RECOMMENDATIONS FOR CATHOLIC SCHOOL ADMINISTRATORS IN FACILITATING SPECIAL EDUCATION SERVICES

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Educating students with special needs in Catholic schools is a challenge facing all Catholic educational leaders. This article provides recommendations to assist administrators in taking full advantage of recent legal cases, state policies, and local special education services in order to serve students with special needs in Catholic schools. Arguing that principals must be conversant in local and state educational policy questions, the article outlines a comprehensive approach for Catholic school administrators seeking assistance to provide special education services in the Catholic school and concludes by suggesting that requiring students with special needs to attend public schools to reach such services may violate the Constitution.

A May 1997 study, "An Analysis of Legal Issues Affecting the Inclusive Education of Children with Special Needs in Catholic Schools" (Depp-Blackett), investigated and analyzed federal regulations and court findings regarding students with special needs in order to discern the legal responsibilities of Catholic school administrators, teachers, and school boards to such students who wish to enroll or to continue their education in Catholic schools. The study also examined the similarities and differences between Catholic schools' responsibilities to students with special needs and those of public schools and extracted from them findings that could inform the actions of Catholic school administrators to ensure compliance with applicable law in the inclusive education of students with special needs. Presented here along with the major findings resulting from that research are recommendations for professional practice in aiding students with special needs in Catholic schools.

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MAJOR FINDINGS

Among the findings of the 1997 study was the identification of the sources of legal authority over special education: federal and state constitutions, federal and state statutes, the body of law created by decisions of the judiciary, and administrative law promulgated by federal and state executive agencies. All of these sources of legal authority are integrated in governing the country's educational system.

A further finding from published statutory, judicial, and administrative special education law was the legal responsibilities of Catholic administrators, teachers, and school boards to students with special needs who wish to pursue their education in Catholic schools.

Another significant finding indicated that there are two companion federal statutes that provide services for and protect the rights of students with disabilities without regard to whether they attend public schools or Catholic schools. These are the Individuals with Disabilities Education Act (IDEA) (1990) and Section 504 of the Rehabilitation Act of 1973 (Zirkel & Kincaid, 1994). These two statutes have varying degrees of indirect influence over the inclusive education of children with special needs in Catholic schools. Another statute, the Elementary and Secondary Education Act (ESEA), was reauthorized in 1993, making a broader scope of services available to disadvantaged students and those with special needs.

The 1997 study also discovered that a significant body of special education case law involving students in Catholic schools is growing. This body of law has been generated by disputes and interpretations of the implementation of federal statutes, the federal and state constitutions, and judgments concerning the educational rights of students with special needs in private and parochial schools. Litigation has involved Establishment Clause issues or the constitutionality of services and the location of the delivery of those services for parochial school students. This case law resolved disputes between parents and school districts regarding the right to a free and appropriate education for children with special needs.

CASE LAW

The body of case law examined also revealed that the findings of state and federal courts vary regarding the spectrum of services available to Catholic school students with special needs and the exercise of discretion by a local education agency in deciding which students to serve. Among the Federal Judicial Circuits there is wide diversity of opinion. There has been no U.S. Supreme Court decision to unify or provide guidance to the lower courts in these matters. In addition, soon after the completion of the 1997 study, the 1997 Amendments to the IDEA were passed by Congress, creating significant

substantive changes in the law regarding students with special needs unilaterally enrolled in Catholic or private schools. Some of the cases analyzed in the 1997 study involving free appropriate public education issues were immediately affected (*Cefalu v. East Baton Rouge Parish School Board*, 1997; *Foley v. Special School District*, 1998; *Fowler v. Unified School District No. 259*, 1997; *Goodall v. Stafford County School Board*, 1995; *K. R. v. Anderson Community School Corporation*, 1997; *Russman v. Sobol*, 1998). Opinions were reversed for the students who were parties in those cases by removing their special-education-related services or maintaining denial of services granted in earlier appeals (*The Special Educator*, 1997). The 1997 Amendment to the IDEA withdrew all private school students' individual rights to receive some or all special education or related services that they would receive if they were enrolled in state schools. IDEA 1997 mandated only that Local Education Agencies (LEA) offer the student a free and appropriate public education to meet their special educational needs in their local public school (Jones & Aleman, 1997; *Private School Law in America*, 2000).

The examination and analysis of case law in the 1997 study highlighted the *Aguilar v. Felton* Supreme Court decision of 1985 as having created limits in the delivery of educational services under federal education programs available to parochial students. *Agostini v. Felton* (1997) declared that the Establishment Clause of the U. S. Constitution formerly was not violated by the delivery of educational services by a public school teacher on parochial school grounds. The Supreme Court ruled in *Agostini* that a federally funded program does not violate the Establishment Clause even if services are provided on parochial school grounds if: 1) there are safeguards to ensure secular instruction, 2) the instruction is supplemental to regularly provided services, and 3) the funding is awarded on neutral criteria (*Private School Law in America*, 2000). This new ruling primarily affected states where federal education programs under ESEA were conducted for disadvantaged students. It had little impact, however, on the delivery of special education services already provided by state programs where private schools were designated service delivery sites because of a lack of other possible sites in given areas. Two cases were found that were favorable to students receiving special education services. These were *Helms v. Picard* (1998) and *Peck v. Lansing School District* (1998). Separate Judicial Circuits held that neither providing special education or related services to a student with a disability on the premises of his or her sectarian school nor transportation to or from the sectarian school violates the Establishment Clause (Zirkel, 1999).

The similarities and differences that exist between the Catholic schools' responsibilities to students with special needs and those of public schools were found primarily through the examination of the case law discussed above and published administrative law. An examination of administrative laws and policies revealed that the administration of the education system in

the United States is ultimately regulated by state legislatures who either themselves or through delegated agencies administer education from the local to the state level. The level of state cooperation with Catholic or private schools varies widely depending on the individual state's education code and the degree and manner of normal state support of Catholic or private schools. Likewise, special education services in Catholic schools are proportional to the allowance of a particular state legislature for the use of federal special education grants or funding for private schools.

In California, for example, the quantity and manner in which special education services are delivered to Catholic school students is at the discretion of the Special Education Local Plan Areas (SELPA), which in most cases are comprised of one or more school districts. No provisions for Catholic or private school students were found in California education code or special education regulations (California Department of Education, 1995) during the 1997 study. Since the implementation of the 1997 IDEA Amendment, there continues to be provision for students with special needs in Catholic or private schools. Local and state education agency compliance with federal and state requirements and statutory implementation regulations are monitored and enforced for special education by the U.S. Department of Education. The final regulations for implementation of the 1997 IDEA Amendments were issued by the Department of Education on March 12, 1999. These regulations denied eligibility for special education services to individuals unilaterally enrolled by their parents in private schools. California's execution of this section of the regulations is strictly interpreted. In September 2000, the California Associated Private School Organizations, an alliance of religious and nonsectarian private school administrations, school boards, and parent organizations, initiated a petition to collect over 100,000 voter signatures to place a measure on the next state ballot to change California's special education laws. The outcome is pending.

The 1997 study indicated that Catholic schools are also affected by special education legal responsibilities in terms of the degree of cooperation between the administrations of public and private schools. This is required to assure that educational rights and opportunities for equitable participation are conferred on students with special needs in Catholic schools by the LEA. Knowledge by Catholic school administrators of the new IDEA regulations is also essential, as illustrated by the following accounts of California Catholic school administrators' experiences in attempting cooperation with a state school district.

Public school administrators, teachers, and school boards are strictly bound by the federal and state constitutions, the state education code, and state special education laws regarding their legal responsibilities to students with special needs in the public schools. After final regulations for implementation of the IDEA 1997 were established in the fall of 1999, some

California Local Education Agencies met with Catholic and private school administrators to outline changes in their legal responsibilities. The administrators were informed that IDEA 1997 mandated the withdrawal of all related special education services from individual students with special needs enrolled in private schools (Jones & Aleman, 1997). Pursuant to the new regulations, one school district, Riverside Unified, called a meeting complying with the provision of the 1997 Amendment that the public agency must consult with representatives of private school children with disabilities on how to formulate a plan for providing appropriate services to meet the needs of these children. Consequently, the district assistant superintendent of special programs proposed a "services plan" to replace the Individualized Education Plan (IEP) as mandated in IDEA 1975, since individual students were no longer eligible for services. This services plan was based upon a limited amount of district special education funds allocated for students in private schools for the school year 2001-2002. These funds targeted one selected special education service to meet a specific need of private school students who were diagnosed with that need before the end of 1999. The private school administrators were asked to name the private school student population's most pressing special need before the meeting adjourned. Further, the district reported that the possibilities for a central delivery location of this services plan would be limited, since the cost of transportation of students would be included in the cost of the administration of the selected service. The private school administrators were unable to prioritize one special need of their entire student population, and discussion of the proposed services plan reflected the frustrations of the Catholic school administrators as well as the inflexible nature of the plan. The final recommendation from the district assistant superintendent was that the private school administrators should advise the parents of students with special needs to seek special education services from private agencies, outside either school system, at their own expense (Moreford, 1999).

Not addressed at this first meeting was the issue that 1997 IDEA still requires local school districts to locate, identify, and evaluate ("child find") any students attending private schools believed to have disabilities and needing special education and related services. In addition, child find activities must be comparable in scope to those in public schools. Referral for special education services had always been a bureaucratic maze for parents prior to the 1997 Amendment. No public school educator had ever initiated inquiry or observation of students in an effort to locate, identify, and evaluate students who have disabilities in the Riverside private schools.

To document this fact, the author created a "Student Referral Survey." Parents and administrators of the San Bernardino-Riverside Diocesan Catholic Schools were asked to complete the survey if they had requested evaluation for special educational needs of a student at his or her home school

(the normal procedure until the implementation of IDEA 1997) and had been refused. Many students had been denied evaluation. This issue, along with other findings after a more in-depth study of IDEA 1997, was discussed at a second meeting with the Riverside Unified School District. The San Bernardino-Riverside Diocesan Superintendent of Catholic Schools and the Director of Education of the California Catholic Conference attended. Following this meeting, a new referral process was established whereby teachers and administrators of Catholic schools could assist in child find by initiating the referral directly to the district office, which would then facilitate the student's evaluation. To date, no such evaluations have taken place.

A consequence of the implementation of IDEA 1997 was a decline in the enrollment of Catholic school students who had been receiving special education services through the public school districts. Students who were receiving special education services on a released time plan and were being transported to and from public school sites by their parents were advised by both public school specialists and some Catholic school administrators to enroll in the public school so that their special education services would not be interrupted. In some cases entire families withdrew if a student with special needs had siblings also attending the Catholic school, even though only the one student was affected by the change in the law.

Three cases illustrate the impact of IDEA 1997 on students with special needs wishing to continue attending Riverside Catholic schools. Soon after the second administrator meeting and special IEP meetings called by Riverside Unified School District, three Catholic school students with special needs residing in the district were informed that their special education related services would be terminated as of December 2000 unless they withdrew from their Catholic school and enrolled in their local public school for the 2000-2001 school year. One student has cerebral palsy with several resulting physical disabilities, and two are severely visually impaired. The students were kept in the Catholic schools, and disposition of each case is still unresolved. The parents of one of the students were accused of child neglect because her attendance at resource classes at a public school, where she was dual enrolled, was terminated by the district at the beginning of the 2000 school year and her parents had left her unilaterally enrolled in the Catholic school while the appeal proceeded. She had successfully attended the Catholic school for eight years, learning compensation skills for her impaired vision. She had the support of her resource classes, but the nurturing environment of her Catholic school family was also significant (Vesley, 2000, personal communication). The other two students remain in the Catholic school and have appeals pending. They have been without their full-time, district-employed teacher's assistants and related special education services since December 2000. Both students' principals agree that their Catholic school personnel are not appropriately trained to carry out the physical and

academic accommodations that are needed for the education of these students, nor can either school afford to hire such specialists. In one case, parents of the Catholic school community have considered assuming the expense of the teacher's assistant because of the positive residual benefits to and related skills learned by other students in the class of the visually impaired kindergartner (Thompson, 2000, personal communication).

The findings of the legal issues study of 1997, related incidents of the last two years, and recent studies in the field locally and across the country can inform actions of Catholic and private school administrators to ensure legal compliance in the inclusive education of students with special needs in Catholic schools. An understanding of law and policy would also enable proficient cooperation with local and state education agencies in seeking to exercise the educational rights of exceptional children in Catholic schools.

The regulation of special education services by administrative, judicial, and educational agencies imposes bureaucratic barriers, especially since the implementation of IDEA 1997, that prevent students from enjoying the full or equal exercise of their rights. Therefore, responsibilities rest with Catholic school authorities and educators to surmount the obstacles to rightful special education services for their students who need them by actively initiating the process, articulating needs and strategies, and cooperating in the follow-through with the authorities that control such services and rights.

PRINT AND POLITICAL RESOURCES

Many resources form a knowledge base for Catholic school administrators. One such resource is a library of materials pertinent to special education law. The library could include the state special education code, IDEA 1997 and supporting federal and state regulations, an annual summary of changes in private school law, and a subscription to a state special education periodical and a national periodical of research regarding children with special needs. An individual need not be a legal professional to comprehend these resources. With few exceptions, federal and state documents are offered free from government publications offices. A complete copy of IDEA 1997 and final regulations can be obtained by telephone from EDPUBS at 877-433-7827; TTY/TDD 877-576-7734. Online ordering is available at the EDPUBS website, http://www.ed.gov./pubs/edpubs.html (U.S. Department of Education, Publications and Products, 2001). Sources for knowledge on private school law include Oakstone Legal & Business Publishing (formerly Data Research) in Birmingham, Alabama, which publishes an annual edition of Private School Law in America, summarizing court decisions concerning special education of the previous year as well as other private school legal issues. Publishers such as LRP Publications of Horsham, Pennsylvania, and Aspen Publications of Frederick, Maryland, offer periodicals and books updating

special education law and other educational legal issues on a regional basis. Many legal publications are expensive; however, the cost is recovered in the informed assistance they enable Catholic school administrators to give to parents and their children with special needs. A policy guide for parents and educators is Exceptional Parent (Schleifer, 1997), published monthly by the Psy-Ed Corporation of Oradell, New Jersey.

The need for knowledge of law and policy as well as the legal and special education structural repercussions resulting from IDEA 1997 indicate the indispensability of specialized personnel in the Catholic school sector to assist administrators, school boards, and teachers in the proper execution of their legal responsibilities to children with special needs.

Such special education facilitators would have the time and expertise to remain apprised of changes in special education law. Given the current activity in the courts, changes in regulations are in constant need of review. Teachers, administrators, and policymakers in Catholic schools have continual demands made upon them regarding attaining expertise in all facets of education. In addition, they must acquire new skills and knowledge at the same time as they carry out the many responsibilities of their jobs. Conducting the research for the study of 1997 while simultaneously executing the regular duties of a Catholic school administrator and periodically consulting on special education issues demonstrated that continuous updating on special education law is a nearly impossible endeavor. Beyond knowledge of the law, understanding how to apply it for children with special needs in many school districts is another dimension that requires being current with the law. This, together with the facts and opinions revealed in the constantly emerging case law, suggests repeatedly that hiring persons who focus on special education issues in Catholic schools would be advantageous. The public schools call such individuals resource specialists and many school districts have several, along with teams of legal professionals to assist them. The addition of such personnel to the Catholic school sector is not just a desirable extension; in light of IDEA 1997 it is a critical necessity.

Full-time special education professionals in the Catholic sector could communicate with the local and state education agencies to protect students' rights and the equitable participation of children with special needs in Catholic schools. Furthermore, a body of such specialists, perhaps one representing each diocese in a state, in conjunction with the education department of the state's Catholic Conference would hold more power to influence the state's special education policy.

Correspondingly, the federal courts are busy with litigation concerning the special educational rights under federal education programs of Catholic school students with special needs, especially after IDEA 1997. A definitive ruling and opinion from the U.S. Supreme Court would unify and guide the decisions of lower courts and the formation of administrative law. Legal pro-

fessionals and student advocates are pivotal in seeking such a decision for the unification of judicial and administrative interpretation of the delivery of special education and related services to students with special needs in private schools.

The same Constitution which some would say prohibits special education services to children attending parochial schools may also protect those rights. Rights granted under prior statutes and constitutional rights of children with special needs and those of their parents to educate them are in question in light of IDEA 1997. One need only consider that new law together with the Civil Rights Act of 1964 and the Supreme Court decision in *Pierce v. Society of Sisters* (1925).

Robert A. Teegarden (2000), California Catholic Conference Director of Education, prepared a position paper after discussions with and questions from Catholic school administrators in California and after attending the school district meetings in which he raised the question:

> Why should a parent forego one constitutional right in order to practice another? Under the revised law, a single parent/child has no "individual rights to services" if the parent chose to send their child to a private or religious school. This could be argued to be in violation of the Civil Rights Act of 1964. (p. 3)

Teegarden also cited the possible violation of the *Pierce* decision of 1925:

> The new regulations create a disincentive to enroll in private/religious schools. In order to obtain specific special education services (services for which they have paid through their taxes), a parent is encouraged to enroll in the local government school. Under this law and for these services, then, private schools do not exist. This is a violation of the *Pierce* decision of 1925. As noted by the justices in that decision, "this law interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation that has no reasonable relation to some purpose within the competency of the state. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." (p. 3)

In other words, if it is not legal for the state to require children in general to be educated in state schools, how is it legal for the state to require children in need of special education services to be educated by the state?

Teegarden's position paper further addressed these and other pertinent and possible irregularities of IDEA 1997 (2000):

> The notion that an individual child who happens to attend a private school has no individual right to special education under this law is in direct opposition to the Civil Rights Legislation of 1992. In that landmark legislation, a citizen's rights were guaranteed specifically not because of an association with any group or class of individuals, but was guaranteed those rights qua their citizenship. (p. 4)

Teegarden (2000) additionally cited that California cannot adequately demonstrate an appropriate and historical child find process as required by the IDEA legislation of 1975. He further suggested that actions of the LEA or the lack thereof may constitute a reason to seek compensatory and punitive damages in such cases where individual rights are denied and services do not occur. The position paper offered steps in seeking redress because of the implementation of IDEA 1997:

1) Attend any consultation sessions offered by any SELPA district.
2) Ask for copies of their local (interpretation) policies in writing.
3) Request a copy of their child find results from the past 10 years.
   a. Whom did they contact?
   b. When? How?
   c. How many children in private education were identified as eligible?
   d. How many received services? What? Where? How much?
4) If children are denied services, a complaint should be filed with:
   a. the complaints division of the state Department of Education
   b. Office of Special Education
      U.S. Department of Education
      Room 3086
      1250 Maryland Avenue SW
      Washington, DC 20202-6132; 202-205-5507
   c. Department of Justice, Office of Civil Rights
      Coordination and Review Section
      P. O. Box 66560
      Washington, DC 20035-6560; Fax 202-307-0595
5) Send copies of your complaints to:
   a. Your state senator
   b. Your state assembly member
   c. Your congressional Senators
   d. Your congressional Representative (pp. 4-5)

While the above recommendations address actions that can be taken by administrators, teachers, school boards, and parents on behalf of children with special needs who attend and wish to continue attendance at a Catholic

school when their rights to state services are denied, a larger question must be answered: What is the moral right of this child and what are the moral responsibilities of the school and the parent to ensure the optimal education of the child so that he or she may realize his or her fullest potential in human society? Is this a child who could be successfully educated within the abilities of the Catholic school and its personnel? Minor adjustments to the Catholic school curriculum or environment may be all that are necessary to meet some of the needs of a particular child. However, during consultation with parents of children with special needs who want them to remain in Catholic schools, reluctance or unwillingness on the part of school administrators to offer educational services to their child is the most common complaint. The inexperience or refusal of school personnel or the lack of funds to finance necessary accommodations for the special needs of the child are the most common reasons given for this reluctance. Another reason given by Catholic school administrators is fear of litigation if education goals for the child are not met or concern that the safety of the child or school personnel is at risk. However, ways have been found to successfully prevent the risk of legal action. The most important is close and realistic communication with the parents about the known abilities of the student along with the limitations of the Catholic school before making a modified curricular plan or particular accommodations for him or her. A written plan reflecting the modifications to the regular educational programs of the school and the physical environment will hold the school safe and harmless. Parents' signatures on this plan are essential.

Some dioceses have examined structural changes to the model of the Catholic school system, for example, Florida Catholic schools, which have since 1956 accommodated students with special learning needs. Morning Star Schools operate in five cities and are accredited by the Florida Catholic Conference. These schools are on campuses adjoining regular parochial schools, allowing for special education classes, mixed classes, and regular classes according to individually designed learning plans. Morning Star Schools, supported by United Way, Catholic Charities, the state's Bishop's Stewardship Appeal, and donations from the community at large, charge tuition in proportion to services necessary for the student. Tuition assistance is available. These schools comply with all state and federal special education requirements and provide a structural model for other states regarding the cooperation of regular parochial schools with community and Church agencies in providing education to meet the special learning needs of students in the Catholic school system.

The rationale compelling Catholic school administrators to assist parents in seeking ways to facilitate special education services for students with special needs in their schools is grounded in the spiritual, moral, philosophical, and legal codes ruling Catholic education. These codes are rooted in sacred

scripture and interpreted in the teaching documents of the Church and the authorities of law that control every essential element of the Catholic school. Among those elements are the inclusivity of the spirit of the Christian community that comprises the Catholic school and sensitivity toward each individual without regard to any infirmity (United States Catholic Conference, 1978).

However, inclusivity cannot be accomplished without knowing what is appropriate or legal according to standard practices in evaluating children, designing individual education plans, and determining whether a child might be eligible for some enhancement of a modified curriculum in the form of some assistance that can be provided by the state.

The research and consultative work in the field also demonstrate the need for more opportunities for pre- and in-service training, familiarizing administrators, teachers, and school boards of Catholic schools with the identification, referral, evaluation, educational planning, and assessment of children with special needs. In addition, ongoing training in differentiating instruction and related classroom management must be given to teachers in Catholic schools. Methods of putting forth the needs of Catholic school students to the local education agency are necessary in this staff development, as outlined in Teegarden's (2000) position paper.

Another suggested professional practice is increased interaction with special education personnel in the local public school district. Research indicates that public school personnel will not seek out private schools to include them in appropriate professional development programs. The private schools must seek out cooperative staff enrichment. Nothing was found in the law prohibiting greater communication between public and private schools in this area. In fact, it was found that cooperative staff development is authorized through some sections of the current provisions of the Elementary and Secondary Education Act (1965).

CONCLUSION

The education of students with special needs in Catholic schools and the actions to be taken on their behalf by administrators, teachers, school boards, and parents are mostly moral considerations.

A vision of the Catholic schools of the future is one in which administrators, school boards, and teachers accept and inclusively accommodate the regular or special educational needs of all students. Future schools might be comprised of classrooms resembling the one-room schoolhouses of pioneer America. In such schools, characteristically similar to an ideal Christian community, every individual was accepted and esteemed as an integral and valuable member and interacted comfortably while working toward personal and group goals and objectives.

In these simple institutions of learning of the past, before education was a nationwide, governmentally supported enterprise, all children were welcome with their individualities, abilities, and backgrounds. In an inclusive environment, children made progress at their own pace and on their own level, with the help of the teacher and each other toward their individual educational goals. The entire educational process was also directly supported by the time, talents, and contributions of the students' parents and the community which each school served. Each child's fulfillment of goals and success in learning was viewed as a personal as well as a community victory.

The realization of this vision of the future would also necessitate a new perception of parents who place their children in Catholic schools: that these parents are as free to fulfill their educational dreams for their children as are the parents of children placed in public schools. Parents of parochial school children would be properly acknowledged as bona fide taxpayers who financially contribute equally to the support of a nation where all children are deemed worthy of the provisions of their government toward their education, no matter where their parents have decided they will attend school. Hopefully these recommendations and considerations will contribute to professional practices that will allow the vision to become a reality for the sake of children with special needs.

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