

# CHAPTER

# 1

## PAST PERSPECTIVES AND PRESENT PRACTICES

“The farther backward you look, the farther forward you can see.”

—Winston Churchill

More than thirty-five years have passed since the event that revolutionized the face of special education services in the United States: the 1975 enactment of *Public Law 94-142*, the *Education for All Handicapped Children Act (EHA)*. This landmark legislation gave birth to two critically important interrelated concepts. The first was that of a *free appropriate public education (FAPE)*—the legal standard-bearer for educational programming for students with disabilities. The second was that of the *individualized education plan (IEP)*, the multifaceted document designed both to benefit and to protect children with special needs and to provide their parents with procedural safeguards.

Having come into existence in the era when management by objectives and accountability were the catch phrases of the day, the IEP offered the promise of welcome relief from nebulous, catch-as-catch-can instruction. It also offered a systematic approach to educational programming by requiring that educational goals and objectives not only be stated in outcome-based behavioral terms but also that they be measurable. Hence, the IEP also emphasized the

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importance of data collection for the purpose of determining how well educational programming was meeting the needs of students with disabilities.

### **A NEW DECADE, NEW CHANGES**

If P.L. 94–142 offered a foot in the door marked by FAPE, its next incarnation pushed that door wide open. The year was 1990. The event was the reauthorization of P.L. 94–142 under the new title *Individuals with Disabilities Education Act (IDEA)*. This law not only reaffirmed the importance of individualized education for students with disabilities but also granted official status to *autism* as an individual disability category under the law. For the first time, students with autism were able to receive educational services under the category label that most accurately reflected their disability. The inclusion of autism as a separate category was heralded by parents and professionals alike, for it underscored the enigmatic nature of the condition and the unique educational challenges faced by students with the condition.

The 1990s were a fertile decade for special education law. Nine years after the reauthorization of P.L. 94–142 as IDEA, new amendments gave the law even greater clout. One of the most significant contributions of the new amendments was an emphasis on staff training, an issue uppermost in the minds of parents. In fact, states were held to a higher standard than previously, “whereby they [had to] *ensure* that those who provided services for students with disabilities (professionals and paraprofessionals alike) had an adequate knowledge base and the skills” (Twachtman-Cullen, 2000a, p. ix) necessary to meet the needs of these students. The inclusion of paraprofessionals in the training loop was a great victory for parents, many of whom had complained bitterly—and in our opinion, rightfully—that the person closest to their child (the paraprofessional) was the one with the least amount of knowledge and training.

On the surface it appeared that “everything was coming up roses” for students with disabilities and their parents. After all, the list of requirements for schools under IDEA read like a parents’ wish list: *related services; supplementary aids and services; assistive technology support; transition*; and the specification of necessary *accommodations or modifications*. Beneath the surface, however, the picture wasn’t quite so rosy.

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For one thing, for many parents the IEP process was frightening and intimidating, and in many cases more often hierarchical than collaborative. This was because parents weren't always granted the equal-partner status that the law afforded them. For another, parents and educators often found themselves at odds on important issues. This was particularly apparent when it came to their views on the standard of *appropriateness*, because the law itself was essentially silent on its interpretation. Typically, schools looked on appropriateness as a *minimal* court-sanctioned standard—the so-called *Chevrolet*. Parents, however, found the school's minimalist position unacceptable, preferring instead that schools *maximize* their children's education by providing the *Cadillac* instead of the Chevy. Little did anyone know at the time that the appropriateness standard would soon take on a whole new meaning.

### A NEW CENTURY, NEW CHANGES, AND A NEW NAME

In December 2004 IDEA was again reauthorized and amended. Now known as the *Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004)*, its net effect was to raise the bar on what constituted a free appropriate public education (FAPE). As a result, there is a new emphasis (in the Findings section of the law) on high expectations, and an increased focus on accountability—for example, the use of research-based instruction—and improved outcomes, such as further education, all of which are designed to bring “IDEA 2004 into conformity with the No Child Left Behind Act (NCLB)” (Wright and Wright, 2006, p. 19). In service to this goal, many of the definitions seen in IDEA 2004 come directly from NCLB. For example, section 1412 (a) (15) of IDEA 2004 applies the *adequate yearly progress* standard from NCLB to children with disabilities. Indeed, the influence of NCLB was so great that IDEA 2004 also placed greater emphasis on academic subjects such as reading and on early intervention (Wright and Wright, 2006). Moreover, where the earlier versions of IDEA were focused on more global—even generic—concerns, such as access to FAPE and procedural safeguards, the latest revision is clearly more concerned with specific refinements to the law and an elevation of standards. Consider the way in which the phrase *to the maximum extent possible* has changed in IDEA 2004. Where the phrase used to refer to *access* to the general curriculum, today it goes far beyond mere access by requiring educators not only to meet developmental goals but also to meet “to the *maximum extent possible* [italics added], the challenging expectations that have been established for all children” (Wright and Wright, 2006, p. 46). Clearly, the new language in IDEA 2004 reflects the profound and intended influence of NCLB. Indeed,

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according to Steedman (Summer, 2005): “IDEA 2004 requires that states establish performance goals for children with disabilities that are the same as the state’s definition of adequate yearly progress under NCLB” (p. 34). Furthermore, IDEA 2004 also follows the lead of NCLB by requiring “highly qualified special education teachers” (Wright and Wright, 2006, p. 19). Hence, there is a very important interface between IDEA 2004 and NCLB that has the effect of holding children with disabilities and special education teachers to higher standards that are more comparable to those that apply to nondisabled students and general education teachers.

In keeping with the focus on higher standards, IDEA 2004 also raised the bar on methodology by requiring that instructional practices, related services, and supplementary aids and services all be based on peer-reviewed research. The decision about whether to include instructional methodology in the IEP rests with the IEP team; however, the new evidence-based standard clearly ups the ante in favor of its inclusion in the document. Methodology issues will be discussed more fully in Chapter Four.

Undoubtedly the greatest change in IDEA 2004—and the most controversial—is the elimination of short-term objectives and benchmarks for all students except those who receive alternate assessments. This change was made, ostensibly, to save time and reduce the amount of paperwork for educators. Unfortunately, it may do neither. Because the annual goals for students are still required to be both specific and measurable, eliminating objectives and benchmarks for those students who are assessed (under NCLB) via grade-level standards may actually make the process of determining progress toward the goal more arduous. It removes the logical, incremental framework—the short-term objectives or benchmarks—within which to gauge progress and make midcourse corrections. It is our opinion that the decision to eliminate objectives and benchmarks for what may amount to the majority of special needs students was shortsighted at best and inimical to the needs of these students at worst. Hence, we strongly advise IEP teams to continue to apply one or the other progress indicator as the means by which to determine the student’s progress toward the annual goals, a practice we will follow in this book and an issue we will revisit many times in Part One of this book.

Another (unwelcome) change under IDEA 2004 concerns multiyear IEPs. Fortunately, because this is a demonstration project that involves no more than fifteen states, it will affect only individuals who reside in those states. Importantly, those individuals should be aware that three-year IEPs require parental consent.

Clearly, this provision, like the one regarding the elimination of objectives and benchmarks, is tied to administrative convenience and is not, in our opinion, in the best interests of students. Hence, we are not in favor of three-year IEPs unless they come equipped with crystal balls!

### IDEA 2004 REQUIREMENTS

Although we applaud the trend toward higher expectations for students with disabilities in IDEA 2004, and the move toward a higher standard for judging the appropriateness of educational programming and student progress, we fear that some of the new requirements may actually be inappropriate for many students with special needs. It is our contention that the comingling of IDEA 2004 and NCLB—especially regarding the requirement that children with disabilities meet the standard of *adequate*

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*yearly progress* set forth by NCLB—holds these children to a standard that, for some, may be highly unrealistic. For example, Steedman (Summer, 2005), in discussing the NCLB goal of narrowing the gap between children with disabilities and their typically developing peers, states: “If a disabled child is already several academic years behind his nondisabled peers, the only way to ‘narrow the gap’ is for the disabled child to make more than one year’s academic growth in the span of one year” (p. 34). Obviously, this requires the child with a disability to accomplish significantly *more* academically in a year than a nondisabled peer—a standard that is highly unrealistic, and more arbitrary and generic, than individualized to the specific needs of the student.

We are also concerned about the NCLB-like emphasis on academics, particularly given the cognitive and social-cognitive needs of students with ASD, ADD/ADHD, NLD, S/LI, and ED. Many students with these conditions have significant pragmatic communication, language, executive function, and theory of mind deficits, as well as impairments in critical thinking such as problem solving and making inferences. All of these areas of functioning are even more tied to “leading productive and independent lives” (the standard set forth in IDEA 2004) after secondary school than academics per se. Indeed, many students with

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these conditions may do quite well academically even though they do not have the skills in the above-noted critical areas of functioning to enable them to be productive and to function independently in the community. For this reason, our focus in this book is not on academics but rather on such skills that fall under the umbrella of communication, language, and to a lesser extent speech; comprehension and expression of nonverbal cues and signals; social relatedness; executive function; theory of mind; and critical thinking. So important are the skills that fall under this umbrella to independent functioning for students with ASD, ADD/ADHD, NLD, S/LI, and ED that we consider them to be the higher-order life skills that are necessary to enable these students to lead productive and independent lives as set forth in IDEA 2004.

Before we proceed to the next chapter, it is important to note that IDEA 2004 did not make any actual changes to the concept of *least restrictive environment (LRE)*. That said, although there is a great deal of variability from state to state and school district to school district when it comes to their philosophies on inclusion, it seems to us that the changes in IDEA 2004 that have been influenced by NCLB have created an even greater emphasis—even if implied—on inclusion than before. So although it is still true that the individual needs of the student should trump the law's long-standing preference for inclusion, this is not always the case in practice. For example, schools in a growing number of states hold students with special needs in inclusive settings to the same types of curricular activities that are appropriate for their peers, even though they are performing well below academic standards and would likely be better served by different programming. In addition, as noted earlier, students with disabilities are also held to the same standard of adequate yearly progress. We believe that these practices give greater weight to inclusive settings vis-à-vis the LRE provision, even though the language regarding LRE has not changed in IDEA 2004. This issue will be addressed more fully in Chapter Nine.

### WRAPPING UP THE MAIN POINTS

- The Education for All Handicapped Children Act (EHA) of 1975 gave birth to two critically important concepts: a free appropriate public education (FAPE) for students with disabilities and the individualized education plan (IEP).
- In 2004 IDEA was reauthorized and amended. The net effect of IDEA 2004 was to raise the bar on what constitutes a FAPE.

- The greatest change in IDEA 2004—and the most controversial—is the elimination of short-term objectives and benchmarks for all students except those who receive alternate assessments.
- Comingling of IDEA 2004 and NCLB—especially regarding the requirement that children with disabilities meet the standard of adequate yearly progress set forth by NCLB—holds these children to a standard that may be highly unrealistic.

