Advocacy in Action
Bridging Research and Practice in Special Education Advocacy

Issue 13 **August 2013**

Characteristics of Effective Class Action Lawsuits in Special Education: An Examination of Case Studies

Introduction to Class Action Lawsuits in Special Education

Typically, lawsuits in special education brought on behalf of individual children with disabilities do not result in systemic policy change. When such change is necessary, class action lawsuits, filed on behalf of a group of similar individuals, can be an effective strategy. In the case of special education, class action lawsuits are often a method of last resort after mediation, resolution sessions, due process hearings, and appeals have failed to resolve the issue at hand. Class action lawsuits (in special education or otherwise) often result in consent decrees, which are legally binding agreements between the plaintiffs and defendants to pursue specific, sustainable solutions to the problems outlined in the lawsuit.

Though class action lawsuits have the potential to create systemic change in the special education system through effective consent decrees, a review of such actions suggests that they rarely have such an effect in practice. In a recent paper, David Rostetter and Katrina Arndt attempted to understand why school districts often fail to achieve the aims outlined by consent decrees, even when they invest significant time and resources in the attempt. To do this, Rostetter and Arndt selected from sixteen class actions brought under the Individuals with Disabilities Education Act seven class action lawsuits that resulted in consent decrees for closer review. Of these particular class actions brought between 1989 and 1999, six are ongoing. The authors defined five of these cases as high cost/low yield and two cases as low cost/high yield (where yield measures the extent to which the intended outcome of the initial complaint has been met). They reviewed court documents, expert reports, consent agreements, records of costs, and interviewed counsel, other key players, and state and district administrators, then looked for similarities between the

unsuccessful (low yield) cases and between the successful (high yield) ones, to arrive at a list of recommendations for plaintiffs and defendants involved in class action lawsuits.

High Cost/Low Yield Cases

- Mrs. W. v. Tirozzi (1989): This case was filed on behalf of students with intellectual disabilities, after data released by the state of Connecticut showed that only 7.69% of students identified with mental retardation in the state participated in general education classrooms (compared to 57.28% of all students with disabilities). The consent decree "established a panel of experts to guide the implementation of increasing the more inclusive placements of students with the label of mental retardation," which ultimately failed to significantly increase such students' placement in regular education classrooms, despite a high expenditure of time and resources on the part of the state. The authors of the study argue that this case failed because it incorrectly assumed that the state's influence could affect large scale behavior change at the local district level, and because it tried to use special education law - implementation of LRE placement decisions by IEP Teams - to affect the behavior of general educators to comply with the LRE regulations.

- Reid L. v. IBSE (1995/2002/2004): This case aimed to reduce the number of students with disabilities in Illinois placed in segregated settings by changing the schools' methods of determining placement. Under the consent decree, the Chicago Public Schools (CPS) agreed "to establish a monitor and staff to ultimately result in a significant change in the way placement decisions were made as well as an actual reduction in students placed in segregated settings." The court extended its reach to the state's general supervision of teacher preparation, certification standards, and special education funding. Despite millions of dollars in litigation and fees for monitoring imposed on the independent monitor and the state in excess of federal statutory requirements, to date, neither CPS nor the state have made significant improvement toward ensuring integrated settings. The authors suggest that "[d]iminishing returns were almost a foregone conclusion given the extensive expectations of the initial consent decree."

- Chanda S. v. LAUSD (1996/2003): This case sought wide scale change to both regular and special education after the California Legislature enacted a law requiring all students to pass an exit examination to receive a high school diploma. The initial consent decree involved reflecting changes in regular and special education, and the development of multiple plans in such diffuse areas as resource development, staff development, LREs, organizational structure, policy and procedure development, and dispute resolution procedures. The district struggled to meet the decree's ambitious plans, a problem compounded by frequent leadership changes and resource limitations. With little

evidence of improved services for students with disabilities, a modified consent degree was mediated in 2003 with fewer and specific outcomes that are largely fulfilled except, the authors pointedly note, those that are beyond the control of special education.

- Emma C. v. Eastin (1996/2001/2007/2008): This case was brought on behalf of a relatively small number of students with disabilities (350) in the Ravenswood City School District (RCSD) in California who challenged the district's continued failure to provide them a Free Appropriate Public Education (FAPE). The 800 page corrective action plan/consent decree was convoluted and overly ambitious in its aims. At the time of this study's publication, the purported systems change lawsuit had cost 19 million dollars and had not improved the availability of FAPE in any significant way.

- Angel G. v. TEA (1994/2004): This case asserted that school districts in Texas were not adequately meeting the educational needs of students with disabilities in residential service agencies. The case's initial consent decree attempted to improve such services, but had very little impact after five years. Only after plaintiffs returned to court to challenge the state's lack of effective monitoring and supervision, was a second consent agreement reached after another five years that established a new, improved method of focused state monitoring and enforcement of the rights of students, including those in residential facilities. Though this system was more effective than the first, it was developed a decade after the original complaint.

Shared Characteristics of High Cost/Low Yield Cases

Having reviewed the above cases, the authors of the study identify the following essential characteristic of an ineffective consent decree from the relatively high cost/low yield class actions: an attempt to change an entire school system (general and special education) solely through special education litigation. Such effort, in general, fails because this kind of system-wide change requires the cooperation and support of general education administrators and staff, who often do not fall under the supervisory authority of special education.

Low Cost/High Yield Cases

- Cordero v. Commonwealth of Pennsylvania (1992): This case was brought on behalf of a student with emotional needs who required significant mental health support services to meet her educational needs. The case sought to mitigate fragmentation of services to students in need of mental health services through eliminating barriers to collaboration and to effective interagency coordination between education agencies and mental health services in Pennsylvania. The consent decree required identification of each member of the statewide class and resolution of each individual's unmet needs. It also required

regular meetings between all necessary agencies involved and resulted in development of cost-sharing agreements between the key agencies at the state and local levels. The conditions of the consent decree were successfully met because the State Board of Education committed itself to monitor the actions of all agencies involved and because the agencies (particularly the Department of Education and of Health and Human Services) recognized the importance of working in tandem.

- Djunaski v. Arizona Department of Education (1999/2001): In this case, the Arizona Protection and Advocacy Office asserted that the Arizona State Department of Education (ASDOE) was not meeting its general supervision responsibilities for investigating and resolving complaints consistent with IDEA. The consent decree established guidelines for the resolution of complaints, as well as a monitor of the process. Again, the conditions of the consent decree were met because the body with legal responsible for state oversight (ASDOE) fully committed itself to the task. This led to strong coordination between the class members and the monitor's office, allowing complaints to be quickly and effectively resolved in accordance with IDEA. This lawsuit was also successful because it identified a very specific component of the law, and because the state was able to create a reliable data system to track its progress against the goals of the consent decree, show evidence of compliance, improved capacity and no further need for a monitor.

Shared Characteristics of Low Cost/High Yield Cases

The authors of the study identify the following characteristic as typical of low cost/high yield class action lawsuits and consent decrees involving special education: they, in general, focus on a limited number of well-defined problems, which can be solved with few changes and with relatively few resources show moderate progress.

Recommendations

Based on the authors' examination of the high cost/low yield and low cost/high yield cases, they arrived at a list of seven recommendations for participants in class action lawsuits in special education. These recommendations are intended to limit the cost of the case and ensure that it results in a consent decree with attainable objectives.

- Plaintiffs should limit the scope of their case to existing special education law. They should not seek outcomes not directly required by special education law, or outcomes that require significant change in general education controlled by other laws.

- Plaintiffs should only seek, and defendants should only agree to, attainable outcomes. The authors advise both parties to focus on what is possible within a given time period, rather than what is ideal, particularly given that class action lawsuits are often brought against districts that are already struggling.

- Consent decrees should involve measurable changes within a finite period. This keeps the focus of the decree on improving outcomes for students.

- Measurements of progress should involve the smallest possible units: change should be measured in classrooms or schools, rather than across a district or state.

- Change should not be recorded in large automated databases, which struggle to pinpoint specific problem areas. Such systems may indicate that an entire district has failed to meet the objectives of a consent decree, when the problem really lies in only a few schools within that district.

- Monitors, masters, and consultants should only be appointed for a finite and predetermined period of time. This increases the likelihood that they will accomplish their tasks within that frame.

- Roles and responsibilities of all parties involved should be well-defined.

The Research: Class Action Lawsuits and Consent Decrees in Special Education: Recommendations for Practice, David Rostetter and Katrina Arndt, Journal of Disability Policy Studies 23 (4) 195-206, Hammill Institute on Disabilities, 2012.

This Advocacy in Action issue was contributed by the Center for Law and Education (www.CLEweb.org).

The Advocacy Institute

A not-for-profit organization dedicated to services and projects that work to improve the lives of children, youth and adults with disabilities.

P.O. Box 565 ♦ Marshall, Virginia 20116 ♦ Phone 540.364.0051
www.AdvocacyInstitute.org ♦ Email: info@AdvocacyInstitute.org