Talk about punishment for a good deed! The Texas Education Agency is under fire from the press, advocacy groups, and now the U.S. Department of Education for working proactively with districts to reduce referrals to special education.

The accusation is that TEA is deliberately depriving students with disabilities of services mandated by federal law by arbitrarily setting a ceiling on the percentage of pupils that can be identified for supports under the Individuals with Disabilities Education Act.

Besides being erroneous, this interpretation negates core tenets that are hallmarks of inclusionary practices.

For one, state officials only set enrollment targets for new pupils entering special education. And more importantly –two – the motivation was not to restrict services and spend less money, instead it was to ensure that thorough and proper diagnoses of learning disabilities take place.

The unmitigated gall of TEA – setting standards for districts to take care in placing children in special education, rather than simply succumbing to teacher or parent pressure to do so!

IDEA itself makes the point that “the education of children with disabilities can be made more effective by . . . ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible.” (IDEA §1400(5))
Further, the Code of Federal Regulations actually precludes special education eligibility under certain circumstances by saying, “A child must not be determined to be a child with a disability … If the determinant factor … is … [l]ack of appropriate instruction in reading … [l]ack of appropriate instruction in math; or [l]imited English proficiency. …” (Title 34 CFR § 300.306(b), et. seq.)

Those quotations are just two samples that convey a thread woven throughout federal laws and policies – the idea that people should not be labeled with a disability unless there is a legitimate failure to perform in school that is directly associated with some kind of impairment.

The charges against TEA originated with an investigative report that ran in the Houston Chronicle and they have been bolstered by advocates such as Johnathan Kozol, a well-known educational researcher and writer who has devoted much of his career to exposing shortfalls in the public schools, especially when it comes to youth facing disadvantages.

“It’s extremely disturbing,” Kozol told the Chronicle. “It’s completely incompatible with federal law.” The paper further reported that he “described the policy as a cap on special education meant to save money.”

Now, Sue Swenson, ED’s acting assistant secretary for special education, has jumped into the fray and directed the TEA to demonstrate that an accountability indicator used to evaluate district eligibility rates is not effectively denying students access to special services. Failure to satisfy the directive might result in sanctions against the state.

Having conducted in depth evaluations of special education programs in Texas, my take is that the TEA’s aims are completely compliant with both the spirit and letter of the IDEA and they have not resulted in reduced expenditures. Furthermore, holding local education agencies accountable for keeping pupils involved in the mainstream program should be encouraged, if not lauded.

When the IDEA was reauthorized in 2004, Congress put in measures that were designed to minimize special education placements by authorizing procedures for comprehensive research-based supports in general education. Prior to that time a student was not considered as having a learning disability unless there was a “significant discrepancy” between ability and achievement. Consequently, pupils would sometimes experience years of failure before an evaluation for a possible impairment was conducted.

The reauthorized version of IDEA allowed states to adopt an alternate definition of LD, based upon a failure to respond to successive interventions. (Title 20 United States Code Section 1414(b)(6)(B)) This change encouraged educators to immediately intervene when a youngster began struggling academically and it had the added benefit of ensuring that only those students unresponsive to curriculum and instructional modifications were assigned to special programs.
Three years later, the Office of Special Education and Rehabilitative Services officially recognized a growing body of scientific research demonstrating that methods like response to intervention can more accurately identify children who truly have learning disabilities. The legislature in Texas, unlike most states, took full advantage of the revised IDEA’s push for reform and altered the state code to say, “Prior to referral, students experiencing difficulty in the general classroom should be considered for all support services available to all students, such as tutorial; remedial; compensatory; response to scientific, research-based intervention; and other academic or behavior support services.”

As a result, according to the National Center of Education Statistics, the percentage of students identified as eligible for special education in the state declined from 11.8 percent in the 2003-04 school year to 8.6 percent in 2013-14. But to what end?

In fact, for the same interval the overall rates of proficiency in general education increased from 65 percent to 93 percent and in special education from 37 percent to 62 percent. Attendance for both populations has remained steady at 95-96 percent.

Meanwhile, state and local fiscal support for SWD did not decline and, as ED knows full-well, under the federal rules for maintenance of effort it could not decrease. MOE requires that states and LEAs continue to fund special education year after year at the same or higher level than the previous period or be subject to financial penalties. The state of Texas has consistently met that requirement.

Fewer placements in special programs means that more pupils with mild disabilities have remained in standard programs while the per capita monetary assistance for those receiving specialized services has actually increased – i.e., there has been more money for young people who truly need it.

While educators have an ethical and legal responsibility to provide individualized instruction to the extent possible to every student who may need extended resources, the sheltered environment of special education is not always the best solution.

Longitudinal studies conducted by the National Center for Special Education Research has shown that those who complete high school while in special education underperform their general education peers on almost every measureable indicator after high school except for one – they have more contact with law enforcement. The reason for this trend is a deficiency in interpersonal skill development that takes place as a consequence of limited interaction with the broader social environment.

Texas should be commended, not condemned, for its ambition.

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