

The Condition of Special Education in Arizona: 2005

Sarup R. Mathur

Arizona State University Tempe Campus

Robert B. Rutherford

Arizona State University Tempe Campus

Reviewer: Martha Cocchiarella

Arizona State University Tempe Campus

Background

Schools throughout the nation are making every attempt to provide the basic provisions of Individuals with Disabilities Education Act (IDEA): Free Appropriate Public Education (FAPE), Least Restrictive Environments (LRE), Individualized Education Programs (IEP), and last, a continuum of alternative placements. Such provisions are intended to ensure that every student with special needs has access to effective instruction that results in positive outcomes. The types of services provided are based on the individual learning needs of students and are specified in each student's IEP.¹ IDEA and its subsequent amendments provide the foundation for special education. Implementing these laws requires schools to provide objective and meaningful assessments of individual needs and implement interventions designed to enhance the performance of students with special needs.

The 2002 reauthorization of the Elementary and Secondary Education Act, known as the No Child Left Behind Act (NCLB), sets as its stated goal raising the bar of academic achievement for all students which creates a risk of compromising the extent and quality of services for students with special needs. With the advent of NCLB and the start of the high-stakes accountability movement, Arizona finds itself having to address

the needs of students in special education who are required to take the Arizona Instrument to Measure Standards (AIMS) test. When students in special education took the AIMS exam at grade level with no accommodations, many special education students were not successful. To make the process of evaluation equitable, alternate assessments and accommodations must be available for students with special needs.

IDEA demands differentiated instruction based upon individualization,² whereas NCLB demands equal treatment for all students. The dichotomy of the two concepts, accountability standards for all vs. individualization, is creating widespread frustration within schools and among the personnel who work with students with special needs. IDEA 2004 emphasizes pre-referral interventions and assistive technology to be used by general educators and special educators.

Professionals and parents are finding it challenging to compromise the individualization model that has been the foundation of special education for years. Promoting multiple content expertise for all special education teachers, requiring high-stakes testing of all students that may preclude graduation, and full inclusion of all students in the general education classroom, seems virtually certain to deny students with disabilities access to the free, appropriate public education that has been mandated for more than 30 years.³

Recent Policy Developments

The most recent reauthorization of the Individuals with Disabilities Education Improvement Act of 2004 (H.R. 1350) continues to mandate that all children with special needs receive a free and appropriate public education, and schools *must* provide special education and related services at no cost to the child or the child's parents or guardians.⁴ The first enactment of the law in 1975, the Education for All Handicapped Children's Act or Public Law 94-142, mandated public schools to provide free and appropriate public education to students with special needs ranging from 3 to 21 years of age in the least restrictive environment possible. This landmark legislation had four specific purposes:

- To ensure that all school-age children with disabilities have access to a free appropriate public education that emphasizes special education and related services;
- To guarantee that children with special needs and their parents are protected by due process rights;
- To assist state departments of education in providing special education and related services to children with disabilities;
- To assure the effectiveness of efforts related to the education of all children with disabilities.⁵

The reauthorization in 1990 renamed the law the “Individuals with Disabilities Education Act” (IDEA). It replaced the term handicap with disability, outlined an array of service delivery models, mandated transition services and supports for youth with disabilities, defined assistive technology, and added autism and traumatic brain injury as separate eligibility categories for special services. The 1997 reauthorization (P.L. 105-17) added changes to the discipline sections of the law; it required schools and school districts to develop and implement functional behavioral assessments and positive behavioral interventions when students with disabilities exhibit or are at risk for behavior problems.

The Individuals with Disabilities Education Improvement Act of 2004 (H.R. 1350) responded to the findings of President Bush’s Commission on Excellence in Special Education (PCESE), which in 2002 called for special education reform that emphasized paperwork reduction, accountability, school choice, and positive outcomes for students. Advocates for students with disabilities have criticized the PCESE report suggesting that it devalues special education and threatens to dismantle services for children and youth with disabilities.⁶ In addition to cuts in the mandatory funding, IDEA 2004 has raised the following concerns:

- It is unclear where the burden of proof now will fall to prove that behavior requiring disciplinary action was caused by or had a direct and substantial relationship to the disability. Prior to IDEA 2004, in order for school

personnel to use the same disciplinary procedures applied to children without disabilities, the school district had to prove that the behavior resulting in a disciplinary action was not a manifestation of the child's disability.

- IDEA 2004 authorizes schools to use up to 15 percent of IDEA funds to develop comprehensive educational support systems for students not yet identified disabilities in grades K-12 who need additional academic and behavioral support to succeed in a general education environment. In addition to the 15 percent of all IDEA funds that a local school district can spend on students without disabilities, 50 percent of all new IDEA money can be spent by a local school district on meeting the requirements of NCLB, which may not necessarily include specialized interventions or individualized programming.
- Coupled with the use of IDEA funds being used for non-disabled students, districts will be given the option of creating “risk pools” of funds to pay for the education of students who are considered especially costly to maintain and educate. The development of such funds is not mandatory, and Arizona needs to define what a high-need student is and how the district will apply for those funds.
- IDEA 2004 eliminates the requirement of developing short-term objectives in Individualized Education Programs (IEPs) for most students. It only requires schools to provide short-term objectives for students with significant disabilities. For most students with disabilities, providing quarterly reports to parents on their child’s progress toward meeting annual IEP goals and how that progress is being measured is sufficient under the law. Additionally, IEPs can be modified or revised without the need to convene and have a formal meeting, if the parent agrees. This may result in some schools not making appropriate efforts to involve IEP teams and parents.⁷

Findings

The findings of these policy changes are discussed in the following six areas: preparing and retaining highly qualified teachers, Response to Intervention (RTI), access to the general education curriculum at the grade level, acceptance of positive behavior supports, continuity of programming, and suspension and expulsion.⁸

Highly Qualified Teachers

A significant issue pertaining to the implementation of the No Child Left Behind Act (NCLB) is the preparing, recruiting, and retaining of “highly qualified” special education teachers. To ensure all children learn from high quality teachers, NCLB calls for a highly qualified teacher in every public school classroom by the 2005-2006 school year. According to H.R. 1350, special education teachers must obtain full State certification in special education. In addition, a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards must meet the requirements as they apply to any elementary school teacher. In the case of instruction above the elementary level, a special education teacher must show that they have subject matter knowledge appropriate to the level of instruction being provided.⁹

New special education teachers who are just entering the profession must demonstrate competence in all the core academic subjects in which they teach in the same manner as is required for an elementary, middle, or secondary school teacher. New special education teachers who are teaching multiple subjects must also meet the NCLB “highly qualified” standard in at least one core subject area (language arts, math, or science) within two years from the date of employment to comply with NCLB’s High Objective Uniform State Standard of Evaluation (HOUSSE), a method to measure competence in core subject areas.

The requirement to be “highly qualified” applies only to teachers providing direct instruction in core academic subjects. Special education teachers who do not directly instruct students in core academic subjects or who provide only consultation to highly

qualified teachers in providing adaptations do not need to demonstrate subject-matter competency in those subjects. Within HOUSSE, states can develop procedures for the existing teachers to demonstrate they are “highly qualified” based on criteria that may combine teaching experience, professional development, and knowledge.¹⁰ NCLB and Individuals with Disabilities Education Act (IDEA) require special and general educators to work together to ensure positive outcomes for students with special needs. The “highly qualified” teacher requirements emphasize special education instructional models based on co-teaching, consultation, and collaboration with general educators. Due to the present teacher shortages, it is imperative that schools do not establish arbitrary definitions of “highly qualified” teachers to meet their short-term needs.

Response to Intervention (RTI)

The milestone decisions in special education (classification; Individualized Education Program, or IEP; development; progress monitoring; reevaluation; and reintegration) are not typically made using a common, valid data set connected across decisions.¹¹ RTI is a most promising method of alternative identification because it closes the gap between identification and treatment of students with disabilities. Identification of students with learning disabilities has typically been done through analysis of the discrepancy between their achievement and ability as measured by their scores on norm-referenced tests (Discrepancy Model). RTI is an alternative method for identifying learning disabilities which involves measuring student’s responses to scientifically-validated academic instruction (known as interventions) as the measure of whether that student has learning disabilities. The RTI process starts by using assessment criteria to determine whether a child is performing at grade level. If a student is behind, he or she receives scientifically-based instruction while being observed closely by a teacher. If the student does not respond to the instruction, further evaluations are conducted to see if the student needs special education services.

IDEA 2004 states that a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability. A local educational agency may use the RTI process to determine if the child responds over a length of time to a scientific, research-based intervention as a

part of required evaluation procedures.¹² The law allows for the development of new procedures to identify students with specific learning disabilities by clarifying that schools are not limited to using the IQ-achievement discrepancy model. By examining student's response to various interventions, schools can determine which of the evidence-based interventions may work better than others for a specific student with learning disabilities.

Researchers have called for the expansion of RTI assessment procedures to the identification, education, and monitoring of other students with disabilities in addition to those with learning disabilities.¹³ Districts are emphasizing RTI for general educators to implement before referring students for special education services. The RTI model bases decisions on intensifying, modifying, or changing the intervention on a student's response to evidence-based interventions. RTI is based on the notion of discrepancy between pre- and post-intervention levels of performance.

In the RTI model, for example, a student should be considered for identification as Emotionally Disturbed (ED) if the student's behavior does not change adequately in response to an evidence-based intervention. Unlike current practices, this approach to the identification of ED requires implementation of an intervention prior to making an eligibility determination. Current practice is based on a refer-test-place model, in which students are not exposed to systematic, evidence-based interventions to improve behavior problems. The RTI model is seen as an improvement over the current practice of eligibility determination that excludes application of evidence-based interventions.¹⁴

From the standpoint of identification of children with learning disabilities, there are some concerns about the complexity of RTI and how it can be implemented with integrity. If implemented correctly, it will require additional dollars and extensive training for school personnel. Despite multiple models for RTI, there is a concern about the limited research on their effectiveness. There needs to be a limit on how long RTI can be implemented before referring a student for special education. Without a time limit, schools may use RTI to postpone or prevent identification of a child who has a learning disability. If a student is not identified, the student will have no special education rights and can be more easily removed from school.

Access to the General Education Curriculum

According to the IDEA amendments of 1997, students with disabilities must access, participate, and progress in the general education curriculum. The IEP must include accommodations, modifications, and any supplementary aids or services that the child needs to access the general education curriculum, as well as identify the supports that service providers need to carry out the child's individualized program.¹⁵ Because general education and special education stakeholders do not have a shared understanding of the IDEA provisions related to access, participation, and progress in the general education curriculum, there is a great variation in how these terms currently are being used. Moreover, professionals need to agree on what constitutes the general education curriculum. Access to curriculum without specialized instruction is ineffective and, therefore, wasted effort. In addition, it is often difficult to meet the individualized educational needs of students with disabilities in the general education curriculum. General educators often fail to apply instructional practices and assessment techniques that are reflective of current research on best practices; they often expect students with special needs to perform under the same conditions as their non-disabled peers. The issue of access, participation, and progress becomes more complex because little is known about how students with disabilities acquire, maintain, and apply knowledge and skills in general education curriculum settings. Moving special education students into general education classes calls for a paradigm shift where special and general education teachers must collaborate in the student's educational planning so as to improve learning in the general education curriculum. Accomplishing these objectives will require technical assistance and training for administrators, general educators, and other school personnel to improve instructional effectiveness and the school climate. Additionally, the state needs to review the academic content standards to ensure that they are reasonable, fair, and appropriate for all Arizona students and teachers.

System–Wide Change: Positive Behavior Supports (PBS)

Schools have a responsibility to improve the academic and social behavioral outcomes of their students, especially those students who are at serious behavioral risk and

who present the greatest daily challenges.¹⁶ The Arizona Superintendent of Education commissioned a study to gather ideas from teachers across the state regarding discipline issues. Teachers consistently expressed their need for support for positive and constructive student behavior. Teachers also expressed a need for consistently enforced schoolwide discipline plans which begin with explaining behavioral expectations to students. Continuous teacher training and techniques for dealing with student behavior as well as alternatives for students with more chronic or severe problems are also of high concern among teachers.¹⁷

IDEA 1997 mandates the use of Functional Behavioral Assessment (FBA) and Behavior Intervention Plans (BIPs) for students with disabilities or students suspected of having disabilities who demonstrate behavioral concerns that place them at risk for suspension and expulsion. These tools ensure that the intervention is based on linking the *purpose* of the student's behavior with the demands of the student's current setting. The Individualized Educational Plans (IEPs) of students with special needs who are at-risk for challenging behaviors must be based on FBAs and include proactive, positive behavioral interventions and supports.

IDEA 2004 amendments continue to support conducting FBA and developing a BIP for students with challenging behaviors. Research on best practices has produced positive findings through initiatives such as the Center on Positive Behavioral Interventions and Supports (PBIS)¹⁸ and the Arizona Behavior Initiative (ABI),¹⁹ which provide technical assistance to U. S. and Arizona schools in positive behavior supports and behavioral interventions.

Changes in IDEA emphasize the need for state and local educational agencies to ensure that superintendents, principals, teachers, and other school personnel are equipped with the knowledge and skills that will enable them to appropriately address behavior problems when they occur.²⁰

Continuity of Programming

Continuity and effectiveness of educational and transition programming are essential to promote student self-determination and independence, and to facilitate

movement from school to postsecondary activities. Although Arizona State University is seeking funding from the Arizona State Legislature to relate student ID's (Student Accountability Information System ID's) with resultant data (e.g., demographics, needs, assessment and progress, enrollment, etc.), it may take from one to two years before these data are accessible to the appropriate stakeholders. Student outcomes measured by student learning levels, graduation rates and dropout rates, and participation levels in post-secondary opportunities indicate that students with special needs require predictability and continuity in services.²¹ Most importantly, services for these students should immediately follow the students. Many students with special needs go back and forth between public schools and juvenile corrections or mental health facilities, which often results in failure to provide services in a timely fashion.²² If the justice systems had the ability to use the SAIS, the state would be able to track these students more efficiently and provide services. Additionally, students who transfer from district to district within the state often are faced with fragmented special education services being provided upon arrival in the new setting.²³ An adequate system for transferring educational records and services would facilitate a reliable and timely exchange of relevant information and the provision of a seamless continuum of services. A statewide tracking system would improve the educational system's ability to understand and address educational, behavioral, and transition-related concerns of children and youth with disabilities.

Suspension and Expulsion

Schools often apply disciplinary policies of removal and/or placement in segregated settings when they deal with students who exhibit behavioral challenges. Although little evidence exists that proves zero tolerance policies improve school safety or behavioral climate, many schools still adopt suspension and expulsion procedures as disciplinary actions leading to interruptions or termination of education for these students.

Under IDEA 2004, a child's disability shall be considered unknown to the LEA if the parent of the child has not allowed an evaluation of the child or has refused services. The new law makes changes to the discipline provisions of Part B. Language has been added giving school personnel authority on a case-by-case basis to consider uniqueness of circumstances when deciding on change in placement for a child with a disability who

violates a code of conduct. The length of time that school personnel may remove a student to an interim alternative setting (without a hearing officer) has increased from 45 calendar days to 45 school days. In addition, school personnel may now remove a student who “has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function” to an interim placement without requiring a hearing officer ruling. The criteria for determining whether a behavior is a manifestation of a student’s disability have been narrowed to whether the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability, or was the direct result of the LEA’s failure to implement the IEP. Timelines have been added for an expedited hearing in matters related to placement during appeals. The length of time that a hearing officer can initially order a change in placement in the event of a finding that the current placement of the child is “substantially likely to result in injury to the child or to others” has increased from 45 calendar days to 45 school days.²⁴

Arizona schools must provide fair and consistent opportunities when determining out of class or out of school placements on a case-by-case basis. Educational and related services must continue unless LEAs can show that these services are not required to provide free appropriate public education.

Policy Implications

The implications for these policy changes are discussed with regard to the following six areas: preparing and retaining highly qualified teachers, Response to Intervention (RTI), access to the general education curriculum at grade level, positive behavior supports, continuity of programming, and suspension and expulsion.

Highly Qualified Teachers

Several factors prevent Arizona from meeting No Child Left Behind’s (NCLB’s) mandates for highly qualified teachers, including confusion about how to apply the law to special education teachers and the need for additional assistance from the Arizona Department of Education (ADE) in identifying the High Objective Uniform State Standard of Evaluation (HOUSSE) implementation strategies. Pursuant to requirements

mandated by NCLB, ADE has provided a free online service to assist schools in hiring personnel. On the website, ADE provides information in an email newsletter about promising educational practices backed by research. In addition to these efforts, a certification task force consisting of a selected group of educators reviews certification requirements. Through Arizona State Improvement Grants, funded through Individuals with Disabilities Education Act (IDEA), the state is attempting to increase the ethnic diversity of fully certified special education teachers. The Teacher Education Partnership Coalition addresses pre-K-12 teacher recruitment and retention issues. The Coalition is developing a standards-linked document outlining the criteria for a quality teacher. The state of Arizona has developed the Arizona Highly Qualified Teachers evaluation form and rubric offering a clearly articulated path for Arizona teachers to be designated highly qualified by the end of the 2005-2006 school year.²⁵

It is still unclear how special educators might meet the criteria for being highly qualified when they teach multiple subjects to students at the middle and high school levels. Due to special education teacher shortages, the subjects that special education teachers may teach often change from the time they are hired. A greater source of uncertainty is whether special education teachers should demonstrate competency for the assessment level or the grade level of the students being taught. Additional factors that interfere with meeting the NCLB requirements include: too short of a timeline for teachers to meet these requirements, the failure of colleges and universities to align their programs with NCLB structures because they do not emphasize majors or concentrations in core academic subjects, and uncertainty on how to reconcile NCLB and IDEA requirements for teachers.

Suspension and Expulsion

Given the controversy that has surrounded the discipline provisions, caution must be exercised over interpreting what these new requirements may mean until final federal regulations are issued. Examples of specific policy areas that need to be addressed during the regulatory process include: defining “unique circumstances” as they relate to the authority of school personnel to make a change in placement on a case-by-case basis; providing additional information on the revised criteria for determining whether a

behavior is a manifestation of a student's disability; and explaining the significance of deleting the definition of "substantial evidence" from the statute.

Although NCLB mandates the use of only those interventions that provide evidence of effectiveness, the national data raise serious questions about whether the use of suspension and expulsion can be considered effective disciplinary practices. In addition, the *Condition of Pre-K-12 Education in Arizona 2004* report²⁶ presents data from the Office for Civil Rights that raise serious concerns regarding overrepresentation of students of color among those who were suspended or expelled in Arizona public schools.

Continuity of Programming

Arizona is moving ahead with a technology initiative, Integrated Data for Enhancing Arizona Learning (IDEAL), which will begin with the release of online benchmark assessments for the high school Arizona Instrument to Measure Standards (AIMS) exam. Whether they are at home, in the classroom, or in a tutoring environment, students will have access to an online high school math assessment on which they can answer the questions and have their responses automatically graded and reported. As the year progresses, ADE intends to move on from benchmark assessments (an assessment that shows where a student stands) to formative assessments and also to provide resources that students and teachers can link to for help in the learning process. ADE has developed the Student Accountability Information System (SAIS), a program to replace the existing internal School Finance System. SAIS is to improve school finance processes and services to local education agencies (LEAs), build a Student Database System to reduce the reporting burden from LEAs, and improve the accuracy and timeliness of student counts required for state and federal funding and reporting.²⁷

SAIS will allow schools to electronically submit raw student and school data as they are being collected rather than summary reports on paper or diskette. As a result, it is hoped that SAIS will provide data on budgets, expenditures, and achievement levels leading to true equity, providing true local control through financial and academic accountability at the level closest to the student. All these changes are on the horizon and

may require more commitment from and training for teachers and administrators working in schools and other agencies that serve students with special needs.

Positive Behavior Supports

In cooperation with Arizona State University, the University of Arizona, and Northern Arizona University, ADE has developed the Arizona Behavior Initiative (ABI) to help Arizona schools develop systems of positive behavior supports for students with challenging behaviors. ABI provides training and technical assistance to schools to support students at the primary, secondary, and tertiary levels of intervention. In addition, the Deputy Associate Superintendent for Discipline at ADE has begun to develop inservice training opportunities for Arizona teachers in effective classroom behavior management procedures. Arizona's teacher training institutions need to provide pre-service, classroom behavior management opportunities, particularly for general education teachers. This will promote general educators' knowledge of and skills in how to develop and implement a behavioral plan for a student with special needs and adopt effective ways of addressing behavior.

By combining ABI, in-service training in classroom behavior management opportunities through Integrated Data for Enhancing Arizona Learning (IDEAL), and developing opportunities for teachers and schools statewide to manage student behavior, Arizona's teachers will be able to deal effectively with challenging behaviors of students with and without disabilities. Carrying out these efforts in concert with Arizona's teacher training institutions would enable all preservice teachers to learn the skills necessary to manage student classroom behavior before their first teaching assignment. Promoting a balance between research and practice in conjunction with efforts to provide positive behavior supports and effective classroom behavior management would increase the likelihood of teachers applying behavioral interventions with fidelity and validity.

Response to Intervention

Although RTI is a promising method of alternative identification to close the gap between identification and treatment of students with disabilities,²⁸ it still needs research to justify its widespread adoption. It also may be a useful tool for identifying those

students who are not eligible for special education but who still need access to quality interventions. IDEA 2004 has mandated that rather than measures of discrepancy between achievement and intellectual ability scores on standardized tests, RTI may be used to identify students with learning disabilities. The law allows for the development of new procedures to identify students with specific learning disabilities by clarifying that schools are not limited to using the IQ-achievement discrepancy model. By examining responses to various interventions, schools can determine which of the interventions may work better than others for a specific student with learning disabilities.

RTI is a tool for identifying students with disabilities other than those with specific learning disabilities. Students with disabilities and their teachers would benefit if ADE and institutions of higher education collaborate in providing in-service and pre-service training opportunities. This training would expose current and future teachers and school psychologists to systematic, evidence-based interventions to identify students with disabilities and to help overcome educational problems.

Access to the General Education Curriculum

The IDEA Amendments of 1997, reiterated in IDEA 2004, require schools to provide students with disabilities the opportunity to participate and progress in the general education curriculum. The Individual Education Program (IEP) must include accommodations, modifications, and any special services that the child needs to access the general education curriculum; it must also identify the service providers needed to carry out the child's individualized program.

Access to the general education curriculum without specialized instruction will not provide appropriate and meaningful education for many students with disabilities. By developing effective collaborative efforts, ADE, district directors of special education, school administrators, and other school personnel can ensure access to the general education curriculum through a continuum of special education services ranging from inclusion to self-contained programs depending upon the individual needs of the student.

Recommendations

In light of the foregoing, it is recommended that:

1. The Arizona Department of Education (ADE) in collaboration with Institutions of Higher Education create a comprehensive database to track patterns of hiring practices of schools. Collaboratively, they should explore software that can be used to track patterns of employment of teachers in Arizona schools. Such tracking would also include how the school environment encourages the use of research- and evidence-based practices; how schools confirm they are hiring quality educators who have knowledge of both content and pedagogy; how teachers apply evidence-based instructional practices and inform researchers and policy makers of advantages and limitations in practice; and how schools assess the efficiency and effectiveness of special education programming.
2. ADE; public, private, and charter schools; and teacher and school psychologist training programs implement response to intervention (RTI) methods to improve achievement and prevent misidentification of students with disabilities.
3. ADE work with individual districts and schools to provide students with disabilities access and opportunities to participate and progress in the general education curriculum through collaboration by special and general education teachers in the student's educational planning.
4. Arizona schools improve the academic and social behavioral outcomes of challenging students who are at serious academic or behavioral risk. State and local education agencies must ensure that superintendents, principals, teachers, and other school personnel are provided professional enhancement experiences to develop knowledge of and skills in implementing positive behavior supports that will enable them to appropriately address behavior problems when they occur.

5. Arizona guarantee effective instructional options, and specialized programming, mental health services, and vocational rehabilitation for students with special needs. Students with special needs must have access to a full continuum of special education options to recognize unique needs and individualized approaches to enable them to achieve both academically and socially.
6. ADE open a statewide dialogue concerning suspension and expulsion, and their alternatives for promoting a productive learning climate in Arizona schools. The No Child Left Behind mandates that all educational practices employed in schools must maximize the opportunity to learn for all children without compromising safety for all students.

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