

THE SPECIAL EDUCATION MUCKRAKER

Dee Alpert, Publisher
(Well, somebody's got to do it.)

OPEN LETTER
April 21, 2004

An Open Letter To President Bush, Secretary Paige And Senator Frist:

THE IDEA AMENDMENTS ARE A BAD IDEA - LET IT GO!

I'm often amazed at the ability of intelligent government folk to maintain positions which are mutually contradictory, all the while insisting that what they want to do makes good policy and good sense. The Administration's current position - supporting proposed amendments to the IDEA (*viz.* S. 1248 and H.R. 1350) which would significantly lessen procedural protections for kids with disabilities on the ground that kids with disabilities are adequately protected by NCLB is a perfect example of institutional or political doublethink. *Let it go, guys.*

You can't have it both ways - Refusing to enforce NCLB for many kids with disabilities while claiming IDEA can be weakened because kids with disabilities are protected by NCLB.

We've just filed two complaints with USDOE which illustrate this point in full. One is about the NYS Ed. Dept.'s repetitive refusal to comply with the IDEA's data publication requirements, http://www.specialeducationmuckraker.com/USDOE_NCLB_Complaint.pdf; the other regarding New York's continued refusal to comply with NCLB, <http://www.specialeducationmuckraker.com/OSEPNYSEDComplaint.pdf>. *Yes, we know USDOE won't do anything about these well-founded complaints.* But we thought we'd put them on the record again. Just in case.

1. NCLB Does *Not* Cover Many Kids With Disabilities. *At All.* For example:

► Michigan has waived all NCLB accountability standards for every single one of its 53 Intermediate School Districts (ISD's) - the county educational organizations which run special ed. programs for local school districts.

Not coincidentally, Michigan recently agreed to forego \$300,000,000.00 in Medicaid reimbursements for services allegedly provided to Medicaid-eligible IEP-kids by medical professionals, after a Health & Human Services-OIG audit showing that many of these "professionals" were clerks. One Michigan ISD diverted \$20,000,000.00 in special ed. money to build a district administration building; it's prior superintendent is currently under indictment for flagrant misappropriation of ISD funds. Another Michigan ISD recently sent over \$30,000,000. in special ed. money back to its general fund. Have these "diversions" hurt sped. kids' outcomes? We'll never know, because ***the data which would show the damage isn't made public due to the Michigan State Ed. Dept.'s NCLB waiver for ISD's.*** We think that disabled kids are a Michigan ISD cash cow, *not* a focus of educational scrutiny or excellence. No wonder nobody there wants a spotlight on disabled kids' outcomes.

► **From the day it went into effect, New York waived all NCLB accountability targets and standards for every single one of its 91 publicly-operated, all-special ed. schools and all alternative high schools; and all "small schools" - and has just made a process available to any district in the State to get waivers for any regular high school as well,** <http://www.emsc.nysed.gov/nyc/SASS/Cover2-26.pdf>.

We estimate that between 30-50% of all kids with IEP's in New York State are in schools for which the State's NCLB AYP standards and targets have been waived - for them.

A recent Health & Human Services-OIG audit of NY's public school claims for Medicaid reimbursement mandates that over \$170,000,000.00 be repaid. Thousands upon thousands of Buffalo IEP kids "receiving" speech therapy "under the supervision" of one lone certified Speech-Language Pathologist with a rubber stamp! And *that audit, the first of 6 on NY, didn't even touch on the NYC public schools' sped scams!* We hear the total NYS Medicaid payback will be over \$1,000,000,000.00. Disabled kids are a profit center in New York State, not a recognized center of educational excellence. Is anybody surprised that the NYS Ed. Dept. refuses to publish its disabled student numbers? Is it any surprise that the NYS Ed. Dept.'s Audit Office claims it doesn't have the staff to monitor districts after State Controller audit after audit has shown they wrongly inflate special ed. enrollments, but forget to report many sped. dropouts? *Cash cow time, guys.*

New York and Michigan are hardly alone in refusing to cover disabled kids under NCLB. It's fair to say that **for a huge number and percentage of US kids with disabilities, NCLB protections do not exist.** It's also fair to say that these States' NCLB plans did not say up front that they were waiving accountability for many kids with disabilities. ***Why has USDOE let them do it? Why claim IDEA protections can be weakened because the kids have NCLB backing them up - when NCLB is simply not there for them at all? They're not "left behind." They're totally left out.***

In 2000, the National Commission on Disability studied USDOE-OSEP's efforts to bring states into compliance with IDEA's requirements - and found that OSEP just plain didn't do its job. In over 20 years of monitoring, for example, OSEP had not managed to bring New York into compliance in even one noncompliant area. ***Not one.*** In response, OSEP stopped monitoring New York. The NCD report concluded that most *real* IDEA enforcement was left to individual parents and their private attorneys. *The proposed IDEA amendments would severely limit their ability to do so.* http://www.ncd.gov/newsroom/publications/2000/backtoschool_1.htm.

A recent letter from Stephanie Lee, OSEP's Director, to State Special Education Directors, says that although OSEP's verification efforts have shown that state ed. depts. (SEA's) are reporting inaccurate data to her office, her office will use that data as the basis for deciding which states get monitored! [We call it rewarding speducrats for falsifying official data reports. What would you call it, fellas?]

2. Is There Some Heretofore Unknown Disability Only Suffered By SEA's: the "We Just Can't Bring Ourselves To Publish Disabled Kids' Test Scores And Their Real Graduation Rates" Dysfunction?" And if "yes," why is USDOE accommodating it?

On March 17, 2004, *for the second time*, the NYS Ed. Dept. published statewide figures on test scores and school exiting for general education students - and *jes' plain fergot* to publish the same information for kids with disabilities. Pretty smart to commit a double play - violating both the IDEA *and* NCLB at the same time. ***So, to say that IDEA protections can be relaxed because NCLB protections are in effect mis-states the reality of both laws. Devil's in the details? We're bedevilled.***

Although the 1997 IDEA amendments required that by mid-2000, all SEA's had to publish assessment scores for kids with disabilities at the same time, and in the same form as they did

for all kids, or kids not classified as disabled, many SEA's just can't seem to get the message. This foreshadowed their refusals to publish the disabled kid data "required" by NCLB.

3. *They Say The Proof Is In The Pudding.*

What does "the pudding" look like, for example, for these 2 states which waived NCLB for their all-special ed. schools? For the 2001-2002 school year - the last year for which figures are publicly available (because USDOE isn't enforcing NCLB's requirements on states' reporting high school graduation and dropout numbers for kids with disabilities)? We think it's a pretty sodden mess.

Michigan: A grand total of 30.45% of all high school-age kids with disabilities who stopped attending school did so by graduating with any kind of diploma or certificate. ***That's right: less than 1 out of 3 graduated.***

New York: **A grand total of 36.31% high school-age kids with disabilities who stopped going to school actually graduated.** In fact, the fastest growing group of disabled high school "exiters" in New York are the ones who didn't finish school because they allegedly moved. Or were moved - out of school. They're called "push outs."

USA: In the 2001-2002 school year, only 38% of all kids with disabilities who stopped attending school did so by graduating with any kind of diploma or certificate at all.
http://www.ideadata.org/tables26th/ar_ad1.htm.

Somehow, USDOE-OSEP *and the USDOE's NCLB folk jes' plain fergot* to ever publish national figures on disabled students' assessment scores, i.e., how many passed and failed, as reported by their SEA's, so there are no national numbers available on that. What we *do know* is that *the big federally-funded NTLs-2 study came up with objective data regarding reading and math levels of high school kids with disabilities - and USDOE - again - jes' plain ferget to publicize the findings: Most high school-age kids with disabilities are more than 3 years below grade level in reading and math:*

"The correlation between grades and academic functioning is nearly zero, indicating that the two are largely unrelated."¹ The average high school kid with a disability is 3.6 years below grade level in reading and math."

"Further, significant numbers of students in all disability categories function sufficiently below grade level in reading and math so as to raise the question of their ability to complete high school work successfully."

Id. The same deplorable numbers apply to younger kids with disabilities, *Special Education Elementary Longitudinal Study*, <http://www.seels.net/search/chooseTopic.jsp> (choose Applied Problems and Passage Comprehension).

In fact, what the NLTS2 and SEELS studies show is that ***the longer a kid receives special edu-***

¹ *The achievements of youth with disabilities during secondary school. A report from the National Longitudinal Transition Study-2 (NLTS2), at 4-3.* Menlo Park, CA: SRI International. Available at www.nlts2.org/pdfs/achievements_ch4.pdf.

cation and related "services," the further behind s/he falls. This is just as true for kids classified as having specific learning disabilities as it is for kids in every other IDEA disability classification. *With these objective numbers, why are you supporting amendments to make it harder for parents of disabled kids to challenge districts' special education decisions? You should be changing the law to make it much, much easier! Isn't that what informed parental decision making - and choice - is all about?*

Another big federally-funded study shows that schools spend, on average, over \$4,000 per year extra for the special education programs and services provided to kids classified as learning disabled, *special ed. lite*; far greater sums are spent on other categories of kids who are more severely disabled. *Total Expenditures for Students with Disabilities, 1999-2000: Spending Variation by Disability*, http://csef.air.org/publications/seep/national/Final_SEEP_Report_5.PDF, June 2003.

The real question is: If the majority of kids with disabilities, most of whom have received special education and related services for years, are more than 3 years below grade level in reading and math by the time they reach high school, and 2/3rds of them never graduate at all, just what is all that extra money being spent on? And how are the proposed IDEA amendments going to improve these deplorable numbers?

The answer to "What is the extra spent money being spent on" is "We don't really know - because USDOE doesn't audit SEA and local districts' special ed. programs and expenditures." Nor does it read districts' program evaluations. The answer to the second question is: "The proposed IDEA amendments will have no meaningful impact on special ed outcomes at all." There is, for example, nothing in any of the proposed amendments to IDEA which would require schools and districts to use research-validated methodologies or programs of remediation and instruction for kids with disabilities. Orton-Gillingham and Lindamood-Bell. Applied Behavioral Analysis.

So few districts actually use Orton or Lindamood, or any other research-validated methodology that it is clear that informed, involved, loving parents of IEP kids who actually want their kids to learn to read have to go outside their public education systems. Why are you making it harder for them to do so?

Sure - NCLB's focus on teaching reading using scientifically-based methodologies and programs of instruction may help divert some future kids from being put into special education as learning disabled in the first place. But less than half of the kids schools have classified as disabled are in the "specific learning disability" category. NCLB won't do anything for the majority - those who are blind, deaf, orthopedically handicapped, traumatic brain injured, or emotionally disturbed. Nor for any of the kids classified with specific learning disabilities who are "in" special ed. right now.

What you've done, effectively, is write off the vast majority of kids who actually have real, professionally-diagnosed disabilities. They're not *really* covered by NCLB, and they're not *really* covered by IDEA. Because USDOE is enforcing neither.

Again, gentlemen: *You can't have it both ways. Start enforcing No Child Left Behind - for all kids - just like it says, or leave IDEA's protections for disabled kids in place. Drop the bad IDEA.*

Dee Alpert, Publisher
The Special Education Muckraker
<http://www.specialeducationmuckraker.com>