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Editorial Notebook

The End of Special Education?

Private Schools At Public Expense

School boards from Maine to California cringe at the mention of Shannon Carter, the learning-impaired ninth grader who won a momentous Supreme Court victory three years ago. Dissatisfied with Shannon's education in the Florence County, South Carolina, public schools, her parents placed her in a private academy — then sued the county for tuition. The Court ruled for the Carters, saying the county had failed to provide an "appropriate public education," as required by the Federal Individuals With Disabilities Education Act. Earlier rulings allowed reimbursement for private schools approved by the state; the Carter decision expanded the list to any and all schools that might be appropriate to the child's disability. The county paid up. Then came the deluge.

The Carter case and its progeny have transformed special education law from a minor specialty into a thriving and profitable industry. The cases are too new to get an accurate national count. But Shannon's lawyer, Peter Wright, has himself consulted in thousands of cases and toured the country, teaching his skills to lawyers and parents alike. The National School Boards Association says suits for private school reimbursement have mushroomed dramatically.

New York City is particularly vulnerable because of its bitter history of school litigation and its abysmal special education effort. Three years ago, New York City faced only two Carter suits. Last year there were 210, costing the Board of Education more than \$3 million. Fearing that the cases could double next year, the city is drilling local boards on how to protect themselves against litigation.

The suits are a hazard, particularly to poor systems. But they also provide a motive for special education programs to reform themselves and begin meeting their legal responsibilities.

Phoebe Redmond, a deputy director of the school board's legal department, admits that reimbursement suits sometimes have merit, but sees the Carter enterprise as "a voucher program for the rich." Ms. Redmond paints a portrait of parents who buy seats in pricey private schools, then seek lawyers who specialize in

making the public sector pay. But Mr. Wright says the parents he knows turn to lawyers only as a last resort — after the schools have failed their children again and again. He says that his typical case involves a child like Shannon, who was learning impaired and entered seventh grade not knowing how to read. When the school wrote Shannon off, her parents placed her in a private school and sued for reimbursement. Shannon jumped several grade levels and graduated reading on par.

The true picture lies somewhere between Mr. Wright's and Ms. Redmond's. What's clear is that many special education programs have become a dumping ground for difficult students. The program's stated purpose is to prepare students for the mainstream. But in New York State, only 20 percent of children who enter special education return to regular classes. Most of the rest fail to graduate. Of those who graduated in 1995, only 4 percent got Regents diplomas.

The failings are both local and Federal in origin. The Individuals With Disabilities Education Act improved the way these children were treated, but also brought problems of its own. It requires an individualized education plan for every child, to be reviewed every year. The plans focus too much on clinical assessments, too little on the instructional life of the child. Teachers describe them as useless and say they ignore them. Yet the system races to complete the plans, fearing that a missed deadline or a minor procedural error will result in a lawsuit. The process occupies an enormous work force and spends a great deal of money that would be better used elsewhere.

In 1979, delays in placing special education students led to a historic lawsuit named for Jose P., a disabled child whose plight typified the problem. New York City entered into a consent decree, which effectively created the special education bureaucracy of today. That bureaucracy now absorbs nearly \$1.6 billion year, about 20 percent of the education budget. Restructuring the system will be difficult. But the Carter suits and the scenario they portend could well be the spur that gets it done.

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