



*New Jersey Council on Developmental Disabilities*

# || PREFACE



ifty years ago the landmark *Brown vs. Topeka Board of Education* court decision established that separate is not equal and that students educated in segregated settings are denied equal opportunity under the law. Since then, long-standing federal and state laws and landmark court decisions have reinforced that decision.

Ten years ago, the New Jersey Developmental Disabilities Council gathered information about segregation in New Jersey's schools and presented the numbers and facts to interested parties. The result was a 1994 publication developed by the Council's Education Subcommittee, entitled *Separate and Unequal*. The report described an entrenched pattern of segregation of students with disabilities in our State, gave data comparing New Jersey nationally, reported on research about the benefits of inclusion and made extensive short, medium and long-term recommendations to move our state forward on this issue.

Ten years later, the now renamed New Jersey Council on Developmental Disabilities Education Task Force<sup>1</sup> revisited the 1994 publication and prepared an update of that report. As they did in 1994, the numbers and facts in this document clearly show that the entrenched pattern of segregation remains with us today, despite the fact that the State has adopted several of the Subcommittee's 1994 recommendations.

The right to an education in the least restrictive environment was established by Congress in the Individuals with Disabilities Education Act. Research cited in this report clearly shows that inclusive education benefits children with and without disabilities. Despite these facts, New Jersey segregates a larger percentage of its classified students than any other state in the union. This must not be allowed to continue. Further, significant reduction of this pattern of segregation may only be accomplished when the New Jersey Board of Education, supported by the Legislature and the Governor, creates a comprehensive plan to end that pattern and moves forcefully to carry it out. The last section of this report offers recommendations on the many steps that will be required to achieve these goals.

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# STILL SEPARATE AND UNEQUAL



In the decade since the publication of *Separate and Unequal*, the nation has moved closer to the goal of including children and adults with disabilities in our schools, communities, and workplaces. The promises of landmark legislation protecting the civil rights of people with disabilities are beginning to be realized.<sup>2</sup> The increasing participation of individuals with disabilities in the activities of our nation has greatly enriched our society as a whole. However, too often, people with disabilities are still segregated and relegated to lesser services, programs, activities, benefits, and jobs.

As this report finds, New Jersey faces the continuing challenge of over-segregation of children with disabilities. The greatest problem area remains the large percentage of children sent out-of-district to private and public separate special education schools. Research tells us that community membership at age 10 predicts community membership as an adult; the more separate the child's education at age 10, the more likely they will be in the same type of setting at age 25.<sup>3</sup> In addition, while the nation's unemployment rate is 6.1 percent, the unemployment rate for adults with disabilities has been reported to range from 57 percent to 75 percent.<sup>4</sup> Consequently, to the extent that our public schools continue to separate out children with disabilities rather than educating them in integrated settings with the people with whom they will live, work, and interact in the future, the same separation is likely to characterize their lives as adults.

Although addressing the issues raised in this report are the direct concern of the educational system, it is clear that all agencies, organizations, policy makers, and community members concerned with education, with children and adults with disabilities, and with setting new directions for public policy have a role to play. Only by targeting issues and working together will we reverse the over-segregation of children with disabilities and ensure their full integration in their communities now and in the future.

# INCLUSION IS A RIGHT



To include children in the same classrooms as their neighborhood peers has been the focus of federal and state law since 1954, when the Supreme Court observed in *Brown v. Board of Education*, that, “[s]eparate ... facilities are inherently unequal.”<sup>5</sup> *Brown* became the springboard upon which parents of children with disabilities in Washington D.C. and Pennsylvania fought in court to end the exclusion of their children from their public schools,<sup>6</sup> and led directly to the passage of Public Law 94-142 in 1975, now known as the Individuals with Disabilities Education Act (IDEA).

Educating children with disabilities with non-disabled peers was a principal objective of Congress in passing IDEA. The law entitles every eligible child with a disability to an appropriate education in the least restrictive environment with the term “restrictive” used as a measure of the child’s opportunity to be educated with non-disabled peers. To ensure the inclusion of children with disabilities to the maximum extent possible, Congress added placement rules allowing removal from regular classrooms to “special classes or separate schooling” only when education could not be achieved satisfactorily in general education classrooms with the use of supplementary supports and services. In order to prevent removal for other than educational reasons, the federal law further prohibits removal based upon the category of the disabling condition, the availability of space, staff, or services, administrative convenience, or any perceived attitude of non-disabled peers or teachers.<sup>7</sup>

Federal court decisions around the United States in the early 1990s, including the Third Circuit’s *Oberti*<sup>8</sup> decision which applies to New Jersey, produced simple rules to ensure a child’s placement in the least restrictive environment regardless of the unique nature of their disability. *Oberti* requires districts to exhaust all placement options within a child’s neighborhood school, beginning with the general education classroom with the use of supplementary aids and services, prior to any consideration of removal to a separate setting.<sup>9</sup>

Since the publication of *Separate and Unequal* in 1994, the actions of Congress and decisions of federal and New Jersey courts have reinforced the strong presumption that children with disabilities will be educated in schools and classrooms alongside non-disabled peers. In the 1997 reauthorization of IDEA, Congress clarified that children with disabilities are to have “access to” and “be involved and progress in” the general education curriculum in general education classrooms to the maximum extent possible, with modifications as necessary.<sup>10</sup> Moreover, in the 2002 district court decision, *Girty v. School District of Valley Grove*, our federal courts agreed with the parents of Spike Girty, a 14-year-old with significant cognitive disabilities, that Spike must have the opportunity to receive his educational program in general education classes in his middle school, observing that “the relevant focus is whether Spike can progress on his IEP goals in a regular education classroom with supplementary aides and services, not whether he can progress at a level near to that of his non-disabled peers.”<sup>11</sup> Finally, *Girty*, as well as recent administrative decisions in New Jersey, have made clear that it is the quality, not quantity of supports, which are relevant in determining whether a school district has done enough to ensure that a child is receiving an appropriate education in general education settings before moving the child to a separate classroom or school.<sup>12</sup>

# BENEFITS OF INCLUSION



During the last ten years, court decisions across the country supporting inclusive placements have energized the efforts of educators to develop evidence-based practices to support diverse learners in the same general education classroom. Educational practices such as differentiating instruction, teaching to multiple intelligences, using functional assessments, organizing cooperative learning groups, using technology—are all practices that today are being used to enrich classrooms to the benefit of all children. Such practices, and advances in assistive technology, have made it increasingly more possible to provide all children with access to the general education curriculum and to include children—even those with significant challenges—in general education classrooms.

Voluminous research over the last 30 years, a small sampling of which is cited below, has made it is clear that intensity of service does not require pulling children out into separate classrooms and schools.<sup>13</sup> Indeed, the body of research substantiating the benefits and value of the education of students with disabilities in general education classrooms with supports has grown and strengthened in the past ten years. General education classrooms offer high academic standards and unique opportunities for modeling social and communication skills. Accordingly, students with disabilities educated in general education classrooms are making gains in academic, social, community living and employment skills not experienced by students educated in separate classrooms. Moreover, research detailing the effects of inclusion on non-disabled students documents their growth in moral and ethical principals, self-esteem, patience, and comfort level with people with disabilities.<sup>14</sup> It is clear that the development of inclusive schools and classrooms can increase understanding and acceptance among the very contemporaries who will become the employers, friends, and neighbors of our children with disabilities in the future. Indeed, the promise of IDEA, the ADA, and the other federal disability laws of a fully integrated society will not be realized unless we move forward in the development of inclusive schools.

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*While [inclusion] surely requires readjustment and considerable effort on the part of educators, and on the part of the community in general, it is a small price to pay to increase the opportunity of individuals with disabilities to become fully-functioning, productive, and co-equal members of society, and of individuals without disabilities to learn in a world where individuals with disabilities are so included.*

—[*Oberti v. Board of Education, supra*, 801 F. Supp. at 1407.]

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## ACADEMIC GAINS:

- The Individual Education Programs (IEP's) of students with disabilities who are placed in general education classrooms, contain more academic objectives, improved quality of the curricular content, and more references to best practices than IEP's developed for students in segregated settings.<sup>15</sup>
- Students in an inclusive school demonstrate, “significantly superior gains on several ...scales, including reading, vocabulary, total reading and language, with a marginally significant effect on reading comprehension”.<sup>16</sup>
- Students with a range of disabilities experienced generally positive academic, behavioral, and social outcomes with no reports of negative academic effects, as reported by numerous schools surveyed.<sup>17</sup> In a review of the literature published by the *Journal of Special Education*, the authors reviewed 19 studies and concluded that:
  1. students with severe disabilities can achieve positive academic and learning outcomes in inclusive settings;
  2. students with severe disabilities realize acceptance, interactions, and friendships in inclusive settings; and
  3. students without disabilities experience positive outcomes when students with severe disabilities are their classmates.<sup>18</sup>
- Students with mild disabilities who are included in general education classrooms demonstrate academic gains that are reflected in achievement test data.<sup>19</sup>

## SOCIAL GAINS

- Compared to students in segregated settings, students with disabilities who are full time members of general education classrooms show significantly higher levels of engagement in school activities, higher levels of participation in integrated school environments and initiate and engage in social interactions with peers and adults to a greater degree.<sup>20</sup>
- Students with disabilities in inclusive placements have had more frequent interactions and larger, more durable networks of peers without disabilities.<sup>21</sup>

## BENEFITS FOR STUDENTS WITHOUT DISABILITIES:

- The presence of students with disabilities in general education classrooms stimulates learning experiences and activities that could not occur in a classroom that does not contain students with disabilities.<sup>22</sup>
- Students without disabilities demonstrate consistent academic gains when educated alongside students with disabilities and do not show evidence of any negative impact from inclusion.<sup>23</sup>
- Studies indicate no difference in academic engagement rates between classrooms with and without students with disabilities, suggesting no negative impact on instructional opportunities.<sup>24</sup>

- Non-disabled students develop positive attitudes, greater understanding, and empathy when students with disabilities are classmates.<sup>25</sup>

## ■ BENEFITS FOR SCHOOL PERSONNEL

- Educators believe that educating students with disabilities in inclusive settings results in positive changes in their attitudes and job responsibilities.<sup>26</sup>
- Teachers develop positive attitudes over time, especially when inclusion is accompanied by training and administrative support. In addition, teachers show increased confidence and professional growth in ability to accommodate more diverse learners in their classrooms.<sup>27</sup>