

# Inviting Malpractice Through Mainstreaming

Rita S. Dunn and Robert W. Cole

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*Mainstreaming handicapped students without providing adequately for their special needs is malpractice and may lead to litigation.*

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Did you ever dream—in your worst nightmare—that you, a classroom teacher, could be placed on a witness stand and cross-examined about one of your former students who had not learned to read? Unfortunately, nightmares have become legal realities, and teachers, administrators, and school boards have been subpoenaed and grilled on their alleged malpractice.

The jury is still out, and appeals are pending in several cases across the country, but in at least two New York decisions, a school district's failure to teach a "teachable" child resulted in an award of private school tuition,<sup>1</sup> and an incorrect placement earned a \$500,000 penalty.<sup>2</sup> However, even if you escape the courtroom under normal teaching conditions, the Education for All Handicapped Children Act of 1975 will undoubtedly provide new bases for litigation against classroom teachers.

In our visits to schools attempting to implement the federal legislation, better known as PL 94-142, we observed excellent special education classes where handicapped youngsters were provided the unique resources and personnel that appear to facilitate their learning.<sup>3</sup> In "regular" schools where most teachers apparently are used to working with large groups rather than small clusters and individual students, we observed

<sup>1</sup> See: Held, Docket No. (H-2-71) (H-10-71); Family Court, Westchester County, New York.

<sup>2</sup> Joan Nassivera. "He Wins 750G in Suit Over I.Q." New York: *The Daily News*, October 27, 1976; Virginia Adams and Tom Ferrell. "Fining Schools for Malpractice." *The New York Times*, Sunday, November 12, 1978. p. E7.

<sup>3</sup> The Alexander Graham Bell School for the Deaf, Cleveland, Ohio, Lois Keizer, Principal; Orthopedic Handicapped Programs, Canton City Schools, Ohio, Ruth Novelli, Supervisor; Programs for Hearing Impaired, Canton City Schools, Ohio, Phyllis Ashbolt, Supervisor.

many practices that, to our thinking, may open the way to an increasing number of malpractice suits by parents on behalf of their handicapped offspring.

Perhaps an examination of "regular" classroom procedures will help you become aware of the ways in which mainstreaming appears to be inviting judicial challenges.

### *Management Procedures That Are Inappropriate for the Handicapped*

#### **Visitation Experience**

The class was studying math problems. All 34 children in that group were lined up in two rows that stretched from the front of the room to the back. The youngsters were seated on the floor, one behind the other, and worked their way up toward the front where a box of math problems was located. Taking turns, the first in each line selected a folded piece of paper, read the problem aloud, and then gave an answer. If the answer was correct, that "team" received a point. If it was incorrect, the team did not.

The children who were seated farther back than the first three or four could not hear the questions being asked, could not hear the answers, and were involved only in looking at the visitors, staring at items in their pockets, and gazing out the window. The closer youngsters did not check the answers that were offered; rather, the teacher at the front of the room (15 children removed from the rear) indicated which answers earned a point and which did not.

The students with normal vision and hearing were nearly oblivious to what was happening at the front. The visually and hearing impaired were locked into a situation from which there could be no educational or social impact at all.

In the second room in which the special education youngsters had been mainstreamed, the children were writing answers to questions in a workbook. When the teacher thought that sufficient time had been given for them to complete their answers, from the front of the room she called on them, one by one, to read their responses aloud. Since the class comprised more than 35 students seated in six rows across with six deep, all but the first row faced the backs of other stu-

dents. The hearing impaired could neither hear the low voices of their classmates, nor could they read lips of the students facing away from them. The visually impaired had no way of checking their answers against those given by the others.

#### **Potential Litigation**

Perhaps the Act's most controversial provision is that while it seeks the most appropriate educational setting for *each* child, it also mandates that all handicapped children be placed in the "least restrictive environment." A class in which visually impaired youngsters are unable to see what is happening is "restrictive"; one where a hearing impaired child cannot hear what is said and cannot face each speaker to lip-read the words is equally restrictive. Merely integrating the handicapped among the physically normal does not provide an environment conducive to growth and achievement.<sup>4</sup> It is likely that some parents will challenge school interpretations of what constitutes the "least restrictive environment" for their children.

#### **Visitation Experience**

The class was involved in a social studies lesson concerned with the history and people of Turkey. The teacher discussed the leadership of Mustafa Kemal, the development of the modern Turkish language, and the products of that country. Children listened to the "large-group" lesson, answered questions, and took notes. They were given a class assignment to complete for the next day and were advised to prepare for a short quiz on the subject.

#### **Potential Litigation**

Public Law 94-142 requires that an Individualized Educational Plan (IEP) be developed for *each* handicapped child. The IEP must include a statement of the (a) child's present level of performance; (b) goals that ought to be achieved by

<sup>4</sup>Joanne Greenberg and Glenn Doolittle. "Can Schools Speak the Language of the Deaf?" *New York: The New York Times*, December 11, 1977. pp. 50-52, 80-87, 90-102.

that youngster during the year; (c) short-term measurable objectives that are related to the recorded long-term goals; (d) specific educational services needed by that child without regard to their availability; and (e) ongoing evaluation verifying at least an annual review.

Teachers who have not been trained to individualize instruction will be unable to fulfill either the intent or the mandate of the act. Also, teachers who are unaware of how to teach special education students will be psychologically and professionally unable to respond to the unique learning and emotional needs of these youngsters. Handicapped youngsters who have been functioning in classes of between eight and 15 with specially trained teachers will now find themselves among 25 or 30 or more students with teachers who (a) unwittingly talk to the class when writing on the blackboard (making it impossible to lip-read); (b) call on children who cannot project their voices (making it impossible for the profoundly deaf); (c) have an expectation of student behavior that is unreasonable for the borderline emotionally disturbed or the mildly retarded and so on.

Undoubtedly the move toward integrating handicapped and regular students stems from the conviction that *increased social and academic interaction would create a more wholesome environment for both*. One need only observe traditional classes—the dearth of opportunities for children to speak and work together and the many difficulties imposed by the handicaps themselves—to recognize that the effectively individualized special education classes observed in Ohio appear to be far more responsive to the needs of their students than are “regular” environments. Indeed, one wonders why Congress did not mandate Individualized Educational Plans for *all* our chil-

dren. There is little doubt that parents of “normal” children will begin demanding individualized instruction for their youngsters and will file suits on the basis of both economic and instructional discrimination.

### Visitation Experience

We were invited into a classroom that was separated into “learning stations” and “interest centers.” Students moved from one area to the next selecting resources to learn how to “. . . write a business letter.” Materials were pushed to different sections of the room as youngsters traded tapes for a filmstrip or games for a programmed sequence on the topic.

In a quiet study corner, three students were sprawled on a carpet and were enjoying their privacy while partially hidden behind two home-made bookcases. An orthopedically handicapped youngster in a wheelchair tried to maneuver so that he, too, might get away from the traffic. Despite his efforts, the wheels of the contrivance couldn't quite make it between the dividers.

At the same time, a visually impaired youngster slowly walked across the room being careful not to trip across wires that connected an overhead projector and a cassette tape recorder being used by another group.

### Potential Litigation

PL 94-142 requires that school facilities must be accessible and usable by handicapped students, including ramps or elevators, handrails and grab bars, doors wide enough for wheelchairs to pass through, suitable toilets, and appropriate science, art, library, auditorium, and playground facilities. If necessary, the school district must add facilities,

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### Future ASCD Annual Conferences

1979	March 3-7	Detroit	Cobo Hall
1980	March 29-April 2	Atlanta	Georgia World Congress Center
1981	March 7-11	St. Louis	Congress Center
1982	March 20-24	Anaheim	Convention Center

renovate, and make structural changes to bring about a barrier-free school.<sup>5</sup>

Since multisensory media are necessary to help many children achieve, it may be necessary to have electrical sockets built into floors to prevent long, extended wires from inadvertently tripping youngsters and to build flexible dividers so that varied instructional areas can be provided to accommodate the number and size of students who share a classroom. Certainly parents of handicapped youngsters will want to be certain that their children are being protected from possible physical injuries.

### Visitation Experience

One of the supervisors recounted a confrontation she had experienced with teachers in the junior high school to which "her" special education children in the sixth grade would be going. After addressing the professionals who would inherit the youngsters for the following semester, she was greeted with, "What kind of monetary compensation can we teachers expect for accepting these handicapped children into our classes?" She assured them that they would receive the same kind of compensation that they had been getting for teaching the pot smokers, the drug addicts, the sex perverts, and the thieves. "The only difference," she added, "is that these kids *want* to learn, often have gifted, eager minds, and are so good in class that you'll lean over backwards to help them!"

### Potential Litigation

Special education addresses the need of handicapped youngsters for a special and significantly different rather than equal or similar education. Despite this, PL 94-142's requirement that exceptional students be placed in "the least restrictive learning environment" is being interpreted by some as mandating the integration of handicapped students into regular classes. Called "mainstreaming," this suggested alternative is being viewed dimly by many of the experienced teachers who have taught handicapped youngsters and are familiar with their problems and by regular classroom teachers who feel inadequately

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prepared to teach children with extreme physical, emotional, mental, and social differences.

Moreover, given the fact that school districts are facing fiscal problems, it is realistic to anticipate that many students who might profit immeasurably from the individualization of their special education classes will be thrust into regular classes because these are considerably less costly.<sup>6</sup>

Consider the factors of:

- Teacher discomfort with students who require special instructional attention;
- The likelihood of increased numbers of handicapped youngsters being mainstreamed because of budgetary restrictions;

<sup>5</sup> Ben Brodinsky. "U.S. Accepts Challenge to Educate All Handicapped Children." *Edpress Newsletter* 39(5): 1-2; December 1977.

<sup>6</sup> Robert W. Cole and Rita Dunn. "A New Lease on Life for Education of the Handicapped: Ohio Copes with 94-142." *Kappa* 59(1):6; September 1977.

- A lack of teacher skill with the individualization process mandated by PL 94-142;
- A lack of school district budget for proper in-service education and facilities changes;
- Authority inevitably being at the top, with responsibility delegated downward.

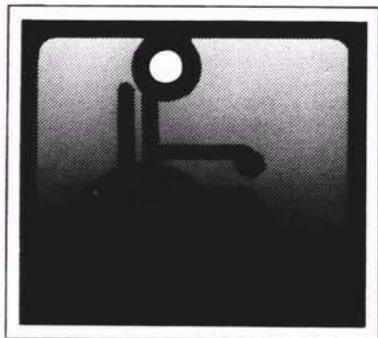
You may understand why we suggest that mainstreaming is likely to increase the number of malpractice suits brought against school districts on behalf of their students.

Ten years ago, few of us would have suspected that the courts *would even entertain* litigation against school districts. That some of those cases have resulted in awards to parents or their children causes us to suspect that such suits will continue. We believe that supervisors should be aware of possible trouble areas so that conflict

may be avoided. That appears to be a better alternative than putting our heads into the sand on the premise that "it can't happen here!"



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## A Response to Dunn and Cole

Paul L. Tractenberg

*If the report by Dunn and Cole is accurate, litigation may be called for—but the real issue is professional responsibility to students.*

Although I had considerable difficulty understanding the ultimate thrust of the article by Dunn and Cole, I was troubled by a number of the propositions they advance. These included the following:

1. That "educational malpractice" suits, no matter what the circumstances, are the classroom teacher's worst nightmare become reality and, presumably, are unfortunate legal intrusions into the classroom;

2. That handicapped children are better educated in "special" schools and classes;

3. That Congress was misguided in adopting an integrationist philosophy for handicapped children who can benefit from the "least restrictive environment";

4. That "regular" schools and their teachers are not dealing effectively with children who have special needs and are unable or unwilling to develop the ability to do so;

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