

Comments of

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Presented by

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Before the

New Jersey Assembly Education Committee

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Thank you for the opportunity to testify regarding the needs of students with disabilities in New Jersey.

My name is Ruth Lowenkron and I am a Senior Attorney with the Education Law Center. As you may know, the Education Law Center (ELC), established in 1973, is a not-for-profit law firm which advocates on behalf of low-income students who are denied access to an appropriate education in New Jersey. One of ELC's priorities and areas of specialization is advocacy for students with disabilities.

ELC respectfully requests that the Assembly Education Committee consider our comments, along with those of the coalitions we are active in, including the New Jersey Coalition for Special Education Funding Reform.

Roughly 15% of New Jersey's school children receive special education services, and special education is often identified as a "cost driver." Yet, special education tends to be an afterthought when education policy initiatives are contemplated. First and foremost, ELC urges that special education be a part of any conversation about education reform in New Jersey.

Special Education Funding

While we are grateful for the increase in special education funding in this year's budget, we note that most New Jersey school districts find themselves with fewer special education dollars than they had three years ago. In addition, because special education funding is not dedicated funding, increases to special education funding can be used to offset the failure to increase general education, to the detriment of children with disabilities. Moreover, the failure to increase the

base rate for general education hurts children with disabilities, as well as their non-disabled peers.

Rather than stress the need for more money, however, ELC will focus its funding comments on “smarter money,” to quote the New Jersey Coalition for Special Education Funding Reform. Policy must be informed by objective data in areas such as funding, costs and best practices. To that end, we urge the State to conduct a scientifically validated, longitudinal outcomes **study to examine the lives of adults who, as students, received special education services**. We invest millions of dollars educating students with disabilities, but objective data on their lives as adults is missing. We need to identify variables that affect positive outcomes in order to make informed decisions. Such a study is particularly timely in light of the recent announcement by the U.S. Department of Education that it intends to focus its oversight of states on such student outcomes. See Nirvi Shah, “Feds Pledge More Focus on Outcomes for Students with Disabilities,” Education Week (July 31, 2012) at http://blogs.edweek.org/edweek/special_education_official_blog/2012/07/federal_special_education_official_blog_2.html.

In addition, we join the Coalition in calling for:

- 1) An independent **study to examine the full actual excess cost of special education**. We lack accurate, objective cost data. Published tuition rates for public school programs are very misleading and fail to capture the full excess costs to taxpayers.

- 2) A **moratorium on the establishment of public schools to be used primarily for students with disabilities**. Taxpayer dollars are better spent improving and expanding local school capacity, not building and financing new, separate schools.
- 3) The **development of public/private partnerships to help bring high-quality, specialized services into all settings**.
- 4) The **regionalization of student transportation** to improve efficiencies and save money.
- 5) The **sharing of equipment and assistive technology by school districts** to improve efficiencies and save money.
- 6) **Increased pre-referral intervention** which will reduce the need for special education services.
- 7) A **revision of the special education funding mechanism** in accordance with the recommendations of the New Jersey Office of Legislative Services and the State-sponsored report by Augenblick, Palaich and Associates, Inc. entitled "An Analysis of New Jersey's Census-Based Special Education Funding System." Aid must be generated based on students' actual needs, not on a statewide average and a statewide percentage. The aid must also be provided in such a way that money can follow the student across placements.

Inclusion

Not only is placement in the "least restrictive environment," or "inclusion," the law, but it makes good fiscal sense. As numerous reports have found, segregated schools are the most expensive, while inclusive, in-district

placements are the least expensive. In order to facilitate inclusion, **the State must assist districts in developing high-quality in-district programs and services, and provide training regarding inclusive education, positive behavior supports, transition to adult life, and parent/professional collaboration.**

Our state is sadly the worst in the country in adhering to the special education inclusion mandate, and much must be done to improve our track record. Legislation **mandating that the New Jersey Department of Education (NJDOE) train teachers and administrators in best inclusive practices** is critical. Such training for current teachers and administrators must be made mandatory and must be included in **professional certification requirements**. NJDOE must also ramp up its **monitoring of inclusive practices** in districts, and support the **construction of school facilities that can accommodate the needs of students with disabilities**.

In addition, New Jersey's hundreds of **public and private specialized programs should function as "regional centers of excellence."** These programs – many with a decades-long track record -- should be considered a resource for local districts seeking training, consultation and assistance in best serving students with disabilities in-district and in inclusive settings.

Restraints and Seclusion

We do not want to see another child injured in school as a result of being restrained or secluded. See, e.g., "School is Not Supposed to Hurt," National Disability Rights Network (March 2012) at

[http://www.napas.org/images/Documents/Resources/Publications/Reports/School is Not Supposed to Hurt 3 v7.pdf](http://www.napas.org/images/Documents/Resources/Publications/Reports/School%20is%20Not%20Supposed%20to%20Hurt%203%20v7.pdf). The Legislature must take immediate

action to **ban the use of restraints and seclusion in schools**, except in emergency situations. **Teachers and administrators must also be trained to deal with children who appear to be at risk.**

Disproportionality

According to the most recent study of the U.S. Department of Education, Office of Special Education Programs (USDOE-OSEP), <http://www.ed.gov/offices/OSERS/OSEP/OSEP98AnIRpt>, African American students constitute 16% of students enrolled in elementary and secondary schools, but 21% of those classified for special education services. Indigent African American students are 2.3 times more likely to be identified by their teacher as having mental retardation than their white counterparts, and students classified as emotionally disturbed are more likely to be African American, male, economically disadvantaged, and living in a single parent home, foster home or other alternative living arrangement. The reasons for these disparities include teacher and administrator bias and assessments which are not culturally sensitive.

In addition, students of color are far more likely than other students to receive special education services in segregated settings, both in- and out-of-district. The reasons for this disparity also include teacher and administrator bias.

Students of color are also less likely to receive counselling services, and more likely to drop out, than their white counterparts. In fact, more than 50% of special education students of color in large cities drop out, and the drop-out rate for special education students of color is 68% higher than it is for white special education students.

NJDOE must be mandated to appropriately train teachers and administrators and to specifically monitor districts for bias and discrimination based on race.

Discipline

School discipline serves the important purpose of maintaining safe and orderly learning environments in our schools, but research shows that an emphasis on harsh, punitive practices such as "zero tolerance" policies, does not improve school safety, and more often than not promotes the "school-to-prison pipeline." This is particularly problematic for our students with disabilities who are suspended/expelled and otherwise disciplined at a higher rate than students who receive general education services. *Student Discipline - Individuals with Disabilities Education Act*, GAO -01-210 (January 2001), p. 15.

In fact, student behavior and learning outcomes can be improved through the use of evidence-based approaches known as Response to Intervention (RTI) or Positive Behavior Support (PBS). Such approaches rely on teaching and reinforcing clear behavioral expectations, providing supports and interventions for students with challenging behaviors, and using alternatives to suspension or expulsion. Both students and society benefit when youth are not excluded from school, since such exclusion places students at greater risk of dropping out and engaging in crime and violence.

ELC urges the Legislature to **mandate RTI/PBS and ban zero-tolerance policies.**

Parent Involvement

Congress, in enacting the Individuals with Disabilities Education Act (IDEA), recognized the critical role that parents play in the education of their children with disabilities. New Jersey must likewise recognize this role and ensure that parents are equal participants with school personnel in making decisions about their children's education. ELC urges that New Jersey adopt an aspect of IDEA's critical parental right to "stay-put" that increasing numbers of State's are endorsing. Specifically, ELC proposes that legislation be enacted to **mandate that any changes in educational programs or placements proposed by school districts and contested by parents require the district, rather than the parent, to file for due process.**

Charter Schools

Sufficient safeguards must be in place to ensure that New Jersey's charter school program is implemented in an accountable and fully effective manner. Charter schools, of course, must comply with federal and state laws when providing our children with the constitutionally-mandated thorough and efficient education, and may not deny admission to students, or deny appropriate services to students, based on disability, severity of disability, classification or level of required special education services. **NJDOE must closely monitor charter schools** to this end.

Further, to the extent that New Jersey continues to encourage the establishment of additional charter schools, **NJDOE must ensure that charter schools include students with disabilities in the general education**

classroom. Similarly, **charter schools that serve solely students with disabilities should not be permitted**, as there is no evidence that New Jersey requires additional segregated settings, and, in fact, an over-abundance of such settings, both public and private, already exists.

Vocational Schools

It has come to our attention, both from individual complaints and from a look at vocational school enrollment statistics, that students with disabilities are being denied admission to vocational schools, especially to the fulltime programs, in great numbers. As with charter schools, vocational schools must comply with federal and state laws and may not deny admission to students, or deny appropriate services to students, based on disability, severity of disability, classification or level of required special education services. **NJDOE must closely monitor vocational schools** to this end.

Role of Stakeholders

ELC is grateful to have been included as a stakeholder in these important discussions about the education of children with disabilities in New Jersey. We are also grateful that Senator Ruiz has gathered together such a large and impressive group of stakeholders. It is ELC's hope that all of the stakeholders continue to participate in discussions about special education in New Jersey, and we also urge that the following stakeholders be invited to participate as well: Disability Rights New Jersey, the New Jersey Special Education Practitioners and Our Children/Our Schools.

Thank you for considering our comments.