



STILL  
SEPARATE  
and UNEQUAL  
THE EDUCATION OF CHILDREN  
WITH DISABILITIES IN NEW JERSEY

*The 2004 report of the  
New Jersey Council on Developmental Disabilities*





*New Jersey Council on Developmental Disabilities*

# || PREFACE



ifty years ago the landmark *Brown vs. Topeka Board of Education* court decision established that separate is not equal and that students educated in segregated settings are denied equal opportunity under the law. Since then, long-standing federal and state laws and landmark court decisions have reinforced that decision.

Ten years ago, the New Jersey Developmental Disabilities Council gathered information about segregation in New Jersey's schools and presented the numbers and facts to interested parties. The result was a 1994 publication developed by the Council's Education Subcommittee, entitled *Separate and Unequal*. The report described an entrenched pattern of segregation of students with disabilities in our State, gave data comparing New Jersey nationally, reported on research about the benefits of inclusion and made extensive short, medium and long-term recommendations to move our state forward on this issue.

Ten years later, the now renamed New Jersey Council on Developmental Disabilities Education Task Force<sup>1</sup> revisited the 1994 publication and prepared an update of that report. As they did in 1994, the numbers and facts in this document clearly show that the entrenched pattern of segregation remains with us today, despite the fact that the State has adopted several of the Subcommittee's 1994 recommendations.

The right to an education in the least restrictive environment was established by Congress in the Individuals with Disabilities Education Act. Research cited in this report clearly shows that inclusive education benefits children with and without disabilities. Despite these facts, New Jersey segregates a larger percentage of its classified students than any other state in the union. This must not be allowed to continue. Further, significant reduction of this pattern of segregation may only be accomplished when the New Jersey Board of Education, supported by the Legislature and the Governor, creates a comprehensive plan to end that pattern and moves forcefully to carry it out. The last section of this report offers recommendations on the many steps that will be required to achieve these goals.

Maureen Babula  
Chair  
New Jersey Council on Developmental Disabilities

# STILL SEPARATE AND UNEQUAL



In the decade since the publication of *Separate and Unequal*, the nation has moved closer to the goal of including children and adults with disabilities in our schools, communities, and workplaces. The promises of landmark legislation protecting the civil rights of people with disabilities are beginning to be realized.<sup>2</sup> The increasing participation of individuals with disabilities in the activities of our nation has greatly enriched our society as a whole. However, too often, people with disabilities are still segregated and relegated to lesser services, programs, activities, benefits, and jobs.

As this report finds, New Jersey faces the continuing challenge of over-segregation of children with disabilities. The greatest problem area remains the large percentage of children sent out-of-district to private and public separate special education schools. Research tells us that community membership at age 10 predicts community membership as an adult; the more separate the child's education at age 10, the more likely they will be in the same type of setting at age 25.<sup>3</sup> In addition, while the nation's unemployment rate is 6.1 percent, the unemployment rate for adults with disabilities has been reported to range from 57 percent to 75 percent.<sup>4</sup> Consequently, to the extent that our public schools continue to separate out children with disabilities rather than educating them in integrated settings with the people with whom they will live, work, and interact in the future, the same separation is likely to characterize their lives as adults.

Although addressing the issues raised in this report are the direct concern of the educational system, it is clear that all agencies, organizations, policy makers, and community members concerned with education, with children and adults with disabilities, and with setting new directions for public policy have a role to play. Only by targeting issues and working together will we reverse the over-segregation of children with disabilities and ensure their full integration in their communities now and in the future.

# INCLUSION IS A RIGHT



To include children in the same classrooms as their neighborhood peers has been the focus of federal and state law since 1954, when the Supreme Court observed in *Brown v. Board of Education*, that, “[s]eparate ... facilities are inherently unequal.”<sup>5</sup> *Brown* became the springboard upon which parents of children with disabilities in Washington D.C. and Pennsylvania fought in court to end the exclusion of their children from their public schools,<sup>6</sup> and led directly to the passage of Public Law 94-142 in 1975, now known as the Individuals with Disabilities Education Act (IDEA).

Educating children with disabilities with non-disabled peers was a principal objective of Congress in passing IDEA. The law entitles every eligible child with a disability to an appropriate education in the least restrictive environment with the term “restrictive” used as a measure of the child’s opportunity to be educated with non-disabled peers. To ensure the inclusion of children with disabilities to the maximum extent possible, Congress added placement rules allowing removal from regular classrooms to “special classes or separate schooling” only when education could not be achieved satisfactorily in general education classrooms with the use of supplementary supports and services. In order to prevent removal for other than educational reasons, the federal law further prohibits removal based upon the category of the disabling condition, the availability of space, staff, or services, administrative convenience, or any perceived attitude of non-disabled peers or teachers.<sup>7</sup>

Federal court decisions around the United States in the early 1990s, including the Third Circuit’s *Oberti*<sup>8</sup> decision which applies to New Jersey, produced simple rules to ensure a child’s placement in the least restrictive environment regardless of the unique nature of their disability. *Oberti* requires districts to exhaust all placement options within a child’s neighborhood school, beginning with the general education classroom with the use of supplementary aids and services, prior to any consideration of removal to a separate setting.<sup>9</sup>

Since the publication of *Separate and Unequal* in 1994, the actions of Congress and decisions of federal and New Jersey courts have reinforced the strong presumption that children with disabilities will be educated in schools and classrooms alongside non-disabled peers. In the 1997 reauthorization of IDEA, Congress clarified that children with disabilities are to have “access to” and “be involved and progress in” the general education curriculum in general education classrooms to the maximum extent possible, with modifications as necessary.<sup>10</sup> Moreover, in the 2002 district court decision, *Girty v. School District of Valley Grove*, our federal courts agreed with the parents of Spike Girty, a 14-year-old with significant cognitive disabilities, that Spike must have the opportunity to receive his educational program in general education classes in his middle school, observing that “the relevant focus is whether Spike can progress on his IEP goals in a regular education classroom with supplementary aides and services, not whether he can progress at a level near to that of his non-disabled peers.”<sup>11</sup> Finally, *Girty*, as well as recent administrative decisions in New Jersey, have made clear that it is the quality, not quantity of supports, which are relevant in determining whether a school district has done enough to ensure that a child is receiving an appropriate education in general education settings before moving the child to a separate classroom or school.<sup>12</sup>

# BENEFITS OF INCLUSION



During the last ten years, court decisions across the country supporting inclusive placements have energized the efforts of educators to develop evidence-based practices to support diverse learners in the same general education classroom. Educational practices such as differentiating instruction, teaching to multiple intelligences, using functional assessments, organizing cooperative learning groups, using technology—are all practices that today are being used to enrich classrooms to the benefit of all children. Such practices, and advances in assistive technology, have made it increasingly more possible to provide all children with access to the general education curriculum and to include children—even those with significant challenges—in general education classrooms.

Voluminous research over the last 30 years, a small sampling of which is cited below, has made it is clear that intensity of service does not require pulling children out into separate classrooms and schools.<sup>13</sup> Indeed, the body of research substantiating the benefits and value of the education of students with disabilities in general education classrooms with supports has grown and strengthened in the past ten years. General education classrooms offer high academic standards and unique opportunities for modeling social and communication skills. Accordingly, students with disabilities educated in general education classrooms are making gains in academic, social, community living and employment skills not experienced by students educated in separate classrooms. Moreover, research detailing the effects of inclusion on non-disabled students documents their growth in moral and ethical principals, self-esteem, patience, and comfort level with people with disabilities.<sup>14</sup> It is clear that the development of inclusive schools and classrooms can increase understanding and acceptance among the very contemporaries who will become the employers, friends, and neighbors of our children with disabilities in the future. Indeed, the promise of IDEA, the ADA, and the other federal disability laws of a fully integrated society will not be realized unless we move forward in the development of inclusive schools.

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*While [inclusion] surely requires readjustment and considerable effort on the part of educators, and on the part of the community in general, it is a small price to pay to increase the opportunity of individuals with disabilities to become fully-functioning, productive, and co-equal members of society, and of individuals without disabilities to learn in a world where individuals with disabilities are so included.*

—[*Oberti v. Board of Education, supra*, 801 F. Supp. at 1407.]

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## ACADEMIC GAINS:

- The Individual Education Programs (IEP's) of students with disabilities who are placed in general education classrooms, contain more academic objectives, improved quality of the curricular content, and more references to best practices than IEP's developed for students in segregated settings.<sup>15</sup>
- Students in an inclusive school demonstrate, “significantly superior gains on several ...scales, including reading, vocabulary, total reading and language, with a marginally significant effect on reading comprehension”.<sup>16</sup>
- Students with a range of disabilities experienced generally positive academic, behavioral, and social outcomes with no reports of negative academic effects, as reported by numerous schools surveyed.<sup>17</sup> In a review of the literature published by the *Journal of Special Education*, the authors reviewed 19 studies and concluded that:
  1. students with severe disabilities can achieve positive academic and learning outcomes in inclusive settings;
  2. students with severe disabilities realize acceptance, interactions, and friendships in inclusive settings; and
  3. students without disabilities experience positive outcomes when students with severe disabilities are their classmates.<sup>18</sup>
- Students with mild disabilities who are included in general education classrooms demonstrate academic gains that are reflected in achievement test data.<sup>19</sup>

## SOCIAL GAINS

- Compared to students in segregated settings, students with disabilities who are full time members of general education classrooms show significantly higher levels of engagement in school activities, higher levels of participation in integrated school environments and initiate and engage in social interactions with peers and adults to a greater degree.<sup>20</sup>
- Students with disabilities in inclusive placements have had more frequent interactions and larger, more durable networks of peers without disabilities.<sup>21</sup>

## BENEFITS FOR STUDENTS WITHOUT DISABILITIES:

- The presence of students with disabilities in general education classrooms stimulates learning experiences and activities that could not occur in a classroom that does not contain students with disabilities.<sup>22</sup>
- Students without disabilities demonstrate consistent academic gains when educated alongside students with disabilities and do not show evidence of any negative impact from inclusion.<sup>23</sup>
- Studies indicate no difference in academic engagement rates between classrooms with and without students with disabilities, suggesting no negative impact on instructional opportunities.<sup>24</sup>

- Non-disabled students develop positive attitudes, greater understanding, and empathy when students with disabilities are classmates.<sup>25</sup>

## ■ BENEFITS FOR SCHOOL PERSONNEL

- Educators believe that educating students with disabilities in inclusive settings results in positive changes in their attitudes and job responsibilities.<sup>26</sup>
- Teachers develop positive attitudes over time, especially when inclusion is accompanied by training and administrative support. In addition, teachers show increased confidence and professional growth in ability to accommodate more diverse learners in their classrooms.<sup>27</sup>

# WHERE ARE WE NOW? STILL SEGREGATED IN NEW JERSEY

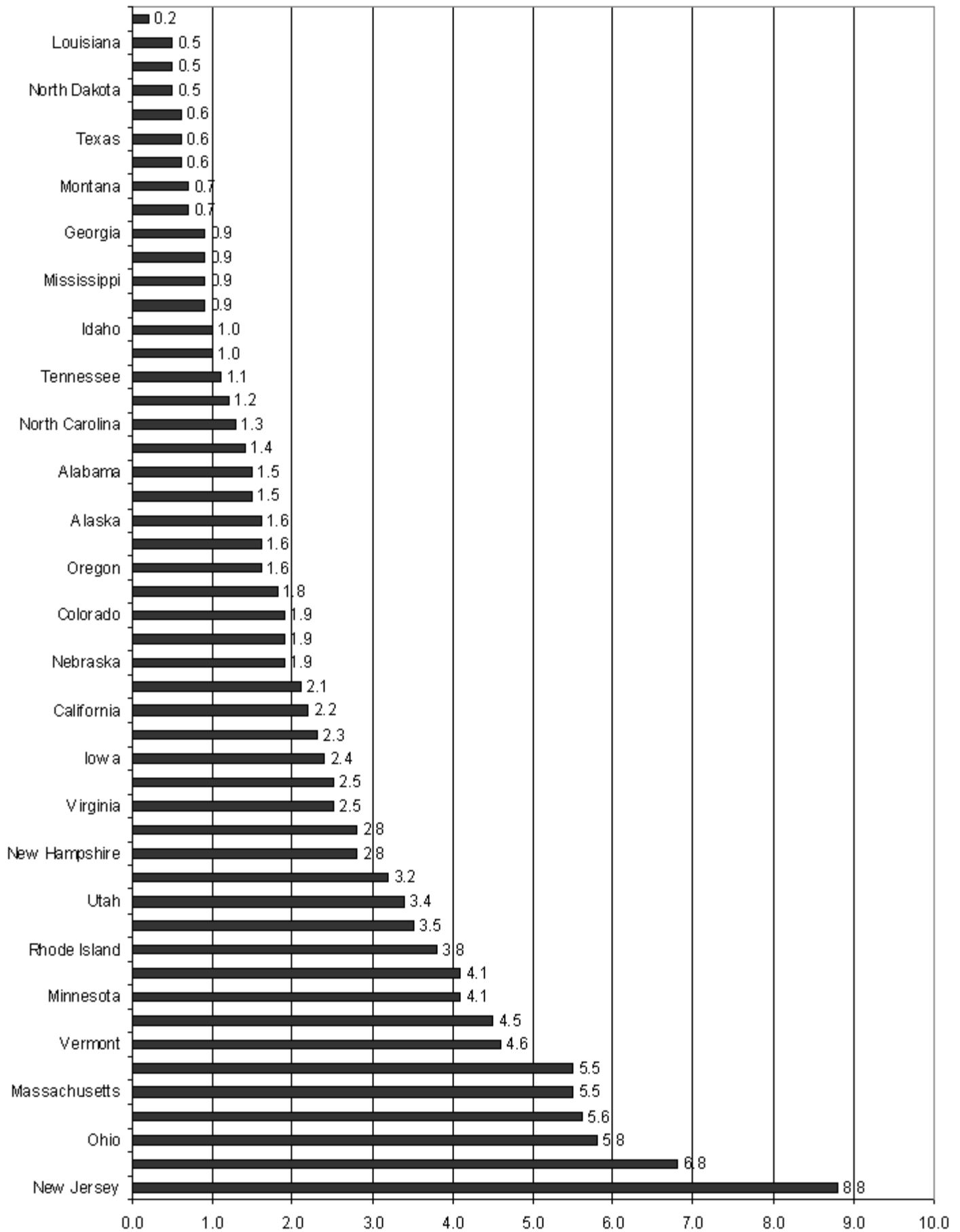


Although progress has been made in several areas, an alarming pattern of segregation continues among students receiving special education services in New Jersey. In 1993, 8.9 percent of New Jersey's students classified as eligible for special education were segregated in separate facilities. Ten years later, this percentage remains constant at 8.8 percent as compared with a national average of 2.9 percent.<sup>28</sup> In fact, as evidenced by the graph in Figure 1 (page 12), no state had a greater percentage of its students in segregated facilities. Moreover, 36 of the 50 states had less than 3 percent of their students in segregated placements.<sup>29</sup>

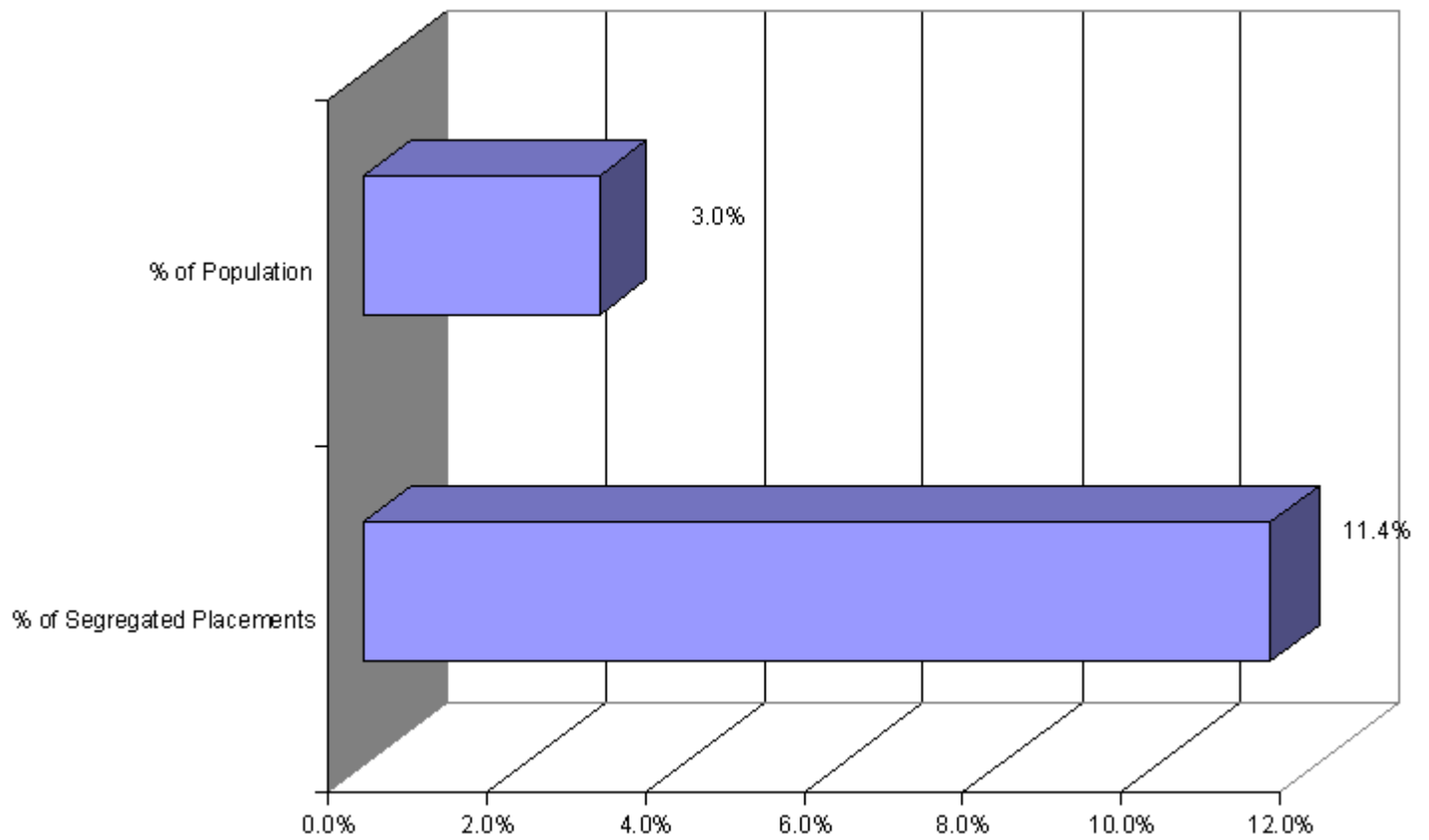
The 8.8 percent of New Jersey students who are placed in segregated facilities represents 19,596 students.<sup>30</sup> Only one state, New York, had more students in segregated placements (but still had a smaller percentage of its special education population in segregated placements than New Jersey); while California, the most populous state with more than four times New Jersey's population, has almost 6,000 fewer students in segregated facilities.<sup>31</sup>

Although New Jersey accounts for less than 3 percent of the U.S. population, more than 11 percent of segregated placements nationally are New Jersey students (see Figure 2, page 13). In fact, in order for New Jersey to fall around the national average in terms of number of segregated placements, more than 13,000 students would have to be moved from segregated facilities (see Figure 3, page 13).

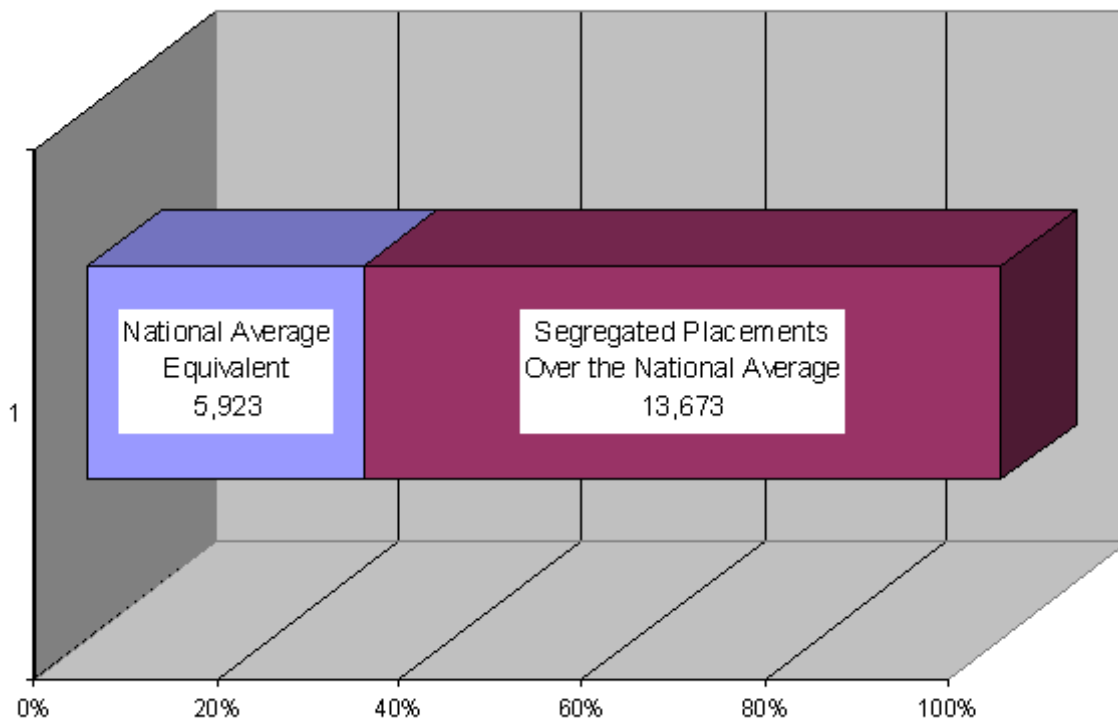
**FIGURE 1. PERCENT OF CLASSIFIED STUDENTS IN SEPARATE FACILITIES 2003**



**FIGURE 2. TOTAL NEW JERSEY POPULATION AND POPULATION OF NEW JERSEY STUDENTS IN SEGREGATED FACILITIES SHOWN AS PERCENTAGES OF THE NATIONAL POPULATION**

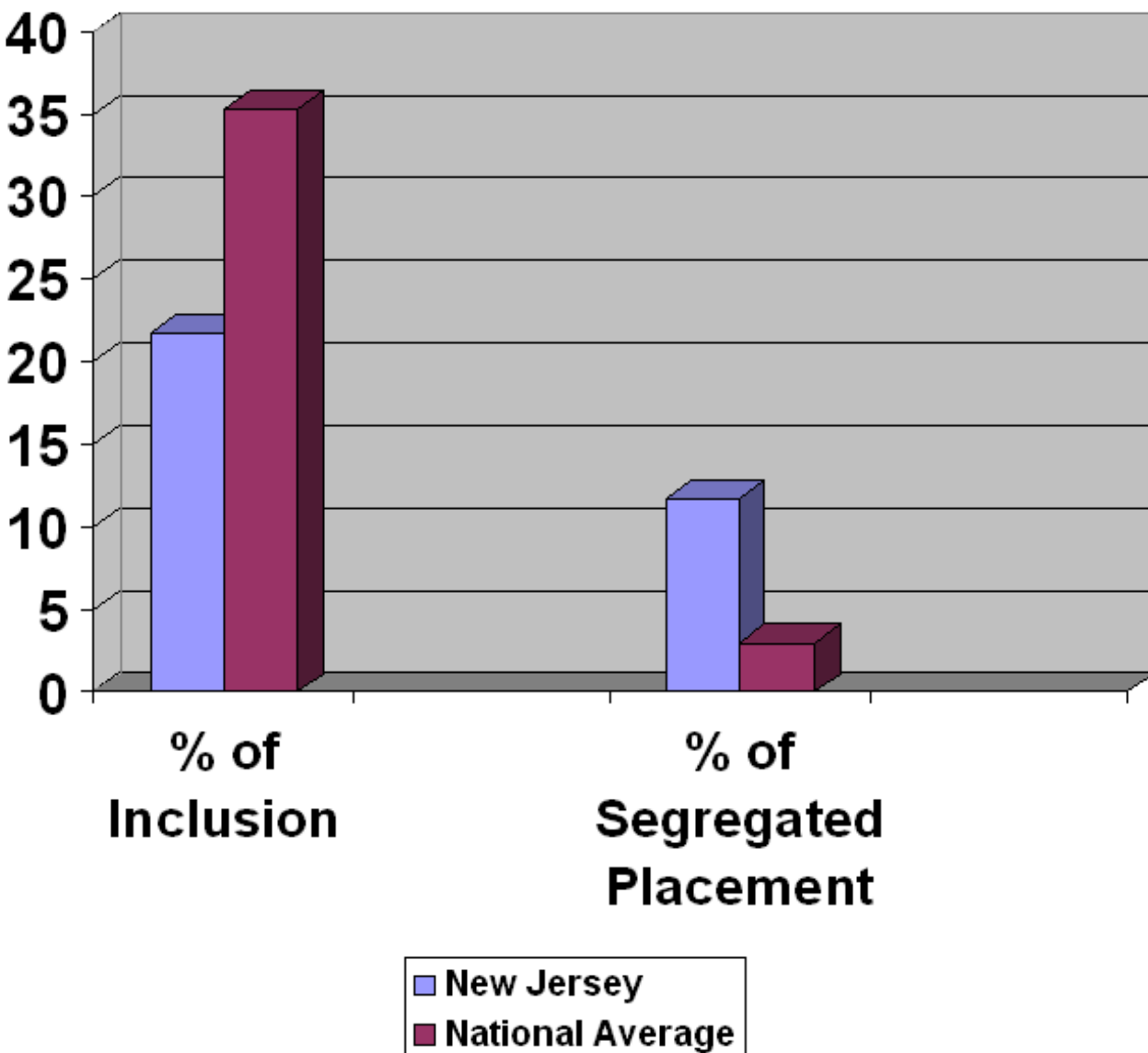


**FIGURE 3. NEW JERSEY STUDENTS IN SEGREGATED FACILITIES**



New Jersey does fare slightly better than the national average with regard to children who are included in general education settings for part of the school day.<sup>33</sup> However, New Jersey still maintains a pattern of segregation, with approximately 60 percent of New Jersey's students spending more than 20 percent of their time outside the general classroom as compared to a national average of about 52 percent.<sup>34</sup> Similarly, although New Jersey has made a significant and commendable increase in the percentage of preschoolers with disabilities educated in inclusive settings,<sup>35</sup> the State still lags behind the national average of inclusive placements for preschoolers.<sup>36</sup> In fact, New Jersey places almost four times as many preschoolers in out-of-district segregated placements as the national average (Figure 4).<sup>37</sup>

**FIGURE 4. PRESCHOOL STUDENTS WITH DISABILITIES**

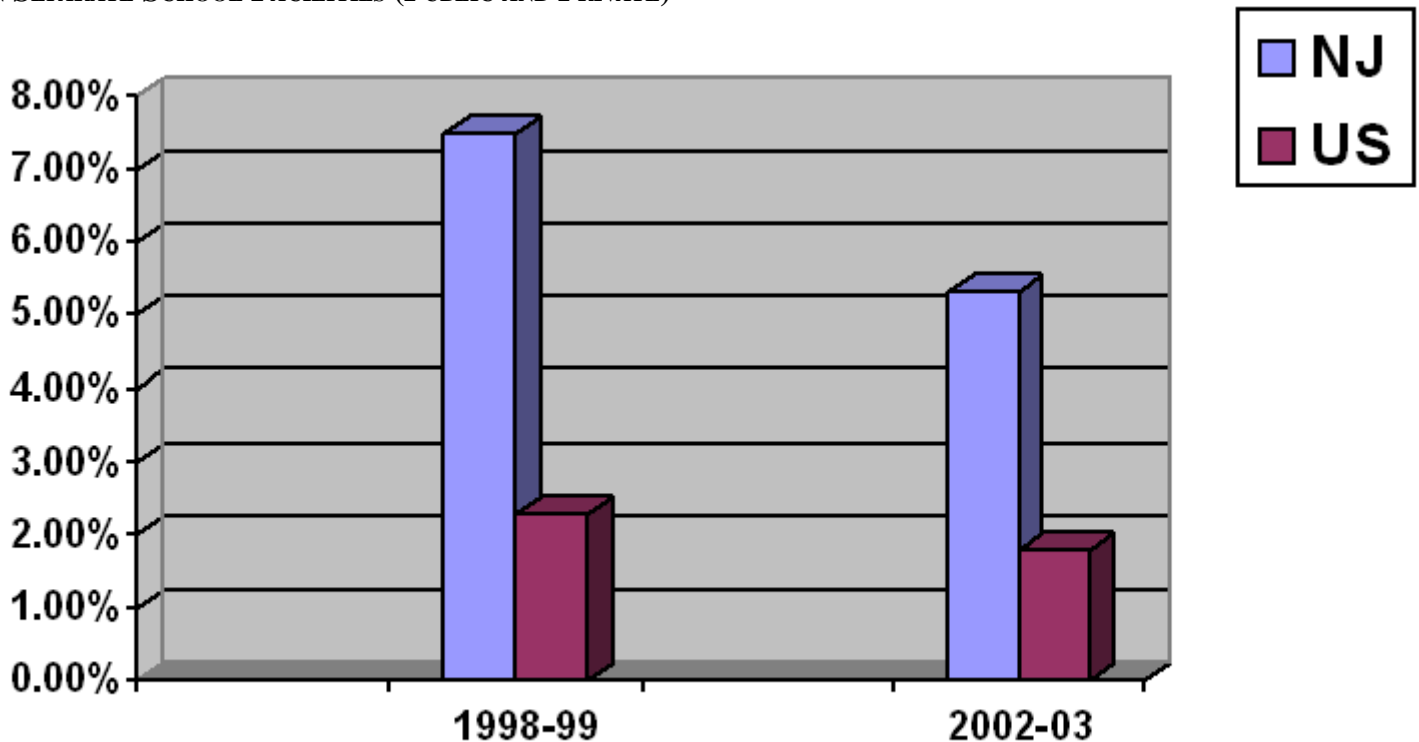


# EDUCATIONAL SETTINGS FOR STUDENTS WITH SPECIFIC DISABILITIES

## STUDENTS WITH ORTHOPEDIC IMPAIRMENTS

During the past ten years, New Jersey saw its greatest increases in inclusive placements for students with orthopedic impairments aged 6 to 21 years. Between 1990-1991 and 2000-2001, the percentage of pupils with orthopedic impairments who were included in regular classes more than doubled.<sup>38</sup> In this category of students, New Jersey is doing significantly better than the national average at including in-district students in general education classes, with 69.35% of students with this classification spending more than 80% of their day in general education as compared to the national baseline of only 44.35%. However, as shown in Figure 5, New Jersey continues to send a far greater percentage of these students to out-of-district schools than the national average.<sup>39</sup>

FIGURE 5. PERCENT OF STUDENTS AGED 6-21 WITH ORTHOPEDIC IMPAIRMENTS IN SEPARATE SCHOOL FACILITIES (PUBLIC AND PRIVATE)

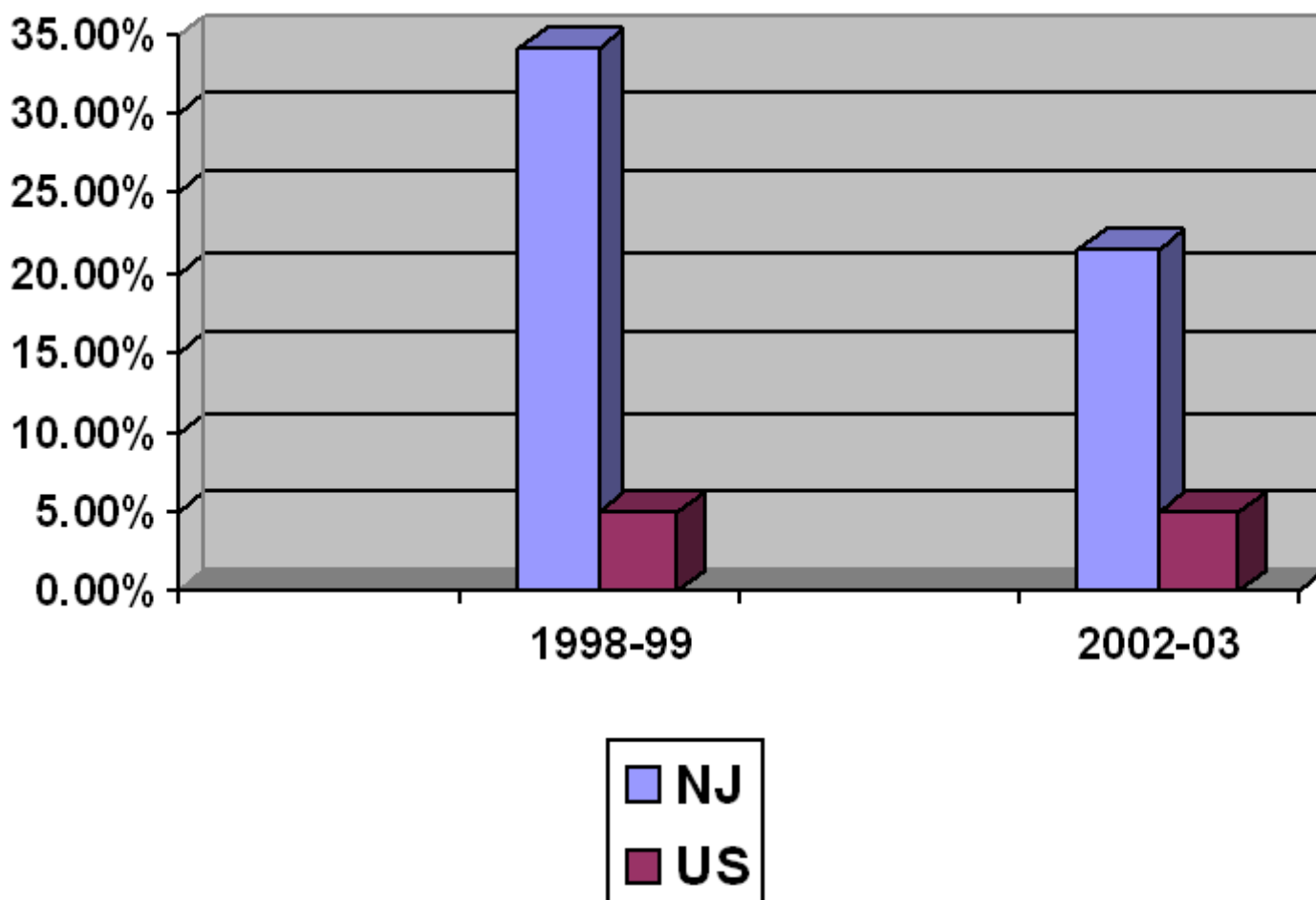


## STUDENTS CLASSIFIED AS HAVING MENTAL RETARDATION

New Jersey remains far behind the national average in placing children classified as having mental retardation in integrated settings. In fact, New Jersey sends a higher percentage of students with mental retardation to out-of-district segregated settings than any other state in the country and, as illustrated in Figure 6, does so at a far greater rate than the national average.<sup>40</sup>

In addition, even when students with mental retardation remain in the school district, New Jersey places far less of them in the most inclusive settings than the national average.<sup>41</sup>

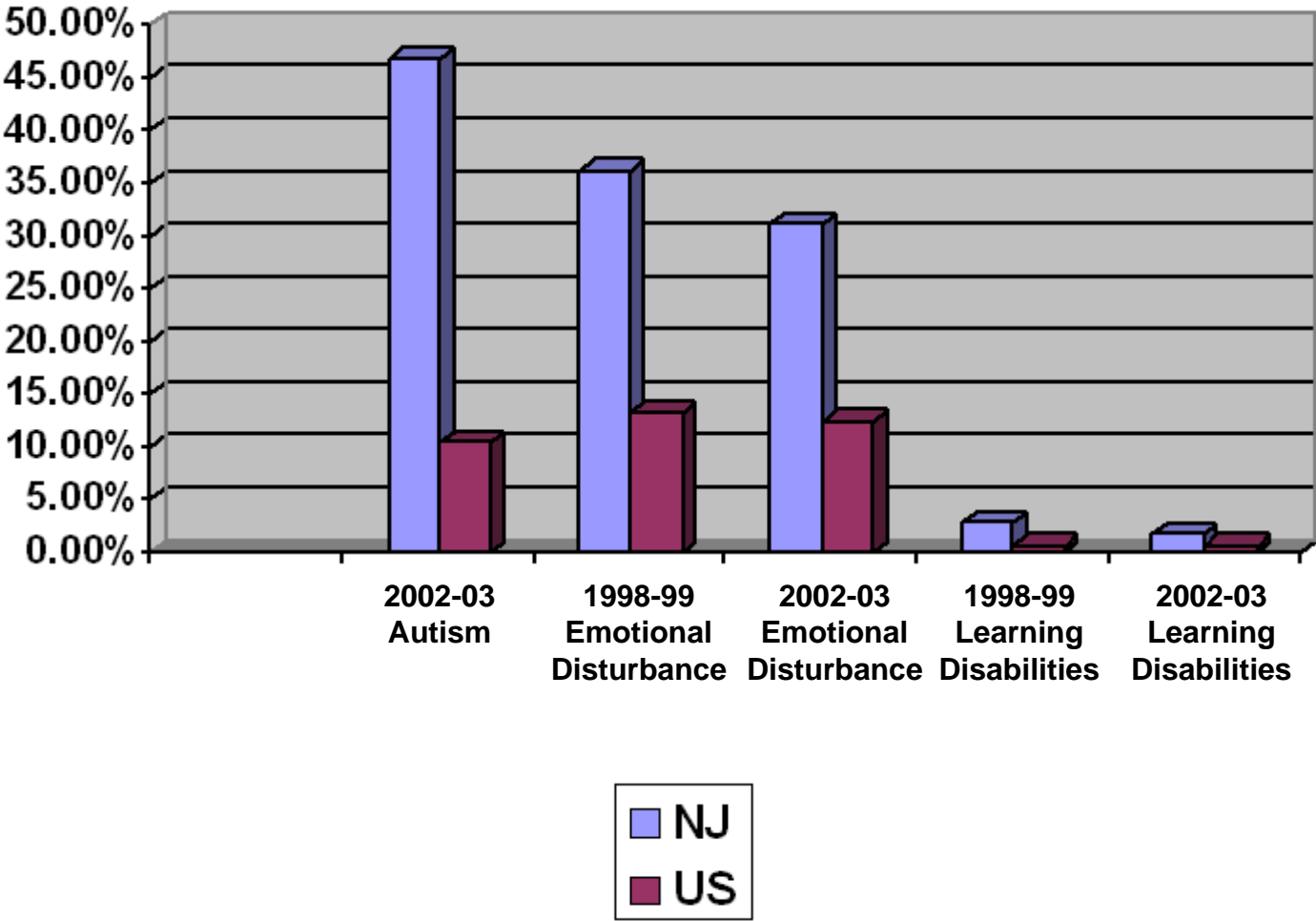
**FIGURE 6. PERCENT OF STUDENTS AGED 6-21 CLASSIFIED WITH MENTAL RETARDATION IN SEPARATE SCHOOL FACILITIES (PUBLIC AND PRIVATE)**



**STUDENTS WITH OTHER DISABILITIES**

New Jersey has a high rate of out-of-district placements for children with other disabilities. For example, New Jersey sends approximately four times as many children with autism to out-of-district placements as the national average.<sup>42</sup> Similarly, students classified as having an emotional disturbance or learning disability attending non-residential programs are educated out-of-district at significantly higher rates than the national average.<sup>43</sup>

**FIGURE 7. PERCENT OF STUDENTS AGED 6-21 IN SEPARATE SCHOOL FACILITIES (PUBLIC AND PRIVATE) BY DISABILITY**



# OVER-REPRESENTATION OF MINORITY STUDENTS



On this 50<sup>th</sup> anniversary of *Brown v. Board of Education*, it is discouraging to note that African-Americans are as significantly over-represented in special education today as they were in the 1990's. Equally discouraging, when African-American children are classified, they are generally placed in the most segregated settings.

Furthermore, they are actually *underrepresented* in preschool special education, reflecting an overall lack of early intervention and in-class support and services in racially and culturally diverse communities.

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***When school systems continue to categorically and unnecessarily place students (particularly those from diverse backgrounds) in more restrictive educational settings, students will be stigmatized, will have difficulty learning, and school systems won't maximize the use of the scarce federal education dollars they receive yearly.***

—[Remarks of Martin Gould, Senior Research Specialist for the National Council On Disability, before the Congressional Bipartisan Disabilities Caucus, on February 13, 2002.]

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## CLASSIFICATION RATES

According to the New Jersey Department of Education's Office of Special Education Programs, in both 1993 and 2001, African-American students were classified at significantly higher rates than their white counterparts.<sup>44</sup> Almost one in four male African-American students in New Jersey is identified as having a disability.

African-American students, both males and females, are classified as having mental retardation at three times the rate of white students, and classified as having multiple disabilities and emotional disturbance at approximately twice the rate of white students. Along with autism spectrum disabilities, these disabilities – emotional disability, mental retardation, and multiple disabilities – are the most likely to result in segregated placements.

By way of contrast, in speech-language disabilities, which are most likely to result in inclusive placements, African-American students are *underrepresented*. White males are 1.8 times more likely to be classified with a speech disability as African-American males, and white females are 2.4 times more likely to be so classified as African-American females.

According to the Conference for Exceptional Children, over-representation has been shown to lower educational expectations for African-American students and

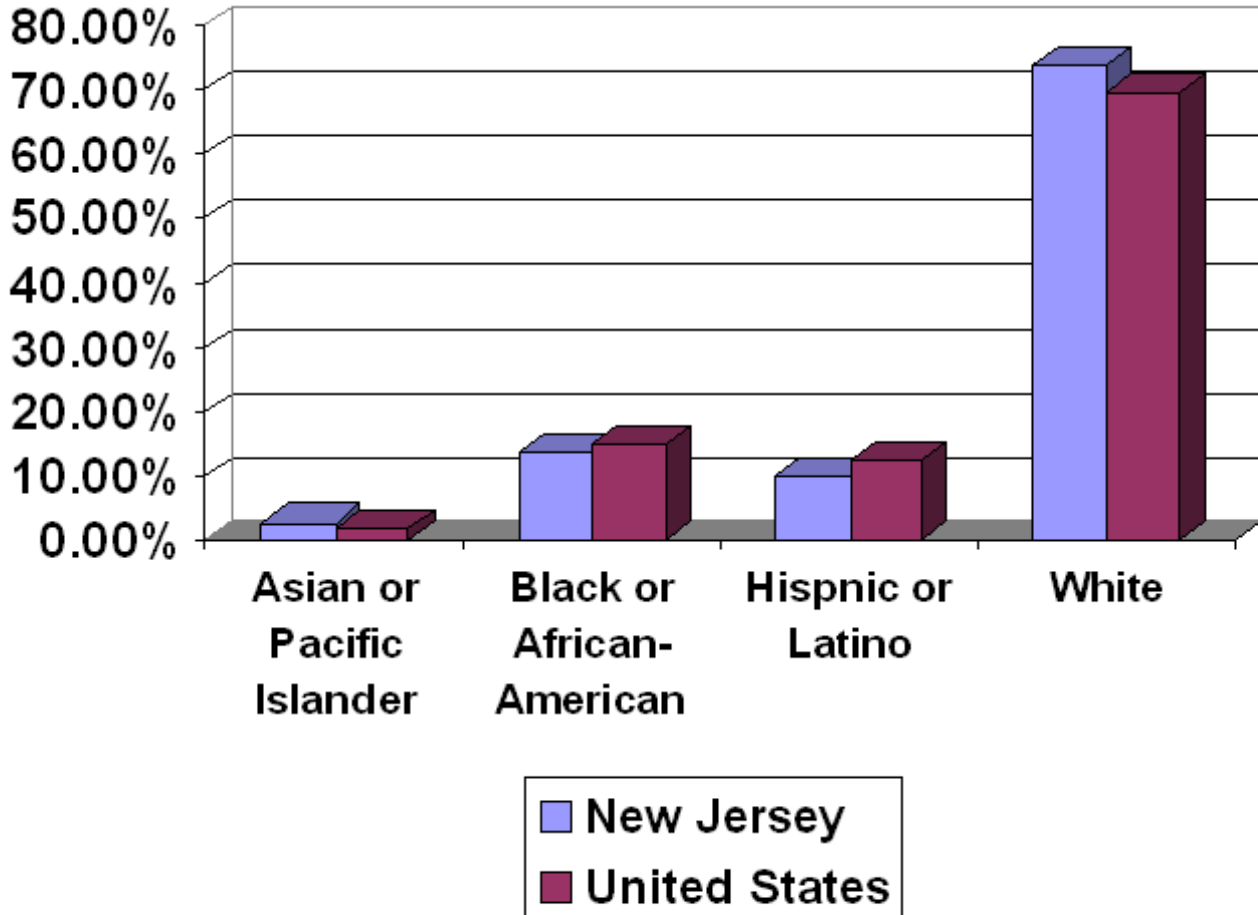
to restrict their access to the general education curriculum. Evidence also suggest that misclassification and inappropriate labels keep African-American students from receiving services that meet their needs and that this contributes to a greater incidence of social and emotional problems in affected students.<sup>45</sup>

## SEGREGATION RATES

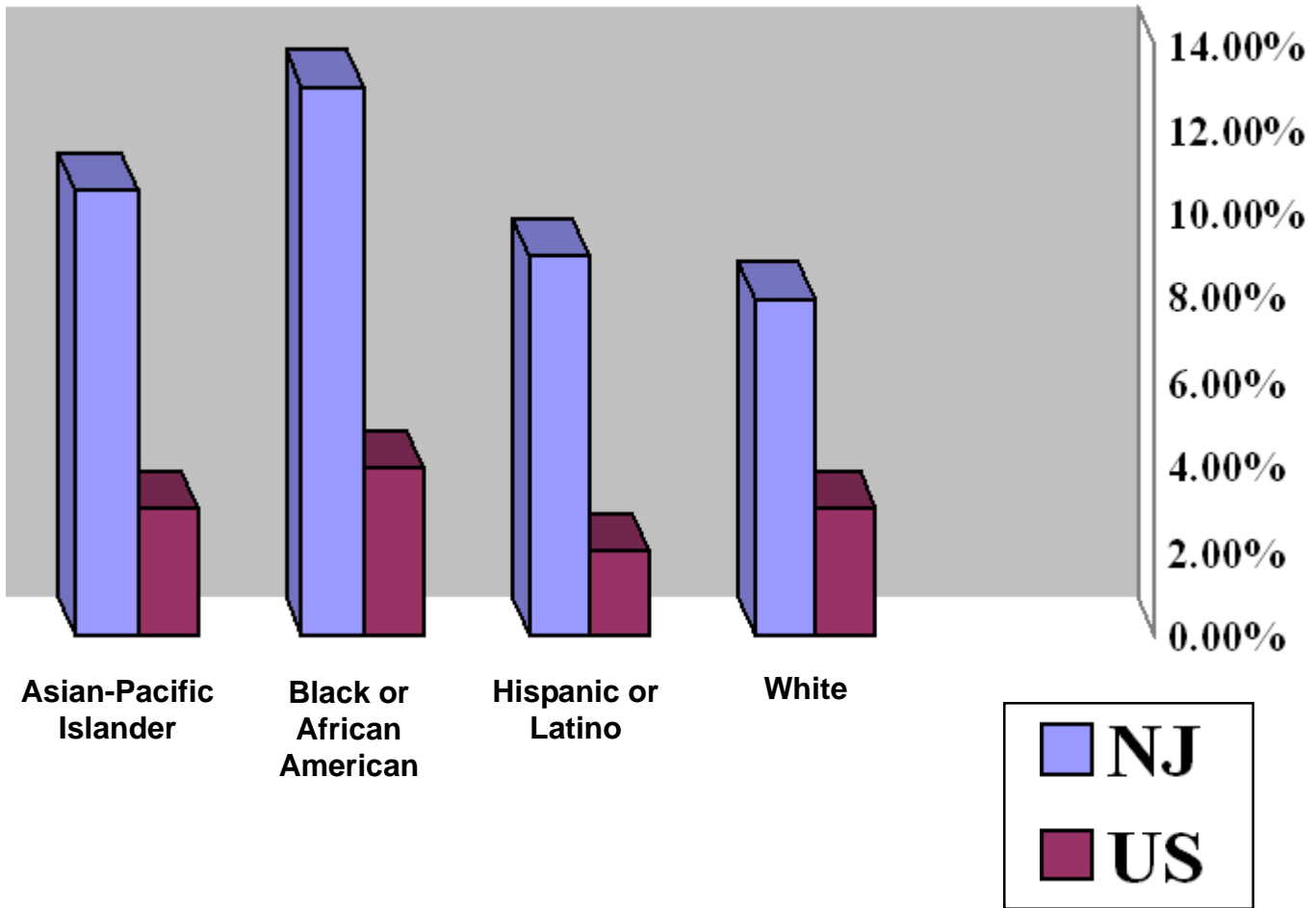
In addition to being over-represented in special education, African-American students are far more likely to be placed in segregated settings than white students.<sup>46</sup> Moreover, as illustrated by Figure 8 showing rates of inclusion, classified students of color are educated outside the general education classroom at far greater rates than classified white students.<sup>47</sup>

Even among all segregated students, there are racial disparities. For example, African-American students in out-of-district placements are more likely to be in public separate facilities, whereas white students are more likely to be in private separate facilities. As Figure 9 (page 20) illustrates, even though white students in New Jersey are also segregated more than the national average, the divergence from the national baseline is smaller for whites than for other ethnic groups.<sup>48</sup>

**FIGURE 8. PERCENT OF CLASSIFIED STUDENTS WHO SPENT MORE THAN 80 PERCENT OF THEIR DAY IN GENERAL EDUCATION CLASSROOMS (1999-2000 SCHOOL YEAR)**



**FIGURE 9. PERCENT OF STUDENTS AGED 6-21 IN SEPARATE SCHOOL FACILITIES (PUBLIC & PRIVATE) BY RACIAL OR ETHNIC DESIGNATION (AS A PERCENTAGE OF TOTAL CLASSIFIED STUDENTS IN THE ETHNIC GROUP)**



**DROP-OUT RATES**

Not only are minorities over-represented with respect to classification and segregation, but the overrepresentation also extends to the dropout rates for students with disabilities. Classified students of color are far more likely to drop out of school than their white counterparts, leaving school at a rate almost double that of white special education students. Specifically, 42% of Black or African-American special education students and 40% of Hispanic or Latino special education students drop out of school as compared to 22% of white special education students.<sup>49</sup>

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*Fifty years after Brown v. Board of Education, these troubling facts highlight complex and chronic social and economic problems and sound a call to action.*

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# BARRIERS TO INCLUSION



The 1994 report cited eight barriers to the inclusion of children with disabilities in general education and offered recommendations for their alleviation.<sup>50</sup> Several of these recommendations were in fact implemented and progress has been made in removing some of these barriers.<sup>51</sup> However, some obstacles cited in 1994 continue to persist and, as more attention has been paid to this issue, new barriers have presented themselves. In 2004, the Task Force identified the following five factors that continue to present significant barriers to inclusion in New Jersey:

## FUNDING AND THE AVAILABILITY OF SEGREGATED PLACEMENTS

In 1996, the Comprehensive Educational Improvement and Financing Act of 1996 (CEIFA)<sup>52</sup> significantly changed the manner in which special education is funded. The implementation of a tier funding system based on the specific needs of the student now provides funding regardless of the placement selected for a particular child. This is a significant improvement from 1994 when a categorical funding formula was in place and did not fund placements of special education students in general education classes with support.<sup>53</sup> However, as noted earlier, this change in the funding scheme has not yet had a substantial effect on inclusion rates in New Jersey. Arguably, this is due (at least in part) to the fact that New Jersey has an abundance of segregated placements which ultimately operate at the expense of in-district services. As noted by the New Jersey Department of Education:

*“when a separate placement is available, it tends to be used to capacity, whether it is a district class, special services school district, educational services commission, regional day school or private school.”*

—[New Jersey Department of Education, *Statistical Report for the 1990-91 and 1991-92 School Years*].

New Jersey currently has 20 receiving public school districts, which were established to serve only students with disabilities.<sup>54</sup> Notably, these county-funded entities have built at least four new separate schools since the 1994 publication of *Separate and Unequal*.<sup>55</sup> In addition to these county facilities, New Jersey operates 10 regional day schools that only serve children with disabilities and 18 regional schools that, until recently, only served children with disabilities.<sup>56</sup>

In addition to these public separate facilities, as of December 2003, there were 171 private separate facilities in New Jersey. The number of these state-approved private special education schools in New Jersey has increased by 25 percent from 1994 to 2004.<sup>57</sup> Indeed, New Jersey is the state with the highest percentage of pupils placed in separate schools, public and private, and has failed to significantly reduce the percentage of students with disabilities attending out-of-district programs over a 10-year period.

Because districts in New Jersey spend between \$25,000 to \$70,000 (plus transportation and other expenses) per student each year to send students to separate facilities,<sup>58</sup> these funds are unavailable to build capacity to appropriately include students with disabilities in district.<sup>59</sup> Thus, sending students to separate facilities (and sending the necessary funds out of district) creates a downward spiral of decreased capacity in districts and ultimately leads to more students being sent out. This trend is exacerbated in some urban areas, where the overall lack of services and infrastructure provide additional incentives for families to seek out-of-district placements in order to remove their children from failing schools.

In sum, although New Jersey now has a placement-neutral funding scheme,<sup>60</sup> significant obstacles to inclusion in New Jersey remain due to the collective effects of the large number of available segregated placements, the “tendency” to place students in segregated settings to capacity and the negative effect these conditions have on districts’ ability to provide the appropriate supports for inclusive settings.

## ■ STRUCTURE OF NEW JERSEY DEPARTMENT OF EDUCATION

Until recently, the administrative structure of the New Jersey Department of Education presented a significant barrier to the successful implementation of monitoring and enforcement of special education laws in the local school districts. County Supervisors who have a major role in the compliance process were “not direct line employees of the New Jersey Office of Special Education Programs (NJOSEP), but rather of the Division of Field Services, and the NJOSEP had little or no control or leverage over these employees.”<sup>61</sup> Changes that were made to the organizational structure of the department and functional roles of the staff were recognized in a follow-up report by NJOSEP in September 2001. County Supervisors have been given additional responsibilities and a redefined role, with NJOSEP assuming dual supervision of these employees. Unfortunately, however, there seems to be a high turnover rate in these positions, which creates vacancies for long periods of time and makes effective and consistent implementation of their revised role difficult to sustain.

## ■ MONITORING FOR LEAST RESTRICTIVE ENVIRONMENT

As noted in the 1994 report, the United States Department of Education, Office of Special Education Programs (USOSEP), concluded (in both their 1989 report and their 1993 review) that the New Jersey Department of Education had failed to implement an appropriate monitoring process for least restrictive environment (LRE).<sup>62</sup> As a result, in April 1999, the state Office of Special Education Programs revamped the monitoring process to include a yearlong self-assessment by every school district, followed by on-site monitoring. Districts have been phased into this process, with the districts that have the highest number of classified students going first and the others phased in over six years. USOSEP has recognized this effort in their 2001 monitoring report update. New Jersey is more than halfway through the process.

This comprehensive look at special education policies and practices, with district ability to identify areas of non-compliance on their own, was generally regarded as a beneficial opportunity to analyze and correct problems. Much effort

has been invested in this process. However, according to the reports of families to Task Force member organizations, there is inconsistency in the manner in which districts have implemented the self-assessment and monitoring process and districts vary in their efforts to include meaningful parental involvement. Additionally, although various enforcement actions for district non-compliance were identified as part of the process, the standards do not specify the criteria for imposing any of the particular enforcement actions. Moreover, it is not known whether any of the enforcement actions have been implemented. In some districts with significantly high rates of segregated placements, for example, there appears to be no consequences for repeated failure to increase inclusion of students with disabilities, despite years of self-improvement plans and/or corrective action.

In 2004, the New Jersey Council on Developmental Disabilities conducted a survey of the districts that have thus far completed the self-assessment and monitoring process. Over 3,000 surveys were sent to districts for distribution to their self-assessment committees. Although only 300 surveys were returned, a review of the preliminary results of the survey data indicates a general satisfaction with the process by administrators and child study team members. Parent members were less satisfied and reported either not knowing or not being sure of various components of the process.

#### **LACK OF ADEQUATE AND ACCURATE INFORMATION FOR FAMILIES**

The authors of the 1994 issue of *Separate and Unequal* concluded that there was a lack of information available to families at the time of eligibility determination regarding the array of options available to their children as well as about the benefits of fully supported inclusive education. Families continue to report this problem.<sup>63</sup> Indeed, parents still routinely advise Task Force member organizations that they receive misinformation from various sources about the availability and benefits of inclusive options in a general education setting. Significantly, families also report a lack of confidence in their school districts to properly provide the supports and services their children may need and often opt for more restrictive settings rather than rely on their district to provide them.<sup>64</sup>

#### **SUPPORT FOR OUT-OF-DISTRICT PLACEMENT**

The recent nationwide trend in special education is to stop the creation of separate schools and focus resources on supporting teachers and students in general education settings. However, in New Jersey even incremental moves towards inclusion face opposition. Indeed, the increasing numbers of private special education schools reflect the presence of ongoing support for building capacity out-of-district. Ultimately, this acts as a significant obstacle to the movement towards inclusion of students with disabilities in New Jersey.<sup>65</sup>

Despite these obstacles to change, the Commissioner of the N.J. Department of Education recently issued a welcome six-month moratorium on the approval of new private separate facilities to examine these and other issues affecting in-district capacity.

# THE 1994 RECOMMENDATIONS 10 YEARS LATER



The 1994 report included numerous recommendations to policy makers for increasing the number of students with disabilities that are included in general education settings. These recommendations called for action by the State's Department of Education, the State Board of Education, the Legislature and others. Much significant work on moving the system forward has taken place and most of the 1994 recommendations have been implemented to some extent. It is our hope that the State's activities under the State Improvement Grant (SIG) and State Improvement Plan (SIP), as well as the efforts of the Council's Education Task Force and other advocates, will continue to move the system forward toward more inclusive environments for all children.

The 1994 recommendations are listed below along with a status update on implementation.

1. The Commissioner of Education must promulgate and widely circulate a policy statement that underscores the Department's commitment to ensuring the availability of fully supported inclusive educational opportunities as a viable option for all children.

*A strong policy statement regarding the Department's clear interpretation of the LRE mandate was developed and circulated several times throughout the past ten years. The Department also developed a strong vision statement for the inclusion of children with disabilities in all aspects of their schools and communities as part of the State Improvement Plan process.*

2. The New Jersey Department of Education must develop a concrete written plan with specific activities and measurable goals and objectives leading to an increase in the percentage of pupils with the full range of disabilities that are educated in general education classes with all necessary supports. Progress should be monitored by an external body appointed by the Developmental Disabilities Council and the Protection and Advocacy System.

*The creation of a State Special Education Steering Committee to guide the development of the State Improvement Plan and Grant begins to approach the vision of this recommendation. The improvement plan addresses only issues that have been identified as deficient, and is not a comprehensive strategic plan for making all of the changes that are necessary. The targets that have been developed as part of this process are not the bold steps necessary to reach the strong vision for children delineated in the introduction of the plan.*

3. The New Jersey Legislature must enact legislation that provides funding for placements in general education classrooms with all necessary supports.

*The funding formula enacted in 1996 now makes funding such placements possible.*

4. The New Jersey Legislature must modify statute N.J.S.A. 18A: 46-14 to clarify, pursuant to federal law, that a general education class with all necessary supports is one of the placement options to be considered for all children who are classified.

*The funding formula enacted in 1996, clarifies the existence of this placement option.*

5. The New Jersey State Board of Education must modify State Code N.J.A.C. 6:28 to clarify that placement in a regular class with all necessary supports must be considered prior to placements in alternative settings.

*This was adopted in the State code in July 1998. There has been uneven implementation throughout the state.*

6. The New Jersey State Board of Education must adopt regulations proposed on April 8, 1993, which expand placement options for preschool students with disabilities to include placement in natural settings such as typical day care, preschool programs and Head Start.

*These regulations were adopted in July 1998 and have resulted in increases in the numbers of children now educated in these settings. The Department of Education is also an active partner in the Map to Inclusive Childcare Team, whose purpose is to expand opportunities for inclusion of preschoolers with disabilities in typical childcare settings.*

7. The New Jersey Department of Education must direct State and federal funds to provide technical assistance to local education agencies to enable districts to implement state-of-the-art, fully supported inclusive models of education for children with disabilities.

*In 2001 the New Jersey Department of Education's Office of Special Education Programs was awarded a State Improvement Grant of \$1.2 million a year for five years by the U.S. Department of Education. This grant was developed in collaboration with a State Steering Committee of special education parents, advocates and professionals and contains elements of a State Improvement Plan that was developed in response to deficiencies identified through federal monitoring in 1994, 1996 and 1998. The grant has 13 major components; each designed to address key areas in the improvement plan. One of the themes of the grant is to create positive and effective school environments that promote participation of students with disabilities in the general education curriculum, in extra-curricular activities and their school community, and in successful transition to adult life and community activi-*

*ties. Increasing the number of general and special education teachers prepared to educate students with disabilities in inclusive programs is also a theme.*

*The Office of Special Education Programs also offered grant funds to local districts with high rates of segregated placements, both in and out of district, to build capacity for the inclusion of students with disabilities in general education programs, as well as to enhance opportunities for inclusive placements.*

*The Office of Special Education Programs collaborated with the NJ Council on Developmental Disabilities in conducting Inclusion Institutes for three years, one of which focused on administrative leadership.*

*These initiatives are voluntary, however, and there is no requirement to demonstrate outcomes when districts do participate.*

8. The New Jersey Department of Education must issue and enforce a moratorium on the purchase or construction of segregated public school buildings.

*This recommendation has not been implemented. In fact, since 1994, there has been expansion in virtually every totally segregated public school. Additionally, 35 private schools have been approved and opened during this time period, a 25% increase. The Department has recognized the need to re-tool the functions of the public segregated schools and has issued an RFP to redirect the services provided at these facilities back into the district to support teachers and students in inclusive settings.*

*Moreover, in July 2004, the Commissioner of the N.J. Department of Education issued a six-month moratorium on the approval of new private segregated schools.*

9. The New Jersey Department of Education must compile, assess, and document available data on current inclusive practices and distribute this information to all local school districts.

*The State Improvement Grant contains activities for two newsletters on the subjects of inclusion and transition. There have been long delays in the publication and distribution of these newsletters. In addition, additional practical easy-to-use information must be compiled, assessed, and disseminated to educators, administrators, and families.*

10. The New Jersey Department of Education must provide training programs for all child study teams, administrators, teachers, and parents that clarify least restrictive environment and the presumption of general education placement with supports for all students with disabilities.

*As noted in the response to number 7, the Department has several initiatives aimed at improvements in parent and staff development. Virtually all of the trainings offered by the Department's Learning Resource Centers focus on*

*providing services to students in general education settings. In addition, the Department has provided trainings to all Abbott districts, which must offer universal preschool to all 3 and 4 year olds, on the obligation to include preschoolers with disabilities in these programs and strategies for their effective inclusion. The State Improvement Grant contains activities for additional parent trainings to be conducted by the Statewide Parent Advocacy Network. Issues remain about the voluntary nature of these initiatives and their lack of meaningful impact on practice at the local level and on placement data.*

11. The New Jersey Department of Education must begin to compile, assess, and document available data on the number of classified pupils placed in general education classes with all necessary supports. These data should become part of the Report to Congress and the annual statistical review provided by the New Jersey Department of Education and distributed to all local school districts.

*The Department has made significant gains in the collection and availability of data. Important data can be viewed on their website and crucial information is now being collected. A long overdue student database is expected to be completed within the next year.*

12. The New Jersey Department of Education must initiate a revision of certification requirements for all school and related services personnel to include course work and practica in educating students with disabilities in general education settings.

*New certification requirements for teachers have been adopted by the State Board of Education requiring that “teachers know and understand...how to identify and teach to the developmental abilities of students, which may include learning differences [and] special physical and emotional challenges.” Teachers are also expected to value and be committed to the educability of all children and adolescents and to an appreciation of multiple ways of teaching. The rules do not include specific course requirements for teacher certification or professional development that prepare teachers to educate students in general education settings.*

13. The New Jersey Department of Education, in conjunction with colleges and universities, must revise undergraduate and graduate curricula to reflect the revised certification requirements.

*The Department has indicated that it will convene a workgroup to determine implementation strategies for the newly adopted regulations governing certification requirements for teachers. The five university based Technical Assistance Centers planned for in the State Improvement Grant, to be housed in institutions of higher education, and the proposed Faculty Academy for Educational Change, will be instrumental in providing the guidance and technical assistance necessary to make the appropriate curriculum changes called for in the regulations.*

14. The New Jersey Department of Education must establish a continuing education requirement for all certified school personnel that includes training in the provision of educational services to students with disabilities in general education settings.

*While continuing education hours are now a requirement for all school personnel, there are no specific requirements for all teachers to receive this instruction in effective ways to include and teach students with disabilities in general education settings.*

15. The New Jersey Department of Education must consider the appropriateness of assessment and evaluation methods currently used to identify, determine eligibility, and place children of color in special education services. The Department must make all necessary changes to these instruments and methods to ensure non-biased testing and assessment. In addition, the department must examine this issue in the monitoring process.

*The issue of overrepresentation of minority students in special education persists. The NJ Department of Education has been involved with a long-standing initiative with the US Office on Civil Rights and New York University Equity Assistance Center and entered into a Memorandum of Understanding in March 1999. Qualitative and quantitative data protocols, recognized by both the Office for Civil Rights and the Equity Assistance Center as a model program were created and memorialized in NJDOE procedures. As a result, the Office of Civil Rights will not be conducting compliance reviews in New Jersey during the current school year. To date, there has been insufficient information to determine the effectiveness or outcomes of this initiative. The monitoring process has flagged districts with high classification rates for African-American males, which only reflects a portion of this extensive problem, particularly given the large threshold of African-American students who must be present in a particular district in order to trigger participation in the initiative.*

16. The New Jersey Legislature must enact major education funding reform legislation that allows special education aid to be generated and used by districts to educate pupils in the full range of environments and that provides level funding, regardless of the placement selected for a particular child. This system must not rely on the labeling of children determined to be eligible for special education and must not provide higher levels of funding for particular placements.

*The revision of the funding formula in 1996, made significant changes to the State funding formula and created equitable funding, based on the service and support needed and not disability label or placement. Unfortunately, the additional funds contributed by counties for the operation of separate schools by Special Services School Districts, Educational Services Commissions and Jointure Commissions is available only for segregated special education students. This creates a disruption of the placement-neutral funding formula mandated by federal law and acts as a disincentive to keep children in district.*

17. The New Jersey Department of Education must establish effective and thorough monitoring procedures that ensure consistent compliance with the least restrictive environment provisions of PL 94-142 and its amendments, with strict penalties for noncompliance, including but not limited to the withholding of federal funds.

*The self-assessment and monitoring process developed in 1999 made a significant improvement in the ability of districts to identify specific deficiencies and areas of non-compliance. However, there continue to be no penalties or consequences for non-compliance, and the ongoing monitoring of the districts' improvement planning and implementation is inconsistent and minimal. The required self-assessment steering committees have been inconsistently implemented. Moreover, districts are only required to appoint one parent of a special education student to the steering committee, and families report that many districts select the parent for the role rather than seek input from families who may have new information for the district. Additionally, a different, less rigorous process and set of standards has been implemented for private special education schools.*

18. The State of New Jersey, including the Governor, Legislature, and Department of Education, must require school districts to provide education leading to clearly defined outcomes to all students, including students with disabilities. Positive outcomes should be evaluated in the areas of physical health, responsibility and independence, contribution to society and citizenship, academic and functional literacy, personal and social adjustment, and satisfaction with the educational experience.

*The Core Curriculum Content Standards adopted in 1996 apply to students with disabilities, and materials have been developed to assist districts in their efforts to educate students with disabilities to achieve the standards. However, these standards have been designed to only measure reading, math and science, which often are not the only critical educational components of the Individualized Education Plans for students with significant disabilities.*

# RECOMMENDATIONS FOR THE FUTURE



The New Jersey Council on Developmental Disabilities commends the State Legislature, the State Board of Education and the Department of Education, Office of Special Education Programs for taking the steps indicated above to improve the inclusion of students with disabilities in all aspects of their schools and communities. Notwithstanding this significant progress, the data contained in the body of this report clearly demonstrates that there is much more that needs to occur before New Jersey achieves the full inclusion of students with disabilities in programs and services that truly meet their individual needs.

The steps that have been taken can be considered a start on the long road of realizing this goal. We must build upon the themes established in the State Improvement Plan that is being developed by the State Special Education Steering Committee in collaboration with the Office of Special Education Programs.

The system cannot simply respond to deficiencies found by monitoring bodies and build changes around them, expecting volunteer initiatives to be sufficient to build capacity. Strategic planning with outcomes for which responsible parties are fully accountable must take place. Ongoing and independent monitoring of this systemic change is essential.

The Council on Developmental Disabilities looks forward to working with all the relevant stakeholders in making this goal a reality. We recommend the following specific steps toward that end:

## VISION

The Department of Education must make bold moves - in words and actions - to deliver a consistent message regarding their commitment to providing each student with a disability an education in the least restrictive environment. Districts must be told, not asked, to increase capacity in general education classrooms to include children with disabilities.

The steering committee convened by the Office of Special Education Programs must play an ongoing advisory role in the Department of Education's development, implementation and ongoing monitoring of the State Improvement Plan.

The vision statement developed with the Steering Committee should be widely circulated and made highly visible in all appropriate Department communications.

The process for the approval of new private separate schools for students with disabilities must be revamped to make approval less automatic and ensure that the

need is justified by specific data.

No State facilities construction dollars should be used for the development of separate facilities that segregate students with disabilities.

Consequences and sanctions must be imposed on school districts that utilize Department of Education grant dollars, but do not demonstrate outcomes indicating significant improvement.

## **PROFESSIONAL DEVELOPMENT**

Mandatory training for all school personnel on including and supporting students with disabilities must extend beyond awareness level. It must foster an environment of teaching all learners, including information on successful strategies and techniques, and on recognizing and addressing learning disabilities.

The Office of Special Education Programs must immediately implement training and technical assistance activities in the State Improvement Grant.

The Inclusion and Transition newsletters funded through the SIG as well as other practical material on inclusion must be issued in a consistent fashion and disseminated to every school and made widely available through a variety of mechanisms.

## **MONITORING AND ACCOUNTABILITY**

As part of the monitoring process, the Department of Education must develop a specific enforcement plan that specifies enforcement actions and specifies under what particular circumstances each action will be used. This plan must describe in detail the “progressive discipline” that will be implemented for noncompliant districts, and the criteria for imposing each enforcement action. Parent and community notification of noncompliance and the potential enforcement actions that will be imposed if appropriate corrective action is not taken in a timely manner should be part of the plan.

Consistent, timely monitoring of school district improvement plans by the County Offices for Special Education must take place with sanctions and consequences for non-compliance fully enforced.

Private and public separate schools must be accountable for the same standards and subjected to the same monitoring requirements as districts.

County monitoring teams should include parents of students with disabilities.

On-site classroom monitoring of out-of-district facilities must take place.

Districts with significant rates of out-of-district placements must be closely scrutinized, including reviewing the IEPs of students placed out of district, visiting the out-of-district placement to verify student characteristics justifying the segregated

placement, and determining through interviews and other mechanisms whether every IEP meeting starts with the presumption that the student will be returned to their home district with needed supports.

## **HIGHER EDUCATION**

The teacher education reform initiative to assist universities to restructure their pre-service programs must require restructuring of both special and general education curricula and should begin immediately.

The Department must immediately convene a work group to examine curriculum to ensure compliance with the newly adopted teacher certification regulations. Membership must be diverse and representative of all stakeholders.

The process to award grants to five universities to implement the Technical Assistance Centers established in the SIG must begin immediately. It is critical that these centers are located throughout the State and are representative of the cultural and geographic diversity for the area served.

## **FUNDING**

The State funding formula must be revisited by the Legislature to ensure that county fiscal contribution does not violate the placement-neutral funding requirement in the federal law.

The extraordinary aid legislation must be revisited to ensure that districts are authorized and encouraged to utilize this funding source to include children with high cost needs within the district and in general education classes.

## **DATA COLLECTION AND OVERREPRESENTATION**

A high-level task force must be convened by the Governor, and facilitated by the State Office of the Child Advocate, to examine this issue. The Task Force should make recommendations for change and monitor the progress of improving New Jersey's dismal record of disparity in services and supports for children of color, children with limited English proficiency, and children from low-income households.

Reports tracking how many students have moved into less restrictive environments must be followed by rigorous monitoring and analysis, including intra-district analyses of how particular schools are doing.

The Department must make public the results of the project with the Office for Civil Rights and the NYU Equity Assistance Center. Districts that do not demonstrate successful outcomes must be sanctioned.

The Department must insure the proper implementation of the Intervention and Referral Service Team process in each district. Data must be collected and used to determine outcomes of the process and to determine whether providing services while deferring referral for special education classification has successful outcomes.

The Department must hold school districts accountable when unjustifiable disproportionality persists. Closer examination through the monitoring system must be implemented. The process of identifying unjustifiable disproportionality, developing and implementing corrective action plans, and determining the impact of those plans, must be made more public and inclusive. Families from diverse constituencies must be directly involved in all aspects of addressing this problem.

## **SYSTEM CHANGE**

The State Board of Education must examine the disconnections that exist in the organization of the Department of Education. County Superintendents responsible for district improvement plans, along with the Departments of Human Services and Corrections and Offices of Education that are responsible for children in State operated facilities, must be accountable to the Office of Special Education Programs in areas that directly affect the implementation of the State Education Code.

All school construction dollars, including Abbott facilities funding, must be tied to a mandatory analysis of out-of-district students and their needs.

The Department should offer fiscal incentives to include preschoolers with disabilities in typical settings with non-disabled peers in ways that maintain “natural proportions” (i.e., where preschoolers with disabilities reflect 10-15% of the preschoolers in the inclusive pre-school program). The Department should also require districts that do not operate their own universal preschool to develop partnerships with childcare centers and typical preschool programs.

The Department of Education must initiate, and the State Board must approve, code changes that would require time for teacher preparation, planning and consultation to be built into the school day.

The State Board must require that at least 20 hours of the 100 continuing education hours required to maintain certification for ALL teachers address the education of students with disabilities in general education settings.

# NOTES

1. The Task Force is made up of advocates concerned about the education of children with disabilities in New Jersey. Agencies represented on the Task Force include the Statewide Parent Advocacy Network, the New Jersey Coalition for Inclusive Education, Inc., the Education Law Center, New Jersey Protection & Advocacy, Inc., the Elizabeth Boggs Center—University Center of Excellence, the New Jersey Council on Developmental Disabilities; The Arc of New Jersey and several educational professionals, parents of children with disabilities and other advocates for children with disabilities.

2. This landmark legislation includes the Americans with Disabilities Act, the Rehabilitation Act, and the Developmental Disabilities Assistance and Bill of Rights Act, as well as the Individuals with Disabilities Education Act (IDEA), which is the focus of this discussion.

3. Statistic from Paul Sherlock Center on Developmental Disabilities, Providence, RI.

4. Browning, P., Dunn, C., Rabren, K., & Whetstone, M. (1995). Post-school outcomes for students with disabilities: A U. S. synopsis. *Issues in Special Education and Rehabilitation*, 10, 31-37; Wagner, M. (1995). Outcomes for Youths with Serious Emotional Disturbance in Secondary School and Early Adulthood, Table 5, Postschool Outcomes for Youths with SED, Youths with Any Disability, and Youths in the General Population [Electronic version]. *Critical Issues for Children and Youths*, 5, 90-112. From *The Future of Children*, a publication of the David and Lucile Packard Foundation. Retrieved from <http://www.futureofchildren.org>

5. *Brown v. Board of Education*, 347 U.S. 483, 495 (1954).

6. *Pennsylvania Association for Retarded Children v. Pennsylvania*, 334 F. Supp. 1257 (E.D. Pa. 1971); *Mills v. Board of Education*, 348 F. Supp. 866 (D.D.C. 1972).

7. 34 C.F.R. 300.550; 34 C.F.R. 352; See also: *Oberti v. Board of Education of the Borough of Clementon School District*, 801 F. Supp. 1392 (D.N.J. 1992), *aff'd*, 995 F.2d 1204, 1215-1218 (3d Cir. 1993).

8. *Oberti v. Board of Education of the Borough of Clementon School District*, *supra*.

9. Under *Oberti's* two step test, the school district must first determine “whether education in the regular classroom with the use of supplementary aids and services, can be achieved satisfactorily.” Second, a district is only justified in removing a child to a segregated setting if it has exhausted the range of possible supported general/special education setting combinations within the neighborhood school building. *Ibid*.

10. See 20 U.S.C. § 1400(c)(5)(A); 34 C.F.R. §§ 300. 532(b), 552(e). These requirements were originally added to IDEA as part of the 1990 reauthorization of the Act.

11. The district court ordered that “Spike” Girty, a 14-year-old with significant disabilities, reading on a pre-readiness level, receive his special education program in general education classrooms in his neighborhood middle school rather than in the life skills classroom sought by the school district. The district had argued that Spike be pulled out because, even with the provision of an aide and accommodations, the sixth grade curriculum still could not be modified down to his level. The court rejected this argument observing that “the relevant focus is whether Spike can progress on his IEP goals in a regular education classroom with supplementary aides and services, not whether he can progress at a level near to that of his non-disabled peers.” The school district was faulted for not providing Spike with systematic instruction, for leaving all responsibility for his educational program to his aide, and for failing to provide supports to his general education teachers or to train them in modification techniques. *Girty v. School District of Valley Grove*, 163 F. Supp., 527, 536 (W.D. Penn 2001), *aff’d*, No. 01-3934, *slip op.* (*per curiam*) (3d Cir. 2002).

12. For example, in *Chester Township Board of Education v. J.R. and J.R. on behalf of E.R.*, Office of Administrative Law Docket No. EDS 11 250.99 (Aug. 11, 2000), an administrative law judge (ALJ) ordered that E.R., a 13-year-old girl with Down syndrome and significant behavior challenges remain in her home school with all necessary supports and accommodations, rejecting the out-of-district special education school sought by the district. While acknowledging that the school district had the right intent and had “spent a great deal of time, effort, and personnel in its genuine efforts”, the ALJ found that the modifications that had been provided as part of E.R.’s in-district program were unsystematic and either “inadequate or inappropriate” and that the behavioral support plan created in consultation with the district’s behavior expert, “[e]ll short of what was reasonable and necessary under the circumstances.” The ALJ rejected testimony from district staff that lessons could not be modified down to ER.’s level, citing testimony from E.R.’s experts that they had successfully modified curricula for students with E.R.’s characteristics in public school classrooms elsewhere. The ALJ faulted the district for failing to provide the teacher with “much needed technical assistance and training.”

13. For a synthesis of the hundreds of research studies completed since 1975, see *Inclusive Schooling Practices: Pedagogical and Research Foundations* by Gail McGregor and R. Timm Vogelsberg (1998). Boston: Paul H. Brookes Publishing.

14. Staub, D. (1996) *On Inclusion and the Other Kids: here’s what research shows so far about inclusion’s effect on non-disabled students*. National Institute for Urban School Improvement: Boston.

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18. Hunt, P.; Goetz, L. (1997) Research on inclusive educational programs, practices, and outcomes for students with severe disabilities [Electronic version]. *Journal of Special Education*, 31 (1), p3-31.
19. Fishbaugh, M. S., & Gum, P. (1994). Inclusive education in Billings, Montana: A prototype for rural schools. ERIC Reproduction Service No. ED 369 636; available from ERIC database: <http://www.eric.ed.gov>
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23. Fishbaugh, M. S., & Gum, P. (1994). Inclusive education in Billings, Montana: A prototype for rural schools. (ERIC Reproduction Service No. ED 369 636); Hollowood, T. M., Salisbury, C. L., Rainforth, B., & Palombaro, M. M. (1995). Use of instructional time in classrooms serving students with and without severe disabilities. *Exceptional Children*, 61(3), 242-252.
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29. U.S. Department of Education, Office of Special Education Programs, Data Analysis System, Table 5.2, Number, Percentage, and Difference from the National Baseline of Children Ages 6-21 Served in Different Educational Environments Under IDEA, Part B During the 2002-2003 School Year. It should be noted that, according to the foregoing data table published by the US Department of Education, 9.5% of New Jersey 's classified students are in public or private separate facilities. However, according to the New Jersey Department of Education, this figure was based on discrepancies in reporting that have since been corrected, as evidenced by State of New Jersey Table 3, Part B, Individuals with Disabilities Education Act Implementation of FAPE Requirements, 2003, dated March 18, 2004, which shows 8.8% of New Jersey's classified students in public or private separate facilities.

30. U.S. Department of Education, Office of Special Education Programs, Data Analysis System, Table 5.2, Number, Percentage, and Difference from the National Baseline of Children Ages 6-21 Served in Different Educational Environments Under IDEA, Part B During the 2002-2003 School Year.

31. State of New Jersey Table 3, Part B, Individuals with Disabilities Education Act Implementation of FAPE Requirements, 2003, dated March 18, 2004.

32. U.S. Department of Education, Office of Special Education Programs, Data Analysis System, Table 5.2, Number, Percentage, and Difference from the National Baseline of Children Ages 6-21 Served in Different Educational Environments Under IDEA, Part B

33. The percentage of special education students in New Jersey spending less than 20% of their day outside the general classroom is 48% as compared to 41% nationally. The percentage of special education students in New Jersey spending between 20% and 60% of their time outside the general classroom is 32% as compared to 30% nationally. The percentage of special education students in New Jersey spending more than 60% of their time outside the general education classroom is 18% as compared to 19% nationally. U.S. Department of Education, 2003, *24th Report to Congress on the Implementation of the Individuals with Disabilities Education Act*, Appendix A, Table ABI, Percent of Children Ages 3-5 Served in Different Educational Environments Under IDEA Part B During the 1999-2000 School Year.

34. These percentages are calculated by adding the percentage of students spending 20% to 60% of the day outside the classroom, the percentage of students spending more than 60% of the day outside the classroom, and the percentage of students receiving services in a segregated placement. *Ibid.*

35. Between 1991 and 2002, the percentage of New Jersey preschoolers with disabilities educated in inclusive settings increased from 0.4% to 21.7%, a significant improvement. It should also be noted that the data collection method used to establish these figures counts every preschool child who spends any amount of time in a segregated setting as being in a non-inclusive placement. Accordingly, some of the children reported generally as being in segregated preschool settings may also be benefiting from inclusive settings during some or much of their schooling.

36. New Jersey's inclusion rate of preschoolers is 21.7% as compared to national rate of 35.39%. New Jersey Department of Education, 2003, Number of Public Students Ages 3-5 by Placement and Eligibility Category December 2001 NJT03DC; U.S. Department of Education, 2003, *24th Report to Congress on the Implementation of the Individuals with Disabilities Education Act*, Appendix A, Table ABI, Percent of Children Ages 3-5 Served in Different Educational Environments Under IDEA Part B During the 1999-2000 School Year.

37. New Jersey's rate of out-of-district placement for preschoolers is 11.7%, as compared to the national rate of 3%. *Ibid.*

38. U.S. Department of Education, 2003, *24th Report to Congress on the Implementation of the Individuals with Disabilities Education Act*.

39. In the 1998-99 school year, 7.5% of students with orthopedic impairments in New Jersey were in separate public and private school facilities as compared to the national baseline of 2.3%. In 2002-03, these figures were 5.3% in New Jersey and 1.8% nationally. National Center for Special Education Accountability Monitoring, Part B Percent Change Educational Environments Ages 6-21 Tables 5.8 (2002-03)

40. U.S. Department of Education, 2003, *24th Report to Congress on the Implementation of the Individuals with Disabilities Education Act*. As shown in the bar graph depicting the segregation of students with mental retardation, during the 1998-99 school year, 34.1% of New Jersey students classified as having mental retardation were placed in separate public and private facilities as compared to a national average of only 5.0%. In the 2002-03 school year, 21.6% of New Jersey students with mental retardation were placed in separate public and private facilities as compared to a national average of only 4.9%. National Center for Special Education Accountability Monitoring, Part B Percent Change Educational Environments Ages 6-21 Tables 5.8 (2002-03).

41. For example, during the 1999-2000 school year, only 3.3% of New Jersey students aged 6-21 and classified as having mental retardation spent 80% or more of their day in a general education classroom, as compared to a national average of 14.1% for the same population. U.S. Department of Education, 2003, *24th Report to Congress on the Implementation of the Individuals with Disabilities Education Act*, Table AB2.

42. As shown in the bar graph depicting the segregation of students by disability, in the 2002-03 school year, 46.8% of New Jersey students classified as having autism were placed in separate public and private facilities as compared to a national average of only 10.5%.

43. As also shown in the bar graph depicting the segregation of students by disability, during the 1998-99 school year, 36.2% of New Jersey students classified as having emotional disturbance were placed in separate public and private facilities as compared to a national average of only 13.3%; in the 2002-03 school year, 31.1% of New Jersey students classified as having emotional disturbance were placed in separate public and private facilities as compared to a national average of only 12.4%; during the 1998-99 school year, 2.8% of New Jersey students classified as having learning disabilities were placed in separate public and private facilities as compared to a national average of only 0.6%; in the 2002-03 school year, 1.7% of New Jersey LD students were placed in separate public and private facilities as compared to an unchanged national average of only 0.6%; National Center for Special Education Accountability Monitoring, Part B Percent Change Educational Environments Ages 6-21 Tables 5.8 (2002-03). New Jersey only has 11 children with deaf-blindness, which is not depicted on the graph. However, there was significant movement toward inclusion in this category. Specifically, in the 1990-91 school year, 3.1% of pupils with deaf-blindness were in regular classes and/or resource rooms, compared with 16.9% nationally. In 2000-2001, over 11% of pupils with deaf-blindness spent 80% or more of their school day in a general education classroom. Although this is a welcome improvement, this rate is still significantly behind the national average of 18.5% of students with deaf-blindness who were included in general education for more than 80% of the school day. Moreover, New Jersey has a much higher percentage of pupils with deaf-blindness in out-of-district public, private or residential facilities than the national average: 61% compared to just under 30%. U.S. Department of Education, 2003, *24th Report to Congress on the Implementation of the Individuals with Disabilities Education Act*.

44. With a classification rate of about 1.3 times that of white students since 1993, New Jersey classifies 13 African-American as needing special education services for every 10 white students similarly classified. Significantly, this excludes students in State agencies such as the Departments of Human Services, Corrections, Juvenile Justice, etc., where African-American students are even more disproportionately represented. For example, as of December 1, 2001, there were nearly five times more African-American special education students in New Jersey correctional facilities than white special education students. New Jersey Department of Education, Office of Special Education Services, *Number of Public and Nonpublic students ages 6-21 with Disabilities by Racial-Ethnic-Gender Group and Placement for State Agencies*. Accordingly, the foregoing data actually understates the extent that African-American youth are classified as eligible for special education.

45. Council for Exceptional Children, 2002, *Addressing Over-Representation of African-American Students in Special Education, the Preferential Intervention Process - An Administrators Guide*.

46. U.S. Department of Education, 2003, *24th Report to Congress on the Implementation of the Individuals with Disabilities Education Act*; New Jersey State Depart-

ment of Education, Office of Special Education Programs, *Percentage of Public Students with Disabilities Ages 6-21 by Eligibility Category within each Racial-Ethnic-Gender Group in District and Charter Schools as of December 2001*.

47. The bar graph illustrates the following statistics for students ages 6-21 during the 1999-2000 school year: 2.65% of Asian or Pacific Islander special education students in New Jersey spend more than 80% of their school day in general education classes as compared to a national rate of 1.76%; this figure is 13.61% of Black or African-American special education students in New Jersey as compared to a national rate of 14.92%; 9.82% of Hispanic or Latino special education students in New Jersey as compared to a national rate of 12.48%; and 73.82% of White special education students in New Jersey as compared to a national average of 69.59%. U.S. Department of Education, 2003, *24th Report to Congress on the Implementation of the Individuals with Disabilities Education Act*, Table AB10.

48. As shown in the bar graph depicting the segregation of students by racial/ethnic designation in the 2002-03 school year, 10.6% of New Jersey Asian or Pacific Islander special education students were placed in separate public and private facilities as compared to a national average of only 3% for that ethnic group; 13.0% of New Jersey black or African-American special education students were placed in separate public and private facilities as compared to a national average of only 4%; 9.0% of New Jersey Hispanic or Latino special education students were in separate public and private facilities as compared to a national average of only 2.0; and 8.0% of New Jersey white special education students were in separate public and private facilities as compared to a national average of only 3.0%. U.S. Department of Education, 2003, *24th Report to Congress on the Implementation of the Individuals with Disabilities Education Act*.

49. U.S. Department of Education, Office of Special Education Programs, 2003, Data Analysis System, Table 1.4b, Number, Percentage, and Difference from National Baseline of Students Ages 14-21+ Dropping out Based on Number of Students Leaving School by Race/Ethnicity During the 2001-2002 School Year.

50. These included: (1) funding; (2) state statute; (3) special education code; (4) NJ Department of Education; (5) failure to monitor for LRE; (6) State Board of Education; (7) personnel preparation; and (8) family education. *Separate and Unequal: The Education of Children with Disabilities in New Jersey, The 1994 Report of the New Jersey Developmental Disabilities Council*.

51. For further discussion of the implementation of the 1994 recommendations, see *The 1994 Recommendations – Ten Years Later*, pp.24-29 of this report.

52. *N.J.S.A. 18A:7F-1 to -36*

53. *Separate and Unequal: The Education of Children with Disabilities in New Jersey, The 1994 Report of the New Jersey Developmental Disabilities Council, p. 6*

54. These consist of 10 county-funded Educational Services Commissions; eight Special Services School Districts; and two Jointure Commissions. The 10 educational services commissions (ESC) are the Somerset County ESC, Camden County ESC,

Monmouth-Ocean County ESC, Morris County ESC, Hunterdon County ESC, Union County ESC, Middlesex County ESC, Sussex County ESC, Passaic County ESC, Essex County ESC. The eight County Special Services School Districts (CSSSD) are the Cape May CSSSD, Gloucester CSSSD, Salem CSSSD, Burlington CSSSD, Bergen CSSSD, Atlantic CSSSD, Warren CSSSD, and the Mercer CSSSD. The two Jointure Commissions (JC) are the South Bergen JC and the Morris-Union JC.

55. These include the Raritan Valley Academy, opened in June 1996 and Bright Beginnings, opened in 2002 by the Middlesex County Special Services Commission. Other new schools have been opened by the Cape May County Special Services School District (CSSSD) and the Gloucester CSSSD since 2000. Although State law permits county entities to send individuals with special education expertise into public school districts to support students with disabilities in district, most provide the bulk of their services within the State's 30 segregated special education schools, established and maintained with public funds. However, one of these county entities, the Bergen CSSSD, has embarked on an ambitious program to send consultants *into* public schools, increasing their capacity to provide services within districts to support the inclusion of children in general education settings.

56. According to the NJ Department of Education, Office of Special Education Programs, these regional schools, formerly called day training centers, also enroll students in the building who do not have Individual Education Plans, but who are in crisis and need a transitional placement.

57. Specifically, 37 private separate schools were opened between 1994 and 2004. However, during this time 18 such schools have since closed, for a net gain of 19 new private separate special education schools built since the over-segregation of children with disabilities was brought to the State's attention in 1994 in the *Separate and Unequal* report. Sources: Bureau of Program Review and Approval, New Jersey Department of Education, November 2003; New Jersey Department Of Education, Office of Special Education Programs, Private Schools, Listing of Schools in Operation by Year as of 12/22/2003.

58. These figures, obtained from the New Jersey Department of Education, Office of Fiscal Policy and Planning, are probably low because they were tentative rates listed in the *Private Schools for the Disabled, Summary of Tentative Tuition Rates for 2001-2002*. New Jersey has the highest transportation rates in the northeast. During the 1997-98 school year, 31.2% of the \$617, 762, 599 which New Jersey spent in that year on transportation was used for students with disabilities (\$192,919,188) a group which made up 11% of students using transportation. *School Transportation News*, Buyer's Guide, October 1999, available at [www.stnonline.com](http://www.stnonline.com), referencing figures obtained from the Office of Pupil Transportation, New Jersey Department of Education. Moreover, districts are struggling. For example, the Gateway Regional School District, located in the southern part of the state, saw its special education costs for out-of-district placements quadruple from \$200,000 to \$950,000. Frustratingly, the costs are rising even when a district strives to maintain level the numbers of children sent out. One such district, the Woodbury Public Schools, also located in Southern New Jersey, had its out-of-district special education costs rise from \$600,000 to \$1.3 million despite the fact that the number of students held steady between 55 and 60 students.

59. These up front costs can be significant. For example, the Woodbury Public Schools received a \$75,000 grant to set up an integrated preschool. It actually cost the district approximately \$150,000. This is in keeping with research that suggests that start-up costs may initially increase the cost of inclusive services. However, research also suggests that the costs over time decrease and are likely to be less than segregated forms of service delivery, especially where there are savings in transportation. McGregor, G. and Voglesberg, R., editors, 1998. *Inclusive Schooling Practices: Pedagogical and Research Foundations*, pages 69-70. Baltimore: Paul H. Brookes Publishing Co.

60. Federal law requires that the state funding system be placement neutral and that there be no incentives for one type of placement above another. Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1412 (a)(5).

61. U.S. Department of Education, Office of Special Education Programs (USOSEP), 1999, Enclosure—*OSEP's Follow-Up Review Process Letter*, p. 4.

62. Specifically, U.S. Office of Special Education Programs (USOSEP) concluded in its 1989 monitoring report that the New Jersey Department of Education had failed to implement an effective method for monitoring the least restrictive environment (LRE) requirements of federal law. USOSEP ordered, as part of a corrective action plan, that the New Jersey Department of Education develop a new plan to monitor school districts. In 1993, when the federal government reviewed the State's new monitoring system, it determined "that the emphasis in the new system was on policies and procedures and did not yet have methods to monitor the way that certain LRE requirements were actually being implemented in public agencies in the State." See 1994 *Separate and Unequal* Report & USOSEP annual monitoring reports.

63. The Arc of New Jersey, 2003, *Needs Assessment*, (compiled from survey results of 137 parent surveys).

64. *Ibid.*

65. For example, the State Department of Education recently proposed revisions to the sections of State code that deal with the approval of private schools. This proposal would raise the number of area students "identified" as having a need for the proposed private school from 16 to 24, having a positive impact on limiting the number of new approvals for private schools. However, the proposal was met with opposition and has not been implemented.





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