

Special Education Subgroups Under NCLB: Issues to Consider

SUZANNE E. ECKES
JULIE SWANDO

Indiana University

Background/Context: *There are few empirical studies exploring the alleged conflict between the No Child Left Behind Act (NCLB) and the Individuals with Disabilities Education Act (IDEA).*

Objective: *The purpose of this study was to examine what impact the No Child Left Behind Act has had on students with disabilities.*

Research Design: *Specifically, using large data sets from three different states, this article examines how the students with disabilities subgroup has fared under the No Child Left Behind Act. Under NCLB, there are four different subgroups: race/ethnicity, socioeconomic status, limited English proficiency, and students with disabilities. If any one of these subgroups fails to make adequate yearly progress (AYP) under NCLB, the entire school fails.*

Findings: *This study found that schools fail to make AYP most often because of the students with disabilities subgroup. The failure of the special education subgroup to make AYP occurs mainly because the students with disabilities subgroup is expected to maintain the exact same proficiency levels as their general education peers—a standard that has proved to be problematic because special education students often start out with lower average test scores than general education students. In addition, the students with disabilities subgroup is the only subgroup in which actual limitations on ability to learn might come into play. The existence of these limitations calls into question the wisdom of trying to close the general education–special education “achievement gap” at the same pace as the race- or class-based achievement gaps. In addition to quantitative methods, this study also used legal research techniques to examine the legal impact that the two laws are having on students with disabilities.*

Conclusions: *The study found that although judicial challenges may be one route to try to change the law, pressure at the state and local levels by educators and parents of students with disabilities working together with the U.S. Department of Education may have an impact as well.*

The No Child Left Behind Act of 2001 was signed into law in January 2002. The law requires, with few exceptions, that schools and districts demonstrate that their students are making substantial annual academic progress toward the goal of 100% proficiency for *all* students by the 2013–2014 school year in certain subjects (No Child Left Behind Act of 2001 [NCLB], 2002). In an effort to make sure certain groups of students are not ignored, NCLB requires that schools separately report test results for subgroups of students who have typically faced challenges within the public school system, including minorities, students with disabilities, students from impoverished backgrounds, and English language learners. Specifically, within NCLB's requirements, average state, district, and school test scores are disaggregated by economic background, race and ethnicity, English proficiency, and disability ("the four subgroups") and analyzed separately and in aggregate. NCLB requires that for schools to make adequate yearly progress (AYP), states must test 95% of students in each subgroup and report each subgroup's results separately—ensuring that schools cannot "hide" the low performance of any particular group of students (NCLB). Each school and student subgroup must reach an identical minimal level of proficiency as identified by the state (the "annual measurable objective") for the school or district to make AYP (Bracey, 2003; Feller & Bass, 2006). For example, the math annual measurable objective for elementary schools in California in 2005 was 16%. This meant that each elementary school needed to have at least 16% of the students scoring proficient or higher in that year to make AYP, and in addition, each subgroup within the school had to average at least 16% proficiency as well. In many cases, this system creates multiple ways in which a school can fail AYP if just one subgroup falls below the required proficiency threshold. The consequences for failing to make AYP are serious: Sanctions may ultimately include the closing or restructuring of the school, depending on the approach taken by each particular state.

Under the Individuals with Disabilities Education Act (IDEA), students with disabilities are entitled to a free appropriate public education that meets their individual needs (IDEA, 2004). Special education is defined under IDEA as "specially designed instruction, at no charge to the parents or guardians, to meet the unique needs of a child with a disability" (IDEA, 2004, 20 U.S.C. § 1404(a)(17)). As a result, each student receiving services under IDEA is required to have an individualized education program (IEP; IDEA, 2004). The law states that "all IEPs must contain a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of students under the assessments required by the NCLB and IDEA"

(IDEA, 2004, 20 U.S.C. § 1414(d)(1)(A)(i)(VI)(aa)).

There are 13 categories of disabilities under IDEA: autism, deaf-blindness, deafness, hearing impairment, mental retardation, multiple disabilities, orthopedic impairments, other health impairment, emotional disturbance, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment, including blindness (IDEA, 2004; Yell, 2006). A disability, such as mental retardation, is often categorized as mild, moderate, or severe. As such, a student's academic goals, as set out in the IEP, may vary greatly depending on his or her unique circumstances. Accordingly, a student's IEP could include a wide range of curricula and assessment techniques, from following the traditional high school curriculum accompanied by an aide or special textbooks (e.g., textbooks in Braille) to simply teaching the student basic life skills that will allow him or her to live independently. Indeed, the ranges of disabilities vary, and students' educational goals need to be individually tailored to meet their specific needs (see Rentschler, 2006; Yell, 2006).

Over six million students in the United States currently receive services under IDEA (Olson, 2004), and making AYP has been particularly challenging for the special education subgroups. To illustrate, in January 2004, CNN reported that "special education students skew test results" (Snell, 2004, p. 1) downward. Likewise, a 2006 *New York Times* article noted that "special education is the single biggest reason schools are judged failing under the federal law" (Winerip, 2006, p. 2). Indiana reported that for the 2005–2006 school year, 50% of Indiana's schools did not make AYP, and of those schools, 80% did not make AYP in special education (Kibbler, 2006).

The failure of the special education subgroup to make AYP occurs mainly because the subgroup is expected to maintain the exact same proficiency levels as their general education peers—a standard that has proved to be problematic because special education students often start out with lower average test scores than general education students. To illustrate this point, a 2004 report concluded that in a study of 30 of the 39 states with complete data on fourth-grade readers, there was an achievement gap of 30% between students with disabilities and their nondisabled peers (Pew Charitable Trust, 2004). Townsend (2007) noted how the testing of students with disabilities under NCLB is a double-edged sword. He argued that if students with disabilities were not included in statewide testing, teachers could put more effort into educating those students who are held accountable, thus slighting the students with disabilities. On the other hand, he noted that it may be unfair to test some students with disabilities (i.e., those with more severe learning

disabilities) at grade level, again slighting the students with disabilities by not providing them with an appropriate educational experience (Townsend, 2007).

Educational researchers rightly focus attention on trying to close achievement gaps, particularly race- and class-based achievement gaps. However, the gap between general and special education students is just as striking—but it is of a different nature. The “students with disabilities” subgroup is the only subgroup in which actual limitations on ability to learn might come into play. The existence of these limitations calls into question the wisdom of trying to close the general education–special education “achievement gap” at the same pace as the race- or class-based achievement gaps. They also suggest that although students with disabilities can, and perhaps should, participate fully in general education assessments, accommodations should always be made when needed. A student identified under the IDEA category of Specific Learning Disabilities would still be held accountable under NCLB, but other sources of academic progress may need to be considered in addition to a very specific grade-level exam (National Center for Learning Disabilities, n.d.). For example, a sixth-grade student falling under this category of IDEA may be reading at the third-grade level as a result of his or her disability. As such, other ways of demonstrating academic achievement are important because grade-level testing, as required by NCLB, may not be acceptable under IDEA’s individualized approach to academic progress (National Center for Learning Disabilities, n.d.).

Specifically, the purpose of IDEA is “to ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education and related services designed to meet their unique needs” (IDEA, 2004, 20 U.S.C. § 1444(d)(1)(A)). The U.S. Supreme Court created a two-part test for determining whether school officials have met IDEA’s FAPE requirement. First, the state must comply with the procedures set forth in IDEA. Second, the IEP developed through IDEA’s procedures must be reasonably calculated to enable the student to receive educational benefits (*Board of Education of Hendrick Hudson Central School District v. Rowley*, 1982). This two-part test could be violated if students with disabilities are expected to take grade-level tests, as required under NCLB, if their IEP does not require such tests. The legal issues related to this conflict will be discussed later in the article.

To begin, it is necessary to explore the “achievement gap” between

general and special education students, which sets the stage for the conflict between IDEA and NCLB. Table 1 illustrates the baseline achievement gaps between general and special education students in California. The proficiency levels are different initially, and even as each group's proficiency level increases over time, the differences between groups remain. In other words, although special education students are clearly increasing their knowledge alongside their general education peers, they are not able to close the gap. In each case, the special education subgroups have the lowest proficiency level of all student subgroups.

Table 1. Schoolwide Proficiency Levels of California Public School Students

Student Subgroups	English Proficiency		Math Proficiency	
	2001-02	2005-06	2001-02	2005-06
Special education	10.2%	20.8%	13.4%	25.5%
Socioeconomically disadvantaged	20.6	35.2	25.1	41.9
Limited English proficiency	17.9	30.5	26.2	41.9
African American	23.4	37.5	22.4	37.0
Asian	48.8	66.1	57.9	74.5
Hispanic	22.4	36.6	25.7	43.0
White	44.4	59.4	44.2	60.4
All Students	33.6%	44.3%	36.0%	51.5

These proficiency differences are not unique to California. As Tables 2 and 3 indicate, similar patterns exist for public school students in both Florida and Texas. In virtually every case, special education students have the lowest average proficiency level on standardized tests and are unable to close the achievement gap over time.

Table 2. Schoolwide Proficiency Levels of Florida Public School Students

Student Subgroups	English Proficiency		Math Proficiency	
	2003-04	2005-06	2003-04	2005-06
Special education	31.5%	33.8%	32.1%	34.8%
Socioeconomically disadvantaged	47.3	50.4	47.1	50.6
Limited English proficiency	37.1	39.4	41.1	44.0
African American	42.4	45.1	39.1	42.9
Asian	62.6	64.1	70.7	73.0
Hispanic	50.5	53.5	52.5	55.9
White	65.0	66.7	65.5	67.9
All Students	55.9%	58.3%	56.0%	58.9%

Table 3. Schoolwide Proficiency Levels of Texas Public School Students

Student Subgroups	English Proficiency		Math Proficiency	
	2003–04	2005–06	2003–04	2005–06
Special education	55.5%	67.3%	48.6%	65.1%
Socioeconomically disadvantaged	70.8	80.1	60.1	70.7
Limited English proficiency	61.9	69.3	56.8	64.7
African American	70.2	77.2	56.0	65.2
Asian	N/A	N/A	N/A	N/A
Hispanic	76.0	80.5	62.6	71.5
White	83.9	89.6	75.2	82.2
All Students	76.9%	84.6%	67.1%	76.2%

According to NCLB, all student subgroups (with few exceptions) must reach 100% proficiency by the 2013–2014 school year. What this requirement mandates is that students in the special education subgroup increase their proficiency levels at a faster rate than their general education peers to maintain full proficiency under the law. This, in turn, places schools with special education subgroups at a vast disadvantage when AYP is calculated. For example, according to Table 1, for the state of California to reach full proficiency by 2013–2014, White students would need to increase their math proficiency level by approximately 5.1 percentage points per year. Special education subgroups, however, would have to increase by approximately 9.9 percentage points per year. Furthermore, it is also important to note that in the progression to 100% proficiency, the annual measurable objectives are escalated each year, so students are expected to improve more quickly as time goes on. This is especially challenging for students with disabilities; the student's disability may impact learning capacity or speed. As a result of these challenges, some states have started to give bonus points to schools if the only subgroup that fails to make AYP is the disability subgroup (Winerip, 2006).

DATA AND METHODS

Using data from three different state departments of education, this article examines how students with disabilities, as a subgroup, have fared within public schools in California, Texas, and Florida. These three states were chosen for several reasons. First, they are all large, diverse states, so they are useful for examining patterns across a wide variety of student subgroups and for generalizing to the country as a whole. More simply, these three states simply provided a wider range of publicly available data than many other states, which makes them easier to analyze. Finally, by

focusing on just three states, a more in-depth analysis is possible than if additional states were included.

Data for the following analyses were primarily obtained from each state's Department of Education Web site.¹ Data about No Child Left Behind AYP determinations, English and math proficiency levels, and various school characteristics such as student demographics were obtained for every elementary, middle, and high school within each selected state. For schools containing missing values on some variables, the mean of the variable across all the schools in the state was substituted for the missing value to avoid excluding cases.²

Each state's directory of public schools was used to obtain a final, representative sample of traditional public and charter schools for the state. Based on the state's classification system for its public schools, schools that were identified by the state as alternative schools, juvenile detention centers, schools serving only special education students, or continuation schools were all eliminated from the sample. Schools with total enrollments of fewer than 50 students were also excluded from the sample. The end result was a statewide sample of all traditional public schools and charter schools with enrollments over 50. These school-level data were then combined with additional school-level data from the National Center for Education Statistics' Common Core of Data section, and district-level data from the Census Bureau's Small Area Income and Poverty Estimates Web site. Once the final sample for each state was compiled, analyses were carried out using cross-tabulations and independent-sample *t* tests, as well as logistic regression analysis.³

In addition to examining these data, the authors analyze the alleged conflict between IDEA and NCLB and the litigation that may occur as a result of this conflict; the NCLB requirements for special education students may present legal conflicts with the "free appropriate public education" provision of IDEA. Specifically, the authors argue that holding special education subgroups accountable under current NCLB requirements may be a violation of IDEA's emphasis on individualized education plans and progress. Indeed, the disconnect between the two federal laws may unfairly target both students with disabilities and the schools they attend.

THE CASE IN CALIFORNIA

Population-wise, California is the largest and one of the most diverse states in the United States. Its 6.3 million students are spread across more than 9,000 schools in 1,053 school districts and are taught by more than 306,000 teachers. The student population is over 46% Hispanic, with

White students making up 31% of the enrollment and students of other races encompassing the other 23% (California Department of Education, 2006). The diversity of California's schools is often cited by state officials as one of its biggest strengths, but it may also have a negative impact on NCLB outcomes; research has shown that more diverse schools are less likely to make AYP under NCLB (Neill, Guisbond, & Shaeffer, 2004).

In addition to being racially and ethnically diverse, California also educates a large number of students with disabilities. In 2005–2006, California schools served more than 635,000 individuals from birth to age 22 via its special education programs mandated under IDEA (California Department of Education, 2006). California's public education system does maintain approximately 700 schools that serve only special education students, but more than 400,000 special education students attend traditional public schools. The minimum subgroup size for calculating AYP in California is 50 students, meaning that any school with fewer than 50 special education students (or students from any other subgroup) in the testing grades does not have to report the results of that subgroup. Comparatively, this subgroup size is relatively large; this may help schools in California under the NCLB guidelines, because any school containing fewer than 50 special education students in the grades being tested is exempted from AYP reporting for that subgroup.

In the 2005–2006 school year, 67.1% of schools in California made AYP under NCLB. Even though more than half of its public schools made AYP, the data from this state support the notion that special education subgroups impact a school's likelihood of making AYP under NCLB. Of the 8,222 public and charter schools in California in 2005–2006, 12% ($N = 986$) contained a special education subgroup that was large enough to be counted in AYP calculations—a percentage that would likely have been much higher if the state had set the subgroup size at fewer than 50 students. In 2004–2005, 10.4% of California schools contained a special education subgroup, which was down from 12.0% in 2003–2004 and 12.7% in 2002–2003. Of the 2,704 California schools that failed to make AYP in 2005–2006, 16.9% ($N = 456$) failed at least partially because of the performance or participation of their special education subgroups. This is down from 24.1% ($N = 573$) in 2003–2004. In that year, 9.5% ($N = 226$) of “failing” schools failed to make AYP *solely* based on the performance of their special education subgroup.⁴

Specifically, schools with special education subgroups are much less likely to make AYP than schools without special education subgroups and the aggregate of all California schools in a given year. Table 4 illustrates this pattern.

Table 4. Percentage of California Schools Making AYP by Presence of Special Education Subgroup

	2001–02	2002–03	2003–04	2004–05	2005–06
All schools	36.4%	56.4%	69.0%	61.8%	67.1%
Schools with a special education subgroup	3.4	17.1	29.7	38.4	42.5
Schools without a special education subgroup	41.0	62.1	74.3	64.5	70.5

In each year, the differences between the number of schools with and without special education subgroups making AYP were statistically significant at the $p = .001$ level. In 2005–2006, schools containing special education enrollments were 71.8% less likely to make AYP than schools that did not contain special education subgroups but that had the same enrollment, race composition, student–teacher ratio, and percentage of poor students.⁵ Clearly, schools in California containing special education subgroups are at a vast disadvantage when adequate yearly progress under NCLB is calculated.

Although the negative patterns for schools containing special education subgroups appear robust, analyzing only one state’s data leaves open the possibility that these patterns may represent some anomaly inherent in California schools. However, data from Texas and Florida suggest that this is not the case.

THE CASE IN TEXAS

The public school system in Texas is also large and diverse, serving over 4.5 million students in 9,143 schools. Forty-five percent of Texas public school students are Hispanic, with 37% identifying as White and the remaining 18% comprising students of other races. Over 55% of Texas public school students are classified as economically disadvantaged, and 11.2% receive special education services. Like California, the state of Texas uses 50 students as its minimum subgroup size for AYP calculations under NCLB, so some observers may argue that schools in Texas are also able to “hide” the performance of many of their special education students if they are spread among a number of schools. Still, the negative patterns for schools containing special education subgroups persist in Texas.

Of 6,306 general public schools with enrollments over 50, 22.3% ($N = 1,404$) contained a special education subgroup in 2005–2006. This percentage is larger than the special education population in California, most likely because the state of Texas does not have the large number of public schools that serve only special education students that California does. In 2005–2006, 21.0% ($N = 285$) of schools containing special education subgroups failed AYP—statistically significantly higher than the

4.0% ($N = 195$) of schools that failed AYP but did not contain special education subgroups ($t = 21.03$, $p < .001$). When enrollment, student-teacher ratio, the racial composition of the student body, and the percentage of students labeled economically disadvantaged are held constant, a logistic regression analysis reveals that schools with special education subgroups are still 79.6% less likely to make AYP than schools that do not contain these subgroups ($p < .001$). To look at this pattern another way, Table 5 presents the percentages of schools making AYP by the presence of a special education subgroup, which makes it clear that having a special education subgroup reduces a school's chance of making AYP.

Table 5. Percentage of Texas Schools Making AYP by Presence of Special Education Subgroup

	2003-04	2004-05	2005-06
All schools	71.6%	82.4%	83.7%
Schools with a special education subgroup	54.4	70.3	63.5
Schools without a special education subgroup	79.1	87.7	89.5

In each year, the difference in likelihood of making AYP based on the presence of a special education subgroup is significantly different at the $p = .001$ level,⁶ suggesting that schools that contain special education subgroups are significantly more likely to fail AYP under NCLB in Texas and in California.

This is not the only similarity between the two states. In Texas, of schools that failed to make AYP in 2005-2006, 31.7% ($N = 325$) failed to make AYP *solely* based on the performance of their special education students. In contrast, only 93 schools (9.1%) failed to make AYP based solely on the performance of their economically disadvantaged or African American students—groups that are commonly blamed for low school performance. Clearly, schools containing special education subgroups in the state of Texas face significant disadvantages when compared with schools not held accountable for the performance of their special education students.

THE CASE IN FLORIDA

The public school system in Florida⁷ serves over 2.5 million students in more than 3,100 schools across 67 school districts. Across the state, approximately 15.5% of public school students qualify for special services under IDEA. Of 2,747 public K-12 schools in Florida (again, excluding alternative schools and schools with enrollments under 50), 85.6% contain a special education subgroup that is large enough to be reported under NCLB. This percentage is strikingly larger than the percentage of California and Texas schools that have special education subgroups,

which is most likely due to the size of the subgroups used. In Florida, the minimum subgroup used for NCLB accountability calculations is 30 students; this means that any school containing between 30 and 49 special education students in the grades being tested would be included in Florida's AYP calculations, whereas those schools would be excluded in California and Texas. Under these criteria, the special education subgroups in 507 schools (18.4% of all Florida schools) counted in AYP calculations for Florida but would not have counted in California or Texas. This difference in subgroup sizes actually results in substantially different patterns of AYP results for the state of Florida as compared with California and Texas—results that virtually disappear when the subgroup size is set at 50.

The findings in Table 6 seem to indicate that schools containing special education subgroups in Florida were actually *more* likely to make AYP than schools without special education subgroups in 2005—a finding that directly contradicts the patterns previously identified in California and Texas.

Table 6. Percentage of Florida Schools Making AYP by Presence of Special Education Subgroup

	2003–04	2004–05
All schools	24.9%	67.1%
Schools with a special education subgroup	22.9	68.9
Schools without a special education subgroup	35.9	56.2

These findings, however, appear to be a function of the smaller subgroup size (30 students) that is used in Florida—in other words, the schools containing 30–49 special education students actually perform so well that they make it appear as if having special education subgroups actually *benefits* schools in Florida. When schools containing between 30 and 49 special education students are eliminated from the sample,⁸ the positive patterns for schools with special education subgroups disappear. These results are reported in Table 7.

Table 7. Percentage of Florida Schools Making AYP by Presence of Special Education Subgroup, Schools With 50 or more Special Education Students Only

	2003–04	2004–05
All schools	25.4%	68.1%
Schools with a special education subgroup	21.1	67.8
Schools without a special education subgroup	35.0	68.6

What this seems to suggest is that only counting schools with large subgroups of special education students in AYP calculations can have a negative effect on overall school AYP. So, although increasing the size of

student subgroups may cause the performance of some students to be hidden in AYP calculations, which has been the concern of some observers (Schemo, 2004), setting the threshold higher may actually harm schools and special education programs as a whole by possibly leading to an increase in blaming and scapegoating of special education students for causing their schools to fail AYP.

Although the findings in Florida were not as strongly negative as those in California and Texas, there is still evidence that some schools do experience profoundly negative effects for having special education subgroups. Of the 890 Florida schools that failed to make AYP during the 2004–2005 school year, 27.5% ($N = 245$) failed *solely* based on the performance or participation of their special education subgroups. In contrast, only 9% ($N = 82$) of Florida schools failed AYP solely based on the performance or participation of their African American subgroup, and only 28 schools (3.1%) failed solely because of their low-income subgroups. Again, although much public attention is paid to the test scores and academic performance of poor and minority students in U.S. schools, these patterns make it clear that the presence of special education subgroups in U.S. schools has a much more negative effect on a particular school's likelihood of making AYP than any other subgroup.

DISCUSSION

It is without question that NCLB promotes the rights of students with disabilities to participate in the general curriculum by requiring grade-level assessment for all students (Rosenbaum, 2004). In requiring such assessments, however, NCLB is actually requiring some students to struggle and some schools to be penalized for the presence of certain students. In fact, the data demonstrate that students with disabilities have experienced difficulties meeting the AYP requirement under NCLB—a pattern that profoundly affects a school's success under NCLB. Specifically, a statistically significant number of schools that failed to make AYP requirements in three states did so primarily because of the disability subgroup. Patterns like these have led some scholars to speculate that the fact that many schools fail to meet AYP because of the performance of their special education subgroup may lead to a backlash or more animosity against special education students, especially if they are the sole group responsible for a school's "failure" under NCLB (see Keele, 2004; Kossar, Mitchem, & Ludlow, 2005; Moores, 2005). It seems possible that these students could be pushed to transfer or drop out of school or that they might be moved into general education programs that are not appropriate for them and where their low test scores can be "hidden" among the

higher test scores of a large group of their general education classmates.

In response to school districts failing to make AYP because of the performance of the special education subgroup, some commentators have noted the inherent conflict between NCLB and IDEA (see Gordon, 2006; Keele, 2004; Olson, 2004; Plain, 2004; Rentschler, 2006). Although Secretary of Education Margaret Spellings recently declared that the final regulations for IDEA align with NCLB (National School Boards Association [NSBA], 2006), the regulations do not address all areas that should be aligned (see Individuals with Disabilities Education Act Regulations, 34 C.F.R. § 300 et seq., 2006). Although the IDEA regulations address the need for students with disabilities to have highly qualified teachers and provide flexibility in spending resources to ensure that students with disabilities are identified early and receive adequate support (NSBA, 2006), the regulations fail to address other important areas. Specifically, there appears to be a basic conceptual disconnect between NCLB's focus on school-level accountability, which places the school's success above the individual student's success, and IDEA's focus on the educational experiences of the individual student (Olson, 2004).

To illustrate, the grade-level approach required under NCLB is much different than the individualized assessment required under IDEA—an issue that was not adequately addressed in the regulations. Under NCLB, students are required to be tested each year in Grades 3–8 and once more in high school. Under IDEA, however, students are not necessarily placed into specific grades, calling into question when those students should commence standardized testing under NCLB and in which grade level they should be tested each year. Plain (2004) contended that the assignment to a “particular grade for the sole purpose of testing would disregard the IDEA's ultimate goal of particularized treatment of students with disabilities” (p. 258), possibly violating students' rights. In addition, this could harm schools and districts by forcing them to test each student at “grade” levels based on the student's age and number of years in school, despite the fact that the particular student may not be academically ready to be in that particular grade.

The alleged disconnect between NCLB and IDEA is also apparent when reviewing NCLB's testing and subgroup accountability requirements. On a fundamental level, expecting all students with disabilities to have proficiency levels equal to those of general education students is illogical. After all, students with disabilities are sometimes placed in special education precisely because they may require a more individualized approach than their general education peers. Similarly, it is unrealistic to expect students with disabilities to increase their test scores nearly twice as rapidly as general education peers. Although some researchers have

stressed that it is beneficial for special education students to be included in accountability systems so that they will not be ignored by educators (McLaughlin, Embler, & Nagle, 2004; Thurlow, 2004), it is clear that NCLB expects a level of uniform academic performance that fundamentally conflicts with the wide range of disabilities that students in special education subgroups may have.

For example, students with learning disabilities (which is only one type of disability encompassed by the category “special education”) often struggle with reading, which is one of the core areas of NCLB (National Center for Learning Disabilities, n.d.); this suggests that schools with large populations of students with disabilities might be disadvantaged in AYP calculations. In fact, this pattern is supported by the current data. In California in 2005–2006, schools whose special education populations contained 50% or more students with learning disabilities had school-wide reading test scores that were 6 percentage points lower than schools whose special education populations contained a majority of students with other disabilities. The difference is even more striking when looking solely at average reading test scores for special education subgroups. Among schools where fewer than 50% of the special education students had learning disabilities, the average reading test proficiency level for the special education subgroup was 25.5%, compared with 14.5% proficient in schools where greater than 50% of the special education subgroup was classified as learning disabled.⁹

Although both proficiency levels are low, it is clear that it is not simply the presence of a special education subgroup that may cause problems for particular schools but also the particular disabilities that are represented within the individual school’s subgroup. This may prove particularly harmful to traditional public schools that have special programs set up to serve students with certain types of disabilities and may therefore attract a larger population of cognitively impaired students than a public school without such programs. Likewise, some charter schools attract a higher percentage of students with specific learning disabilities because of the schools’ small size and teacher-to-student ratio (Fiore, Harwell, Blackorby, & Finnigan, 2000). These types of schools may arguably experience more difficulties with meeting AYP requirements even though some educational researchers may argue that those schools and special programs are performing a valuable service to students with disabilities.

These problems have raised legal issues in the minds of concerned educators and researchers as well. Plain (2004) argued that the testing requirements of NCLB may violate student rights established by IDEA. For example, under IDEA, the IEP team, not the local education agency, determines how students will be assessed. In addition, unlike NCLB,

there is no minimum participation percentage under IDEA (Individuals with Disabilities in Education Act [IDEA], 2004), which means that local education officials are free to decide what percentage of students are capable of taking the regular exam and when an alternate assessment is warranted. For the principles of IDEA to be preserved, the IEP team, not the state or federal government, should decide when a student needs an alternate assessment. Under NCLB, the thoughtful and informed decisions of IEP teams—decisions such as finding out-of-grade-level tests to be more appropriate, for example—are not always considered even though the IEP team is charged with determining what accommodations an individual student needs under IDEA (see Yell, 2006).

Further, although NCLB does recognize that students with disabilities may need accommodations on standardized tests, the NCLB requirements are often considered too rigid (Shindel, 2004). For example, some special education students in Maryland had their test scores invalidated by state education officials because they had portions of their reading exams read aloud to them by teachers—an accommodation allowed under their IEPs but not always permitted under NCLB (Neill et al., 2004). These types of issues perpetuate the conflict between the two federal laws, which could likely lead to more litigation.

On the other hand, some argue that the two federal statutes are consistent. To illustrate, the Senate Committee Report for IDEA claims that IDEA

makes a series of significant modifications to reflect the important changes to accountability that were enacted under the No Child Left Behind Act. NCLB established a rigorous accountability system for States and local educational agencies to ensure that all children, including children with disabilities, are held to high academic achievement standards and that States and local educational agencies are held accountable for the adequate yearly progress of all students. Most importantly, NCLB requires schools and local educational agencies to disaggregate their data to examine the results of children with disabilities and to ensure that such subgroup is making adequate yearly progress towards reaching proficiency. The bill carefully aligns the IDEA with the accountability system established under NCLB to ensure that there is one unified system of accountability for States, local educational agencies and schools. (Individuals with Disabilities Education Act Senate Report, 2003, pp. 17–18)

In addition, despite the alleged conflict between the two federal laws,

observers argue that being able to participate in some form of accountability assessment brings valuable attention to the particular needs of this student population (Hagar & Slocum, 2005; Thurlow, 2004). Thurlow also observed that the requirements of NCLB have provided much needed data on students with disabilities and noted the important benefits of including students with disabilities in assessments and accountability systems. She highlighted examples in which the passing rates for students with disabilities improved in a few states. In citing these examples, Thurlow makes it clear that the identified students must receive the appropriate services and supports to improve their performance. Hagar and Slocum also highlighted the importance of striking a balance between standardization and individualization—in other words, between the requirements of NCLB and the requirements of IDEA.

This debate appears to have caught the attention of officials at the U.S. Department of Education. In December 2005, Secretary of Education Margaret Spellings proposed changes to NCLB that would impact the way that students in the special education system are assessed (National Education Association, 2005). The proposed changes were eventually adopted and added to the current regulations that permitted 1% of students with the most severe cognitive handicaps to be assessed with alternative tests. The new regulations have also allowed for an additional 2% of students (as a percentage of all students in the school) to take modified tests (Frazor, 2006; Yell, Katsiyannas, & Shiner, 2006). The tests are “designed to meet the needs of students with disabilities who may not reach grade level within the same time frame as their peers, but who can make significant strides, given the right instruction” (U.S. Department of Education, 2005). The modifications to the tests essentially change the depth or breadth of a test rather than the entire content. The tests must reflect grade-level content, and the students are not permitted to take out-of-level tests (U.S. Department of Education, 2006), so the modifications do not remedy the “grade level” problem discussed earlier in this analysis. The regulations also required states to adopt specific criteria for the IEP team to use when it determines whether a student is eligible to be assessed based on modified achievement standards. Specifically, the IEP team must determine whether:

The student’s disability has precluded the student from achieving grade-level proficiency, as demonstrated by objective evidence; the student’s progress in response to high-quality instruction, including special education and related services designed to address the student’s individual needs, is such that the student is not likely to achieve grade-level proficiency within

the school year covered by the IEP; and the student is receiving instruction in the grade-level curriculum for the subjects in which the student is being assessed. (34 C.F.R. § 200.1(e)(2)(i)-(iii))

In making these changes, the Department of Education acknowledged that some students with disabilities may not be able to achieve grade-level proficiency within the same time frame as other students. In addition, under the regulations, it would be up to the IEP team to determine the appropriateness of modified achievement standards based on the unique needs of each individual student with a disability. States may now be given more flexibility and could use different achievement standards for around 30% of students with disabilities. Indeed, the regulations appear to be more aligned with the spirit of IDEA. The regulations offer greater flexibility by allowing students with disabilities who do not meet the state guidelines to participate in an alternative assessment using modified achievement standards that are more aligned with grade-level content standards (U.S. Department of Education, 2006).

To address the issue of individual student progress, the Department of Education also selected proposals from Alaska, Arizona, Arkansas, Delaware, Florida, North Carolina, Oregon, and Tennessee to consider for participation in a growth model program. This pilot program allowed schools and districts to use the growth models to judge whether they met the NCLB requirements. The growth model permitted schools to receive credit for students who made progress but may not have reached the proficient level (NSBA, 2006). The growth model is another example of how the department is reconsidering its original approach to NCLB requirements.

Another area of concern regarding NCLB and students with disabilities relates to the size of subgroups used for NCLB reporting, which varies greatly by state. To ensure that schools are not penalized for the failures of only a few of their students, the department permits states to set their own minimum subgroup sizes. The group size reflects the number of students in a specific subgroup who must be enrolled in a school for that school to be held accountable to that particular group (U.S. Department of Education, 2005).

The National Center for Learning Disabilities (n.d.) noted that subgroup size may vary across states, from requiring 3 students in a subgroup to requiring 200 students in a subgroup. Ten students per subgroup is the most common number of students creating a subgroup (National Center for Learning Disabilities, n.d.). As such, small schools may have too few students with disabilities to constitute a subgroup under NCLB (Purcell,

East, & Rude, 2005). Therefore, schools or districts that do not have enough special education students to meet the subgroup minimum would not be held accountable for the performance of their special education students. Observers have noted that subgroup sizes have permitted school districts to “not count the test scores of nearly two million students when they report academic progress by race as required by the law” (Feller & Bass, 2006). However, setting subgroup sizes at a higher level minimizes the impact that one or two test scores can have on a school’s AYP determination, making it an attractive option for states that wish to limit the impact that a few low special education test scores can have on overall achievement. It is interesting to note, however, that the data analyzed previously in this article suggest that this method of setting larger subgroup sizes could actually backfire and exaggerate the negative effects of having a special education subgroup. A *New York Times* article discussed the inconsistencies regarding subgroup sizes stating that, “around the country, states and school districts are sidestepping the spirit, and sometimes the letter, of the federal No Child Left Behind Education Act when it comes to recording their successes and failures in teaching disabled youngsters” (Schemo, 2004, p. 1). It is not surprising that subgroup size has been the focus of recent commentary (Feller & Bass, 2006; Freudenberg, 2006).

The Department of Education has proposed a regulation that would not permit states to set a higher number for the subgroup of students with disabilities. Specifically, a state could not set a higher minimum number for students with disabilities than it sets for student in the English language learner subgroup (34 C.F.R. § 200.7(a)(2)). This regulation was proposed to ensure that the number per subgroup may not be manipulated to avoid accountability for students within this (or any) subgroup. This regulation still fails to address state differences in subgroup size, however, so it is possible that one state could use a subgroup size of 10, whereas its immediate neighbor could set a subgroup size of 100.

With these changes—to both better align with IDEA and to monitor subgroup numbers—the department would be taking the necessary first steps in addressing the needs of students in the students with disabilities subgroup. However, until greater steps are taken to address these issues, the department may face legal challenges.

RESULTING LITIGATION

The strict NCLB requirements for students with disabilities have resulted in litigation in one state. Two Illinois school boards and a group of special education students and their parents challenged some of the

mandates in the NCLB (*Board of Ottawa Township High School v. U.S. Department of Education*, 2005; NSBA, 2005). The school districts in this case had failed to make AYP solely because of the performance of their students with disabilities subgroup. The parents alleged that NCLB is contradictory to the legal requirements of IDEA. In their lawsuit, the parents named the U.S. Department of Education, Department Secretary Margaret Spellings, the Illinois State Board of Education, and the state superintendent. They argued that NCLB would cause their children with special needs significant harm because the school districts cannot comply both with IDEA's mandates of treating students with special needs individually through an IEP and with NCLB's requirement that IEPs be altered for the sole purpose of meeting NCLB's categorical requirements of requiring all students to meet AYP (*Board of Ottawa Township High School v. U.S. Department of Education*; NSBA). In essence, NCLB requires that students with disabilities be held to the same level of performance of general education students without concern for their individual disability.

The plaintiffs argued that portions of NCLB are invalid because they are allegedly inconsistent with the individualized treatment required by IDEA. The plaintiffs stated that, regarding the disabilities subgroup, NCLB does not allow for the individual differences of these groups. They also argued that NCLB requires school districts to alter IEPs for students within this subgroup to address deficiencies in meeting the state standards. In so doing, the plaintiffs alleged that the alteration is contrary to IDEA, which requires IEPs to be uniquely tailored to the student's needs as they relate to an individual's disability. The school officials noted that NCLB's failure to allow an unlimited number of students to take an alternate assessment violates IDEA because there is no way of ensuring that only 1% (or 3%) of the school's students require an alternate assessment, especially in a school with special programs aimed at serving students with particular types of disabilities (*Board of Ottawa Township High School District v. U.S. Department of Education*, 2006). Accordingly, the plaintiffs argued that significant harm to special education students will result if the IEPs are altered to meet NCLB requirements.

The Department of Education responded to these allegations by arguing that the State of Illinois voluntarily accepted the funds and requirements of both NCLB and IDEA. The department also noted that even if there were inconsistencies between IDEA and NCLB, the latter-passed statute (NCLB) would trump the earlier requirements. Going along with this argument, however, the plaintiffs asserted that the renewal of IDEA in 2004 would trump the earlier NCLB requirements.

Another point of contention relates to the meaning of the NCLB

statute. For instance, NCLB states that “AYP shall be defined in such a manner that includes separate measurable objectives for continuous and substantial improvement for students with disabilities” (*Board of Ottawa Township High School District v. U.S. Department of Education*, 2006, pp. 7–8). The plaintiffs reasoned that the plain meaning of this statute indicates that NCLB requires separate measurable annual goals for special education students. To the contrary, the defendants declared that other portions of the NCLB statute require all students to be subject to the same high academic standards (*Board of Ottawa Township High School District v. U.S. Department of Education*, 2006).

In 2007, the U.S. Department of Education’s motion for summary judgment was granted. The federal district court found that the plaintiffs did not have standing to pursue this lawsuit (*Board of Ottawa Township High School District 140 v. U.S. Department of Education*, 2007). Specifically, the law requires that to establish standing, a plaintiff must have suffered an actual injury or be subject to an imminent injury (see *Lujan v. Defenders of Wildlife*, 1992). In finding that the plaintiffs did not have standing, the court held that the plaintiffs, at the time the lawsuit was filed, had not been injured because the schools did not accept Title I funds (NCLB funds), and they had not yet been identified for corrective action (*Board of Ottawa Township High School District 140 v. U.S. Department of Education*, 2007). The court further reasoned that the State of Illinois may be the entity at fault because the state chose to receive federal funds, and the state defined the AYP requirements for the schools. As such, the plaintiffs did not have standing to sue the Department of Education because the harm that the plaintiffs alleged was not traceable to the department. Under NCLB, schools may face imminent corrective action or sanctions if they fail to meet AYP for 4 consecutive years. At the time of this lawsuit, the plaintiffs had not failed to meet AYP for 4 consecutive years (*Board of Ottawa Township High School District 140 v. U.S. Department of Education*, 2007).

The court dismissed the plaintiffs’ accusation that NCLB, as implemented, is violating IDEA because it will harm students with disabilities by forcing them to meet the same academic standards as nondisabled students. The court reasoned that NCLB permits alternate assessments for students with disabilities and that students with disabilities have not been denied a free appropriate public education (*Board of Ottawa Township High School v. U.S. Department of Education*, 2007). On appeal, the seventh circuit court of appeals found that the plaintiffs had standing but found that the case had been properly dismissed. The court reasoned that even

though the IDEA was reauthorized in 2004, none of the amendments superseded any portion of the NCLB (*Board of Education v. Spellings*, 2008).

Even though the *Ottawa* case was dismissed, there are still several legal and policy implications for school districts across the country. First, this decision still leaves the door open for further litigation from those schools or districts that *have* suffered an “injury”—that is, Title I schools that are facing restructuring after multiple years of failing AYP. In addition, even if the plaintiffs appeal and ultimately lose this case, several of their arguments should resonate with policy makers. Specifically, Congress needs to pay close attention to this debate over the conflict between IDEA and NCLB. For example, according to the U.S. Supreme Court case *Pennhurst State School and Hospital v. Halderman* (1981), Congress needs to speak with a constitutionally “clear voice” (p. 17). The way that NCLB and IDEA are currently written, there is not a clear voice.

On this same note, there is also a presumption that the legislature did not intend to write two contradictory statutes. As a result, the courts have a responsibility to construe statutes that appear to be in conflict with one another by considering all their provisions. In so doing, the courts need to construe the laws together to make them as harmonious and workable as possible (82 Corpus Juris Secundum [CJS] Statutes Sec. 354, 2007). According to the CJS, when there is an inconsistency between two federal statutes, the courts need to reconcile them without nullifying either statute and in a way which gives effect to the legislative intent (82 CJS Statutes Sec. 354).

Additionally, because the more recent statute is a later expression of the legislative intent, if there is an irreconcilable conflict between the two statutes, the later enactment would generally control. In such a case, the newer statute may be regarded as creating an exception to the prior statute. However, where there is no clear intention to the contrary, a specific statute will not be controlled or nullified by a general one, regardless of the priority of their enactment (82 CJS Statutes Sec. 354, 2007).

Most recently, in the 2007 U.S. Supreme Court’s *National Association of Homebuilders v. Defenders of Wildlife* decision, the Supreme Court helped clarify this issue. The court reasoned that although a later enacted statute may operate to amend or repeal an earlier statute, such “repeals by implication are not favored” (p. 33). As such, the court will not infer a repeal of the earlier statute unless the later statute clearly contradicts the earlier statute and if the intent of the legislature to repeal the earlier statute is clear (*National Association of Homebuilders v. Defenders of Wildlife*, 2007).

CONCLUSION

As the data in this study of three large states suggest, schools fail to make AYP most often because of the students with disabilities subgroup. When the students with disabilities subgroup causes the entire school to fail, it is unfair not only to the special education students but also to the entire school district. It is also problematic for those who would like to see NCLB work. Specifically, if the special education subgroup dictates the AYP decision of the entire school, then NCLB is a law that is not concerned with improving overall student achievement or identifying truly high- or low-performing schools. As noted, students with disabilities are expected to maintain the exact same proficiency levels as their general education peers, with only a few exceptions. Most identified students *will* be able to participate in the grade-level statewide assessments with appropriate accommodations, but grade-level assessments for those students with severe cognitive disabilities (who do not fall within the exception) are unreasonable. Indeed, it seems illogical to test a sixth-grade student reading at the third-grade level with a sixth-grade test when the student's IEP has deemed grade-level testing as inappropriate for that student. Out-of-level testing should be considered for some additional special education students because many students with disabilities advance through school by chronological age instead of by specific grade-level requirements (see Frazor, 2006). Such accommodations should not be considered "low expectations," but "reasonable expectations." Further, NCLB should not supplant the IEP team's individualized assessment of the student. As noted by Frazor, NCLB's "one-size-fits-all requirements tend to undermine local developments" (p. 179). These issues should be addressed within the upcoming reauthorization of NCLB.

It is laudable that NCLB attempts to raise achievement for all students, but the law's approach needs to be reconsidered for some of the students within the students with disabilities subgroup. Although the Department of Education is considering changes to the current NCLB requirements regarding students with disabilities, the changes may not be drastic enough to align with IDEA and to correct the fundamental disconnect between the two laws. As the data from California, Florida, and Texas suggest, students with disabilities are often responsible for schools and school districts not making AYP requirements. Accordingly, school districts may allege that there is an inherent conflict between IDEA and NCLB that has caused many districts and schools to fail to make AYP. Although holding students with disabilities accountable is important, requiring that they obtain the *same* test scores as general education students to meet AYP requirements conflicts with the spirit of IDEA. If

Congress does not address this conflict within the upcoming reauthorization of the NCLB, courts may likely construe the two different statutes based on legislative intent. Judicial challenges may be one route to try to change the law, but pressure at the state and local levels by educators and parents of students with disabilities working together with the U.S. Department of Education may have an impact as well.

Notes

1. Data on California schools were obtained from the California Department of Education Web site (<http://www.cde.ca.gov/ds>), data on Texas schools were obtained from the Texas Education Agency Web site (<http://www.tea.state.tx.us>), and data on Florida schools were obtained from the Florida Department of Education Web site (<http://www.fldoe.org>).

2. The percentage of schools that had mean values substituted for missing values was very small. In California, 29 schools (0.36%) had missing values imputed. In Texas, only 9 schools (0.09%) contained missing values. In Florida, missing values were imputed for 18 schools (0.67%).

3. Logistic regression analysis is a statistical regression model for binary dependent variables (variables that have only two possible responses, such as yes/no questions). This method allows researchers to calculate the independent effects of a number of factors on the dependent variable and also allows researchers to predict the probability of obtaining one response or the other (Long, 1997).

4. In 2004–2005, the annual measurable objectives (AMOs) in California increased by approximately 11 percentage points, so schools that were required to have approximately 12% of their students score proficient in 2003–2004 were required to achieve about 23% proficiency in 2004–2005. As a result, a larger percentage of schools failed to make AYP in 2004–2005 and 2005–2006 than in previous years, so the percentage of failures due to special education alone were artificially low as compared with previous years.

5. Results are from a logistic regression analysis that examines the effect of having a special education subgroup on a school's AYP status, controlling for the race composition of the student body, school enrollment, the student–teacher ratio in the school, and the percentage of free-lunch-eligible students ($b = -0.694$, $p < .001$).

6. This analysis used independent sample t tests to determine whether the means of one group (in this case, schools containing special education subgroups) differed significantly from the means of a second group (schools that do not contain special education subgroups). In each year, the difference between the two group means was significant at the .001 level.

7. Beginning with the 2005–2006 school year, the Florida Department of Education changed the way it reported NCLB AYP data for the schools in its state. These changes made it virtually impossible to conduct the type of analyses needed for this article on the 2005–2006 data. As a result, the 2004–2005 AYP results are the most recent data analyzed for the state of Florida.

8. In other words, when we treat Florida as if it has the same 50-student subgroup rule as California and Texas and recalculate AYP based on the performance of subgroups containing 50 or more students.

9. Data obtained from California Department of Education Web site (<http://www.cde.ca.gov>). Difference in schoolwide reading test scores based on special

education composition is significant at the $p = .001$ level ($t = 14.41$). Differences in average reading test scores among special education subgroups was also significant at the $p = .001$ level ($t = 29.16$).

References

- Board of Education v. Spellings, 517 F.3d 322 (7th Cir. 2008).
- Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982).
- Board of Ottawa Township High School v. U.S. Department of Education, Case No. 05 C 0655, Motion to Dismiss (2005).
- Board of Ottawa Township High School District v. U.S. Department of Education, Case No. 05 C 0655, Plaintiffs' Reply Brief in Support of Their Motion for Summary Judgment (2006).
- Board of Ottawa Township High School District 140 v. U.S. Department of Education, 2007 U.S. Dist. LEXIS 24057 (N.D. Ill. 2007).
- Bracey, G. (2003). The 13th Bracey report on the condition of public education. *Phi Delta Kappan*, 85(2), 148.
- California Department of Education. (2006). *Fact Book 2006: Handbook of Education Information*. Retrieved April 10, 2006, from <http://www.cde.ca.gov/re/pn/fb/documents/factbook2006.pdf>
- 82 Corpus Juris Secundum Statutes Sec. 354 (2007).
- Feller, V., & Bass, F. (2006, April 18). Congress leaders to probe No Child scoring [Electronic version]. *Associated Press*. Retrieved August 10, 2006, from <http://www.political-news.org/breaking/25267/congress-leaders-to-probe-no-child-scoring.html>
- Fiore, T., Harwell, L., Blackorby, J., & Finnigan, K. (2000). *Charter schools and students with disabilities: A national study*. Washington, DC: U.S. Department of Education, Office of Educational Research and Improvement.
- Frazor, E. (2006). No Child Left Behind in need of a new IDEA: A flexible approach to alternate assessment requirements. *Golden Gate University Law Review*, 36(2), 157–184.
- Freudenberg, S. (2006, April 17). 2 million scores ignored in “No Child” loophole. [Electronic version]. *Associated Press*. Retrieved from August 10, 2006, from <http://www.msnbc.msn.com/id/12357165/from/RSS/>
- Gordon, S. (2006). Making sense of the inclusion debate under IDEA. *Brigham Young University Law Review*, 2006, 189–225.
- Hagar, K. D., & Slocum, T. A. (2005). Using alternate assessment to improve educational outcomes. *Rural Special Education Quarterly*, 24(1), 54–59.
- Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq. (2004).
- Individuals with Disabilities Education Act Regulations, 34 C.F.R. § 200 et seq. (2006).
- Individuals with Disabilities Education Act Senate Report, 108-185 (2003).
- Keele, C. (2004). Is the No Child Left Behind Act the right answer for children with disabilities? *UMKC Law Review*, 72, 1111–1136.
- Kibbler, A. (2006, September 26). Special standards: ISTEP for special ed students—unfair or a guarantee they won't be overlooked. *The Herald-Times* [Bloomington, IN], D1.
- Kossar, K., Mitchem, K., & Ludlow, B. (2005). NCLB: A national study of its impact on special education and rural schools. *Rural Special Education Quarterly*, 24(1), 3–8.
- Long, J. S. 1997. *Regression models for categorical and limited dependent variables*. Thousand Oaks, CA: Sage.

- Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992).
- McLaughlin, M. J., Embler, S., & Nagle, K. (2004). *Students with disabilities and accountability: The promise and the realities. Should there be alternatives?* Washington DC: Report for the Center on Education Policy.
- Moores, D. (2005). The NCLB Act and IDEA: The uneven impact of partially funded federal mandates on education of deaf and hard of hearing children. *American Annals of the Deaf*, 150(2), 75–80.
- National Association of Homebuilders v. Defenders of Wildlife, 2007 U.S. LEXIS 8312 (2007).
- National Center for Learning Disabilities. (n.d.). *No Child Left Behind and students with learning disabilities*. Retrieved August 30, 2006, from National Center for Learning Disabilities Web site: <http://www.nclcd.org/>
- National Education Association. (2005, December). *Department of Education to allow improved special education tests*. Retrieved March 25, 2006, from <http://www.nea.org/esca/specialrules1205.html>
- National School Boards Association. (2006, August). *Federal regulations: IDEA*. Retrieved August 9, 2006, from <http://www.nsba.org/>
- Neill, M., Guisbond, L., & Schaeffer, B. (2004). *Failing our children: How No Child Left Behind undermines quality and equity in education*. Retrieved April 10, 2006, from the National Center for Fair and Open Testing Web site: http://www.fairtest.org/Failing_Our_Children_Report.html
- No Child Left Behind Act of 2001, 20 U.S.C. § 6301 et seq. (2002).
- Olson, L. (2004). Count me in: Special education in an era of standards. Enveloping expectations. *Education Week*, 23(17), 8–20.
- Pennhurst State School & Hospital v. Halderman, 45 U.S. 1 (1981).
- Pew Charitable Trust. (2004). States strive to include students with disabilities in testing and accountability systems, but huge achievement gaps remain. Quality Counts 2004. *Education Week*, 23(17), 7.
- Plain, M. (2004). Results above rights? The No Child Left Behind Act's insidious effect on students with disabilities. *Roger Williams University Law Review*, 10(1), 249–278.
- Purcell, L., East, B., & Rude, H. (2005). Administrative perspectives on the No Child Left Behind Act for students with disabilities in rural settings. *Rural Special Education Quarterly*, 24, 27–31.
- Rentschler, T. (2006). No Child Left Behind: Admirable goals, disastrous outcomes. *Widener Law Review*, 12, 637–663.
- Rosenbaum, S. (2004). Aligning or maligning? Getting inside a new IDEA, Getting behind No Child Left Behind and getting outside of it all. *Hastings Women's Law Journal*, 15(1), 1–38.
- Schemo, D. J. (2004, August 30). School achievement reports often exclude the disabled. *New York Times*. Retrieved October 1, 2006, from <http://query.nytimes.com/gst/fullpage.html?sec=health&res=9D03E7D71F3EF933A0575BC0A9629C8B63>
- Shindel, C. (2004). One standard fits all? Defining achievement standards for students with cognitive disabilities within the No Child Left Behind Acts Standardized Framework. *Journal of Law and Policy*, 12, 1025–1088.
- Snell, L. (2004, March 1). Accountability looms for special education. *School Reform News*. Retrieved April 8, 2006, from http://www.reason.org/commentaries/snell_20040301.shtml
- Thurlow, M. (2004). NCLB and the inclusion of students with disabilities in the accountability and assessment systems. *The Beacon*. Retrieved June 15, 2007, from <http://www.harborhouselaw.com/articles/highstakes.nclb.inclusion.thurlow.htm>

- Townsend, N. (2007). Framing a ceiling as a floor: The changing definition of learning disabilities and the conflicting trends in legislation affecting learning disabled students. *Creighton Law Review*, 40(1), 229–270.
- U.S. Department of Education. (2005, December). *To raise achievement of students with disabilities, greater flexibility available for states, schools*. Retrieved March 25, 2006, from <http://www.ed.gov/news/pressreleases/2005/12/12142005a.html>
- U.S. Department of Education. (2006, January). *Assessing students with disabilities: IDEA and NCLB working together*. Retrieved March 25, 2006, from <http://www.ed.gov/admins/lead/spced/toolkit/index.html>
- Winerip, M. (2006, January 11). Bitter lesson: A good school gets an “F.” *The New York Times*. Retrieved February 8, 2006, from <http://www.schneiderman.org/show.php?page=news&id=354&PHPSESSID=3d82dc63a35bc733b808225ba82ccdd5>
- Yell, M. (2006). *The law and special education*. Upper Saddle River, NJ: Pearson.
- Yell, M., Katsiyannas, A., & Shiner, J. (2006). The No Child Left Behind Act, adequate yearly progress, and students with disabilities. *Teaching Exceptional Children*, 38(4), 32–39.

SUZANNE E. ECKES is an associate professor in the Educational Leadership and Policy Studies Department at Indiana University. She researches how the equal protection of laws protects students with disabilities, GLBT students, women, and racial minorities. Suzanne has published over 50 articles on these topics. Her most recent publications include a coauthored piece in the *American Educational Research Journal* about the legal rights of GLBT teachers, and a coauthored piece in *Educational Policy* about racial integration in charter schools.

JULIE SWANDO is a PhD candidate in the Department of Sociology at Indiana University. Her major research interest is the study of education reform, specifically how reform policies develop and their effects on students and schools. Her dissertation research compares the processes by which school voucher and school funding equalization policies were proposed and implemented in five states. With this work, she hopes to expand the body of knowledge on the development of school reform policy and to refine theories of social policy development more generally.