

CHAPTER TEN

IDEA and Disproportionality: Federal Enforcement, Effective Advocacy, and Strategies for Change

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Overrepresentation and inappropriate placement of minorities have been historic problems within special education—persisting even after the passage of Public Law 94-142, the nation's special education law. Researchers have debated the extent to which some overrepresentation may result from poverty, but most acknowledge that poverty alone cannot fully account for this phenomenon, particularly in categories such as mild mental retardation (Harry & Anderson, 1995; Hehir & Gamm, 1997). In addition, students with disabilities who are served in urban settings in which minorities predominate have a higher likelihood of being placed in segregated settings than their white suburban counterparts, and a lower likelihood of accessing challenging curricula (Harry & Anderson, 1995; Patton, 1998; U.S. Department of Education, 1996). Not until the 1997 reauthorization of the Individuals with Disabilities Education Act (IDEA 97), which required that states collect and monitor data from schools for overidentification and restrictiveness by race and intervene when appropriate, did the nation's special education legislation directly address racial disproportionality.

Federal enforcement under IDEA has been criticized as weak overall (National Council on Disability, 1996); therefore, it is not surprising that federal enforcement of what IDEA requires of states in terms of racial disproportionality has been minimal or indirect. Despite this disappointing record, the law as amended in 1997 does contain promising options for enforcement, which could improve compliance on this issue if well applied. Moreover, advocates for the disabled and leaders from both political parties are calling for greater federal oversight and better outcomes for the children targeted as bene-

ficiaries of our education expenditures. These demands for greater accountability hold promise for better enforcement.

In addition to trying to improve implementation through federal oversight, there are a number of situations in which effective advocacy can improve implementation through state and local activity. This chapter reviews the relevant federal enforcement structure and the federally protected rights under disability law most pertinent to concerns of minority overidentification and restrictiveness. It further examines the role of the federal government as it influences and is influenced by political pressures and advocacy efforts at these different levels. Finally, the chapter explores ideas for advocacy strategy and suggests comprehensive approaches that pursue change on the local, state, and federal levels. In each section the focus is on the enforcement of IDEA through the Office of Special Education Programs (OSEP), the federal office within the U.S. Department of Education (DOE) that has statutory responsibility for implementing the act.

Specifically, this chapter will provide 1) a firsthand description of the political dynamic of federal enforcement in IDEA; 2) an overview of important relevant changes to IDEA, including the relatively new enforcement options; and 3) a proposed strategy for enforcement that could reduce overrepresentation and promote the effective implementation of IDEA for minorities who have disabilities. The ideas presented here were developed over my six years as director of OSEP during the Clinton administration and my previous fifteen-plus years of experience in urban education. I state this not simply to reinforce my credibility to speak on the issue, but also so the reader may take into account my biases.

THE ENFORCEMENT STRUCTURE

Concerns about minority overrepresentation in special education could potentially trigger intervention by any one of three federal agencies. Enforcement of the federal antidiscrimination provisions that protect the civil rights of students with disabilities and students who are racial minorities is conducted by the Office for Civil Rights (OCR) of the U.S. Department of Education and by the U.S. Department of Justice (DOJ). The Office for Civil Rights has jurisdiction to review complaints on matters such as racial overrepresentation and may intervene in a variety of ways. It can also initiate its own investigation, called a compliance review. Ultimately, OCR can withhold all federal education funding from a district if necessary, but it usually brokers a resolution agreement

with the district that is in violation. The agency can also refer cases to the Department of Justice for further adjudication. OCR has jurisdiction to enforce antidiscrimination laws, including disability-based claims under Section 504 of the Rehabilitation Act of 1973 and claims of racial discrimination under Title VI of the Civil Rights Act of 1964. But it is not charged with federal oversight of the IDEA. A critical difference is that IDEA is a grants-to-states program. Unlike Section 504, enforcement and oversight of IDEA by OSEP focuses primarily on proper implementation of the act by states, not on whether students experience discrimination.

Therefore, it is OSEP, the grant administrator, and not OCR that is charged with the proper implementation of IDEA. In the course of giving grants to states and school districts to provide special education, the IDEA also specifies what kinds of students must be served in what kind of educational setting, how such services should be provided, and includes extensive due-process rights for parents and children to ensure that students with disabilities receive a free appropriate education. The law also contains "child find provisions," which require that school districts identify for services all students with qualifying disabilities. Part of the grant package is that states must provide parents with a broad array of rights, including clear notice of the right to challenge identification, placement, and the specific nature of the educational services the school offers to the student.

OSEP enforces IDEA through state departments of education for Part B (preK-12) and through lead agencies for Part C (infants to age three). The provisions regarding racial disproportionality are found in Part B (students age 3-21). It is important to note, however, that OSEP oversees the implementation and enforcement by the states. By law, each state has its own administrative hearing process to handle complaints and is supposed to perform other oversight and enforcement functions vis à vis schools and districts. OSEP reviews state implementation and ensures that state enforcement efforts are meeting IDEA's requirements. Where states are not complying with the law, OSEP may act to bring about compliance, including withholding of IDEA funds in whole or in part.

Both OSEP and OCR can refer cases to the U.S. Department of Justice for further legal proceedings, but this rarely happens. DOJ's involvement in addressing racial disproportionality in special education is primarily limited to desegregation cases in which DOJ has been a party and special education disparities have been raised as an indicator of unlawful segregation (see Losen & Welner, this volume).

IDEA: OVERREPRESENTATION AND ENFORCEMENT

The lack of attention to the problem of minority overrepresentation needs to be understood against the backdrop of weak federal enforcement of IDEA. In 1996, the National Council on Disability convened 350 disability leaders from throughout the country. These leaders summarized enforcement of IDEA and other relevant laws as follows:

Despite progress in the last decade in educating students with disabilities, current federal and state laws have failed to ensure the delivery of a free appropriate public education for too many students with disabilities. . . . Lack of accountability, poor enforcement, and systemic barriers have robbed too many students of their educational rights and opportunities and have produced a separate system of education for students with disabilities rather than one unified system that ensures full and equal physical, programmatic, and communication access for all students. (National Council on Disability, 1996, p. 53)

In a subsequent comprehensive report on IDEA enforcement, the National Council on Disability noted, "Although Department of Education Secretary Richard W. Riley has been more aggressive in his efforts to monitor compliance and take more formal enforcement action involving sanctions than all of his predecessors combined, formal enforcement of IDEA has been very limited" (National Council on Disability, 2001, p. 7).

Although problems with racial disparities persist, OSEP did work on the problem of racial disparities in identification and placement through funding research, technical assistance, and personnel preparation. Moreover, before collecting data on race was required by IDEA in 1997, OSEP's largest study of the implementation of the act, the National Longitudinal Transition Study, included race in its entire design (Wagner, Blackorby, Cameto, & Newman, 1993). This study collected a large amount of data that shed light on the issue and was used by proponents of many of the changes included in IDEA 97. Further, OSEP funded a research center on minorities in special education to provide fellowships for promising minority researchers. The National Institute on Urban School Improvement was funded in 1998 to promote inclusive education in urban settings. These activities not only increased our understanding in this area, but also helped develop important infrastructures needed for the work of researching and developing solutions.

The Department of Education has also been active in its legislative role. The changes to IDEA adopted in 1997 that addressed minority overrepresentation were largely proposed to Congress by the Clinton administration.

The 1997 amendments to IDEA addressed both the discretionary grant programs and the Part B program. The findings section of the statute expressed congressional intent that “greater efforts [be made] to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities” (IDEA, 1997).

These findings were supported by statutory requirements. States now have an affirmative responsibility to monitor and intervene where overrepresentation occurs. If a state does not do this, it runs the risk of losing its eligibility to receive funds under IDEA.

Finally, the political leadership of the department has used its “bully pulpit” function frequently to draw attention to this issue. During the Clinton administration, Secretary Riley directly addressed this issue in speeches, and Assistant Secretary Judy Heumann promoted inclusive education and racial equity in countless speeches throughout her tenure. The Eighteenth Annual Report to Congress on the Implementation of IDEA devoted a good deal of analysis by the administration to the issue of special education in urban areas (U.S. Department of Education, 1996).

OSEP’s monitoring and enforcement of IDEA with regard to reducing racial disproportionality have been indirect, in that they have addressed problems and sought legal remedies in areas that particularly impact minorities. For example, minorities are disproportionately placed in more restrictive settings. OSEP’s monitoring activity has routinely reviewed whether students were being educated in the least restrictive environment (LRE), and therefore this federal oversight has likely benefited a large percentage of minority children with disabilities. Likewise, because minority children with disabilities are disproportionately subjected to school expulsion, OSEP’s enforcement activities involving the prohibition of ceasing services for students expelled from school likely had particularly important benefits for minority children, as would OSEP’s enforcement of ensuring the provision of education to students in correctional facilities.

The provision of services in the LRE—that is, the statutory preference for providing education as much as appropriate within mainstream settings—received much attention from the political leadership in both the Reagan and Clinton administrations. The law requires that educational settings be determined based on each student’s individual need. However, based on research showing that students with disabilities progress faster academically and socially when educated with nondisabled peers (see p. 235, National Longitudinal Transition Study), the law also requires that students with disabilities be educated with nondisabled peers to the maximum extent appropriate. OSEP’s monitoring process has reflected an emphasis on this legal requirement.

Although enforcement involving sanctions and the threat of withholding funds has been infrequent, this activity may have arguably produced demonstrable change. From the 1986–1987 school year to the 1996–1997 school year, the number of students receiving special education services primarily in general education classrooms increased significantly, from 27 percent to 44 percent (Hehir & Gamm, 1997). It is likely that minority students benefited from this activity, given the high rate of minorities within special education and the well-documented tendency to educate minority students who have disabilities in more restrictive settings than white students who are similarly challenged.

THE POLITICAL DYNAMICS OF FEDERAL ENFORCEMENT OF IDEA

During the Clinton years, enforcement of IDEA that involved the threat of withholding funds and which had an impact on minority students was initiated twice. Both examples illustrate the political dynamic of federal enforcement of IDEA. One involved the movement to withhold funds from the state of Virginia for failing to provide services to students expelled from school. The other involved the state of California's refusal to provide services to students with disabilities incarcerated in state prisons. In Virginia, the affected students were disproportionately African American. California prisons, like those elsewhere, have disproportionate numbers of inmates who are minorities (Bilchik, 1999; Males & Macallair, 2000). Both of these actions involved the DOE's historic pre-IDEA 97 *interpretation* of the statute's requirement that Free Appropriate Public Education (FAPE) be provided to all eligible students (those determined disabled under IDEA), regardless of school expulsion or incarceration (personal communication, R. Davila to F. New, 1989).

Both actions brought intense political reaction and statutory changes in IDEA, and both have become recurring legislative flashpoints in Congress. During congressional consideration of the No Child Left Behind Act, two proposals to limit the FAPE entitlement for certain violations of school discipline failed to win approval.

Virginia's Refusal to Provide FAPE to Expelled Students with Disabilities

In 1994 the DOE was informed by disability advocates in Virginia that the state was not providing services for students with disabilities who were expelled from school for behavior not deemed to be a manifestation of their disability. (See IDEA 97 for definition of manifestation and for legal requirements for determination.) The DOE informed Virginia that if it would not ensure that

these students would receive FAPE, then the department would move to withhold the state's IDEA grant. A period of intense negotiation and political opposition ensued. Although the DOE assured the chief state school officer for Virginia that the state could legally expel students from school as long as they continued to provide services, Virginia refused to serve those students. The Republican governor, George Allen, publicly criticized the Clinton administration's action as being soft on school discipline.

While directing OSEP, I received a call from a DOE official, who had been informed by the White House that the president had read the governor's criticism in the press clips and wanted to know what the DOE was doing. She warned, "You're going to have to explain this one, Tom." As we had done with Secretary Riley prior to the enforcement action, we explained to the White House that we were enforcing the previous administration's interpretation of IDEA, which stated that all special education students were entitled to FAPE, even those expelled. Further, we explained that this interpretation was central to the statute's requirement that "all students" meant *all* students, a principle that was reinforced by a U.S. Supreme Court decision, *Rochester School Dist. v. Timothy W.* (1989). In the midst of our attempts to persuade the White House, I received another call from the Democratic senator from Virginia, Chuck Robb, who implored us to seek a compromise. In the end, the White House supported our action, regarding it as legally correct yet politically risky.

The disability advocacy community, which strongly supported the administration's action, saw Virginia's action as undermining the fundamental principle of IDEA—that all disabled students were entitled to FAPE and that any compromise on that principle could bring about more widespread exclusion. In a meeting with leading advocates from the disability community shortly after the action, the advocates unanimously urged the secretary to hold firm on the issue.

The State of Virginia ultimately brought suit in federal court (Fourth Circuit) against the DOE's action and won. The court agreed with Virginia that the DOE's interpretation of the statute was faulty and that IDEA did not contain language that meant that the act protected students expelled from school. However, Virginia's victory was temporary. When IDEA was reauthorized, both the Clinton administration and the disability community insisted that the "Virginia problem" be corrected statutorily by insisting on language that prohibited ceasing services for students expelled from school. This was not an easy sell, and the behind-the-scenes discussions were intense.

Specifically, I recall an incident when the administration was sent a Statement of the Administration's Position (SOP) on a draft version of the IDEA that did not include the sought-after language. The draft of the SOP from the

White House that Assistant Secretary Judy Heumann and I were reviewing did not address the issue either. The Department of Education's assistant secretary for legislation, Kay Cassteavens, met with us and informed Judy that we were not going to prevail on this position. She believed that the only way this could be saved was if Judy would personally meet with the president's senior staff. That day Judy wheeled (she uses a wheelchair) up to the White House with Kay, met with the president's senior staff, and prevailed. Kay informed me afterward that Judy had won the issue single-handedly. Her argument that the disability community was solidly behind this position was undoubtedly not lost on the White House political operatives. (See Shapiro, 1993, for discussion of the political strength of the disability community.) As a result, IDEA 97 added strong language prohibiting the cessation of services for students with disabilities who were suspended and/or expelled from school.

In 2001, Congress agreed to take up the issue again in 2002, when it is expected to reauthorize the IDEA. On April 25, 2002, the Senate held hearings on behavioral issues and IDEA, and concerns about discipline were in the forefront of those discussions.

California and FAPE for Incarcerated Youth

OSEP monitoring of California in 1994 identified the fact that the state was not serving students with disabilities incarcerated in its prisons (Office of Special Education Policy, 1994). OSEP sought "corrective action"—an assurance from California that by a certain date the students would be served—and warned that IDEA funds would be put on hold if it did not comply. California refused, and eventually then-governor Republican Pete Wilson became involved. The gist of his opposition was that these inmates didn't deserve special education services because of their crimes ("Phonics for Felons," 1996). As was the case in Virginia, the governor accused the Clinton administration of overstepping its bounds by threatening to withhold funds (Edds, 1994). I attended a meeting with congressional staff at which the governor's lobbyists made it clear that they intended to use his influence to change the statute during the upcoming reauthorization.

Unlike the case in Virginia, there was little advocacy at the state level for the DOE's position. Some California disability advocates told me this issue was "a loser." When I related this conversation to the assistant secretary, she replied, "Tom, I've been to those [prisons] in California and they are filled with African Americans and Chicanos. I will not sell them down the river."

The issue was addressed with mixed results when the reauthorization finally occurred. The statute made it clear that students who were identified as disabled under IDEA, who had not received a high school diploma, and who

were incarcerated in adult correctional facilities must be served. However, inmates over eighteen who had not been previously identified as disabled under IDEA were not eligible. Further, the DOE could only withhold funds proportional to the number of students in those facilities. Arguably, the changes in IDEA related to this issue represented a weakening of the law. On the other hand, the new statute codified important legal rights that would have otherwise continued to be susceptible to legal challenge and differing judicial interpretations of the statute.

Before IDEA 97, there was neither explicit statutory nor regulatory language, making enforcement of the administration's interpretation open to a reversal in federal court. However, the amendments clearly relieved states from serving a population, albeit small, of prison inmates over eighteen who had not been previously identified. Further, the codification also rescinded important enforcement leverage, the potential to withhold all IDEA funds for a state. The diminished power specific to incarcerated youth was counterbalanced by the addition of important enforcement tools, increasing OSEP's power overall.

For those who seek greater DOE involvement in IDEA enforcement as it relates to minority populations, the lesson is clear—increasing federal enforcement is a highly political endeavor, and one that never ends. These examples also show how federal enforcement can lead to demonstrable change. The ultimate result of the Virginia action was that no school district in the country can legally expel a student with a disability without providing for continuing educational services.

Second, political forces heavily influence federal enforcement. This dynamic can result in turning an important issue into a political football, as happened in Virginia. Depending on the political landscape, something may be lost in order to preserve what was once regarded as a right, as was the case in California.

Third, and possibly most important, IDEA can be changed by Congress. Although IDEA is viewed properly by many as a civil rights bill, technically it is a voluntary "grants to the states program." States are required to do more for students with disabilities under IDEA than under the civil rights provisions of Section 504 of the Rehabilitation Act or the Americans with Disabilities Act (ADA). States can refuse to accept funds under IDEA (as New Mexico did for several years) and are, therefore, relieved of the requirements that go beyond Section 504 or ADA.

During my time at OSEP, three states, Connecticut, Illinois, and Pennsylvania, considered withdrawing from the infant and toddler program, Part C of IDEA. New Hampshire considered withdrawing from the school-age program, Part B of IDEA. All these actions were turned back by strong advocacy at the

state level. However, in my opinion, this aspect of IDEA—that it is a voluntary state program—has had an inappropriate chilling effect on compliance monitoring and enforcement.

Further, the federal financial commitment to the program, estimated at approximately 13 percent of the additional cost of educating students with disabilities necessary to comply with Part B of IDEA—a cost that is in excess of a states' general education per pupil expenditures (President's Budget Request for FY 2000)—is relatively small and falls short of the original promise to fund 40 percent of the excess cost. Awareness of this federal funding shortfall adds to the reluctance by federal agents to strictly enforce the law. As a matter of fact, on-site monitoring of Part C did not begin until 1997 and was opposed by some in OSEP as risky and potentially threatening to state participation in the program.

I offer these cautions not to discourage advocates from seeking increased federal monitoring of overrepresentation and improved implementation of IDEA for minorities with disabilities, but to encourage effective, thoughtful, multilevel strategies.

OSEP AND COMPLIANCE

In addition to withholding funds, OSEP employs a number of other less dramatic strategies to leverage compliance. These strategies broadly involve activities concerning state eligibility to receive funds under IDEA, the legal basis for OSEP's monitoring activity. Essentially, states must assure OSEP that they are implementing the statute consistent with its dictates. Although each state must assure this annually in order to receive funds, no state is fully in compliance with the program (National Council on Disability, 1996). OSEP engages in two major activities to ensure that, although noncompliance exists, the states are moving to correct noncompliance: on-site monitoring, and determining whether states are eligible to receive funds under the act.

Every three or four years, and more frequently in problematic states, OSEP conducts on-site monitoring visits to the states to ascertain their level of compliance with IDEA. These visits typically result in a monitoring report that details noncompliance, and the state must develop a corrective action plan in response to the findings. Any state that fails to do this may be deemed ineligible to receive funds, thus triggering a withholding action. Therefore, states always respond by developing a plan, which must be approved by OSEP. It is important to influence both the monitoring and corrective action plans that result. Advocates must be vigilant and communicate with OSEP about the status of a state's effort, as the states will present their efforts to OSEP in the best light. Grassroots advocates can influence OSEP's view of the states' efforts. The Vir-

ginia enforcement action is an example of how advocacy complaints that OSEP received translated into enforcement.

OSEP also monitors state eligibility to receive funds on an ongoing basis. For instance, states must have their special education regulations approved by OSEP as being consistent with IDEA. Changes in state regulations or ongoing policies that violate IDEA can threaten a state's eligibility status. This is essentially what happened in Virginia. In less extreme cases, OSEP routinely requires changes in state law or regulations to comply with IDEA and, at times, has slowed the release of funds for a state's failure to respond. Advocates have been effective in using this process to push through changes at the state level.

Finally, if states have been ineffective with their corrective actions over time, OSEP may either seek a compliance agreement or designate a state a high-risk grantee. These actions heighten the level of federal scrutiny and may be precursors to withholding funds. Even in the face of political backlash, advocates at the state level have reported to me that OSEP's actions have improved implementation.

NEW ENFORCEMENT OPTIONS

Although Congress limited some of OSEP's withholding options where juvenile justice is at issue, it added important enforcement options to IDEA 97. The Senate report that accompanied the bill summarized these changes and emphasized the importance of enforcement:

The bill authorizes the Secretary to withhold part B funds, in whole or in part, from States that are not in compliance with part B [grants to states for students ages 3 to 21]. . . . Thus, based on the nature and degree of noncompliance, the Secretary may determine the level of funding to be withheld and the type of funding to withhold (e.g., the entire State set-aside or the set-aside for administrative purposes). . . . In addition, the Secretary may initiate other actions to ensure enforcement, such as requiring the State to submit a detailed plan for achieving compliance, imposing special considerations on the State's part B grant, referring the matter to the Department of Justice for appropriate enforcement action, and other enforcement actions authorized by law. The committee has included in express reference "referral to the Department of Justice" in section 616(a)(1)(B) to the authority now in current law of the Department of Education to refer instances of noncompliance to other agencies. (PL 105-17, Section 616)

The potential importance of these changes to those interested in enforcement in this area are significant. Specifically, the potential to partially withhold

funds may be the most important feature. In the past, the withholding option applied to the entire state grant. Therefore, every school district and every child with a disability in a program receiving federal IDEA funds would be affected. Even some advocates have been cautious in recommending withholding because it has the potential to hurt students. Also, withholding a full state grant is likely to invoke an intense political reaction, as was the case in California and Virginia. Conceivably, a future enforcement action in the area of overrepresentation could involve a few school districts within a state, thus focusing the sanction more closely on the problem. Another option that could be employed in extreme cases is a referral to the Justice Department. Given the relationship between IDEA and other statutes, particularly the Americans with Disabilities Act, this type of action may promote a more powerful intervention.

Other amendments to IDEA, although not directly involving overrepresentation, have the potential to address some of the historic problems in this area. One by-product of overrepresentation has been the fact that assignment to special education classes has frequently meant removal from the general education curriculum and a watered-down curriculum. The 1997 amendments address this issue directly, pointing out the denial of equal educational opportunity. The same can also sometimes be said for those appropriately identified; whether a child is disabled or not, they should have access to the general education curriculum (McDonnell, McLaughlin, & Morison, 1997). Disability advocates have long fought against assumptions of low expectations that frequently undergird the systems that served them (Shapiro, 1993). In IDEA 97 debates, disability advocates successfully impressed upon Congress the need to have strong provisions in the bill that emphasized access to the curriculum. All Individualized Education Programs (IEPs) must now address this issue, and following the recently enacted No Child Left Behind Act of 2001, there is no question that students with disabilities must be included in district and state accountability systems.

In addition to the requirement that IEPs address the issue of access, states must establish performance goals for their IDEA programs. At a minimum, these goals must address students' progress in achieving general curriculum standards while also addressing the need to reduce dropout rates. These provisions are potentially important to minority students served in special education programs because the students have higher dropout rates and perform less well on statewide assessments. Further, the requirement that states address the issue of dropout rates is particularly important in states that are employing high-stakes assessment programs—that is, they deny promotion or graduation based on the performance assessments. Research in this area strongly suggests that, when these policies are implemented, dropout rates increase (Heubert &

Hauser, 1999). It is hoped that the affirmative obligation of states to address this issue will provide an important counterbalance to those policies. The existence of this requirement may also provide an importance enforcement lever.

The 1997 amendments strengthened the role of parents in the special education process. Of particular importance is the new requirement that parents must be involved in decisions about the placement of their children. It has been my experience that African American parents have frequently objected to the placement of their children in special classes. They now have a clear and legally guaranteed opportunity to voice such objections.

Finally, IDEA 97 created Community Parent Training Centers, which are designed for underserved and minority populations. There are currently over thirty centers funded to serve diverse populations, from rural Indian reservations to South Central Los Angeles. These centers should provide a valuable source of information on implementation of IDEA for minority populations, as well as a foundation for grassroots advocacy.

TOWARD AN EFFECTIVE ENFORCEMENT STRATEGY

This chapter has thus far dealt primarily with federal law and federal enforcement. The following conclusions can be drawn from this discussion:

1. The history of federal enforcement of IDEA reveals a federal government that is reluctant to be aggressive, particularly as it relates to the imposition of sanctions.
2. Aggressive enforcement can result in political backlash and statutory changes.
3. Effective enforcement is enhanced by activism at the local level.
4. There are other less volatile federal enforcement mechanisms that advocates can use to promote change.
5. IDEA 97 adds important statutory requirements relevant to this issue.
6. The increased range of enforcement options in IDEA 97 may increase federal enforcement.

A proper understanding of the potential for increased IDEA enforcement must go beyond federal enforcement. Indeed, IDEA's enforcement and compliance scheme has always been constructed to be multileveled—including state government enforcement as well as judicial and due process enforcement. This multilevel approach was created to address both systemic and individual compliance problems: "In the first arena, the federal government initiates action; in the second arena it is the state government; and in the third area it is the parents

of students with disabilities" (National Council on Disability, 1996, p. 36). A thorough understanding of the enforcement of IDEA must take into account all three arenas.

It should be clear from the discussion that state implementation is influenced heavily by federal behavior. However, the impact of individual judicial/ due process action should not be ignored. Individuals bringing claims against school districts can have an impact that goes far beyond the student involved. Successful use of due process has caused some school districts to change entire programs to ward off similar future claims by other parents (Hehir, 1990). Class action suits, such as *Pennsylvania Association for Retarded Children v. Pennsylvania* in 1971, in which the state agreed to educate all previously excluded disabled students, arguably led to the passage of PL 94-142 in the first place (Hehir & Gamm, 1997).

Further, both the states and the federal government have used these types of suits to reinforce their enforcement goals. Massachusetts filed as a plaintiff intervenor in a class action suit brought on behalf of students with disabilities in the Boston Public Schools. (*Allen v. McDonough*, 1982) The federal government has filed *amicus* briefs in a number of cases on the side of the plaintiffs. A notable example involved a student with various medically oriented related services, *Cedar Rapids Community School District v. Garrett Frey* (1999). In this case the Department of Education, through the solicitor general, argued that IDEA requires the school system to provide the supports the child needed to access FAPE. The Supreme Court agreed in a 7 to 2 decision. This case will affect decisions involving thousands of students for years to come.

Given the history of federal enforcement (or lack thereof), an advocacy strategy is most likely to be effective if it considers activities involving all three prongs of the compliance scheme contained in IDEA. Given the changes to IDEA and the nature of IDEA enforcement, I believe an effective enforcement strategy is possible. I recommend the following:

Seek to influence OSEP's monitoring activities with the state. Know the contents of existing monitoring reports and corrective action plans. These are public documents that are often posted on OSEP's website (www.ed.gov/offices/OSERS/OSEP). If advocates' concerns have not been addressed by OSEP, let the advocates know. Each state has a contact person assigned to be responsive to the concerns of the public. Individuals at the state level are valuable sources of data. If the contact isn't responsive, write. All federal correspondence is tracked and the person responsible cannot ignore a letter. Although I recognize that federal government agencies often act slowly, there are examples where OSEP's

monitoring of states has been heavily influenced by local advocates, as was the case in Virginia. Further, OSEP holds public meetings when it does on-site monitoring. The input from these meetings often directs the agency's inquiry.

Make states defendants. If advocates feel a class action suit is necessary, then states, regardless of their previous action, should be made defendants. The *Corey H.* case (see Soltman & Moore, this volume) is an excellent example of the use of multiple prongs to promote change. This action has yielded positive results. The Illinois State Board of Education (ISBE) was forced to provide Chicago with more resources to train staff for working with students with disabilities in inclusive settings at the school level. Further, the deposition filed by the former chief state school officer in which he denied his responsibility to ensure compliance was subject to inquiries between OSEP and ISBE concerning the state's eligibility to receive funds under IDEA. Under *Corey H.*, Chicago has moved toward higher levels of compliance with demonstrable change in student placements. (See Soltman and Moore, this volume, for a comprehensive description of the changes resulting from the *Corey H.* litigation.)

It should be noted, however, that not all class action suits have joined states as defendants (*Allen v. McDonough* [Boston Public Schools], *Chandra Smith v. Los Angeles Unified School District*). I believe this has been a serious mistake in that states have both the resources and the statutory responsibility to deal with noncompliance. Large urban school districts may not be capable of effectively addressing these issues without strong state involvement.

Develop a long-range comprehensive plan and be persistent in pursuing it. A favorable court ruling or administrative review should be regarded as only the beginning of a protracted struggle. Given the element of risk that Congress can change the IDEA, I believe it is also appropriate to bring most of these cases under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act as well as IDEA. Having findings derived from these broader civil rights statutes may ultimately serve to protect actions that are less likely to seek and gain political support. In addition, filing under federal antidiscrimination law may reduce the threat to IDEA from weakening amendments. Generally, I recommend that advocates avoid the prospect of political involvement in enforcement by using enforcement mechanisms less likely to evoke the reaction. For example, an enforcement action in which advocates, OSEP, and a state join in seeking change within a local education agency (LEA) through a corrective action plan is not likely to involve intense political reaction at a national level. Of course, these may ultimately not be effective and advocates will need to seek

stronger action through the courts. When this is the case, the use of multipronged approaches is recommended to minimize political interference.

1. *Use a multiprong approach.* The use of more than one prong of enforcement increases the likelihood of success and decreases the likelihood of unanticipated negative consequences, such as weakening of the law. If OSEP and the state are already involved in seeking corrective action in an LEA or group of LEAs, those opposing the enforcement to file due process claims or class action suits may spur action (Hehir, 1990). Finally, it has been my experience that politicians are less likely to intervene in matters involving the courts. Obviously, as the Virginia and California actions have shown, politicians seem free to exercise influence over administrative reviews.
2. *Seek school-level remedies.* Advocates seeking true reform of instructional practice need to move beyond systemwide remedies and seek school-level remedies. School principals, teachers, and individual schools must become deeply involved in any effort to promote greater racial equity in special education. School principals are at the heart of the process of finding solutions to the emerging challenges of special education reform. Although early litigation has been successful in gaining access to schools for students with disabilities, a second generation of problems has emerged (Hehir & Gamm, 1997). Chief among these issues, argues Jay Heubert of Columbia University, are the fragmentation and balkanization of educational programs and instructional staff (Heubert, 1997). He points to many schools and districts that have separate staff and administrators for general education, special education, vocational education, bilingual education, and Title I programs. Too often these programs exist in isolation, with little communication among staff members. If students with disabilities are to be educated effectively in their local schools and integrated appropriately in regular classrooms with nondisabled peers, the staffs of these fragmented programs will have to collaborate with one another in new and innovative ways. Federal law now allows for this to occur.

Once the appropriate administrators are involved, intervenors need to focus on improving the teachers' ability to address the needs of disabled students. Inadequate preservice and in-service training, scheduling conflicts, and lack of administrative support all contribute to the problem. The solution, again, lies with the active intervention and advocacy of school administrators. Only they can establish the institutional expectation of inclusiveness and sense of mission that are necessary if progress is to occur. With clear expectations established, the need for significant, high-quality staff development will undoubtedly be necessary to move systems forward. Intervenors

should seek remedies that require such opportunities for staff development; Part B funds can be used for this purpose.

3. *Have a clear vision of the change you want to see.* This last piece of advice is probably the most important. Enforcement action brought about by advocates through litigation or government monitoring can have a positive impact on the education of children but might also bring negative unintended consequences. Although the education of children with disabilities has been greatly improved by such intervention, court interventions in large cities may have had mixed results (Heubert & Hauser, 1999; Tatel, 1993). In special education, such interventions may have encouraged centralized bureaucratic approaches that have discouraged school-level accountability for the education of students with disabilities, thus inadvertently encouraging segregated placements. New York, Boston, and Baltimore, which have long-standing special education lawsuits, have at the same time been faulted for high levels of disability segregation (New York State Department of Education, 2000). In the Baltimore case, a "remedy" for noncompliance for some students was placement in segregated private special education schools. All three districts serve a majority of minority students.
4. *Include numeric goals, but avoid overreliance on numbers.* Intervenor's need to be clear about the goals they seek to achieve. In the area of overrepresentation, this is critical. Although numeric analysis of disproportionality is important, some higher incidence of disability can be expected as a result of poverty. Therefore, in high-poverty districts, strict numeric proportionality may mean that some children in need are not receiving services.

Once advocates have been successful in securing an action against a district or state, the selection of remedies must be done with care to ensure greatest positive impact and minimal unintended results. Some lawsuits and government monitoring efforts, triggered by numerical findings of overrepresentation, have relied on "input" remedies such as changing referral and assessment procedures of the district. While these input remedies have been important and may have prevented some inappropriate referrals to special education, they may not have promoted significant reform in how students of color fare in the special education system. A critical question remains: What happens to students once they are identified as having a disability? Do they receive services that truly benefit them? State-reported data and the National Longitudinal Transition Study (NLTS) show that disabled students in cities are almost three times more likely to be segregated in separate schools and far more likely to be kept out of challenging academic programs than their suburban counterparts (Wagner et al., 1993). Almost 11 percent of urban youth with disabilities go to special schools,

compared with about 3 percent of disabled suburban youth. Adding the figures for those in special schools with those served in regular schools but not in regular classes, the NLTS found that over 26 percent of disabled urban students were segregated, compared to 13 percent of suburban youngsters. The same study found that only 38 percent of urban students had the option of integration into some or all regular academic classes, compared to 59 percent of suburban students with disabilities. The NLTS also found that, for students with disabilities who graduate from high school, integration was associated with better educational results. LRE thus provides an important perspective from which to examine these cases (Wagner et al., 1993)

Those who seek to improve special education in large urban systems must go beyond a simple numerical analysis of evaluation and referral practices and move to a more sophisticated kind of "benefit" analysis (Hehir & Gamm, 1997). The goal should not simply be to reduce the numbers of students identified as needing special education, but to ensure that all who need appropriate services receive them. The focus should not only be on preventing inappropriate referrals but also on ensuring that those eligible for services under IDEA receive valuable benefits.

IDEA 97 has made it clear that, for most students with disabilities, special education should be seen not as a place where students receive services, but as a vehicle by which students access a challenging, appropriate curriculum. The problem of overrepresentation, therefore, must be viewed through a wider lens that considers not only the determination of eligibility but also the results of that identification. Indeed, this kind of benefit analysis would serve every child covered by IDEA.

As advocates work to address issues of disproportionality, it is important to emphasize that many of the innovations associated with promoting better, more inclusive education for students with disabilities can be beneficial for all students. In-class support for students with disabilities can also be used for other students who may be having difficulty. The availability of such support may also decrease referrals to special education and improve performance of all students in the class (Snow, 1998). Effective approaches for supporting students experiencing difficulty learning to read in the early grades may not only help students with disabilities get off to the right start but also prevent later inappropriate referrals. Schoolwide approaches to managing inappropriate behavior in school have been shown not only to increase the capacity of schools to meet the needs of students with behavioral disabilities but also to markedly reduce school suspensions (Sugai, Sprague, Horner, & Walker, 2000). Intervenors should be seeking the adoption of such practices. The greater the degree to which the remedies sought in these cases employ strategies that benefit all students, the higher

the likelihood that roots of inequity both for students who have disabilities and those inappropriately identified will be effectively addressed.

In conclusion, there is much that advocates can do to address the issues of racial inequity in special education. Effective strategic advocacy in special education has been shown to promote substantive change. Further, IDEA 97 creates new opportunities for change. Well-informed strategic action on the part of advocates is needed to end the legacy of inequity for minorities in special education, which has gone on for far too long.

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CHAPTER ELEVEN

Ending Segregation of Chicago's Students with Disabilities: Implications of the *Corey H.* Lawsuit

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In May 1992, attorneys from Designs for Change (DFC), a Chicago-based school reform organization, and Northwestern University Legal Clinic¹ filed a federal class action lawsuit charging that Chicago and Illinois officials had illegally segregated students with disabilities in schools. The lawsuit, called *Corey H. et al. v. Chicago Board of Education and Illinois State Board of Education*² was brought on behalf of the more than 40,000 students with disabilities then enrolled in the Chicago Public Schools.³ The lawsuit alleged violations of the least restrictive environment (LRE) provisions of the federal Individuals with Disabilities Education Act (IDEA).⁴

The *Corey H.* lawsuit reflects lessons learned from many years of research and advocacy efforts by DFC, much of which specifically focused on remedying racial disparities in special education. For example, DFC research in the 1980s revealed that 13,000 Chicago students were classified as mildly mentally retarded (Educable Mentally Handicapped, or EMH) and were overwhelmingly enrolled in separate classes or schools. Chicago had by far the largest enrollment of students in EMH classes of any urban school system in the nation, and more than 10,500 of these 13,000 students were African American. These data (coupled with direct experience in assisting parents of students with disabilities) indicated that, while many Chicago students who needed special education services were not receiving them, thousands of Chicago's African American students were misclassified in segregated classes for the mentally retarded.⁵ DFC's reform efforts seeking to remedy the problem of misclassification of African American students as EMH had mixed results, in part due to the narrow

focus on one disability label. *Corey H.* is much broader in scope and remedy than prior efforts, as it encompasses the unwarranted segregation of all students with disabilities.

Under the IDEA, all children with disabilities are entitled to a "free, appropriate, public education" (FAPE)⁶ based on their individual needs,⁷ including being educated in the least restrictive environment. The IDEA's LRE mandate requires that "to the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."⁸ Research since the LRE requirement became part of federal law in 1975⁹ has documented the positive educational and social effects of educating children with and without disabilities together in the regular education classroom.¹⁰

This chapter analyzes DFC's previous research and reform strategies, the litigation strategy through the *Corey H.* settlements, and initial implementation of the settlement agreements. The authors emphasize both the multimethod advocacy effort employed and the view of schools and school districts as complex "human systems." Carrying out litigation intended to benefit students with disabilities within this broader framework dramatically enhances the prospects for achieving major improvements in students' educational experiences and academic achievement.

The advocacy strategy supporting *Corey H.* was research based and combined several advocacy methods, such as community organizing, media exposure, and lobbying. Strategies in the lawsuit were based on a view of schools and school districts as human systems whose organizational and political dynamics must be carefully analyzed if litigation is going to contribute to concrete improvements in educational quality, not just paper victories. For example, the school principal has been shown to be vital in initiating school-level changes; therefore, any school-level remedy for implementing the LRE mandate must take into account the critical leadership role of the principal.¹¹ This theoretical focus also shaped the decision to define the *Corey H.* class as all children with disabilities so that the remedies could encompass the organizational changes necessary to educate them in the least restrictive environment.

The court approved the settlement agreements with the Chicago Board on January 16, 1998, and with the State Board on June 19, 1999, both of which are being overseen by the court through at least January 2006. The Chicago Board agreed to settle prior to the trial, and the State Board settled after the

trial. These settlement agreements commit the defendants to a significant restructuring of a wide range of policies and practices that affect the education of the 55,000 students with disabilities currently enrolled in the Chicago Public Schools.¹²

In February 1998, after a trial that focused on the Illinois State Board of Education's liability, Judge Robert Gettleman entered a finding for the *Corey H.* plaintiffs. The court ruled that students with disabilities in the Chicago Public Schools were being illegally segregated and were not being educated in compliance with the LRE mandate; that teachers in the Chicago Public Schools were not adequately prepared to teach Chicago's students in the LRE; that the State Board had failed to identify and correct LRE violations in the Chicago Public Schools over a period of years, ignoring its legal obligation to do so; and that the Illinois system of special education teacher certification based on specific disability classifications was contributing to noncompliance with the LRE mandate.

These settlement agreements reflect the view that the school is the essential unit of change for improving educational quality. Individual Chicago public schools will develop schoolwide plans for making basic changes and will receive professional development and support in implementing these plans. Schools are then held accountable through state and local oversight for this implementation, both during and after the restructuring process at each school. The State Board and the Chicago Board have together allocated more than \$43 million dollars to support this school-driven change process. Also central to the settlement agreements are changes in policies and practices to ensure student placement decisions based on individual needs, rather than on disability labels and comprehensive state monitoring and enforcement of the LRE mandate in Chicago. A court-appointed monitor is charged with overseeing all aspects of implementation and assisting the parties in settling disputes, if possible, before taking them to the court.¹³

The plaintiffs' attorneys continue to negotiate specific procedures for implementing various aspects of the settlement agreements and to monitor the Chicago Board and the State Board to determine whether initial changes that were promised are in fact occurring. At the same time, the Policy Reform Team at Designs for Change, as well as other advocacy groups, are active outside of the litigation process in pressing for the settlement agreements to be implemented—for example, by organizing families of students with disabilities to press for implementation in their individual schools, seeking media coverage for progress resulting from the settlement agreements, and lobbying to prevent action by the state legislature intended by opponents of the *Corey H.* decision to thwart the implementation of the settlement agreements.

The initial settlement agreement with the Chicago Board was reached more than five years after the case was filed, while the agreement with the State Board was reached seven years after filing. Thus, the implementation of the agreement with the Chicago Board was in progress for about four years and implementation of the State Board agreement was in progress for thirty months when this was written. The agreements will be in force at least until 2006.

PREVIOUS RESEARCH AND REFORM

Northwestern University Legal Clinic's Special Education Reform Initiatives

In 1988, the Northwestern University Legal Clinic initiated a Special Education Project to train law students by having them represent students with disabilities in an effort to secure an appropriate education consistent with state and federal law.¹⁴ As of 1992, when *Corey H.* was filed, Northwestern attorneys had represented over one hundred students with disabilities in due process hearings, in litigation, and in school-level meetings to determine student evaluation and placement. This experience led the Legal Clinic's attorneys to conclude that, even when skilled advocates were available to assist families of students with disabilities on an individual basis, the potential for securing appropriate educational experiences was limited. One issue on which a case-by-case approach to advocacy was particularly ineffective was least restrictive environment, given deeply entrenched school system procedures and practices that placed a substantial portion of students with disabilities in segregated classrooms or schools. Thus, the Legal Clinic's attorneys were open to considering class action litigation to address the LRE issue.

The Northwestern legal team had a detailed understanding of special education law and of the Chicago Board and the State Board, as well as extensive experience in litigating complex class action lawsuits. Further, the Legal Clinic was able to draw on the capabilities of law students to conduct extensive legal research and of law school faculty members to advise the team on specialized legal issues.

DFC Early Strategy and Reform Initiatives

Designs for Change is an educational research, advocacy, and assistance organization focused on improving the quality of education in major U.S. school systems, with a particular focus on Chicago. DFC concentrates especially on improving the quality of education for low-income students, minority students,

and students with disabilities. It is committed to linking applied research and policy analysis with advocacy for systemic reform.

Early DFC Research and Resulting Conceptual Frameworks

After its founding in 1977, DFC carried out a number of multicity educational research projects to identify promising urban education reform strategies. Based on these investigations, in 1983 DFC identified twenty-one practices employed in effective advocacy efforts,¹⁵ which have formed the basis for DFC's educational advocacy (see Table 1).

DFC also refined an analytical model for understanding the educational process that has guided its reform efforts. For example, the research on school effectiveness indicates that the quality of classroom instruction is critically important in determining student achievement; however, the nature of classroom instruction is shaped decisively, for instance, by the extent to which teachers collaborate, trust one another, and believe that they are encouraged to innovate.¹⁶ Therefore, improving instructional practice must be viewed in part as an effort to change such key aspects of the school community as teachers' beliefs, deeply rooted organizational routines, and existing political bargains (in other words, to restructure the school community as a "human system").¹⁷

Further, the school community must be viewed as existing within the context of a nested set of larger human systems that include the local school district, the state government, and the federal government. A key challenge for advocates is to determine what changes in policy, customary practice, and resource allocation at the various levels of this complex human system will have a positive impact on the practices of school communities, and thus on students' educational experiences and learning outcomes.

DFC began to carry out the practices of effective advocacy in Chicago in the early 1980s in order to catalyze fundamental improvements in Chicago's public schools. These advocacy efforts focused on improving the overall quality of education on a schoolwide basis for all students—especially teaching students to read—and improving the quality of education for students with disabilities. DFC's advocacy efforts during the 1980s had a significant impact on subsequent efforts to ensure that the LRE mandate was carried out.

Improving Schoolwide Educational Quality

DFC's efforts resulted in a successful campaign to restructure the Chicago school system through a change in Illinois state law that applies only to Chicago—the Chicago School Reform Act of 1988. This law shifted significant

TABLE I
Practices Employed in Effective Advocacy Efforts

Area 1. Maintaining a Strong Organization

1. Provide project leadership
2. Have staff dedicated to improving services for substantial numbers of children at risk
3. Make a commitment to improve the group's maintenance activities (e.g., clear definition of responsibilities, accurate internal communication, clear decisionmaking)
4. Sustain needed funds

Area 2. Developing a School Improvement Strategy That Shapes Action

5. Carry out a cycle of analysis and intervention
6. Develop a clear advocacy strategy for improving services for substantial numbers of children at risk
7. Focus on a subsystem of the education system that shapes services to a particular group of children at risk
8. Focus on central issues determining the quality of services to children
9. Envision a clear solution
10. Bring about or capitalize on a major policy change
11. Focus on implementation

Area 3. Gathering Comprehensive Accurate Information

12. Document problems and solutions
13. Gather comprehensive accurate information about the educational system

Area 4. Building Support

14. Use media effectively
15. Develop a support network
16. Build a committed constituency

Area 5. Intervening to Improve the Schools

17. Intervene at multiple levels
 18. Use multiple tactics
 19. Carry out specific intervention tactics competently
 20. Use bargaining orientation
 21. Be persistent
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decisionmaking authority to elected local school councils and to principals at each of Chicago's schools (which at present number more than 550); abolished principal tenure and placed principals on four-year contracts with their local school councils; established a school-level improvement planning process; gave principals increased control over curriculum and teacher selection; and granted an average of \$500,000 in new discretionary funding to each school.

From this and other schoolwide improvement efforts, DFC honed its skills in carrying out activities such as the preparation of research reports, media advocacy, and lobbying to support the adoption and implementation of a major public policy change, and gained extensive firsthand knowledge of key institutions and actors in the educational and public policy arenas in Chicago and Illinois. Further, DFC's research about Chicago schools and its direct efforts to assist specific schools clarified how organizational change strategies can be carried out in light of the complex organizational dynamics of specific urban schools. Finally, the experience clarified common school-level barriers to the education of students with disabilities in the least restrictive environment, and barriers to collaboration between special education and regular education staff.

Initial DFC Systemic Efforts to Improve the Quality of Education for Students with Disabilities

Beginning in 1981, DFC organized parents of children with disabilities to work both to improve the quality of education for individual students and to help press for systemic changes. DFC served as a federally funded Parent Training and Information Center (PTIC) from 1982 to the present. Through understanding student evaluation, placement, and Individualized Education Program (IEP) development processes, DFC gained detailed insight into how Chicago special education was shaped at the school community, school district, and state levels. During the same period in the 1980s, DFC pursued a series of advocacy efforts to restructure the special education system in Chicago and statewide. These efforts laid critical groundwork for the *Corey H.* lawsuit and served as lessons to the plaintiffs' attorneys that helped them structure the lawsuit and the settlement agreements.

Attacking the Misclassification of Chicago Students into Classes for the Mentally Retarded Initially, DFC gathered extensive information about the misclassification problem, including data about patterns of placement by race in Chicago special education. These data, coupled with direct experience in assisting parents of students with disabilities, indicated that, while many Chicago stu-

dents who needed special education services were not receiving them, thousands of Chicago students (primarily African Americans) were misclassified in segregated classes for the mentally retarded. DFC found that 13,000 Chicago students were classified as mildly mentally retarded, and that EMH students were overwhelmingly enrolled in separate classes or schools. Chicago had by far the largest enrollment of students in EMH classes of any urban school system in the nation, and labeled African American students as EMH at more than twice the rate for white students (3.8% of Chicago's African American students were labeled EMH, compared with 1.7% of white students). Experts on the assessment of mental retardation advised DFC that, if proper student assessment procedures were employed, no more than 1.25 percent of any ethnic group should be classified as EMH.¹⁸

Once students were labeled EMH in Chicago, they were nearly always placed in segregated EMH classrooms in "cluster programs," which serve a number of neighborhood schools. EMH students were typically bused away from their siblings and friends to schools that did not view the EMH students "housed in" their school as "their children." These EMH classes frequently were characterized by extremely low expectations for student achievement, and it was virtually impossible for these students to escape the EMH label and segregated classrooms for the duration of their elementary and secondary education experience.¹⁹

Thus, DFC launched an advocacy campaign aimed at securing a fundamental restructuring of Chicago's EMH program. To do so, DFC pressed for the adoption of specific standards, for the reassessment of all students currently enrolled in the program, and for consistent, high-quality transition assistance for all misclassified students.

One strategy centered on a consent decree between the Chicago Board and U.S. government, which settled a lawsuit charging the Chicago Board with illegal racial segregation.²⁰ DFC sought to have specific commitments for restructuring Chicago's EMH program incorporated into the court-ordered plans for implementing the desegregation consent decree to which the Chicago Board had agreed. This effort met with modest success. The implementation plans contained a general commitment to restructure the EMH program in order to resolve a previous lawsuit on the EMH issue.²¹ After DFC submitted detailed recommendations to the court to make the EMH restructuring plan much more specific, the federal judge presiding in the case required the Chicago Board to meet with DFC, hear DFC's concerns, and then to report to the court about what actions they would take to address these concerns. However, the court never specifically required the Chicago Board to incorporate any of DFC's detailed recommendations into their plans.

To bring public attention to the issue, DFC released a report on the shortcomings of Chicago's EMH program, titled *Caught in the Web: Misplaced Children in Chicago's Classes for the Mentally Retarded*.²² Along with extensive media coverage for the release of this report, follow-up media stories documented the experiences of individual misclassified students. Additionally, DFC organized a citywide EMH coalition of parent, school reform, and civil rights groups to press for the changes spelled out in *Caught in the Web*, aggressively monitored the Chicago Board's implementation of its massive reassessment of the 13,000 EMH students, pointed out how Chicago's reassessment efforts failed to meet accepted legal and professional standards, and filed related complaints with the State Board.

These advocacy efforts produced a mixture of successes and failures. DFC forced the Chicago Board to reevaluate all students in EMH classes on a specific timetable. As a result, about 3,500 students formerly classified as EMH were either returned to regular classrooms or diagnosed as having some other disability. However, DFC was unable to get the Chicago Board to carry out student reevaluation procedures recommended by national experts, who estimated that an additional 3,500 students still remained misclassified in Chicago's EMH classes. Nor was DFC able to secure consistent transition help for misclassified students who were returned to regular education classrooms.

These efforts contributed to a marked decline in the placement of additional students in EMH classes in subsequent years. The statewide enrollment in EMH classes for African American students fell by half—from 14,821 in 1981 to 7,381 in 1989. However, the overall placement rates in Chicago and in Illinois in separate special education classrooms and schools did not decline significantly during the 1980s. In 1986, 26 percent of all Illinois students with disabilities were enrolled full-time in separate classrooms and schools, while in 1989 this percentage stood at 24 percent—a marginal drop. Further, the comparable percentages of African American students in Illinois fell only slightly during the 1980s; they were 36 percent in 1986 and 34 percent in 1989.²³

Thus, one major lesson of the campaign to restructure Chicago's EMH program was that Designs for Change had to extend its concerns beyond a specific disability label to focus more broadly on the issue of least restrictive environment. A second lesson was that in advocating for students to be placed in less restrictive settings, strong guarantees were needed that these students would receive proper aids and supports, rather than simply being "dumped" into the regular classroom.

Challenging Delays in Evaluation and Placement in Chicago One persistent problem that DFC's parent education and organizing effort constantly con-

fronted in the early 1980s was delay in the evaluation and placement of students with disabilities. In 1986, the federal Office for Civil Rights (OCR) issued a letter of findings against the Chicago Board²⁴ stating that 78 percent of students referred for special education evaluation had not been evaluated within the 60-day time limit mandated by state law. Further, 41 percent of those judged to need special education services did not receive them within the legal time lines. A substantial number of students waited two or more years to be evaluated and provided with services, and delays were particularly severe for Hispanic students. After the OCR letter of findings was issued, the Chicago Board failed to negotiate a satisfactory settlement of the complaint, and OCR moved toward a trial before an administrative law judge in 1987.²⁵

Designs for Change gained friend of the court status in the OCR proceeding, submitted extensive pretrial and posttrial briefs, and secured substantial media coverage about these problems. After the administrative law judge ruled in 1988 that Chicago was indeed violating requirements for timely evaluation and placement, DFC offered detailed recommendations to OCR as to what would constitute an adequate remedy.

The time-lines initiative resulted in a mixture of successes and failures. In 1989, the Chicago Board was only completing 42 percent of student evaluations within sixty days. By 1994 this percentage had risen to 75 percent and continued to climb. Major improvement had taken place,²⁶ but DFC was unable to persuade OCR to press for specific requirements in its corrective action plan that addressed critical defects in the Chicago Board's compliance plan. DFC urged OCR not only to insist on numerical targets for the percentage of evaluations completed within sixty days, but also to require that Chicago be found in compliance only if a review of a sample of completed evaluations indicated that all evaluation components had been appropriately carried out, and only if a review of a sample of placements indicated that all services promised by students' IEPs were actually being provided. Further, DFC urged OCR to determine whether the Chicago Board was improving its compliance rate for student evaluations by shifting staff (such as counselors and social workers) from providing direct services to students with disabilities to completing evaluations.

OCR refused to negotiate a corrective action plan that dealt with these questions. This allowed the Chicago Board in many cases to come into compliance with numerical time lines while still failing to meet basic quality standards, and thus to continue violating the rights of many special education students to appropriate evaluation and educational services. A major lesson of this experience that the attorneys applied in the *Corey H.* litigation was the need to seek specific guarantees that address quality issues, beyond numerical targets.

Challenging Ineffective State Monitoring and Enforcement Compared with other state education agencies, the Illinois State Board was particularly reluctant to aggressively monitor and enforce state and federal education law. This reluctance was even more pronounced in relation to the Chicago Public Schools. DFC sought in the mid-1980s to press for meaningful monitoring and enforcement by the State Board of laws on the misclassification of minority students in special education, timely evaluation and placement, and the provision of adequate services to limited English proficient students with disabilities. DFC conducted an analysis of all written communications (obtained through a Freedom of Information Act request) between the State Board and five urban school districts (including Chicago) about the State Board's monitoring and evaluation of special education compliance. This analysis revealed the State Board's failure to address racial disparities in special education placement, lack of specific standards for judging compliance, and repeated citing of school districts for the same problems year after year with no follow-up enforcement action taken.

To remedy these problems, DFC lodged complaints with the State Board, the Senate Education Committee of the Illinois General Assembly, and the federal Office of Special Education Programs. The bottom line near the end of the 1980s was that changes in the State Board's monitoring and enforcement initiatives were primarily cosmetic. The bureaucracy blunted efforts to initiate more aggressive enforcement, even when the board's leadership took steps in that direction. A lesson from this experience that the attorneys applied to the *Corey H.* lawsuit was that only long-term, aggressive, and independent oversight of any changes in enforcement practices promised by the State Board would result in meaningful improvements.

Analyzing the Implementation of the LRE Mandate in Chicago and Illinois DFC consistently advocated that students with disabilities must be educated in the least restrictive environment. As noted earlier, the campaign to decrease the number of African American students in separate EMH classes was successful, but ten years later the overall percentage of African American students in separate special education classes and schools (when students with all special education labels were analyzed) had not diminished significantly. Thus, DFC concluded that a major change in Chicago's implementation of the LRE mandate was the best strategy for ensuring that students with disabilities, particularly minority and low-income students, would be exposed to more challenging educational programs, would gain social competence needed to function in life, and would achieve better educational outcomes.

At the same time, implementing the LRE mandate was the single special education reform issue that generated the strongest opposition to change. Historically, Illinois was one of the first states to require the education of students with disabilities as a matter of state law. However, Illinois established a special education delivery system tightly organized around specific disability categories based on the view that disabilities could be identified with precision and that each disability could best be “treated” by a specialist in that disability working solely with students who “had” that particular disability.

Advocates for carrying out the LRE mandate in Illinois were opposed not only by many special educators committed to the state’s segregated special education system, but also by some disability advocates and parents who viewed mainstreaming as a threat to the system of separate specialized treatment that they believed was best. Some also feared that school districts would “dump” students with disabilities into regular education programs where they would be ridiculed, would not receive promised support, and would fail academically. To counter such opposition, DFC analyzed the current status of LRE implementation in Illinois, as well as best practices for implementing LRE across the nation, and summarized both in a draft position paper of December 1991, *Caught in the Web II: The Segregation of Children with Disabilities in Chicago and Illinois*.²⁷ This research report summarized the benefits of educating students with disabilities in the least restrictive environment, the extreme degree of segregation and isolation of students with disabilities in Chicago and Illinois, and some of the underlying dynamics that led to this segregation.

Caught in the Web II revealed the striking degree and scope of segregation to which Illinois students with disabilities were subjected compared with those in other states, based on annual reports of the federal Office of Special Education Programs.²⁸ Each annual report provides state-by-state data by disability about the number and percentage of students with disabilities educated in different educational environments along the LRE continuum: regular class, resource room, separate class, separate facility, and residential facility. In Illinois for the 1988–1989 school year:

- Only slightly more than 3 percent of Illinois students with cognitive disabilities were educated in regular classrooms or part-time resource settings; Illinois ranked 49th among the states in integrating students with cognitive disabilities.
- Only 20 percent of Illinois children with physical disabilities were educated in regular classes or part-time resource room settings; Illinois ranked 48th among the states in integrating students with physical disabilities.

- Illinois ranked 46th among the states in terms of educating children with disabilities in regular education classrooms or part-time resource placements, considering all disabilities.
- Illinois' pattern of segregating students with cognitive and emotional disabilities had worsened during the 1980s. In 1983–1984, about 7 percent of Illinois students with cognitive disabilities were educated for most of the day in regular or resource classes; by 1988–1989, that percentage decreased to just over 3 percent. Similarly, the percentage of children with emotional disabilities in these less restrictive learning environments decreased from 31 percent in 1983–1984 to 23 percent in 1988–1989.²⁹

Further analysis indicated that the segregation that characterized special education statewide was also a reality in Chicago.³⁰

Underlying these statistics was a pattern of practice in Chicago and many other Illinois school districts in which the disability label assigned to a student usually dictated the nature of that student's placement (contrary to federal law). An EMH label in Illinois almost always meant a segregated classroom in a cluster program, usually at a school outside the student's neighborhood to which the student was bused.³¹ A physical disability label in Chicago meant assignment to a handful of accessible schools in which most other students enrolled had physical disabilities. A Trainable Mentally Handicapped (TMH) label (moderate to severe cognitive disability) almost always meant that a child was placed in a separate, segregated school.

Further causes of this segregation included problematic state policies, such as financial reimbursement policies that rewarded placement of students in private segregated settings outside of the public schools, and a special education teacher certification system based on a set of narrow categorical disability labels.

The extent of segregation prompted attorneys from the Northwestern University Legal Clinic and DFC to undertake a systematic review as to whether the types of problems being encountered by students with disabilities that the Legal Clinic was then representing could be addressed effectively by a class action lawsuit focused on enforcing the LRE mandate. After the attorneys determined that it was advisable to proceed with the lawsuit, the first public step in carrying out DFC's commitment to a multimethod advocacy strategy was to hold a press conference to highlight the findings about the extreme segregation of students with disabilities in Chicago and Illinois and to enable the plaintiffs' attorneys to publicly communicate the focus and rationale for the *Corey H.* lawsuit.³²

THE COREY H. LAWSUIT

Initial Strategy Decisions

Lessons from Previous Experience

The *Corey H.* attorneys understood that it would require a costly multi-year commitment to carry out a class action lawsuit focused on enforcing the LRE mandate. As they undertook their representation of the plaintiffs, they drew on lessons from past experiences, including the following:

- Seeking changes in such specific disability categories as “mildly mentally retarded” had had a limited impact on securing improvements in the quality of education for students with disabilities, particularly minority and low-income students.
- Seeing the school community as the essential unit of change meant that the improvement of special education and regular education should be seen as inextricably linked.
- A meaningful remedy should draw on the lessons of research about unusually effective urban schools.
- An effective remedy should both build commitment at the school community level to bring about appropriate changes and bring school district-, state-, and federal-level enforcement to bear in those school communities that fail to improve.
- An effective remedy for improving the quality of education for students in the LRE must entail clear obligations to provide adequate staffing, aids, and supports, as well as professional development for special education and regular education staff.
- An effective remedy must address the State Board’s crucial role in monitoring and enforcing state and federal law in local districts. Further, there must be ongoing independent monitoring of settlement agreements or court orders, with the possibility of sanctions, to ensure that promised changes in monitoring and enforcement are actually carried out.

Defining the Class

A key prefiling decision concerned whether to define the plaintiff class as including all students with disabilities in Chicago or to limit the plaintiff class to those subcategories of students with disabilities who were the most segregated, such as students labeled mildly mentally handicapped and emotionally handicapped. The attorneys decided to include all students with disabilities in the class, since there was evidence of unjustified segregation compared to other

states and cities with respect to students in all disability categories, and since the remedy envisioned would have been unworkable if illegal segregation had been established only with respect to particular subcategories of disabled students.

The Defendants

The attorneys decided that, in addition to the State Board, Chicago should be the sole district defendant because Chicago was the largest school district in the state and because the plaintiffs' attorneys already had a commitment to improve Chicago's schools, as well as familiarity with the Chicago school system as a whole and its special education program in particular. Nevertheless, the attorneys believed that a legal victory would also have an impact on the State Board's statewide policies and practices, both because some statewide remedies would be deemed necessary to correct specific violations established by the litigation and because changes resulting from the lawsuit would stimulate advocates in other local districts to press for similar reforms.

Pressing for Settlement Based on the Likelihood of Prevailing

The plaintiffs' attorneys pursued one overriding strategy throughout the litigation. Because the plaintiffs' attorneys had already amassed substantial data about Chicago's special education program and about the State Board's policies and practices (especially special education monitoring and enforcement), the attorneys were optimistic that they could further buttress their case through focused discovery and could prevail in establishing the defendants' liability. At the same time, the plaintiffs' attorneys believed that it was preferable to reach settlement agreements with the defendants, if possible, rather than to carry out an extended trial and then have remedies imposed by the court. Settlements would have the maximum potential to result in coherent remedies likely to improve educational quality. Thus, the plaintiffs' attorneys sought to demonstrate to the defendants that the plaintiffs would prevail if the case went to trial and, at the same time, that the plaintiffs were open to serious settlement discussions.

The plaintiffs' attorneys hoped that they could reach a rapid settlement with at least one of the defendants. Subsequent to the 1988 Chicago School Reform Act, the new general superintendent of schools appointed an outsider with a commitment to the LRE mandate, Thomas Hehir, to head Chicago's special education program. Although Hehir initiated reforms within the school system that were supportive of the LRE mandate, no immediate settlement negotiations ensued after the lawsuit was filed. For the first two years after filing, the litigation followed a traditional path. After nine months of discovery and related briefing concerning the defendants' motions to dismiss and the plain-

tiffs' motion for class certification, the court ruled for the plaintiffs on both issues. The plaintiffs then began both depositions and extensive document discovery.

Joint Expert Agreement and Extended Settlement Discussions

An important break from tradition occurred late in 1993 when the plaintiffs suggested that the parties engage a panel of joint experts with diverse backgrounds, experience, and perspectives to investigate and draw conclusions about the plaintiffs' claims. Plaintiffs made this suggestion because they hoped to avoid a battle of the experts if the case went to trial and to facilitate settlement discussions. Finally, based on the plaintiffs' extensive knowledge of the Chicago school system, the plaintiffs were confident that the experts' findings would verify the plaintiffs' allegations.

After nine months of negotiations, the parties arrived at a set of key agreements that allowed an investigation by the joint experts to go forward. Plaintiffs and defendants agreed on 1) a set of questions that would be the subject of the joint experts' investigation, 2) a set of rules for the conduct of the joint experts' investigation,³³ 3) a set of documents that would be shared with the experts,³⁴ and 4) a panel of three joint experts with collective backgrounds at the university, state department, and local district levels to carry out the investigation.

During the last six months of 1994, the joint experts conducted their investigation and analysis employing qualitative and quantitative methods to assess how well the LRE mandate was being implemented in Chicago. Their analysis was based, on data collected through document reviews, interviews with Chicago Schools central office personnel, interviews with State Board staff, analysis of quantitative data from national sources, and a structured qualitative study of fifty-five Chicago schools.³⁵

The agreement provided that the parties would receive a written report from the joint experts upon completion of their investigation. Although the joint experts were prepared to submit their written report, the defendants requested that the parties instead be given an oral report, with the promise that, if warranted, the defendants would begin settlement discussions thereafter. Within two weeks after the joint experts' oral report in 1995, the parties began settlement discussions that would last for nearly two years. During this period, the plaintiffs' attorneys sought the advice of dozens of individuals and organizations throughout the country. The joint experts subsequently prepared a written report of their findings as trial preparations proceeded in 1997.

Despite the settlement with the Chicago schools, the case against the state did proceed to trial. Although the report was never publicly released, Brian McNulty, one of the joint experts, testified at trial regarding the documenta-

tion of continuing systemic violations of the LRE mandate in Chicago and Illinois.³⁶ Further, Alice Udvari-Solner testified at trial to the following key findings:

- There was an overwhelming pattern in which the categorical label given a student through the evaluation process automatically determined the nature of the student's placement.
- Individualized education programs consistently failed to justify the placement of students in segregated settings rather than in less restrictive settings.
- Regular classroom educators and school administrators did not have a clear understanding of what the LRE meant or how it should be implemented.
- Regular classroom educators believed that students with disabilities who participated in their classes were obliged to master the regular education curriculum with few modifications, and that it was up to special educators to enable students with disabilities to keep up in the regular classroom.
- Regular education and special education teachers almost never collaborated.
- Adaptations made for students with disabilities in the regular classroom were "very simple or low tech."³⁷

Overall, the experts concluded at trial that Chicago's special education program was in stark violation of the LRE mandate.

Preparations for Trial and Settlement with Chicago

With no settlement having been reached, a trial date was set for October 1997. In August 1997, the Chicago Board attorneys and the plaintiffs reopened settlement negotiations and quickly reached a tentative settlement agreement. This agreement was preliminarily approved by the court³⁸ a week before the scheduled trial and, with minor modification, was formally approved by the court in January 1998 after a fairness hearing. Key provisions of the agreement illustrate the top-down, bottom-up nature of the change strategy.

The Chicago Board was required under the agreement to carry out a school-by-school restructuring process to implement the LRE mandate through what has become the Education Connection program. The Chicago Board committed more than \$24 million for local school systemic change over the seven-year course of the agreement. Each year, thirty schools are slated to begin a three-year process to design and implement a plan for educating students with disabilities in the LRE. These schools are given \$110,000 to support this educational restructuring process (\$10,000 for planning and professional

development in Year 1 and \$50,000 for implementation in both Years 2 and 3). Each school's plan must be approved by the court-appointed monitor to ensure that the plan is appropriately focused on the LRE objectives of the settlement agreement and that funds are allocated for proper purposes.³⁹

The agreement requires that all Chicago Board policies "promote" the education of children with disabilities in the LRE. In addition, it requires changes in some specific policies, such as a change in the way standardized tests are administered and reported to the public to include children with disabilities.⁴⁰

Another provision requires Chicago elementary schools to implement an informal curriculum-based, problem-solving assessment process for students who are at risk of failure or who are having behavior difficulties.⁴¹ The Chicago Board must provide sufficient staff to provide students with disabilities an appropriate education in the LRE and carry out other required services for students with disabilities.

In addition, a key provision of the agreement required the Chicago Board to fund a court-appointed monitor to collect information about the implementation of the agreement and to take any reasonable steps necessary to ensure compliance.

Trial and Finding of Liability against the Illinois State Board of Education

With the Chicago settlement preliminarily approved, preparations for the October 1997 trial focused on State Board liability. The plaintiffs' attorneys presented two types of evidence at trial. First, they presented evidence that students with disabilities in the Chicago Public Schools had been unnecessarily segregated in restrictive settings. Second, they proffered evidence that the State Board had failed to ensure that students in the Chicago Public Schools were educated in the LRE. The plaintiffs documented, for example, that it was the State Board's policy until 1990 that placement decisions were made prior to writing an individualized education program and immediately after a student's disability label had been determined; that the Board's system for monitoring and correcting LRE problems in Chicago was ineffective; that the State Board's system of preparing and certifying special education teachers based on narrow disability categories contributed to student segregation; and that the Illinois special education reimbursement system created incentives for segregated placements.

Among the key witnesses for the plaintiffs was Brian McNulty, who concluded that continuing systemic violations of the LRE mandate in Chicago and Illinois were "persistent and pervasive." His testimony cited analysis carried out

by the joint experts that compared rates of placement in federal LRE categories for Illinois for the 1993–1994 school year to the placement rates for other states and to the national average rate. Evidence included investigations or evaluations carried out by the Office for Civil Rights, the Office of Special Education Programs (OSEP), and the Illinois State Board between 1990 and 1996, which confirmed Chicago's systematic LRE violations. McNulty cited a "self-monitoring project" involving ninety-five schools that was carried out in 1995–1996 and 1996–1997 by the Chicago Public Schools, which confirmed fundamental problems in IEP decisionmaking and service delivery, such as failure to include modifications in IEPs to enable students to participate in the LRE, lack of collaboration and consultation among special educators and regular educators in the implementation of IEPs, and lack of knowledge among regular educators about how to adapt instruction for students with disabilities. McNulty also concluded that the State Board's monitoring and enforcement efforts were fundamentally inadequate.

In response to substantial evidence about pervasive LRE violations in Chicago and lack of meaningful state enforcement, the State Board offered no evidence justifying the ineffectiveness of its monitoring and enforcement efforts. Their core defense was that oversight of the state's monitoring must be left to the federal officials charged with that responsibility, not the courts. The State Board also argued that repeated approvals of their plans for carrying out their obligations under federal law indicated that the State Board's monitoring and enforcement were adequate. Further, the State Board argued that it was responsible for the "general supervision" of special education in local school districts, rather than for "ensuring" that students with disabilities were educated in the LRE.

Rejecting these defenses in a February 19, 1998, decision, the court found the State Board in violation of the IDEA for its continuing failure to ensure that 1) placement decisions are based on each student's individual needs as determined by his or her IEP; 2) LRE violations are identified and corrected; 3) teachers and administrators are fully informed about their responsibilities for implementing the LRE mandate and are provided with the technical assistance and training necessary to implement the mandate; 4) teacher certification standards comply with the LRE mandate; and 5) state funding formulas that reimburse local agencies for educating students with disabilities support the LRE mandate.

The court offered the State Board the opportunity to submit a comprehensive compliance plan within two months that aimed to remedy the violations, but rejected the State Board's plan in June 1998. Subsequently, the court en-

gaged its own expert to make recommendations regarding remedy. In December 1998, the court held an evidentiary hearing on remedies. After enlisting settlement assistance from the court in February 1999, the parties agreed to a remedial settlement agreement,⁴² key provisions of which include the following:

- The State Board must completely overhaul its process for monitoring and enforcing the LRE mandate in Chicago, with numerous specific requirements as to the content of the State Board's procedures—such as whether numerical targets for individual schools and for the entire school district are met; whether students with disabilities have access to and support in specialized schools (including vocational, magnet, and charter schools); whether students in various educational environments are making appropriate progress from year to year; whether IEPs are implemented; whether adequate special education personnel are provided; and whether regular and special educators are adequately trained to carry out the LRE mandate.
- The State Board must provide \$19.25 million to be used at the local school level to carry out two- to three-year corrective action plans to remedy any problems identified through its monitoring.
- The State Board must modify specific state policies that have an impact on educating children with disabilities in the LRE, such as state-funded preschool programs, state-sponsored testing, state funding policies, and the statewide system for certifying special education and regular education teachers.
- A court-appointed monitor would exercise essentially the same oversight responsibilities as those spelled out in the Chicago settlement agreement.

COREY H.: INITIAL IMPLEMENTATION AND IMPACT

At the time that this chapter is being completed, implementation of the settlement agreement with the Chicago Board had been in progress for four years and with the State Board for thirty months. Each will run until at least January 2006. Much of the plaintiff attorneys' time to date has been dominated by further negotiations and legal advocacy aimed at turning general commitments from the two settlement agreements into more detailed plans that would lead to significant school-level improvements.

Advocacy Concerning the Specifics of Implementation

Each settlement agreement included a commitment for the State Board and the Chicago Board to develop a major implementation plan.⁴³ The settlement

agreements also called for the development of additional plans (besides the two major implementation plans) to address such specific issues such as districtwide and school-level targets and benchmarks for progress. Further, the agreements provided for studies to inform future decisions about specific issues, and the procedures for carrying out these studies are the focus of ongoing debate among the parties. From the early stages of implementation to the present, aggressive participation and oversight by the plaintiffs' attorneys and the court monitor have been critical to move from general commitments to meaningful specifics.

By early 2002, many key aspects of implementation were still being put into place. For example, the State Board's newly developed procedures for monitoring LRE compliance in individual Chicago schools, required by the settlement agreement to be completed in July 1999, had not yet received final approval from the monitor. Further, the first State Board monitoring cycle involving twenty-five Chicago schools was not yet completed, so the new procedures' effectiveness is still unknown. Likewise, even though the agreement with the Chicago Board was nearly at the halfway mark, the systematic assessment of the impact of Education Connection (school-based restructuring) for the nearly fifty schools that have completed the three-year cycle was just getting under way.

To implement the settlement agreement, one of the defendants typically develops a required document (an implementation plan or a monitoring instrument) and the plaintiffs are then given the opportunity to comment on this document. If resolution of disagreements through discussion is not possible, the court monitor then makes a determination. Any party is then free to appeal to the court for relief. Given these dynamics, the plaintiffs' attorneys have spent much of their time for the past several years commenting on the defendants' plans, discussing these plans with the defendants and with the monitor, commenting on rulings proposed by the monitor, and, in some cases, appealing to the court.

Such issues have included details of the State Board monitoring process; local school- and districtwide targets for improvement; a new teacher certification system in Illinois that complies with the IDEA's LRE mandate; the allocation of the \$19.25 million committed by the State Board under the settlement agreement to carry out corrective action plans; and the satisfaction of the State Board's obligation to determine whether policies and practices for the allocation of state and federal categorical funds support the LRE mandate.

As such issues arise on a daily basis, the importance of executing the methods of effective advocacy is constantly underscored. Attorneys need to have a clear understanding of how schools work as human systems and how changes in

public policy at one level of the system are likely to have an impact on the implementation of the LRE mandate in individual schools.

Multiple Advocacy Methods at Work

DFC's research indicates the need to employ multiple methods in a successful advocacy campaign, and that litigation can be supported by the consistent use of these adjuncts. We offer two examples of the multiple methods employed by DFC to press for changes that support the implementation of the settlement agreements.

Defining a "Regular Classroom"

The first example concerns the definition of a "regular classroom." The definition is critical for judging progress in the *Corey H.* lawsuit, since one of the major targets for progress hinges on the percentage of students being educated in the regular classroom,⁴⁴ and for establishing a standard to guide schools in providing meaningful inclusion of children with disabilities in less restrictive settings. After receiving comments from all parties, the monitor defined a regular classroom as a classroom in which fewer than 50 percent of students had disabilities, that taught the regular education curriculum, and that was not remedial.⁴⁵ The plaintiffs had advocated unsuccessfully in an appeal to the court that a classroom should be considered a regular classroom only if fewer than 30 percent of enrolled students had disabilities. The monitor had ruled that there was no justification in law or regulation for adopting this more stringent standard.

Shortly before he issued his definition of a regular classroom, however, the monitor provided comments to the State Board regarding newly proposed Illinois special education rules to implement the 1997 amendments to the Individuals with Disabilities Education Act. In his comments, the monitor urged that the board provide an operational definition of the regular classroom, a term that it had employed throughout its proposed rules.⁴⁶ At the same time, DFC commented on these proposed regulations and urged that any definition of a regular classroom limit the percentage of students with disabilities in a regular classroom to 30 percent. Subsequently, the board incorporated into its final rules a definition of a regular classroom nearly identical to the monitor's definition, except that the board adopted the 30 percent limitation proposed by Designs for Change as part of its definition. The monitor subsequently agreed to adopt a definition consistent with the one that had been adopted by the State Board. Thus, DFC was able to advocate through the State Board rule-making process to influence a key standard that will now be employed in the *Corey H.* case to evaluate Chicago's systemwide compliance.

Lobbying against Legislative Opposition

A second illustration of this multimethod approach is DFC's advocacy effort for statewide changes in special education teacher certification. From the time that the initial settlement agreement with the Chicago Board was announced, DFC and other advocacy groups that support the *Corey H.* decision have sought to secure positive media coverage and support among elected officials for the process of change mandated by *Corey H.* DFC was aware that pro-inclusion decisions elsewhere have sometimes resulted in a media backlash, in which defenders of categorical methods have attacked inclusion as a hare-brained scheme that will destroy the effectiveness of special education. DFC was well aware that an Illinois coalition of special education parents, special education teachers, and private schools were mobilizing to oppose the implementation of *Corey H.*

Thus, when the initial settlement agreement with the Chicago Board was preliminarily approved by the court in October 1997, DFC and other advocates supportive of implementation of the LRE mandate held a press conference stressing the extent of current segregation in Illinois and Chicago, the benefits of education in the LRE, and the opportunities that would be provided through implementation of the agreement.⁴⁷ As each major new development occurred in the case, DFC sought additional media coverage.

Even before the State Board agreement requiring a redesign of the Illinois certification system was approved by the court in June 1999, those opposing aspects of the *Corey H.* decision launched a campaign against any move to a less categorical system of special education teacher certification. Opponents targeted the Illinois General Assembly in April and May 2000, seeking legislation that would prohibit the State Board from mandating any special education teacher certification system that was not based on existing disability classifications, arguing that students with disabilities were best served by experts trained to deal with their particular disability and that the State Board's proposal would dilute the quality of students' education by leaving their education to inadequately prepared "generalists."

DFC lobbyists worked with parent organizations and groups representing special education professionals to oppose this legislation. Ultimately, over continued DFC opposition, the Illinois House and Senate passed nonbinding resolutions urging the State Board not to implement any new teacher certification program before the General Assembly had an opportunity to examine this issue through public hearings. After this resolution was passed, Judge Gettleman stated on the record that he would not be swayed by these legislative actions. Nevertheless, DFC's Policy Reform Team was extremely concerned that if leg-

islators were not convinced of the merits of restructuring special education teacher certification, legislative opposition could embolden a reluctant State Board to further drag its feet in enforcing the LRE mandate and could set the stage for subsequent legislative action to undermine the LRE mandate, both in Chicago and statewide.

Thus, DFC's Policy Reform Team carried out a campaign to organize public support for the LRE mandate, including mobilization for the hearing mandated by the legislature on changes in teacher certification, scheduled for July 2000. DFC countered arguments about the virtues of the current segregated special education system by analyzing and releasing the first achievement test data that showed extremely low academic performance by the state's students with disabilities. DFC advocates spoke repeatedly with the major legislative sponsors of the call for hearings, who backtracked from their opposition to the new teacher certification system when they further understood the history of the *Corey H.* litigation. A coalition of thirty organizations representing parents of students with disabilities, adults with disabilities, and special educators endorsed the restructured special education teacher certification system and substantially outnumbered opponents when testimony was heard.

Notwithstanding these efforts, six months later the opponents of less categorical certification were able to effectively lobby legislators to support the suspension of the new certification changes. As a result, the court was forced to order the State Board to implement the rules that have been in effect for fifteen months at this writing. Public debate over the move toward less categorical special education certification continues, even in the face of implementation of the new system. At the same time that the attorneys vigorously argue through formal legal channels for continued implementation of an LRE-compliant certification system, there will clearly be a need for Designs for Change and other university-based, parent, and school advocates to actively promote policies and practices supporting teacher certification that better prepares teachers to educate children with disabilities in the LRE.

Early School-Level Implementation

Central to the *Corey H.* settlement agreements are two school-by-school restructuring initiatives. The Chicago initiative (Education Connection) has been under way for more than three years, while the State Board's school-by-school monitoring (which will lead to school-level corrective action plans and financial resources for professional development and technical assistance) has not yet completed a first cycle.

Education Connection Schools

In the first year of implementation, twenty-eight schools began their participation in Education Connection. Over an eight-year period a total of 238 schools will be involved for one to three years. Of the first group of twenty-eight schools, which were scheduled to complete their three-year cycle at the end of the 1999–2000 school year, most did not keep on schedule (in part because these schools comprised the trial group), a few have barely gotten under way, and only a handful have been evaluated by the Chicago Board or the monitor's staff as of the time this chapter is going to press. Monitoring of approximately fifty of these Education Connection schools that have completed the three-year cycle is expected to be carried out during 2002.

One of the plaintiffs' goals is that those Education Connection schools that carry out exemplary plans for serving students in the LRE can become resources to help other schools make changes, either through structured visits to these exemplary schools, or through staff from these exemplary schools who provide technical assistance to the schools just getting started.

Schools Targeted for State Board Compliance Reviews

As described above, the State Board's settlement agreement requires it to develop a new school monitoring system that effectively identifies and corrects problems that contribute to students with disabilities not being educated in the LRE. The implementation plan approved in January 2001 required the State Board to visit twenty-five schools in March 2000 and fifty schools in each of the next six years to determine their level of compliance with the LRE mandate. Further, the plan called for those schools to receive an average of \$57,000 in funding to develop and carry out corrective action plans to remedy deficiencies in implementing the LRE mandate. Thus, over a seven-year period of court supervision, if the plan is followed as approved, 325 schools will participate in this process for from one to three years. As noted earlier, the State Board has committed \$19.25 million to support technical assistance efforts for these schools, which are to be provided primarily by independent resource groups.

The first two years of the State Board's monitoring, however, did not go according to plan. In July 2001, the court monitor issued a letter finding serious deficiencies in both the quality and timeliness of the State Board's first seventy-five monitoring reports, most of which were produced in May through July 2001. In addition, most of the corrective action plans were not yet developed and approved because the staffs at most of the schools were just finishing the school year or on vacation when the reports were finally issued. To try to get State Board monitoring back on track, adjustments were agreed to by the par-

ties (by amending the implementation plan) for the 2001–2002 school year. The number of schools newly monitored during the year was reduced to thirty-five (instead of fifty), and the State Board was required to reissue monitoring reports and/or corrective action plans for up to sixteen schools that were monitored during the 1999–2000 or 2000–2001 school years. Since schools targeted for state compliance reviews will typically not be Education Connection schools, a total of about 550 Chicago schools will receive assistance in meeting the LRE mandate through either the Education Connection or the State Board's compliance process.

Initial Implementation of the Education Connection Process

As the plaintiffs' attorneys have reviewed plans submitted by Education Connection schools and obtained scattered initial reports about changes in the participating schools, there is evidence of a wide range of individual school responses. At the negative extreme, some schools have sought to use Education Connection as a source of additional operating revenue, have delayed developing plans, or have implemented plans that completely ignore the segregation of an entire group of children identified by disability label. At the positive extreme, a number of schools have fundamentally restructured the way in which they educate students with disabilities. Because the first comprehensive assessment of the schools completing the Education Connection program was not completed at the time of this writing, and because the parties and the monitor have been attempting to incorporate lessons from the experience with this first cohort of schools into the process being carried out with the subsequent cohorts, it is impossible to offer empirically based conclusions about the overall impact at this point.

Based on anecdotal information, it is possible to speculate that the more successful experiences involve assistance from a skilled consultant at the school site (e.g., as opposed to a centralized trainer); plans that have focused projects with measurable outcomes (e.g., increasing the involvement of children with disabilities in grades K–2 in the regular classroom, or redesigning the math curriculum to take more of a “real-world” approach that would be beneficial to students with disabilities); training that is linked to a specific LRE initiative (training staff to implement a team-teaching model to provide flexible options for students in a high school); and the presence of a school principal and a core of staff that are committed to educating children with disabilities in the least restrictive environment.

One critical barrier to the success of the Education Connection at the high schools stems from the fact that, during the past several years, the Chicago

Board has placed the vast majority of high schools in Chicago on probation based on their poor academic performance. This dramatic reform has undermined compliance. Being on probation means that a school has relinquished its autonomy to an outside consultant who directs "reforms" in the school and faces the possibility that a significant part of the professional staff will be replaced. Recent reports have concluded that the probation process in Chicago has had the opposite effect of what was intended. Test scores and dropout rates have not dramatically changed, and school staff has become demoralized and cynical about new initiatives, including the Education Connection.⁴⁸

Penn Elementary School: A Promise of Change

Penn Elementary School is located on Chicago's West Side in an extremely poor neighborhood. Ninety-six percent of Penn students are African American, and 90 percent are low income. Safety is a continuing concern and source of stress at the school; in one instance during the 1999–2000 school year, students had to stay at school for three extra hours before it was safe to go home because of gunfire in the neighborhood. Third graders score extremely low on standardized tests; only about 13 percent of them scored at or above the national average in reading and math on the Iowa Tests in spring 2000. However, scores have improved steadily at higher grade levels; by eighth grade, nearly 50 percent of Penn students scored at or above the national average in reading and math. The Penn staff's initial focus in the Education Connection program has been on including in the regular classroom and the regular curriculum elementary students who had previously been educated in separate classrooms. School staff accomplished much of this inclusion through effective use of classes cotaught by regular education and special education teachers.

Working with a strong consultant, the staff agreed that they should have much higher expectations for students with disabilities. Students in the primary grades who are labeled EMH have been moved into the regular education curriculum with support, and students labeled trainable mentally retarded, or TMH (moderate to severe cognitive disability) are being educated with students with mild disabilities. Based on a 1999 visit (after Year 2 of Penn's involvement in the Education Connection program), the monitor's staff noted that "very impressive" units had been developed cooperatively by the regular and special education teachers (based on the city and state learning standards) with titles such as *The Solar System*, *The Community*, *Classification of Animals*, *Life Cycles*, and *Matter and Energy*.⁴⁹ From the first to the second year of Penn's Education Connection participation, more than one hundred students with disabilities moved into increased involvement in the regular classroom ac-

tivities. The monitor's staff noted that in some instances students who had been in self-contained classes exclusively were spending ninety minutes a day in the regular classroom and that this time was focused on core academic subjects.

The monitor's staff attributed the progress at Penn to the principal's strong support for implementing the LRE mandate and ongoing direct assistance from a skilled consultant who helped teams of teachers to develop cooperative relationships and new curricula. The monitor's staff found "universal enthusiasm" among teachers, with one teacher stating that her students who had historically been segregated were energized by participation in regular classrooms and were making significant educational progress.

The next challenge for Penn will be to expand the inclusion process that has begun in the primary grades into the school's upper grades.

Gauging Outcomes for Students

The success of the *Corey H.* agreements must ultimately be judged by their impact on the quality of students' educational experiences and on their academic achievement and school completion. At present, we lack reliable data to judge the extent to which such improvements are occurring. However, systemwide monitoring efforts by the State Board and studies by the Chicago Board that are required by the settlement agreements, as well as analyses by the court monitor's staff, should provide reliable information over the next several years.

Annual progress toward meeting the districtwide numerical targets will be one measure of progress. However, data that are currently available illustrate the issues entailed in accurately gauging benefits for students. As reported by the Chicago Board, the percentage of Chicago students attending school in regular classrooms and resource rooms combined has increased from approximately 53 percent in 1994 to approximately 61 percent in January 2000, an 8 percent improvement. These data still leave many questions unanswered. For example, given the strong incentive that Chicago Public Schools staff now have to show improvements in inclusion, what percentage of students with disabilities listed as participating in a regular classroom are, in fact, participating in classrooms that enroll less than 30 percent students with disabilities, teach the regular curriculum, and are not remedial classrooms?

Further, even if there is improvement in such numerical indicators of students' placements in less restrictive settings on a citywide or school level, it is important to be sure that this improvement does not simply represent the "dumping" of students with disabilities into regular education classes without adequate staffing and other aids and supports, contrary to a series of guarantees in the settlement agreements. The State Board is obligated to collect district-

wide data annually to clarify such issues as the following, which will illuminate the quality of efforts to implement the LRE mandate:

- whether individualized education program decisions regarding LRE are individualized and justified and provide for sufficient staff and other supports necessary for appropriate participation in the LRE
- whether IEPs provide students with access to the regular education curriculum and the supports necessary to master the regular education curriculum
- whether IEPs specify the methods by which progress toward meeting annual goals will be monitored and assessed
- whether IEPs of students in more restrictive settings document consideration of less restrictive options and justify the rejection of those options
- whether lack of adequate personnel or administrative convenience bar students from less restrictive options
- whether students in various educational environments are making appropriate progress from year to year⁵⁰

Beyond these data about the nature of students' educational experiences, it will also be informative to track data over time about the achievement levels and dropout rates for students with disabilities. Another research focus of major interest to the plaintiffs is to pinpoint those schools that are doing an exemplary job of improving educational quality and student achievement for students with disabilities, and then to analyze the practices of these exemplary schools and the process of change that took place.

SOME IMPLICATIONS AND RECOMMENDATIONS

The resources available for litigation and other advocacy efforts to improve the quality of special education for minority and low-income students are extremely limited, and the organizational resistance to significant improvement in the educational systems that these students with disabilities attend is potent.

The *Corey H.* settlement agreements are in an early stage of implementation, and systematic data about their impact on students' educational experiences and student outcomes will not be available for several years. Nevertheless, the plaintiffs have been successful in winning extremely detailed and coherent settlement agreements. Further, one can conclude that, at the very least, significant changes in policy, customary practice, and resource allocations are beginning to occur with respect to both the Chicago Board of Education and the Illi-

nois State Board of Education. Further, the plaintiffs' strategy for catalyzing school-level initiatives to improve the quality of education in the LRE has, at the very least, resulted in substantial improvements in a number of schools.

Key features of this strategy merit serious consideration by other advocates. Features that we conclude will dramatically enhance the prospects for achieving significant improvements in the educational experiences and academic achievement of minority and low-income students with disabilities include the following: a multimethod advocacy strategy in which litigation is viewed as one among a number of change levers; a focus on the school community as the essential unit of change; an analytical approach that views the school community as a human system with complex organizational and political dynamics; a research-based educational and legal reform strategy; and, last, an understanding that the school community is nested in a series of other human systems (the school district, state government, and federal government) and that a key task for effective reform advocates is to determine what changes in policies, characteristic practices, and resource allocations at various levels of the educational system will improve educational practices in school communities and thus the quality of students' educational experiences and educational outcomes.

NOTES

1. Northwestern University Legal Clinic is part of Northwestern University School of Law. Designs for Change's special education policy reform initiatives in Chicago and Illinois are the responsibility of DFC's executive director and coauthor Donald R. Moore. All *Corey H.* litigation decisions are made by the plaintiffs and their attorneys. Coauthor Sharon Weitzman Soltman, a DFC attorney and one of the *Corey H.* plaintiffs' attorneys, is responsible for those portions of this article dealing directly with the litigation. An expanded version of this chapter can be found on the DFC website at www.designsforchange.org.
2. *Corey H. et al. v. Board of Education of the City of Chicago et al. and the Illinois State Board of Education et al.*, No. 92 C 3409 (N.D. Ill. 1992). Hereafter the Chicago Board of Education and the Chicago Public Schools are referred to as the "Chicago Board," and the Illinois State Board of Education is referred to as the "State Board."
3. There are now more than 55,000 children with disabilities in the Chicago Public Schools.
4. Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.* The Complaint also alleged violations of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*
5. In current terminology, the EMH label indicated a "mild cognitive disability."
6. Individuals with Disabilities Education Act, 20 U.S.C. § 1412(a)(1).
7. The IDEA requires that, for each child with a disability, knowledgeable school personnel develop and implement an Individualized Education Program (IEP), which specifies goals for that child's educational program, educational and other support services to be

- provided to the child, the extent to which the child should participate in the regular classroom, and how progress toward meeting the goals will be measured. See Individuals with Disabilities Education Act, 20 U.S.C. § 1414(d). The statute further establishes a series of procedural safeguards to ensure that the IEP is both correctly crafted and implemented for each child, including, *inter alia*, notice and consent requirements, a requirement that the parents be involved in developing the IEP, and the opportunity for an impartial hearing on a complaint from a parent regarding the identification, evaluation, placement or provision of FAPE to his or her child. See Individuals with Disabilities Education Act, 20 U.S.C. § 1414(d)(1)(B), § 1415.
8. Individuals with Disabilities Education Act, 20 U.S.C. § 1412(a)(5)(A).
 9. The Education for All Handicapped Children Education Act, P.L. 94-142 (1975).
 10. See, for example, Gail McGregor and R. Timm Vogelsberg, *Inclusive Schooling Practices: Pedagogical and Research Foundations: A Synthesis of the Literature That Informs Best Practices about Inclusive Schooling* (Towson, MD: Paul H. Brookes, 1999).
 11. Daniel Levine and Larry Lezotte, *Unusually Effective Schools: A Review and Analysis of Research and Practice* (Madison, WI: National Center for Effective Schools Research and Development, 1999); Designs for Change, *What Makes These Schools Stand Out: Chicago Elementary Schools with a Seven-Year Trend of Improved Reading Achievement* (Chicago: Author, 1998).
 12. The settlement agreement with the State Board was developed pursuant to a process overseen by the court to fashion a remedy for the violations found in the court's February 19, 1998, opinion. *Corey, H., et al. v. Board of Education of the City of Chicago, et al.*, 945 F. Supp. 900 (N.D. Ill. 1998).
 13. The Honorable Joseph Schneider serves as the *Corey H.* court-appointed monitor. Judge Schneider is a retired presiding judge of County Division of the Circuit Court of Cook County. From 1992 to 1995, he served as a court-appointed monitor in a federal class action involving the failure of the Illinois Department of Children and Family Services to fulfill their responsibilities to children in the care of the state. See *B.H., et al., v. MacDonald, et al.*, No. 88 C 5588 (N.D. Ill.). In addition to Judge Schneider, the *Corey H.* monitor's office now includes three full-time staff persons, and the monitor occasionally uses consultants as well.
 14. The Legal Clinic's Special Education Project was headed by attorney John Elson and staffed by attorneys Laura Miller and Nancy Gibson, along with Northwestern University law students.
 15. Donald R. Moore, Sharon Weitzman Soltman et al., *Child Advocacy and the Schools: Past Impact and Potential for the 1980s*—a report to the Carnegie corporation of New York (Chicago: Author, 1998); Donald R. Moore, Sharon Weitzman Soltman et al., *Standing Up for Children: Effective Child Advocacy in the Schools* (Chicago: Author, 1983).
 16. Designs for Change, *What Makes These Schools*; Penny B. Sebring, Anthony S. Bryk, Melissa Roderick, and Eric Camburn, *Charting Reform in Chicago: The Students Speak* (Chicago: Consortium on Chicago School Research, 1996).
 17. See, for example, Richard F. Elmore, "Organizational Models of Social Program Implementation," *Public Policy*, 26 (Spring 1978), 185-227.
 18. Designs for Change, *Caught in the Web: Misplaced Children in Chicago's Classes for the Mentally Retarded* (Chicago: Author, 1982).
 19. Designs for Change, *Caught in the Web*.

20. See Educational Components in *United States of America v. Board of Education of the City of Chicago*, No. 80 C 5124 (N.D. Ill.).
21. *Parents in Action on Special Education (PASE) v. Hannon*, 506 F.Supp. 831 (N.D. Ill. 1980). The PASE plaintiffs decided not to appeal the decision when the Chicago Board included in the educational components a commitment to discontinue the use of standardized individual tests of intelligence as the sole or primary source of information in special education screening and evaluation of African American and Hispanic students. *United States of America v. Board of Education of the City of Chicago*, No. 80 C 5124, *Desegregation Educational Components*, p. 46.
22. Designs for Change, *Caught in the Web*.
23. Illinois State Board of Education, *The Role of Ethnicity in Special Education Identification and Educational Setting Placement in Illinois* (Springfield: Author, 1991).
24. Office for Civil Rights, U.S. Department of Education, Letter of Findings re. 05-85-5001 (March 28, 1986).
25. *In the Matter of U.S. Department of Education v. Chicago Board of Education and Illinois State Board of Education*, No. 87-504-2.
26. Chicago Public Schools, *Special Report: Special Education Media and Informational Services* (Chicago: Author, 1994), Tables 2, 13.
27. The final version of the report was released ten months later: Designs for Change, *Caught in the Web II: The Segregation of Children with Disabilities in Chicago and Illinois* (Chicago: Author, 1992).
28. U.S. Department of Education, *To Assure the Free Appropriate Public Education of All Children with Disabilities: Thirteenth Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act* (Washington, DC: Author, 1991).
29. Designs for Change, *Caught in the Web II*, pp. 21-23a.
30. Designs for Change, *Caught in the Web II*, pp. 24-26.
31. Essentially no change had been made in Chicago since DFC had raised this issue in 1985.
32. David Jackson, "Suit seeks to mix disabled kids into school mainstream," *Chicago Tribune*, Chicagoland Section, May 22, 1992, p. 1.
33. The rules covered such issues as communications with the joint experts by the parties, time frames for the investigation, and the experts' latitude to hire individuals to gather data for the investigation.
34. The documents initially supplied to the experts included data analyses that the parties agreed reflected the most recent, most accurate data available showing the LRE placements of all students in the Chicago Public Schools in the spring of 1994. This Chicago database was much more detailed than the data that were customarily reported to the state and federal governments.
35. These fifty-five schools were, for the most part, chosen at random, although some schools were identified by Chicago Board administrators because, in Chicago's view, these schools represented extremes in terms of effectively educating children in the LRE.
36. Trial Tr. at 454 and 451 (McNulty).
37. Trial Tr. at 290-298 (Udvari-Solner).
38. Order Preliminarily Approving Settlement Agreement (October 23, 1997).
39. See Chicago Settlement Agreement, pars. 41 and 42. During the course of implementation, these requirements have been made more specific.

40. Prior to the settlement, Chicago Board policy required exclusion of most categories of students with disabilities from schoolwide or districtwide test results. Since a number of Chicago Board's policies are based on the average schoolwide test scores (e.g., a policy to determine whether a school should be placed on "probation" because it is not adequately serving its students), it is important that students with disabilities be included in the relevant test results. Thus, the agreement requires that Chicago not only administer standardized tests to students with disabilities as determined by each student's IEP, but also include the test results of such students as part of the public reporting of school-by-school and systemwide test results.
41. To implement this process systemwide, the Chicago Board is required to provide training (in curriculum-based assessment, assessment of classroom learning environment, and behavior management and assessment) to approximately one-sixth of all elementary schools each year over a six-year period.
42. The State Board Settlement Agreement was approved by the Court after a fairness hearing on June 19, 1999.
43. The court approved the Chicago Implementation Plan in September 1998. The State Board Implementation Plan, which was supposed to be completed by November 1999, was partially approved in January 2001, but those portions implementing the certification and professional development provisions of the agreement (par. 29-33) are still awaiting approval.
44. *Monitor's Targets and Benchmark Decision* at 34-35.
45. See *Board of Education of LaGrange v. ISBE and Ryan B.*, No. 98-4077 (7th Cir. July 29, 1999).
46. Comments by Joseph Schneider, Court-Appointed Monitor on the Proposed Illinois State Board of Education Rules: Title 23; Part 226 Special Education.
47. See Janita Poe and Michael Martinez (1997, November 4). Agreement reached on special ed lawsuit. *Chicago Tribune*, Chicagoland Section, p. 1.
48. Mario G. Ortiz, "Amid dismal first year results, CPS plans for year two," *Catalyst*, 12, No. 9 (June 1, 2001), 22-23.
49. The monitor's staff's visit took place in May 1999. All references to that visit come from a letter dated June 4, 1999, to Chicago Public School personnel from Rodney E. Estvan of the monitor's staff.
50. New state requirements to report state achievement-test results for students with disabilities (that respond to the Individuals with Disabilities Education Act), coupled with detailed requirements that are part of the *Corey H.* settlement agreement for the reporting of Chicago's Iowa Test results for students with disabilities, will facilitate the tracking of student achievement over time. See Chicago Settlement Agreement, par. 20.

