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An Analysis of Kansas Due Process Hearings 1977-1992 Support for Special Education Inclusion

by Jane Adams

National legislation during the last ten years has encouraged the inclusion of students with disabilities in the mainstream of the education system. Public Law 94-142, P.L. 99-483 Individuals with Disabilities Act, Sections 503 and 504 of the Rehabilitation Act of 1973 and the results of fifteen years of special education due process hearings, many of which resulted in district and state court rulings, stress free appropriate public education for all and stress that education must take place in the least restrictive environment.

In the 1990's the demands for special education inclusionary practice from individual parents, state and regional parent advocacy groups, and the state boards of education are intense. School administrators must be keenly aware of identification, placement and least restrictive environment regulations. The principal must ensure that all due process safeguards are protected as students move from restrictive resource and self-contained traditional placements to general education classrooms.

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Building teams throughout the state are making decisions to place individual and whole classes of special education students in general education.

The Principles of Special Education Inclusion

The cumulative chronological impact of these laws and acts has been to progressively move special education students further and further into maximum participation in the normal school program. From the early parent efforts to open the school house doors to students with disabilities (PARC 1972), to the mid 80's thrust for integration in the mainstream to the demands of the 90's for full inclusion, students have moved into general education classrooms. General education teachers are expected to teach them. Inclusion is a radical philosophical and programmatic orientation toward a student's right to be in the general education classroom and to be educated in non-segregated environments. With inclusion, services are offered in general education classrooms in neighborhood schools regardless of the student's categorical label or extent of disability.

Inclusive schools are places where all students are included in the mainstream of their regular neighborhood school and are educated in general classes. According to Thousand and Villa (1991), students are educated together in groups where the number of those with and without disabilities approximates the natural proportion. Within these groups, students who have disabilities participate as full members of the class and participate daily in shared educational experiences with other students and at the same time. Even though students are involved in the same activities, their learning objectives are individualized and may be different.

Inclusion emphasizes the performance expectations of the student's same age peers. Special and general education teachers work together to specify curricular outcomes and outline the supports and services the individual student needs to reach the general curriculum outcome goals in the general education classroom. The placement, where the services are offered, in the classroom, in the neighborhood school are paramount.

Kansas Due Process Hearings Have Been Placement Hearings

A review of the Kansas due process hearings since 1975 (all hearings are on file with the Office of Special Education, Kansas State Board of Education) indicates that placement issues have been the primary focus of parent/school disputes in this state. Fifty-seven of 133 hearings on record at the KSBE represent 43% of the total. When secondary issues are added, another 36 of the 133 cases bring the total to 70%. Third level issues dealing with placement add another 10 cases for a grand total of 103 of the 133. Seventy-seven percent of the due process hearings in Kansas have addressed placement as one of the top three issues in dispute.

Other issues which dominated hearings have been identification, with 34 cases; evaluation, re-evaluation, with 19 cases; free appropriate public education (FAPE), with 8; Least Restrictive Environment (LRE) and related service issues with 5 cases; procedural safeguard issues with 3; and extended school year with 1. No due process hearings were filed by districts or parents over such issues as graduation, or transportation.

Each hearing recorded in the state has been catalogued by KSBE staff with the following field descriptors: Case number, hearing dates, decision, issues (first second and third level), whether or not the case was appealed, etc. The issue field was searched to compile, in four year increments, the numbers of cases in each of the above categories. Table 1 highlights placement as a primary issue of concern in the due process hearings filed in this state. Parents care where their children receive services. In fact, they seem to care more about **where** (57 cases) than **what** (34).

With the placement issue dominating Kansas due process hearings for the last fifteen years, an analysis of the categorical areas in which cases were most frequently filed shows Behavior Disorders dominating the field with 34, Learning Disabilities and Educable Mentally Handicapped tie with 21 each. Gifted follows with only 10 cases.

Table 1. Issues Tabulated in Four Year Increments: 1975-1992

	1975-78	1980-84	1985-89	1990-92	Totals
Evaluation/ re-evaluation	1	10	2	6	19
Extended school year			1		
FAPE		5		3	8
Identification	5	18	10	1	34
LRE	4		1		5
Placement	20	21	8	8	57
Procedural safeguards	1		2		3
Related services		3	2		5
Unknown					4
Total	31	57	26	18	133

Schools implementing inclusionary practices frequently select BD, LD and EMH students as the first groups of students or individuals. When placement becomes, for this group of students, a continuum of services within the general education classroom, almost 80 percent of unresolved parent-school discord related to special education may be prevented. The resulting fiscal savings which is taken from the general education budget and ultimately the district tax payer can be used to support children instead of attorneys.

Hearing officers' decisions were overwhelmingly in favor of the district position: 90 of the 133 cases were awarded to the district. Of those 29 were appealed with 8 decided for parents on appeal. Of the 19 cases decided for parents, three were appealed resulting in 1 for the district, 2 for parents and 1 compromise.

Table 2. Issues Grouped by Categorical Area: 1977-1992

	BD	DD	ECH	EMH	GI	HI	LD	OH	SL	TM	VI
Evaluation/ re-eval.	2				2		1				
Extended school year											
FAPE						1	2	1			
Identification	10		1	8	8		3			1	
LRE	1			2							
Placement	19	3		10		4	14			1	1
Procedural safeguards	2			1							
Related services							1	1	1		
Unknown											
Total	34	3	1	21	10	5	21	2	1	2	1

Only 37 of the 133 cases were appealed to the KSBE reviewing officer. Of the 37, the KSBE reviewing office ruled in favor of the parents in 10; in favor of the district in only 13. In five, compromises were reached. Four cases were dismissed. In only 1 is the disposition unknown because no report was filed with the KSBE.

Due process issues presented and the hearing outcomes support inclusionary practices. A longitudinal examination, 1977 to the present, profiles changing trends in the interpreta-

tion of LRE, from hands-off in the early years to active insistence on the placement of children general education classrooms or very close to them. In the early years, 1977 to 1979 courts and hearing officers practiced a hands-off policy regarding placement issues. In 1979 the hearing officer was so bold as to state "placement was outside of the hearing officer's realm." In two other early cases, the hearing officer decisions enforced moving the child to attendance centers other than the neighborhood school. Since 1985, though, hearing officer decisions support placement in the neighborhood school and the general education classroom in which the child would attend if not disabled.

Conclusions and Recommendations

Seventy-seven percent of the state's due process hearings have occurred as a result of placement disputes between parents and schools. One half of all cases were filed by the parents of Behavior Disordered, Learning Disabled, and Educable Mentally Handicapped.

Special education reform has targeted placement of children with disabilities. Terms such as mainstreaming, least restrictive environment and full inclusion describe various reform stages. Special education advocates, the Kansas Board, and teacher trainers are disseminating practices and strategies to integrate in schools.

School administrators are challenged to respond and meet the needs of an increasingly diverse student population, including minority, poor and disabled students. Now is the time for school administrators to apply their knowledge of the law and their understanding of democratic principles to support school diversity and lead staff in developing equity within their own classrooms. Administrators can empower teachers and hold them accountable to work together for the benefit of all children. Administrators can speak the language of possibility and support the development of collaborative partnerships between general and special education to create opportunities for student progress.

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