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Fixing Special Education

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To produce responsible and effective education for students with disabilities, we must provide schools with a set of balanced incentives that reward good performance while also keeping costs under control, but efforts to put the right kind of incentives into place have been hindered by a lack of understanding that incentives even play a role in this policy area. The strong emotions associated with providing services for students with disabilities clouds many people's thinking about how those services can best be structured to ensure quality while controlling costs. Powerful interest groups, including trial lawyers, special-education advocates, and teachers' unions, exploit and perpetuate these strong emotions, further hindering the adoption of efficient government policies for special education. As a result, the special-education system currently incorporates incentives that serve these interest groups rather than students. Specifically, the system rewards schools for placing more students into special education regardless of whether they are truly disabled; this is detrimental to disabled and nondisabled students alike. Research demonstrates that more efficient arrangements do exist for serving disabled students. Unless political barriers to the adoption of those more efficient policies are overcome, however, education of the disabled will continue to be dominated by costly and ineffective approaches.

A Brief History of the Problem

There is no doubt that the current state of affairs is a significant improvement over the state of education for disabled students before the 1970s. Until Congress passed the Education for All Handicapped Children Act—the predecessor of the current Individuals with Disabilities in Education Act (IDEA)—in 1975, disabled students were frequently denied adequate services by their schools and were sometimes denied services altogether. As the National Council on Disability describes it, “In 1970, before enactment of the federal protections in IDEA, schools in America educated only one in five students with disabilities. More than 1 million students were excluded from public schools, and another 3.5 million did not receive appropriate services.”¹

Before IDEA and its predecessors, the difficulty was not primarily one of ill will toward students with disabilities. Rather, the problem was one of incentives. Disabled students were often expensive to serve and usually did not generate additional revenues for schools. Under those circumstances, serving disabled students necessarily involved diverting resources from the education of other students. Most school districts were unwilling to divert their resources in this way, because doing so would hinder their ability to attract and retain general-education students.

Because school districts are in constant competition for students and the funding those students generate, schools generally could not afford to redistribute resources from less expensive general-education students to more expensive special-education students. Such a policy would tend to attract more special-education students seeking services, pushing up costs further, while also driving away general-education students whose education might be shortchanged, reducing revenues further. This kind of “race to the bottom,” as Paul Peterson and Mark Rom describe it in *Welfare Magnets*, is an inherent problem for any redistributive effort by local governments competing for tax base.² Special education before IDEA and its predecessors is a classic illustration of this phenomenon.

One solution to the problem of the race to the bottom, Peterson and Rom suggest, is to establish national standards for redistributive policies, thus preventing competitive pressures from undermining the ability of local governments to engage in redistribution. This is exactly what IDEA and previous legislation have done for special education. By mandating that all public schools provide adequate services to disabled students, and by allocating additional funds to help defray the costs, federal special-education legislation

has helped ensure that competition among school districts for tax base would not prevent the provision of special-education services.

The Overidentification of Students as Disabled

Although IDEA and its predecessors were an enormous step forward for disabled students, the way in which federal legislation has addressed the education of the disabled has also created very serious problems. One such problem is the overidentification of students as disabled. The percentage of students participating in special education has increased 60 percent since the federal special-education law was first enacted, from 8.3 percent of students in 1976 to 13.3 percent in 2000.³ Although there is no one definitive measurement of the true rate of disabilities in the population, it simply strains credulity to suggest that more than one in eight students is disabled. At the very least, to claim that so many students are disabled one would have to stretch the meaning of the word “disabled” beyond its common usage and certainly beyond what the authors of the original legislation imagined.

A close examination of different categories of special-education enrollments supports the conclusion that whereas the *identification* of students as disabled has increased, the percentage of students who truly are disabled has remained approximately the same. Almost the entire increase in special-education enrollments since 1976 can be attributed to a rise in one category, called “specific learning disability,” which has more than tripled from 1.8 percent of the student population in 1976–77 to 6.0 percent in 2000–01. All other categories of special education combined, including mental retardation, serious emotional disturbance, deafness, blindness, autism, and traumatic brain injury, have increased only slightly, from 6.5 percent to 7.3 percent of the student population, during the same period.⁴

If the true rate of disabilities in the population were really increasing, it should be evident in more than just one disability category. It is highly implausible that something has caused more children to have specific learning disabilities without also causing more mental retardation, serious emotional disturbance, and so forth. It is more likely that the large increase in the category of specific learning disabilities can be attributed to a greater likelihood of children being labeled as having those problems than to a true increase in the incidence of learning disabilities in the student population.

This seems especially likely when we recognize that this high-growth category, specific learning disability, consists of learning problems that are more subjective in their diagnosis and less expensive in their treatment than the

other categories of special education. The relative subjectivity of identifying specific learning disabilities makes it possible for an increased propensity to label children as disabled to change the number of children with that diagnosis. The relatively low cost of treating specific learning disabilities may further incline schools and educators to assign that label, especially if the additional funds produced by identifying a child with a specific learning disability exceed the marginal cost of providing that student with relatively minimal services.

The malleability of the “specific learning disability” diagnosis is underscored by the odd way in which disorders in this category are typically identified.⁵ To be diagnosed as having a specific learning disability, students must meet two criteria. They must perform significantly worse in a subject area, like math or reading, than is indicated by their cognitive potential, typically measured by an intelligence quotient—or IQ—score. And this mismatch between potential and achievement must be caused by a “disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language.”⁶ The problem is that a mismatch between potential and achievement is not always caused by a psychological disorder. For example, it could also result from exposure to ineffective teaching methods. Schools may not be receiving more students with learning problems; in an era of results-based accountability, they may simply be more likely to notice the low performance of students who have been the victims of educational malpractice. And the subjective judgment call of whether a student’s mismatch between potential and achievement is caused by a psychological disorder or by bad teaching is usually made by the same school that was responsible for teaching that child in the first place.

Special-education experts, however, do not share this view that true disability rates have remained flat while identification of disabilities has skyrocketed. The common view among practitioners and advocates is that various forces outside of schools have caused a natural increase in disabilities. Consider the arguments advanced by Sheldon Berman and colleagues in their chapter in *Rethinking Special Education for a New Century*. The authors are convinced that “the increases [in special education that] schools have been experiencing have not been caused by school district policy and practice.” Instead, they insist, “these cost increases have been primarily due to the increased numbers of children with more significant special needs who require more costly services.”⁷ In particular, they identify three phenomena that they say have increased the numbers of children with learning problems: improvements in medical technology, deinstitutionalization of children with serious difficulties, and increases in childhood poverty.

All three of these putative causes of greater disabilities have an air of plausibility to them, but they all turn out to be inconsistent with the facts. It is true that improvements in medical technology have saved the lives of more low-birth-weight babies and others with health problems, leading to an increase in children who manifest learning problems later in life because of low birth weight. At the same time, however, other improvements in medical technology, along with other improvements in public health such as reductions in lead paint and safer car seats, have also helped prevent many children from developing disabilities at all and have reduced the severity of disabilities that do occur. Improvements in medical care and public health have led to a net reduction in the number of children with learning difficulties. Berman and colleagues contend that increasing numbers of surviving low-birth-weight babies caused the number of children expected to have mental retardation due to low birth weight to increase from about 4,550 between 1980 and 1985 to 12,375 between 1995 and the present.⁸ Overall, however, the number of mentally retarded children in schools actually declined from 961,000 in 1976–77 to 599,000 in 2000–01.⁹ Obviously, low-birth-weight babies contribute only a small amount to the total number of children with mental retardation. It appears that any increase in mental retardation attributable to surviving low-birth-weight babies has been more than offset by greater reductions in the number of mentally retarded children attributable to other improvements in medical care and public health.

Berman and his colleagues' claim about deinstitutionalization is no less misleading. Although they provide no numbers, they contend that the deinstitutionalization of mentally retarded children in particular has placed a growing burden on school systems. Yet, as we have already seen, the total number of mentally retarded children served by schools under IDEA has declined steeply. Children with specific learning disabilities were never institutionalized, so deinstitutionalization cannot explain the rise in the one disability category that is driving the growth of special education.

Nor is childhood poverty a plausible explanation for the increase in specific learning disabilities. Poverty among children younger than six is actually about the same now, averaging 18.5 percent in the past five years, as it was in the first five years of federal disability legislation, 18.2 percent.¹⁰ It is true that during the intervening years childhood poverty percentages were sometimes higher because of recessions. But whereas childhood poverty has gone up and down with the business cycle, it has not shown any overall upward trend, and special-education enrollment has steadily increased the whole time.

And this does not even take into account the improvement in the conditions of the poor over the same period. In 1976 the average family in the lowest income quintile earned \$12,972 in inflation-adjusted 2001 dollars, compared to \$14,021 in 2001.¹¹ In addition, if poverty were driving specific learning disability diagnoses, this in itself would prove that those diagnoses were not reflecting real disabilities, because the official definition of specific learning disabilities explicitly excludes "children who have learning problems which are primarily the result of . . . environmental, cultural, or economic disadvantage."¹²

Perverse Incentives and Overidentification

If there has not been a natural increase in the rate of disabilities, what is causing this increase in special-education rolls? Although a variety of factors may be at work, including improved awareness and lessened stigmatization of some disabilities, parents increasingly angling for accommodations, and schools seeking to evade accountability for low-performing students, the primary culprit appears to be perverse incentives caused by special-education funding arrangements. Special education is usually funded by providing additional monies to school districts as their special-education enrollment grows. This system, candidly referred to as the "bounty system" by some school finance officials, essentially provides school districts with a financial reward for additional diagnoses. Paying schools more money as they place more students in special education certainly raises the possibility of a perverse financial incentive, swelling special-education enrollments.

Some, however, might object that providing schools with additional funds would not provide them with an incentive to overidentify students as disabled if the costs of serving the disabled equaled or exceeded the additional funds. School officials regularly complain that special-education costs per pupil are far greater than state and federal subsidies, so special education imposes a significant financial burden on schools, not an incentive to overidentify.

This argument embodies a misunderstanding of what truly is and is not a "cost" of placing a child in special education. A true cost is an expenditure that the school would not have made otherwise. Some services that a school would have provided to a particular child no matter what can be redefined as "special-education services" if the child is placed in special education; these services are not truly special-education costs because they would have been provided anyway. For example, imagine that a student is performing

substantially below average in reading. The school can choose to help that student by giving him some small-group instruction with a focus on reading fundamentals and simply pay for that as part of its regular education budget. Or the school can say that the student has a specific learning disability (a processing problem in his brain) that is causing his subpar achievement. The intervention that the school would then provide for the student would be essentially the same, some small-group instruction with a focus on reading fundamentals, but under this scenario the school receives subsidies for instructional expenditures that it would have made anyway.

No one in the school system has to consciously or maliciously misidentify a student as disabled for perverse financial incentives to increase special-education enrollments. Well-intentioned teachers and administrators, eager to help students who are behind academically, subtly learn that it is easier to help those students by identifying them as disabled and generating outside subsidies rather than providing the services without special-education status and external resources. The ambiguity of diagnosing specific learning disabilities makes the overidentification of students as disabled possible. The financial bounty attached to additional placement of students in special education makes the overidentification desirable.

Of course, placing a student in special education also generates some additional administrative costs, but in education, even in special education, instructional costs are far greater than administrative costs. In addition, most administrative expenses are fixed costs that do not increase with every new child. Schools need administrators, secretaries, psychologists, speech therapists, and other specialists, whether their special-education caseload is low or high. Placing more students in special education spreads those fixed costs across a larger base of subsidy-generating students.

Overidentification of students as disabled inflicts real harm. First, incorrectly assigning a disability label to a student may alter everyone's expectations about that child's academic potential, hindering his future achievement. Second, swelling special-education rolls do drive up aggregate costs statewide, even if overidentification is in the financial interest of individual schools. Schools and districts have a positive financial incentive to place students in special education as long as the external subsidies exceed a true increase in expenditure, and those external subsidies increase the state's total education spending. Third, shifting large numbers of low-achieving-but-not-disabled students into special education diverts attention and resources away from truly disabled students, depriving them of the quality services they would otherwise receive.

Evidence of Perverse Financial Incentives

The suggestion that financial incentives contribute to increasing special-education enrollment is not just a plausible story. It is supported by three empirical analyses that have examined this question. In one study by Greene and Forster, the role of financial incentives was examined by comparing growth in special education in states with different funding methods.¹⁴ Most states use the "bounty system," in which school districts receive additional funds commensurate with increases in their special-education enrollment. An increasing number of states, however, do not tie funding to the number of students placed into special-education programs. Instead, those states provide districts with a lump sum of money based on their total population, historical special-education enrollments, and demographic characteristics. Except for safety valves provided for the tiny number of severely disabled students who are very expensive to educate, these "lump-sum" states expect that the pool of money allocated to each district should be sufficient. Districts do not get more money for shifting more students to special education.

Greene and Forster compare the growth in special-education enrollments in bounty states to those in lump-sum states during the 1990s. Thirty-three states had bounty funding systems for the entire decade, four states began the decade with lump-sum systems, and twelve switched to a lump-sum system during the 1990s. One state, New Hampshire, did not have any state-level funding of special education until 1999 and was excluded from the analysis. Special-education enrollment under lump-sum systems grew from 10.5 percent in the 1991–92 school year to 11.5 percent in the 2000–01 school year, an increase of 1 percentage point. Meanwhile, special-education enrollment under bounty systems grew from 10.6 percent to 12.6 percent in the same period, an increase of 2 percentage points. Even this simple comparison suggests that special-education growth is much higher when there are positive financial incentives to identify students as disabled. Greene and Forster's analysis estimates that approximately 62 percent of the growth in special-education enrollments in states with bounty funding systems during the 1990s could be attributed to financial incentives, whereas the presence of high-stakes tests had no effect on special-education enrollment.

Greene, Wolf, and Forster subjected these data to a more rigorous analysis to test whether the relationship between funding and enrollment was statistically significant and robust.¹⁴ They organized the information on funding systems and special-education enrollments in each state as a cross-sectional time-series database. Each individual observation was of a particular state in a

particular year. They then estimated the effects of lump-sum funding and high-stakes testing on the size of the special-education population while controlling for variation that was specific to particular states and for any general trend over time in special-education diagnoses. Because the special-education enrollments in one state may be influenced by the enrollments in adjoining states—commonly called a “contagion effect”—they used a technique called panel-corrected standard errors to control for such variability. Their statistical analysis finds that special education grew at a significantly faster rate in states that offered positive financial incentives to identify students as disabled. In the average year, states with bounty funding systems had special-education enrollment rates that were higher by 0.555 percentage point. Taking the average total enrollment in bounty-system states across all years in their study and multiplying that by 0.555 percent, they find that this effect is the equivalent of 169,237 extra students assigned to special education because of funding incentives in states that have not reformed their funding systems. The additional spending associated with having that many extra students in special education would be over \$1 billion per year.¹⁵

In a third study, Cullen focused on how changes in special-education financing within a state affected the identification of students as disabled.¹⁶ She studied how school districts in Texas responded to changes in financial incentives arising from court-mandated restructuring of the state education financial system. She found that, after the court order took effect, in districts where the amount of money provided for placing a student in special education went up, special-education enrollment went up faster than in other districts. Specifically, she found that a 10 percent increase in the bounty for placing a student in special education could be expected to produce a 1.4 percent increase in a district’s special-education enrollment rate. The relationship between changes in financial incentives and changes in special-education enrollment was strong enough that Cullen found it explained 35 percent of the growth in special education in Texas from the 1991–92 school year through the 1996–97 school year.

Despite this systematic evidence showing a relationship between financial incentives and special-education enrollments, an unwillingness to consider that incentives even play a role causes some people to resist this conclusion. For example, Robert Ervin, the superintendent of schools in Bangor, Maine, reacted to the finding of a relationship between financial incentives and special-education enrollments by telling the *Bangor Daily News* that he could not imagine that “people are sitting in meetings in school on a Thursday afternoon with parents present and they’re talking about money.”¹⁷ And Perry

Davis, the superintendent of the Dover-Sherborn Schools in Massachusetts, similarly told the *Boston Globe*, “I don’t know too many superintendents that are trying to put youngsters into special education to garner more money.”¹⁸ School staff, special-education advocates, and others simply have a hard time imagining that financial incentives play a role in labeling students as disabled. Unfortunately, their emotional investment in helping disabled students often blinds them to the possibility that other, less noble motivations can unconsciously and subtly influence decisions about special education even though the evidence clearly indicates that that is the case.

Underserving Disabled Students

In addition to overidentifying students as disabled, the current structure of special education provides incentives to underserve those students who are disabled. Schools do not receive external subsidies based on the quality or extent of services they provide; they get their money simply for placing students in special education regardless of how well those students are served. Even worse, poor accounting and site-based management make special-education monies essentially fungible.

Diverting special-education funds to boost general education is attractive to schools because disabled students are more likely to be captured clientele, whereas the market for general-education students is more competitive. Truly disabled students have extra needs that are more costly to address. Their more expensive needs and the more limited institutions that can effectively serve their needs limit the choices available to the families of disabled students. It is more difficult to find private schools willing to educate more costly students without receiving additional funds. And few families can afford regular private-school tuition, let alone any additional expenses that would be required for disabled students. Choices among public schools are also more limited for disabled students than they are for general-education students because not every public school can address every disability. In addition, all public schools face the same set of perverse incentives to take special-education subsidies while underserving those students.

Even if public schools do not divert funds to general education, they still face inadequate incentives to provide high-quality services with the money they do spend. Because special-education families are more likely to have limited alternatives, their public schools can afford to take them more for granted. Again, no malice on the part of school officials is required for subpar services to be provided to disabled students. The lack of positive financial

incentives to serve disabled students well simply undermines, often in subtle and unconscious ways, the motivation of administrators and staff to ensure that disabled students receive the best care.

Disabled students are entitled to free and appropriate education services under the law, and schools that underserve them are potentially subject to lawsuits. Unfortunately, the legal process is an extremely inefficient method of ensuring that students receive complete, quality services. There are significant barriers to families accessing the legal process to obtain quality services. Families have to be aware that they are entitled to certain services, and they have to be aware of the appeals and legal processes by which they could seek those services. Only the most sophisticated families of disabled students are fully knowledgeable about their rights and how to protect them. Hiring legal representation to fight for services often requires money that families are unable or unwilling to spend. Even if families are aware of the quality and type of services they should be receiving, know how to use the legal process to seek those services, and have the resources to do so, families still have to be willing to engage in a legal fight with the same people that take care of their children every day. This is a price that families are often unwilling to pay.

Even before a struggle for services hits the legal arena, families of disabled students are at a distinct disadvantage in seeking fully adequate services. The set of services each student should receive is determined by an individual educational plan (IEP). The IEP is essentially a contract between the school and the family, describing the services and accommodations a disabled student should receive. The IEP is the product of negotiations between school staff and families. In those negotiations, schools have every advantage in seeking to minimize services provided. School officials are much more sophisticated than most parents in negotiating the IEP. School personnel negotiate IEPs almost every day, whereas families do not. Schools know how to craft IEP language to limit their exposure to expensive service mandates in ways that all but the most knowledgeable parents cannot detect. Families can have legal representation at IEP meetings, but all of the barriers to the legal process apply to the use of lawyers in negotiating IEPs as well.

Listening to school officials, however, one might think that militant and lawsuit-happy parents have the edge over schools in the IEP process. Exceptionally sophisticated and active parents extracting expensive services from schools can make for appealing news stories, but this is one of those cases where the plural of "anecdote" is not "data." Families with the knowledge and resources to prevail over the very knowledgeable and very wealthy state

are necessarily few in number. Although special-education lawsuits have increased dramatically over the last few decades, they continue to represent a tiny fraction of all students in special education, and their number has begun to level off. Perhaps more important, schools win far more often than school administrators think.¹⁹ Perry Zirkel, who systematically tracks education litigation, finds that "judges increasingly appear to believe that school officials merit the strong benefit of the doubt."²⁰

If you doubt that schools work hard to minimize their IEP obligations, consider a satirical skit presented at a 2003 national conference for school disability lawyers. According to the *Washington Post*, the skit's mock newscast "was greeted by abundant laughter" as the anchorman "joked that Cuisinart has come up with the Due Processor, which 'shreds, dices, cuts, blends, frappes and otherwise destroys' unwanted applications for due process hearings. . . . Showing a photo of elated children, he said, 'In Boulder, Colorado, a group of students took to the streets in celebration of their due process victory, where the judges awarded them new sets of parents.'" Perhaps most striking was the skit's frank depiction of how schools manipulate the IEP process: "With a John Madden display of arrows and circles, he gave a play-by-play of how a school system used its skill to deny a family the placement sought for a child." This attack against parents for seeking their IEP rights was so well received that the conference organizers invited the performer—himself a senior special-education attorney for a school district—to deliver it again at the next year's conference.²¹

Evidence of Underserving Disabled Students

As colorful as this anecdote from the *Washington Post* may be, an anecdote does not prove that special-education students are being underserved. In general, because special-education students are often exempt from testing requirements and because other systematic information on the progress of disabled students is difficult to find given privacy concerns, we have less evidence on the question of underservice than we do on the question of over-identification. The evidence we do have, however, supports the plausible theory that the incentives in the current special-education system encourage the underserving of disabled students.

The National Council on Disability has documented widespread problems with the delivery of adequate services to disabled students. In particular it concludes:

Every state was out of compliance with IDEA requirements to some degree; in the sampling of states studied, noncompliance persisted over many years. Notwithstanding federal monitoring reports documenting widespread noncompliance, enforcement of the law is the burden of parents who too often must invoke formal complaint procedures and due process hearings, including expensive and time-consuming litigation, to obtain the appropriate services and supports to which their children are entitled under the law. Many parents with limited resources are unable to challenge violations successfully when they occur. Even parents with significant resources are hard-pressed to prevail over state education agencies (SEA) and local education agencies (LEA) when they or their publicly financed attorneys choose to be recalcitrant.²²

Although the findings of a disability advocacy group should be taken with a grain of salt, their systematic analyses of compliance and their broad information on reported difficulties with enforcement support the claim that disabled students are seriously underserved.

In addition, Greene and Forster conducted a survey of parents of disabled students who had participated in Florida's McKay Scholarship Program.²³ The McKay scholarship is a voucher that any student with an IEP in Florida can use to attend a different school—public or registered private, within or outside the district. The voucher is worth the entire amount spent on that child in his or her previous public school, so it provides additional dollars for students with more severe disabilities. In that survey, parents were asked whether their public school had provided all of the services that were required by the IEP. Only one-third of parents reported that the schools had provided all required services. In addition, almost half reported that they had conflicts with their public school over the IEP.

Of course, because they were seeking alternative services elsewhere, families who sought a McKay scholarship might be among those who would have the strongest complaints about the quality of services they received. Nevertheless, the fact that almost 4 percent of disabled students were using a McKay scholarship only a few years into the existence of this program suggests that the desire to seek alternative services is not highly exceptional, so their experiences may not be seriously atypical. Even if we assume half as many reports of subpar service from non-McKay families, we would still expect that almost one-third of schools failed to deliver services required by the IEP and almost one-quarter came into conflict with families over the IEP.

Furthermore, these reports of inadequate services would only include incidents where families were sophisticated enough to be aware of the types and quality of services their disabled children should have been receiving.

The Civil Rights Model versus the Market Model

These problems with the overidentification of students as disabled and the underserving of those students who are identified are not inevitable. Failure to devise a special-education system that provides checks and balances to limit the impact of perverse incentives has been facilitated by the modeling of special-education legislation after civil rights efforts. Federal legislation covering the education of the disabled was first adopted in the 1970s on the crest of a wave of civil rights legislation. Measures to ensure an adequate education for disabled students were similar to those adopted to guarantee an adequate education for racial minorities. Legislation explicitly mandated the provision of adequate services with heavy reliance upon the legal system to ensure compliance.

The difficulty with applying the civil rights model to special education is that the barriers preventing adequate services for minority students were different from the barriers preventing adequate services to disabled students. Black students, particularly in the South, were denied services primarily because of irrational racial prejudice. State and local laws reflected those irrational prejudices, legally forbidding school integration and resulting in inferior services. The denial of adequate services to disabled students, however, was not motivated primarily by prejudice or ill will. Instead, the obstacles were largely a matter of finances and incentives. Minority students do not cost more money to educate, but disabled students do.

The civil rights model necessarily relied heavily on enforcement through the courts rather than using market incentives to facilitate the realization of people's preferences, because the problem was irrational racist preferences. Schools could have been provided with financial incentives to integrate and offer better-quality services to minority students, but that approach could not have easily overcome racist preferences. Southern schools could have been offered additional money to admit black students, but schools that integrated would have risked losing many of their white students and the tax revenues those families generated. The only solution was to order integration and ensure compliance through the legal system.

This was not the only solution, nor was it the best solution, for addressing the education of the disabled. Schools could have been offered financial

incentives to serve the disabled, and, properly structured, those incentives could have been sufficient to ensure adequate services. Unlike the case of race, people's preferences were not the problem. Rather, the problem was financial and could have been addressed by altering schools' financial incentives.

In particular, special-education legislation should provide additional funds to cover the additional costs associated with educating students given their disabilities, but the funds for special-education students should be in the form of vouchers, not as payments directly to schools. Altering who controls the money students generate has significant implications for how that money affects everyone's behavior. If schools directly receive additional money for placing students in special education, they have an incentive to overidentify students as disabled because there are more rewards than costs to shifting students. In addition, providing additional funds directly to schools regardless of how well disabled students are served provides schools with incentives to take that money while minimizing the quantity of services they offer. Paying schools regardless of how well they serve disabled students also undermines their attention to the quality of the services they do provide.

If every student placed in special education is offered a voucher equal to the entire cost of his education, however, the incentives facing schools are fundamentally changed. Schools would have some reluctance to overidentify students as disabled, because any student placed in special education could take all of the funds he generates for the school and walk out of the door with them. With special-education vouchers, schools put some of their funding in jeopardy when they shift students into special education, placing a check on the financial incentive to overidentify. In addition, giving disabled students vouchers would provide those students with better leverage to obtain full and high-quality services. Rather than having to fight with schools for services in the courts, students could threaten to take their funding elsewhere if they were dissatisfied.

Evidence on the Market Model

The argument for a market approach to special education is not solely theoretical. Evidence from the McKay program in Florida sheds light on what might happen with a broader market model. The McKay program provides a voucher for all students with IEPs from Florida public schools. Disabled students can use the voucher, which is equivalent to the entire amount of money spent on that student in public school, to attend a different public or private school. Families are allowed to supplement the voucher with their

own funds to pay tuition if it exceeds the value of the voucher. Private schools can be religious or secular, but they must meet minimal eligibility requirements to ensure financial viability and safety. Private schools receiving McKay students are not required to follow the student's previous IEP, nor are they required to develop a new one. Instead of serving the student by writing a contract that can be enforced through the courts, the McKay program intends to serve students by allowing them to shop for quality services. McKay is essentially a pilot program for switching from the civil rights model to the market model.

Initial results from the McKay program are very encouraging. More than 12,000 disabled students in Florida, representing the full spectrum of disabilities, racial backgrounds, and family incomes, have been able to find seats in private schools, and the evidence suggests that they are being much better served under the market model than they were previously. Also, research has found that the McKay program has begun to reduce the rate of growth in special-education enrollment, limiting the problem of overidentification of students as disabled.

In their evaluation of the McKay program, Greene and Forster found significantly better outcomes for disabled students in private schools with McKay scholarships than in their previous public schools.²⁴ For example, they found that 86.0 percent of parents of McKay students reported that their private schools provided all promised services, whereas only 30.2 percent reported that their previous public schools had similarly delivered all promised services. McKay students saw class size drop dramatically, from an average of 25.1 students per class in public schools to 12.8 students per class in private schools. Small class sizes may be particularly beneficial to disabled students because addressing their special needs requires higher levels of individualized attention. Disabled students are often more vulnerable to bullying from other students, but McKay students were victimized far less by other students because of their disabilities in private schools. In public schools, 46.8 percent were bothered often and 24.7 percent were physically assaulted because of their disabilities, but in McKay schools 5.3 percent were bothered often and 6.0 percent were assaulted. Higher levels of school follow-through on promised services, smaller classes, and lower levels of victimization contributed to glowing appraisals of the McKay program from the families of disabled students. Almost all (92.7 percent) of McKay participants are satisfied or very satisfied with their McKay schools, compared to only 32.7 percent who were similarly satisfied with their public schools. Even among families that had tried a McKay scholarship and discontinued participating in the

program (only 10 percent of all McKay users), almost two-thirds reported being satisfied with the program, and 90 percent said that the program should continue for others.

Despite this success, critics of market approaches to special education, including People for the American Way and the Progressive Policy Institute, have worried that programs such as McKay would make disabled students vulnerable if they have more severe disabilities or come from low-income or racial minority families.²⁵ The experience with the McKay program, however, suggests otherwise. The distribution of the type and severity of disabilities in the McKay program is roughly representative of the special-education population in Florida public schools. McKay is also roughly representative of the public-school population in its racial and class composition.²⁶ In addition, it is not entirely clear why low-income and minority disabled children are better protected under the civil rights model, in light of their lower access to the knowledge and resources necessary to protect the right to services through the courts.

These concerns about the McKay program misunderstand why federal legislation has made schools able to serve disabled students. Schools are now able to educate the disabled because they now have the additional funds to provide special-education services. As the experience with the McKay program shows, there are plenty of private schools that, if offered the same additional funds, are happy to serve students with the full range of disabilities. They do not provide those services because they are required by law, documented in an IEP, and enforced by the threat of lawsuits. Private schools accepting McKay students do so because they are paid for their efforts, just as public schools have been for the past three decades. The only difference is that private schools have to earn their payments by providing quality services, whereas public schools only have to do just barely enough to avoid litigation.

Barriers to Fixing Special Education

If the education of the disabled is better structured using a market approach rather than a civil rights approach, why have we not adopted the more efficient policies? First, there is a certain amount of inertia in policy arrangements. Special education was modeled after civil rights legislation in part because of when it was adopted, and it is hard to change approaches once those arrangements have been set.

Second, the civil rights approach has developed powerful constituencies that are reluctant to consider changes. Disability advocates remember the bad

days when disabled students were regularly denied adequate services and are grateful for the progress that the civil rights approach has produced. They are understandably cautious about making any changes in the system that realized those gains. The cottage industry of lawyers that has developed around special education is also committed to the civil rights model—not only because their livelihood is dependent upon it, but also because they are more familiar with contracts and litigation than with choice and competition. Public-school officials, including their representatives in the teachers' unions and other professional associations, are also relatively content with the civil rights model. They receive additional funds as students are shifted into special education, and the high costs of enforcing disability rights through litigation make them relatively unaccountable for the quality of services those funds are supposed to support. Of course, the market approach to special education would threaten their funding and increase their accountability for results, making that model particularly unappealing to school officials.

The third and most significant barrier to adopting a market approach to special education is the perceived incompatibility between our emotional commitment to the disabled and the hard incentives of the market model. Students with disabilities rightly deserve our sympathies and emotional support, and thankfully these sentiments are widespread. Nevertheless, people fear that thinking about how incentives operate in special education undermines this emotional support. Will we undermine the notion that people should help disabled students because they need our help if we emphasize the ways in which financial incentives alter the type and quantity of help they receive?

In spite of these barriers, there are also factors that will support policy change. Although reform would create financial “losers”—primarily trial lawyers, special-education staff, and teachers' unions—it will also create “winners.” Putting fewer nondisabled students into special education would provide a better education to both disabled and nondisabled students. The former would benefit because special-education programs would no longer be required to serve large numbers of students who are not truly disabled, freeing up the system to serve truly disabled students more efficiently. The latter would benefit because putting a “disabled” label on a student who is not truly disabled harms that student. Parents and teachers of a “disabled” child will have seriously lowered expectations for that child's performance, so many children who could be doing much better academically if only they were served better will languish as low-performing special-education students. Finally, reform would benefit taxpayers, not only by improving the

overall efficiency of the system in the ways just described, but also by ending the upward distortion in spending caused by incorrectly labeling students as disabled. Placing a student in special education produces spending mandates that may exceed the amount that would actually have to be spent to address that student's academic needs if they were rightly understood. A more accurate diagnosis of which students are truly disabled and which students are performing poorly because of bad instruction will allow for a more accurate assessment of spending needs.

It is difficult to quantify the inefficiency created by the existing special-education system, but it is possible to at least get a ballpark idea of its size. As noted above, Greene, Wolf, and Forster estimate that 169,237 extra students are assigned to special education in states with bounty funding. This is a very conservative estimate, because it includes only enrollment growth due to funding incentives during the 1990s, whereas funding incentives have actually been driving up special-education enrollment for thirty years. The estimate is also conservative because it includes only states that still have bounty funding, whereas states that have reformed their funding systems still have higher enrollment than they would have had if financial incentives to over-identify had never operated. Special-education subsidies for that many students add up to about \$1 billion per year. Not all of that money can be considered lost, of course, because (as we have seen) much of it goes to subsidize services that would have been provided anyway even if those students had not been placed in special education. At least some of that money is wasted, however, because it is spent on disability services that are not truly appropriate for nondisabled students and because placing nondisabled students into special education produces unnecessary administrative costs. If even 20 percent of that money is wasted on inappropriate services and unnecessary costs, the annual loss is considerable.

But this only captures the monetary loss; if the special-education funding system were reformed, it would not only cost less, it would perform better. Disabled and nondisabled students alike would receive a better education. The nation currently spends \$400 billion per year on education, a doubling of real per-pupil spending in the past thirty years with no increase in educational outcomes. Any reform that actually provides a better education, and does so while reducing costs, could generate substantial public support.

The only way to overcome the barriers to policy change is to try market approaches in more places, carefully collect information on the consequences of a market approach, and use that evidence to convince people about what will best serve disabled students while controlling costs. This

gradual experimentation and persuasion can eventually ease concerns about a tension between hard-headed analysis of incentives and the promotion of compassion. It can also convince disability advocates that the risk of switching to a market approach is less than the benefits it would bring their constituents. Disability lawyers and school officials are going to be the most difficult to persuade, in light of their financial investment in the status quo, but even they can be moved by evidence on what is in the best interest of disabled students. Interests shape people's views, but they do not determine them. If future experiments support a market approach, we might make a second giant step forward in the education of the disabled.

Notes

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5. Craig S. Lerner, "Accommodations for the Learning Disabled: A Level Playing Field or Affirmative Action for Elites," *Vanderbilt Law Review*, vol. 57, no. 3 (2004): 1058–64.
6. "Digest of Education Statistics," definitions appendix (<http://nces.ed.gov/pubs2003/2003060h.pdf> [July 14, 2006]).
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8. Berman and others, "Rising Costs of Special Education in Massachusetts," p. 201.
9. "Digest of Education Statistics," table 52.
10. U.S. Census Bureau, Historical Poverty Tables, Table 20 (www.census.gov/hhes/poverty/histpov/hstpov20.html [July 14, 2006]).
11. U.S. Census Bureau, Historical Income Tables—Families, Table F-3 (www.census.gov/hhes/income/histinc/f03.html [July 14, 2006]).
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13. Jay P. Greene and Greg Forster, "Effects of Funding Incentives on Special Education Enrollment," Manhattan Institute Civic Report 32, December 2002 (www.manhattan-institute.org/html/cr_32.htm [July 14, 2006]).
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15. This cost estimate is based on an estimated additional expenditure per special-education student of \$5,918 in the 1999–2000 school year, calculated on behalf of the

U.S. Department of Education by the Center for Special Education Finance. This figure represents spending on special-education students over and above what is spent on regular students. See Jay G. Chambers, Tom Parrish, and Jennifer J. Harr, "What Are We Spending on Special Education Services in the United States, 1999–2000? Advance Report no. 1," Center For Special Education Finance, June 2004 (www.csef-air.org/publications/seep/national/AdvRpt1.pdf [July 14, 2006]).

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PART

III

New Tools for Problem Solving