sports — baseball, basketball, bowling, gymnastics, and soccer — and the children play every Sunday afternoon, year-round. Each child with a disability is paired with a child who is not disabled, so if there is a skill a child with a disability can't perform, he or she gets a helping hand. "We started with 32 kids," says Strupe. "Now we're up to 80."

The issues are different for Judy Higginbotham, a parent educator at ECAC whose daughter attends the Metro School in Charlotte, a separate school for children with severe disabilities. Higginbotham can help parents work through issues around educational placement for children with more severe disabilities.

***Don't laugh at me
Don't call me names
Don't get your pleasure
from my pain
In God's eyes we're all
the same
Someday we'll all have
perfect wings
Don't laugh at me.***

—MARK WILLS

"DON'T LAUGH AT ME"

Higginbotham's daughter has a disability called Turner's Syndrome. She is approximately four feet tall, has an IQ of approximately 25, and suffers from a degenerative muscular disease. Yet she is able to participate in some job training, was able to attend a summer camp, and went to the prom. Higginbotham is pleased with the education her child is receiving at Metro, even though it's a special school where all of the students have severe disabilities.

For her, Metro School is the most appropriate environment as required by the IDEA. And Hawkins, the ECAC director, notes that a well-designed special education program must have a continuum of options. "Anybody who says there is a cookie-cutter answer is not doing what the law says," notes Hawkins.

The experiences of parent educators such as Roberts and Higginbotham are valuable because staff members have learned firsthand how to be an effective member of an IEP team. The IEP — or individualized education program — is intended to be a blueprint for the child's special education program. Unfortunately, says Hawkins, many of these IEPs are not well done. "There's not enough training in IEP writing," says Hawkins, "and that's where parents put the most stock. "It's also where a lot of the conflict starts."

There is no mandated local IEP form. Instead, the local form must have certain components, including goals and objectives that are to be realized in the course of the year. "If the primary disability is academic, the goals and objectives will be academic," says Hawkins. "The purpose of education is to help the student become as productive and independent as possible. The IEP could address everything from the severely, profoundly retarded to the academically gifted in a wheelchair. The range is significant. That's why individualization is so important."

ECAC's mission is to work collaboratively with parents and educators to make sure that children get the services they need under their individualized education programs. ECAC's expertise and experience helps parents, who can sometimes be overwhelmed by the school system in disputes over how to serve the needs of the child.

Too often, Hawkins says, the parents feel they are working against, rather than with, the school system. That, Hawkins says, is unfortunate. She believes the law intends a collaborative process between parents and educators. "Ninety percent of the calls we get, the parents say, 'I really wish I didn't have to fight,'" says Hawkins.

"Unfortunately, it's become an issue of sides. There should be only one side, and that's the child's. There shouldn't be a parent side and a school system side."

Including Students with Severe Disabilities in the Regular Classroom

Joy Nance readily concedes she's still a student when it comes to educating children with special needs in the regular classroom. Yet her relatively poor school system in the northwestern Piedmont has taken the concept of including children with severe disabilities in the regular classroom further than any public school system in North Carolina.⁵ Nance is assistive technology/inclusion facilitator for the Rockingham County Schools, and her school system's work is often pointed to as a model for other educators who want to bring more children with disabilities into the regular classroom.

Nance eschews the term "model." She prefers to call the efforts of the Rockingham County Schools to include most special needs students in the regular classroom a "work in progress."

But special education teacher Anne Montaigne says major strides have been made at her school, Reidsville Intermediate, since the schools announced they were going to an inclusion model some seven years ago. "Now we have a new staff of inclusion believers," says Montaigne.

Inclusion is the education of children with disabilities into the regular classroom with supports. In Rockingham County, this typically means a co-teaching situation, with a regular classroom teacher and a special education teacher working together to make sure everyone's needs are met, and these professionals sometimes are supported by a teacher's aide. "People talk about dumping children," says Nance. "That's not inclusion."

The school system currently practices inclusion at some level in all of its 25 schools. Of some 2,400 special education students, only 110 are not in a regular classroom for 40 percent or more of the day. The school system provides observation sites and training for the North Carolina Department of Public Instruction, and Nance and other special education and regular classroom teachers regularly perform workshops to demonstrate model practices to help inclusion work. Nance began her career as a regular education teacher, but she also holds a master's degree in special education and technology.

At the 49th annual conference on Exceptional Children held by the State Board of Education and

the N.C. Department of Public Instruction in the summer of 1998, Nance's audience was charter school practitioners interested in how to serve special needs children better. Nance played the part of the teacher well, right down to her lapel pen — a handsomely carved, bright red apple. She teamed up with regular classroom teacher Kristi Harris and Montaigne, a special education teacher who co-teaches a fourth grade class with Harris. Nance and her colleagues crammed seven years of experience into a three-hour presentation, passing out candy at the break to keep the blood sugar up as the afternoon session wore on.

One clear message was Nance's commitment to inclusion as the first choice for educating children. The case she made for inclusion rested on six key points: (1) children have a right to a free and appropriate education in the least restrictive environment; therefore, they have the right to have the regular classroom considered first; (2) inclusion provides better preparation for adult life; (3) children with disabilities who are included with their regular classroom peers exhibit improved social and academic learning from role models; (4) children with and without disabilities learn to accept each other for both their similarities and their differences; (5) included children gain exposure to normal experiences such as taking the end-of-grade test and pursuing the regular classroom curriculum — called the standard course of study; (6) inclusion of children with disabilities provides greater opportunities for friendship between disabled and non-disabled students.

Yet Nance acknowledges there are challenges to including children with disabilities and those without in the same classroom. Perhaps chief among them is coordination between the special education and regular classroom teacher. One problem can be a failure of the regular classroom teacher to recognize the special education teacher as an equal in the classroom. Another is deciding who will do what, when. A great deal of coordination must occur between educators who already are pressed for planning time. Tests must be modified, study strategies must be implemented for students who learn differently. Someone — usually the special education teacher — must make sure that the special needs students are "getting it" and participating at their level.

But Rockingham County education officials do not believe the special education students in regular classes are holding back their peers. Special Education Director Ann Brady says in Rockingham County, students in inclusion classes — with and

without disabilities — seem to perform better than those in non-inclusion classes on end-of-grade tests.

On the whole, the school system's end-of-grade test results were adequate but not exceptional for the 1997–98 school year. Seven of 21 schools serving children in grades kindergarten through eight show exemplary growth in student achievement as measured by the state's ABCs plan. Only one school in the district achieved school of distinction status by registering a composite score of more than 80 percent on end-of-grade tests in reading, math, and writing.

The challenges are plentiful, yet Nance believes inclusion can work and work well. Her own son Jordan is one example of a student who has blossomed in moving from a self-contained classroom to full inclusion. Wheelchair bound and with multiple disabilities from birth, Jordan has learned to read and write. Nance credits inclusion and his assistive technology for much of the progress. Her son also has made non-disabled friends. She re-

members fondly his having a few friends over to share popcorn and watch World Wide Wrestling on Pay-Per-View. For Jordan, it was no big deal. But Nance had a sudden realization. "His friends just viewed him as one of the guys."

The next challenge Jordan faces is a high school diploma. With all the progress he has made, Nance would like to see Jordan get more out of his public school education than a certificate of attendance.

Improved social and communication skills, better classroom performance, and greater acceptance by non-disabled peers are three gains Nance has seen in her own son and in other children in the Rockingham County Schools. "When I look at him and see the progress. . . . It can work for all children." One reason is that students without disabilities help the students with disabilities learn. "Peers are such natural teachers," says Nance. "You keep asking yourself, how are you going to help these kids? And you step back and the peers come up with the answer."

Helping Friends

Hi, my name is James. I would like to tell you a story about one of the best friends I ever had. It all started on my first day in second grade. I was in Mrs. Rountree's classroom. When I first walked in the door, I saw a kid in a wheelchair. After a few minutes, Mrs. Rountree told us that we had two special students named Jordan and Brandon. I was kind of scared meeting Jordan at first because I had never known anyone disabled before. Jordan was CP. He doesn't talk or walk. He got CP because he was born a little too early.

Mrs. Nance soon made a system where the boys would have partners. Sometimes when I was Jordan's partner he liked to play and get off the topic. Mrs. Nance would come around and tell me to get him back to the subject. She also told me that I should try to make him do as much as he could. One of the other things that I did with Jordan was being his lunch buddy. I really had to help him eat because he couldn't move his hands very well. I also helped Jordan in P.E.

Editor's note: This letter provides a firsthand account of a Rockingham County student's experience with inclusion.

He did kind of different things. Instead of sit-ups, he would do head-ups. Sometimes he and Brandon would have a race, and we would cheer them on.

I was in Jordan's class in third grade also. I was his peer helper. I still got to be his lunch buddy and work partner too.

I learned a lot those two years. I learned that even disabled children can do a lot of things and that you just can't laugh at kids because they are disabled. They can do a bunch of things. I also learned that disabled kids have to do different things sometimes and then the same things that we do other times. I also made two good friends. Brandon has moved to an Eden school, but I will never forget him. Jordan is in the year-round school program, but I still get to see him some. At Christmas, his dad took me, Jordan, and another friend to Greensboro to a lunch and a movie. My parents take me to visit Jordan in the summer.

I think that Jordan learned a lot from me too. He also learned that you can make a lot of friends disabled and non-disabled. Jordan and I will be friends forever!



Karen Tam

Yet she does not believe every student *must* be included. "My philosophy is that all kids need to have an opportunity with their non-disabled peers," says Nance. "I don't think all kids need to be in the regular classroom all day long, because that may not be the best way to meet their IEP (Individualized Education Program) goals, but they do need to be a part of their school community throughout the day."

At the Rockingham County Schools, there is a continuum. While many special education students are fully included, there also are classes in which special needs students are "pulled out" from the regular classroom for special instruction, and some students are in self-contained classes in which all of instruction takes place with peers with disabilities. Yet Rockingham County has carried inclusion farther than North Carolina's other 116 school systems. "We don't look at the label and say this is the program," says Nance. "We look at the child and say, 'What are the supports necessary to make this child successful in the regular classroom?'"

Can the Rockingham County inclusion experiment be replicated in public schools across North Carolina? The answer clearly is yes. The Rockingham County school system is not a wealthy one, and its inclusion program is being carried out with less funding than most other school systems receive for special education. But the commitment must run deeper than just adopting the latest special education jargon and dropping special education students into the regular classroom without the necessary supports. Restructuring must take place to make the model work, and teamwork between the regular and special education teachers is essential. Para-professionals and assistive technology for communications and other special needs also sometimes are needed to help students with special needs keep their heads above water in the regular classroom. Enthusiastic participation from parents, administration, and staff is critical if inclusion is to work. Yet where these key ingredients exist, inclusion seems to unlock potential for children with disabilities. This, combined with the legal mandate for educating special needs children in the least restrictive environment, makes the case for inclusion a strong one.

* * *

A question mentioned several times in the case studies mentioned above, is, are the programs replicable? Indeed, this is an issue whenever scarce program dollars are applied to pressing social problems. Why not simply transfer what is already

known to work to a new location, rather than constantly creating new programs and repeating old mistakes? A report by the Charles Stewart Mott Foundation points out that too many resources go to paying for program innovation and too little to what is already proven to work.⁶ But it isn't always that simple.

What makes a program replicable? The publication *Common Ground*, published by the North Carolina Center for Nonprofits in Raleigh, offers a few pointers from a Philadelphia nonprofit called Replication and Program Strategies Inc.⁷ A program should have: (1) clear and plausible aims; (2) concrete and understandable components; (3) data to support its effectiveness; (4) cost-effectiveness when measured against other programs in the field; (5) transferability to another site, and; (6) a network of support at the new location.

Yet another important ingredient is leadership. Where innovative, successful programs have blossomed, there typically has been a visionary leader with a strong commitment to making the program work.

Given the criteria mentioned above, how do the four programs discussed in this article stack up? While none can expect a perfect score, each offers some degree of replicability. And even those programs that are not fully replicable may provide a rich source of ideas for special educators.

The informal, open-minded approach to dispute resolution in the New Hanover County Public Schools with reliance on mediation where other measures fail seems superior to more rigid approaches that have failed elsewhere. The program passes the test on cost since mediation is far cheaper than litigation. It has a track record of effectiveness, with seven successful mediations and no parents seeking more aggressive administrative remedies. Whether the approach can be duplicated elsewhere depends upon the receptiveness of school administrators at the new site to the more informal approach. In other words, leadership that believes in this approach to dispute resolution is crucial to making it work. Yet mediation, as practiced by the New Hanover County School system, provides a sound alternative to more expensive and divisive dispute resolution processes.

The Hill Center does not suggest that its model can be precisely replicated in the public schools due to the Center's low student-teacher ratio. Yet some of the school's teaching methods may transfer to larger groups, and the public schools can provide smaller student-teacher ratios for at least part of the school day. And Hill Center tips to help students

build better study habits and improve their time management skills can work anywhere. In addition, Hill Center efforts to raise awareness of learning disabilities among teachers can lead to earlier recognition and better accommodation of these students in the classroom. The Hill Center experiment in Catawba, Durham, and Pitt counties bears watching to see if it produces better results in public school classrooms.

Local school systems might also do well to emulate the parent facilitator program operated by the Exceptional Children Assistance Center. Adding a parent facilitator to the payroll has been tried successfully in the San Diego, Calif., schools to help parents negotiate the complexities of special education law. Such an approach may lessen the adversarial aspects of the relationship between parents and educators and promote teamwork.

Rockingham County's compassionate commitment to including students with disabilities in the regular classroom provides a positive model of success. The approach is being undertaken on a modest public school budget, and with support and commitment from educators and parents, it can be transferred to other school districts.

All four examples — the New Hanover County Public Schools, the Hill Center, ECAC, and the Rockingham County Public Schools — provide models for what can be accomplished when proper attention is paid to educating children with special

needs. Properly cultivated in new soil, these ideas might take root and grow. ☐☐

FOOTNOTES

¹For more on year-round schools in North Carolina, see Todd Silberman and John Charles Bradbury, "Year-Round Schools: N.C. School Systems Test the Waters," *North Carolina Insight*, Vol. 17, No. 1, May 1997, pp. 2-41.

²Codington Elementary School students registered a composite score of 72.4 on state end-of-grade tests in reading, math, and writing, a performance judged adequate by the N.C. Department of Public Instruction.

³Winter Park Elementary School's composite performance score was 88.1 for the 1997-98 school year. The score takes into account state end-of-grade tests in reading, math, and writing.

⁴Sharon Maskel and Rebecca Felton, "Analysis of Achievement at the Hill Learning Development Center: 1990-94," in *Clinical Studies of Multi-Sensory Structured Language Education for Students with Dyslexia and Related Disorders*, International Multisensory Structured Language Education Council, Salem, Oregon, 1995, pp. 129-137.

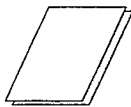
⁵For the most recent work by the North Carolina Center for Public Policy Research on the relative wealth of the state's 117 school systems, see Mebane Rash Whitman, "Center Update: The Right to Education and the Financing of Equal Educational Opportunities in North Carolina's Public Schools," *North Carolina Insight*, Vol. 17, No. 1, May 1997, pp. 42-71.

⁶Carol D. Rugg, "Replication: Sowing Seeds of Hope," the Charles Stewart Mott Foundation, Flint, Mich., special section reprint from 1990 annual report, p. 6.

⁷Laura Kujawski, "Replication: Opening Another Door," *Common Ground*, N.C. Center for Nonprofits, Raleigh, N.C., September-October 1997, p. 8. For more on replication, contact Replication and Program Strategies, Inc., 1 Commerce Square, 2005 Market St., Suite 900, Philadelphia, PA, 19103. Phone: (215) 557-4482.



Gray Laughridge Wells



MEMORABLE MEMO

Vote on November 3rd, Know Their Record on the Environment



Senator Lauch Faircloth
Incumbent



John Edwards
Candidate for Senate



Authorized a bill exempting factory hog farmers from meeting certain Clean Water Act requirements while he owned the 5th-largest hog operation in the state. (S. 851, 05/25/95; *Raleigh News and Observer*, 08/23/98)



On June 9, 1996, after multiple warnings from the North Carolina Department of Environmental Management, Faircloth's farm violated state law by spilling 250,000 gallons of livestock feed into the Black River, killing 6,100 fish. (*Raleigh News and Observer*, 08/23/98)



Voted to cut funding for enforcement of clean water laws. (H.R. 2099, 09/27/95)



Voted to fund the Clean Water Action Plan. (Sen. Con. Res. 86, 04/02/98)



Cosponsored a Superfund bill that undercuts the principle requiring polluters to pay to clean up the pollution they create. (S. 8, introduced 01/21/97)



Voted to kill an amendment that would have protected a community's right to know about toxins being released into the air and water. (amendment to S. 343, 07/13/95)



Voted against saving taxpayer dollars and cutting environmentally damaging logging road construction. (H. R. 2107, 09/17/97)



Supports requiring industrial hog producers to use effective treatment technology. He has a four point plan to regulate hog producers. (www.johnedwards.org; *The Independent*, 04/29-05/05/98)



Supports rigorous enforcement of the Clean Water Act. Improving North Carolina water quality and wetland protection is his top environmental priority. (Response to LCV Questionnaire, 1998)



Says the current system does not work, and that the federal government can play a role in setting standards for hog farms. (*Wilmington Morning Star*, 03/01/98)



Supports making polluters pay to clean up the pollution they create. (www.johnedwards.org; Responses to LCV Questionnaire, 1998)



Supports retaining public right to know provision and fully funding the programs. (Responses to LCV Questionnaire, 1998)



Supports protection of our National Forests and National Parks. (www.johnedwards.org)

Sierra Club.

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for our families, for our future.

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This guide has been prepared to educate you on the candidates' positions on environmental issues and is not intended to advocate the election of any candidate.

In this year's U.S. Senate campaign, the Sierra Club brought North Carolina's U.S. Senate candidates face to face on the issues. Only trouble is, they brought the wrong face for John Edwards. But let's face it, looks can be deceiving. Maybe this is John Edwards. After all, it's a small picture. Want to be certain? Blow it up. (Actually, it's a photo of a California lawyer, also named John Edwards with a similar website, which is how the mix-up occurred.) Meanwhile, send us your memorable memos. Photo identification not required, and anonymity guaranteed.



The real
John Edwards

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