

**ENDING ILLEGAL SEGREGATION OF
CHICAGO'S STUDENTS WITH DISABILITIES:
STRATEGY, IMPLEMENTATION, AND
IMPLICATIONS OF THE *COREY H.* LAWSUIT**

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INTRODUCTION

This paper analyzes key aspects of the *Corey H.* lawsuit, which aims to end the illegal segregation of students with disabilities in Chicago and Illinois. In this paper, the authors place major emphasis on explaining (1) the multi-method advocacy effort (which includes parent organizing, media advocacy, and lobbying) that has been employed to support the *Corey H.* litigation and its settlement agreements and (2) the crafting of remedies in the lawsuit based on viewing schools and school districts as complex “human systems.” The authors emphasize these issues because the authors conclude that if litigation focused on the education of students with disabilities is carried out within this broader framework, the prospects for achieving major improvements in students’ educational experiences and academic achievement are dramatically enhanced.

In May 1992, attorneys from Designs for Change¹ (DFC) and Northwestern University Legal Clinic² filed a federal class action lawsuit (*Corey H., et al. v. Chicago Board of Education and Illinois State Board of Education*³) on behalf of the more than 40,000 students with disabilities then enrolled in the nearly 90% minority Chicago Public Schools.⁴ The lawsuit alleged violations of the least restrictive environment provisions (“the LRE mandate”) of the Individuals with Disabilities Education Act.⁵ (Hereafter the Chicago

¹ Designs for Change is a non-profit educational research, advocacy, and assistance organization established in 1977 that has as its primary mission the improvement of educational programs for public elementary and secondary students in major U.S. cities, with a focus on improving education for low-income students, minority students, and students with disabilities. Policy reform initiatives of Designs for Change related to special education in Chicago and Illinois are the responsibility of DFC’s Executive Director and co-author Donald R. Moore. Although Designs for Change supports the litigation, all litigation decisions are made by the plaintiffs and their attorneys. Co-author Sharon Weitzman Soltman, one of plaintiffs’ attorneys in the lawsuit, is responsible for those portions of this article dealing directly with the litigation.

² Northwestern University Legal Clinic is a legal organization which is part of Northwestern University School of Law. The Legal Clinic serves as a training ground for students at Northwestern University Law School.

³ *Corey H. et al. v. Board of Education of the City of Chicago et al. and the Illinois State Board of Education, et al.*, No. 92 C 3409 (N.D. Ill. 1992).

⁴ Chicago Public Schools (1995). *Annual Desegregation Review, 1993-94: art I: tudent Assignment Component*. Chicago: Author.

⁵ Individuals with Disabilities Education Act, 20 U.S.C §§1400 *et seq.* The “LRE Mandate” refers to the requirement of §1412(5)(A) that “[t]o the maximum extent appropriate, children with disabilities ... are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” The Complaint also alleged violations of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*

Board of Education and the Chicago Public Schools are referred to as the “Chicago Board,” the Illinois State Board of Education is referred to as “the ISBE,” the federal Individuals with Disabilities Act is referred to as “IDEA,” and the lawsuit is referred to as “the *Corey H.* lawsuit.”)

As elaborated below, the *Corey H.* lawsuit was pursued consistent with a research-based educational advocacy strategy that employed a range of advocacy methods in combination (such as community organizing, media advocacy, and lobbying) in support of the litigation. Further, remedies in the lawsuit were crafted by viewing schools and school districts as “human systems” whose organizational and political dynamics must be carefully analyzed if litigation is going to contribute to concrete improvements in educational quality, rather than merely paper victories. A focus on schools as human organizations underscores, for example, the fact that school principal leadership has been shown to be vital in initiating a wide range of school-level changes, so that any school-level remedy for implementing the LRE mandate must take into account the critical leadership role of the principal.⁶

In February 1998, Judge Robert Gettleman entered a finding for the *Corey H.* plaintiffs, after a trial focused on the ISBE’s liability. The Court ruled that students with disabilities in the Chicago Public Schools were being illegally segregated and were not being educated in compliance with the LRE mandate, that teachers in the Chicago Public Schools did not understand the LRE mandate and were not adequately prepared to teach Chicago’s students in the LRE, that the ISBE had failed to identify and correct LRE violations in the Chicago Public Schools over a period of years (ignoring the ISBE’s legal obligation to do so), and that the Illinois system of special education teacher certification based on specific disability classifications was contributing to noncompliance with the LRE mandate.⁷

The Court approved settlement agreements with the Chicago Board and the ISBE on January 16, 1998 and June 19, 1999 respectively, both of which are being overseen by the

⁶ Daniel Levine and Larry Lezotte (1990). *Unusually effective schools: A review and analysis of research and practice*. Madison, WI: National Center for Effective Schools Research and Development; Designs for Change (1998, April). *What makes these schools stand out: Chicago elementary schools with a seven-year trend of improved reading achievement*. Chicago: Author.

⁷ *Corey H. et al. V. The Board of Education of the City of Chicago, et al.*, 27 IDELR 713 (N.D. Ill. 1998). The trial, which took place in October 1997, focused only on the ISBE’s liability related to its failure ensure that children with disabilities are educated in the LRE in Chicago. The reason for this focus is that one week before trial, the Court preliminarily approved a settlement agreement between the plaintiffs and the defendant Chicago Board.

Court at least through January 2006.⁸ These settlement agreements commit the defendants to significantly restructure a wide range of policies and practices that affect the education of the 55,000 students with disabilities currently enrolled in the Chicago Public Schools. Central to these settlement agreements is the view that the school is the essential unit of change for improving educational quality. Thus, the settlement agreements create the opportunity for individual Chicago public schools to develop school-wide plans for making basic changes in order to educate their students with disabilities in the LRE, and to receive professional development and support in implementing these plans. Schools are then held accountable through state and local oversight for this implementation, both during and after the restructuring process at each school. The defendants have allocated more than \$43 million dollars to support this school-driven change process.

Also central to the settlement agreements are changes in a range of Chicago Board and ISBE policies and customary practices, such as ensuring that student placement decisions are based on individual needs rather than disability labels, and instituting comprehensive ISBE monitoring and enforcement of the LRE mandate in Chicago. Essential in implementing these agreements is the appointment of a Court Monitor, who is charged with monitoring all aspects of implementation and assisting the parties in settling disputes, if possible, before taking them to the Court.⁹

The plaintiffs' attorneys continue to devote substantial time to negotiating specific procedures for implementing various aspects of the settlement agreements, and to monitoring the Chicago Board and the ISBE to determine whether initial changes that were promised are in fact occurring. At the same time, the Policy Reform Team at Designs for Change, as well as other advocacy groups, are active outside of the litigation process in pressing for the settlement agreements to be implemented — for example, through organizing families of students with disabilities to press for implementation in their individual schools, through seeking media coverage for progress resulting from the settlement agreements, and through

⁸ The settlement agreement with the ISBE was developed pursuant to a process overseen by the Court to fashion a remedy for the violations found in the Court's February 19, 1998 opinion.

⁹ The Honorable Joseph Schneider serves as the *Corey H.* Court-Appointed Monitor. Judge Schneider is a retired Presiding Judge of County Division of the Circuit Court of Cook County. From 1992-1995, he served as a court appointed monitor in a federal class action involving the failure of the Illinois Department of Children and Family Services to fulfill their responsibilities to children in the care of the state. *B.H., et al., v. MacDonald, et al.*, No. 88 C 5588 (N.D. Ill.). In addition to Judge Schneider, the *Corey H.* Monitor's office now includes two full-time staff persons, and he occasionally uses consultants as well.

lobbying to prevent action by the state legislature intended by opponents of the *Corey H.* decision to thwart the implementation of the settlement agreements.

The initial settlement agreement with the Chicago Board was reached more than five years after the case was filed, while the agreement with the ISBE was reached seven years after filing. Thus, the implementation of the agreement with the Chicago Board has been in progress for less than 36 months and implementation of the ISBE agreement has been in progress for 18 months. These agreements will be in force for at least five more years.

At this relatively early point in the implementation of these settlement agreements, the authors analyze:

- The research and reform experiences that shaped the lawsuit, including the problems that the lawsuit sought to remedy and the advocacy and organizational change strategies that have been pursued.
- The course of the litigation from the initial formulation of the litigation strategy to the settlement agreements, including the key elements of the settlement agreements and the strategy for securing acceptable settlement agreements.
- Initial implementation of settlement agreements.
- Implications of the *Corey H.* advocacy strategy for successful change in other cities and for a related research agenda.

1. HOW PREVIOUS RESEARCH AND REFORM EXPERIENCE SHAPED THE *COREY H.* LAWSUIT

The attorneys who represented the plaintiffs, as well as the organizations that supported the work of these attorneys, brought an extensive set of skills, knowledge, and strategies to the effort to ensure that the LRE mandates were carried out. Their initiatives were shaped by their previous research and reform activities. (Below, we first discuss Northwestern University Legal Clinic and then focus on Designs for Change in more detail.)

Northwestern University Legal Clinic's Major Special Education Reform Initiatives

In 1988 Northwestern University Legal Clinic initiated a Special Education Project to train law students through representation of students with disabilities in their efforts to secure an appropriate education consistent with state and federal law.¹⁰ As of 1992 when the lawsuit was filed, Northwestern attorneys had represented over 100 students with disabilities in school-level meetings to determine student evaluation and placement, in due process hearings, and in litigation. This experience led the Legal Clinic's attorneys to conclude that even when skilled advocates were available to assist families of students with disabilities on an individual basis, the potential for securing appropriate educational experiences was limited, given the deeply ingrained practices of Chicago and other school districts in implementing special education and lack of enforcement by the ISBE. One issue on which a case-by-case approach to advocacy was particularly ineffective was on the issue of LRE, given deeply-entrenched school system procedures and practices in Illinois that placed a substantial portion of students with disabilities into segregated placements. Thus, the Legal Clinic's attorneys were open to considering class action litigation to address the LRE issue.

The Northwestern legal team brought to the *Corey H.* lawsuit a detailed understanding of special education law and of the Chicago Board and the ISBE, based on years of experience in representing individual students with disabilities and in litigating other Chicago education issues. The Legal Clinic also brought to the litigation extensive

¹⁰ The Legal Clinic's Special Education Project was headed by attorney John Elson and staffed by attorneys Laura Miller and Nancy Gibson, along with Northwestern law students.

experience in preparing for and trying complex class action lawsuits and pursuing appeals in complex litigation. Further, the Legal Clinic was able to draw on the capabilities of law students to conduct extensive legal research and of law school faculty members to advise the legal team on specialized legal issues.

Designs for Change Strategy and Major Reform Initiatives

Designs for Change (DFC) is an educational research, advocacy, and assistance organization focused on improving the quality of education in major urban school systems, with a particular focus on Chicago. DFC concentrates especially on improving the quality of education for low-income students, minority students, and students with disabilities. DFC is committed to linking applied research and policy analysis with advocacy for systemic reform.

Early DFC Research and Resulting Conceptual Frameworks

After its founding in 1977, DFC carried out a number of multi-city educational research projects to identify promising urban education reform strategies. The first such research project (which subsequently had a major impact on the strategy underlying the *Corey H.* litigation) was a study carried out for Carnegie Corporation of New York of eight experienced child advocacy groups that had an exclusive or significant focus on improving the quality of education for those students most at risk of school failure¹¹ (such as Children's Defense Fund, Massachusetts Advocacy Center, Advocates for Children of New York, and Chicano Education Project). Donald Moore, DFC's Executive Director, was the principal investigator for this study, while Sharon Soltman (now DFC's Consulting Attorney, who has represented the *Corey H.* plaintiffs since the beginning of the lawsuit) served as research coordinator for the study.

DFC's advocacy study entailed 50 weeks of field research to identify the characteristic strategies, beliefs, and practices of these eight experienced advocacy organizations. Based on this investigation, DFC identified 21 effective advocacy practices

¹¹ Donald R. Moore, Sharon Weitzman Soltman, et al. (1983). *Child advocacy and the schools: Past impact and potential for the 1980s*. A report to the Carnegie Corporation of New York. Chicago: Author.

in Five Areas of Effective Advocacy Practice.¹² These effective advocacy practices were employed in specific projects carried out by these advocacy groups in instances in which the advocacy group had had a substantial impact in improving public policy and educational quality for students at risk of educational failure. For example, DFC studied the successful effort by Massachusetts Advocacy Center to pass Chapter 766, the Massachusetts special education law that contained many key concepts later incorporated into the first comprehensive federal special education law.¹³ These 21 practices employed in effective advocacy projects are summarized in Table 1 (attached). As it has been refined through 18 years of subsequent experience, DFC's multi-method advocacy strategy that employs these 21 practices has formed the basis for DFC's efforts to improve the quality of education for students with disabilities (including DFC's involvement in pressing for the implementation of the LRE mandate), and as the basis for other DFC advocacy efforts (such as DFC's successful effort to shift significant educational decisions in Chicago to individual local schools, through the Chicago School Reform Act of 1988).¹⁴

In carrying out DFC's advocacy study and other research projects, DFC refined an analytical model for understanding the educational process that is based on viewing "school communities" and the larger educational systems of which individual school communities are a part as "human systems" (see attached Table 2). As reflected in Table 2, students are educated in "school communities," which include the school itself and other institutions and individuals with which students come into regular contact (such as their families and peer groups). The practices of school communities create students' educational experiences, and the nature of students' educational experiences determine the outcomes of education (such as a student's reading competence).

As reflected in Table 2, DFC analyzes the practices of school communities in light of Five Essential Supports for Student Learning (School Community Leadership, School Environment, Parent-Community Partnerships, Adult Learning and Collaboration, and

¹² Donald R. Moore, Sharon Weitzman Soltman, et al. (1983). *Standing up for children: Effective child advocacy in the schools*. Chicago: Author.

¹³ 1972 Massachusetts Acts, Chapter 766.

¹⁴ Chicago School Reform Act, P.A. 85-1418, 1998 Illinois Legislative Service (West); O'Connell, Mary (1991). *School reform Chicago style: How citizens organized to change public policy*. Chicago: Center for Neighborhood Technology.

Learning Experiences In and Out of School).¹⁵ These Five Essential Supports represent a useful framework for organizing and applying a major body of research that has guided DFC’s reform efforts: the 40 years of research aimed at identifying the practices of effective urban schools that exhibit exemplary levels of student achievement.¹⁶

The research on school effectiveness indicates, for example, that the quality of classroom instruction is critically important in determining student achievement: however, the nature of classroom instruction is shaped decisively, for instance, by the extent to which teachers collaborate, trust each other, and believe that they are encouraged to innovate.¹⁷ Therefore, improving instructional practice must be viewed, in part, as an effort to change such key aspects of the school community as teacher beliefs, deeply-rooted organizational routines, and existing political bargains (in other words, to restructure the school community as a “human system”).¹⁸

As further reflected in Table 2, the school community does not exist in a vacuum, but rather within the context of a nested set of larger human systems — which include the local school district, the state government, and the federal government. A key challenge for advocates is to determine what changes in policy, customary practice, and resource allocation at the various levels of this complex human system will have positive impacts on the practices of school communities, and thus on students’ educational experiences and on student outcomes.

To summarize, the analytical model that has shaped DFC’s advocacy for educational reform (including DFC’s involvement in pressing for the implementation of the LRE mandate) has entailed the following key elements:

¹⁵Designs for Change (1993). *Creating a school community that reads*. Chicago: uthor; Designs for Change (1997). *Building a school community that reads —Literacy as the catalyst for schoolwide improvement*. Chicago: Designs for Change.

¹⁶ Recent examples of publications reporting or summarizing research about school effectiveness include, for example, Levine and Lezotte (1990); Charles Teddlie and Sam Stringfield (1993). *Schools make a difference: Lessons learned from a 10-year study of school effects*. New York: Teachers College Press; Designs for Change (1998, April).

¹⁷ Designs for Change (1998, April); Penny B. Sebring, Anthony. S. Bryk, Melissa Roderick, and Eric Camburn (1996). *Charting reform in Chicago: The students speak*. Chicago: Consortium on Chicago School Research.

¹⁸ See, for example, Richard F. Elmore (1978, Spring). Organizational models of social program implementation. *Public Policy* 26: 185-227.

- A multi-method advocacy strategy in which litigation is viewed as one among a number of methods that must be carried out to bring about changes in educational policy and practice that will improve the quality of students' educational experiences and outcomes.
- A focus on the "school community" as the essential unit of change and an analytical approach that views the school community as a "human system" with complex organizational and political dynamics that need to be understood to craft changes that will improve educational quality.
- A focus on the utility of crafting educational reform strategies (including legal remedies) in light of four decades of research about the practices of effective urban schools.
- The perspective that the school community is nested in a series of other human systems (including the school district, state government, and federal government) and that a key task for reform advocates is to determine what changes in policies, characteristic practices, and resource allocations at various levels of the educational system will improve educational practices in school communities and thus the quality of students' educational experiences and educational outcomes.

After clarifying this human systems perspective for analyzing the process of improving education and after completing its national study to identify effective advocacy practices, DFC began to carry out the practices of effective advocacy in Chicago in the early 1980s, to catalyze fundamental improvements in Chicago's public schools. These advocacy efforts focused on two priorities that DFC adopted in the early 1980s and that DFC has pursued to the present:

- Improving the overall quality of education on a school-wide basis for all students (with a particular focus on improving the effectiveness of elementary schools in teaching students to read).
- Improving the quality of education for students with disabilities.

DFC's subsequent advocacy efforts during the 1980s that were focused on both of these priority issues significantly impacted subsequent efforts to ensure that the LRE mandate was carried out. The impact of some of these key advocacy initiatives during the 1980s on the *Corey H.* lawsuit is summarized briefly below.

Improving School-Wide Educational Quality

DFC's effort to improve the overall quality of education on a school-wide basis resulted in a successful campaign to restructure the Chicago school system through a change in

Illinois state law that applies only to Chicago — the Chicago School Reform Act of 1988.¹⁹ This law shifted significant decision-making authority to elected Local School Councils and to principals at each of Chicago’s 550 schools, abolished principal tenure and placed principals on four-year contracts with their Local School Councils, established a school-level improvement planning process, gave principals increased control over curriculum and teacher selection, and granted an average of \$500,000 in new discretionary funding to each school. The Reform Act focused Chicago’s central board and administration on carrying out key accountability and enforcement obligations, as well as on carrying out activities that benefit from economies of scale.

Between 1988 and the present, DFC has implemented a series of organizing and advocacy efforts aimed at protecting the educational improvement strategy created by the Chicago School Reform Act. In addition, DFC has provided direct assistance to specific inner-city Chicago elementary schools to help them improve educational quality and student achievement, and has refined a research-based framework of promising educational practices for improving student achievement organized around Five Essential Supports for Student Learning.²⁰

This advocacy and educational assistance experience contributed to DFC’s multi-method advocacy efforts to press for the implementation of the LRE mandate in Chicago by:

- Concretely illustrating how such advocacy activities as the preparation of research reports, media advocacy, and lobbying can be used to support the adoption and implementation of a major public policy change, as well as providing DFC with extensive first-hand knowledge of key institutions and actors comprising the educational and public policy arena in Chicago and Illinois.
- Clarifying, through research about Chicago schools and through direct efforts to assist specific schools in the change process, how organizational change strategies can be carried out in light of the complex organizational dynamics of specific urban schools (such as how to assist school-level planning for change that impacts educational practice, how to work with school principals to enlist their commitment to changing school practice, how to mobilize parents in support of school change, and how to provide professional development and follow-up assistance to teachers that impacts their teaching practices).

¹⁹ Chicago School Reform Act.

²⁰ Designs for Change (1997).

- Clarifying common school-level barriers to the education of students with disabilities in the least restrictive environment, and barriers to collaboration between special education and regular education staff.

Initial DFC Systemic Efforts to Improve the Quality of Education for Students with Disabilities

Beginning in 1981, DFC carried out efforts to organize parents of children with disabilities to work both to improve the quality of education for individual students and to help press for systemic changes. In carrying out these parent education and organizing efforts, DFC has served as a federally-funded Parent Training and Information Center (PTIC) from 1982 to the present. The understanding of the student evaluation, placement, and IEP development processes gained as a Parent Training and Information Center gave DFC detailed insight into how Chicago special education was shaped at the school community, school district, and state levels.

During the same time period in the 1980s, DFC pursued a series of advocacy efforts to restructure the special education system in Chicago and statewide. Because these efforts laid critical groundwork for the *Corey H.* lawsuit and provided critical lessons to the plaintiffs' attorneys for structuring the lawsuit and the settlement agreements, the authors in the balance of Section 1 highlight four such special education policy reform efforts that DFC carried out in the 1980s.

Attacking the Misclassification of Chicago Students into Classes for the Mentally Retarded. When DFC initiated its advocacy focus on special education, the organization sought data about patterns of placement by race in Chicago special education. These data (coupled with direct experience in assisting parents of students with disabilities) indicated that while many Chicago students who needed special education services were not receiving these services, thousands of Chicago students (primarily African-American students) were misclassified in segregated classes for the mentally retarded.

DFC found that 13,000 Chicago students were classified as mildly mentally retarded (Educable Mentally Handicapped or EMH) and that EMH students were overwhelmingly enrolled in separate classes or schools.²¹ Chicago had by far the largest enrollment of students in EMH classes of any urban school system in the nation, and more than 10,500 of these

²¹ In current terminology, the EMH label indicated a "mild cognitive disability."

13,000 students were African-American. Chicago labeled African-American students as EMH at nearly twice the rate for white students (3.8% of Chicago's African-American students were labeled EMH, compared with 1.7% of white students). Experts on the assessment of mental retardation advised DFC that if proper student assessment procedures were employed, no more than 1.25% of any ethnic group should be classified as EMH.²²

A further negative impact of Chicago's EMH program was that once a student was labeled "EMH" in Chicago, this decision nearly always resulted in placement in a segregated EMH classroom in a "cluster program" serving a number of neighborhood schools. Thus, EMH students were typically bused away from their siblings and friends to attend cluster programs in schools that did not view the EMH students "housed in" their school as "their children." Frequently, these EMH classes were characterized by extremely low expectations for student achievement, and it was virtually impossible for these students to escape the EMH label for the duration of their elementary and secondary education experience.

Thus, DFC launched an advocacy campaign aimed at securing a fundamental restructuring of Chicago's EMH program. To do so, DFC:

- Pressed for specific standards to be adopted for restructuring Chicago's EMH program, for the reassessment of all students currently enrolled in the program, and for consistent, high quality transition assistance to be provided to all misclassified students.

The Chicago Board had entered into a consent decree to settle a lawsuit brought by the U.S. government, charging the Chicago Board with illegal racial segregation.²³ DFC sought to have specific commitments for an EMH restructuring process incorporated into the Educational Components to which the Chicago Board agreed for implementing the desegregation consent decree.²⁴ This effort met with modest success. The Educational Components to implement the desegregation consent decree contained a general commitment to restructure the EMH program, in order to resolve a previous

²²Designs for Change (1982, December). *Caught in the Web: Misplaced Children in Chicago's Classes for the Mentally Retarded*. Chicago: author.

²³ *United States of America v. Board of Education of the City of Chicago*, No 80 C 5124 (N.D.III).

²⁴ While the "Rationale" section of the Special Education and Testing Educational Component developed pursuant to the desegregation consent decree acknowledges the past practice of segregating special education students, the national movement to place children in the LRE, and the harmful effects of misclassification, the actual recommendations do not contain specific references as to how these problems will be addressed, other than a vague reference to staff development to prepare teachers for the "implementation of mainstreaming."

lawsuit on the EMH issue.²⁵ After DFC submitted detailed recommendations to the Court to make the EMH restructuring plan much more specific, the federal judge presiding in the case required the Chicago Board to meet with DFC, hear DFC's concerns, and then to report to the Court about what actions the Chicago Board would take to address these concerns. However, the Court never specifically required the Chicago Board to incorporate any of DFC's detailed recommendations into their plans for restructuring Chicago's EMH program.

- Released a major report on the shortcomings of Chicago's EMH program and Chicago's plan for restructuring it, titled *Caught in the Web: Misplaced Children in Chicago's Classes for the Mentally Retarded*.²⁶ DFC secured extensive media coverage for the release of this report, as well as follow-up media stories documenting the experiences of individual misclassified students.
- Organized the EMH Coalition, a citywide coalition of parent, school reform, and civil rights groups that pressed for the changes spelled out in *Caught in the Web* to be carried out by the Chicago Board.
- Aggressively monitored the Chicago Board's implementation of its massive reassessment of the 13,000 students enrolled in Chicago's EMH program, constantly pointing out the ways in which Chicago's reassessment efforts failed to meet accepted legal and professional standards.
- Filed complaints with the ISBE charging that Chicago's EMH program and its reassessment efforts violated state and federal special education laws, and filed complaints with professional organizations of psychologists charging that the reassessment effort failed to meet the professional standards of these organizations.

These advocacy efforts produced a mixture of successes and failures. DFC forced the Chicago Board to reevaluate all students in EMH classes on a specific timetable, an action that they had not clearly committed themselves to take prior to DFC's advocacy efforts. As a result, about 3,500 students formerly classified as EMH were either returned to regular classrooms or diagnosed as having some other disability. However, DFC was unable to get the Chicago Board to carry out student reevaluation procedures recommended by national experts, who estimated that an additional 3,500 students still remained misclassified in

²⁵ The main focus of the recommendations related to referral and assessment procedures, in part, because of the close proximity in time of the desegregation Consent Decree and the threatened appeal of a federal court decision ruling in favor of the Chicago Board in a discrimination suit challenging the use of IQ tests in determining special education eligibility in the Chicago Public Schools. *Parents in Action on Special Education (PASE) v. Hannon*, 506 F.Supp.831 (N.D. Ill. 1980). The PASE plaintiffs decided not to appeal the decision when the Chicago Board included in the educational components a commitment to discontinue the use of standardized individual tests of intelligence as the sole or primary source of information in special education screening and evaluation of African-American and Hispanic students. *Desegregation Educational Components*, p. 46.

²⁶ Designs for Change (1982, December).

Chicago's EMH classes. Nor was DFC able to secure consistent transition help for misclassified students who were returned to regular education classrooms.

By putting a public spotlight on the dangers of EMH placement, DFC contributed to a marked decline in the placement of additional students in EMH classes in subsequent years. The statewide enrollment in EMH classes for African-American students fell from 14,821 in 1981 to 7381 in 1989. However, DFC was also distressed to subsequently determine that, when DFC analyzed student placement rates across all special education categories, the overall placement rates in Chicago and in Illinois in separate special education classrooms and schools did not decline significantly during the 1980s. In 1986, 26% of all Illinois students with disabilities were enrolled full time in separate classrooms and schools, while in 1989 this percentage stood at 24% — a marginal drop. Further, the comparable percentages of African-American students in Illinois fell only slightly during the 1980s; they were 36% in 1986 and 34% in 1989.²⁷

Thus, one major lesson of the Designs for Change campaign to restructure Chicago's EMH program was that DFC had to extend its concerns beyond a specific disability label to focus more broadly on the issue of least restrictive environment. A second lesson was that in advocating for students to be placed in less restrictive settings, advocates needed strong guarantees that these students would receive proper aids and supports, rather than simply being “dumped” into the regular classroom.

Challenging Delays in Evaluation and Placement in Chicago. One persistent problem that DFC's parent education and organizing effort constantly confronted in the early 1980s was delay in the evaluation and placement of students with disabilities. In 1986, the federal Office for Civil Rights concluded an investigation of such delays in Chicago by issuing a letter of findings against the Chicago Board.²⁸ OCR found, for example, that 78% of students referred for special education evaluation had not been evaluated within the 60-day time limit mandated by state law. Further, 41% of those judged to need special education services did not receive them within the legal timelines. A substantial number of students waited two or more years to be evaluated and provided with services, and delays were

²⁷ Illinois State Board of Education (1991, May). *The Role of Ethnicity in Special Education Identification and Educational Setting Placement in Illinois*. Springfield: Author.

²⁸ Office for Civil Rights, U.S. Department of Education, Letter of Findings re. 05-85-5001 (March 28, 1986).

particularly severe for Hispanic students. After the OCR letter of findings was issued, the Chicago Board failed to negotiate a satisfactory settlement of the complaint, and OCR moved towards a trial before an Administrative Law Judge in 1997.²⁹

To press for meaningful improvements to result from the OCR action, Designs for Change gained friend of the court status in the OCR proceeding, submitted extensive pre-trial and post-trial briefs, and secured substantial media coverage about the issue of delays in evaluation and placement and about the progress of the case.

After the Administrative Law Judge ruled that Chicago was indeed violating requirements for timely evaluation and placement in August 1988, DFC offered detailed recommendations to OCR as to what would constitute an adequate remedy for the violations that the Administrative Law Judge found.

As with the DFC's campaign to restructure the Chicago Board's EMH program, the timelines initiative resulted in a mixture of successes and failures. In 1989, the Chicago Board was only completing 42% of student evaluations within 60 days. By 1994, this percentage had risen to 75%, and continued to climb. There is no doubt that a major improvement had taken place.³⁰

However, DFC was unable to convince OCR to press for specific requirements in its corrective action plan with Chicago that addressed critical defects in the Chicago Board's compliance plan. Based on past observations of the Chicago Board's practices, DFC urged OCR to insist not only on numerical targets for the percentage of evaluations completed within 60 days, but also to require that Chicago should be found in compliance only if a review of a sample of completed evaluations indicated that all evaluation components had been appropriately carried out, and only if a review of a sample of placements indicated that all services promised by students' IEPs were actually being provided. Further, DFC urged OCR to determine whether the Chicago Board was improving its compliance rate for student evaluations by shifting staff (such as counselors and social workers) from providing direct services to students with disabilities to completing evaluations.

²⁹ *In the Matter of U.S. Department of Education v. Chicago Board of Education and Illinois State Board of Education*, No. 87-504-2.

³⁰ Chicago Public Schools(1994, January). *Special Report: Special Education Media and Informational Services*. Chicago: author. Tables 2 and 13.

OCR's refused to negotiate a corrective action plan that dealt with these questions about the adequacy of the Chicago Board's special education evaluation, placement, and staffing practices. This allowed the Chicago Board, in many cases, to come into compliance with numerical timelines, while still failing to meet basic quality standards and thus to continue violating the rights of many special education students to appropriate evaluation and educational services.

A major lesson of this experience that the attorneys applied in the *Corey H.* litigation was the need to seek specific guarantees that addressed quality issues, rather than simply totaling up the number of students who met a particular numerical target.

Challenging Ineffective State Monitoring and Enforcement. Compared with other state education agencies, the ISBE has been particularly reluctant to aggressively monitor and enforce state and federal education law. And this reluctance has been even more pronounced in relation to the Chicago Public Schools,

Against this backdrop, DFC sought in the mid-1980s to press for meaningful monitoring and enforcement by the ISBE of state and federal special education laws on such topics as misclassification of minority students in special education, timely evaluation and placement, and the provision of adequate special education services to limited English proficient students with disabilities. For example, DFC conducted an analysis of all written communications between the ISBE and five urban school districts (including Chicago) about the ISBE's monitoring and evaluation of special education compliance in these districts. (These communications were obtained through a Freedom of Information Act request.) This analysis revealed such fundamental shortcomings as the following: (1) key enforcement issues not addressed by the ISBE's monitoring protocol, such as racial disparities in special education placement; (2) a lack of specific standards for judging compliance on issues that the monitoring protocol did address; and (3) school districts repeatedly cited for the same problems year after year, with no follow-up enforcement action taken.

To remedy these problems, DFC undertook a number of advocacy initiatives, which included lodging complaints with the ISBE itself, the Senate Education Committee of the Illinois General Assembly, and the federal Office of Special Education Programs. While the ISBE made some changes in its monitoring procedures and staffing as a result of these complaints, the bottom line near the end of the 1980s was that changes in ISBE's monitoring

and enforcement initiatives were primarily cosmetic and had not resulted in meaningful improvements in educational practice and educational quality that impacted significant numbers of students. The ISBE bureaucracy blunted efforts to initiate more aggressive enforcement, even when the ISBE's leadership took steps in that direction.

A lesson from this experience that the attorneys applied to the *Corey H.* lawsuit was that only long-term, aggressive, and independent oversight of any promised changes in enforcement practices promised by the ISBE would result in meaningful improvements.

Analyzing the Implementation of the LRE Mandate in Chicago and Illinois.

During the 1980s, DFC consistently advocated that students with disabilities must be educated in the least restrictive environment, a view that was intensified by the low quality of Chicago's separate EMH classes and the permanence of EMH placement for most students classified as EMH.

DFC further concluded that enforcing and implementing the LRE mandate was the single best catalyst for improving educational quality and student achievement for students with disabilities, particularly for minority and low-income students with disabilities. As noted earlier, for example, DFC's major effort to decrease the number of African-American students in separate EMH classes was successful, but ten years later the overall percentage of African-American students in separate special education classes and schools (when students with all special education labels were analyzed) had not diminished significantly. DFC concluded that a major change in Chicago's implementation of the LRE mandate was the best strategy for ensuring that students with disabilities would be exposed to more challenging educational program, would gain social competence needed to function in life, and would achieve better educational outcomes.

At the same time, implementing the LRE mandate was the single special education reform issue that generated the strongest opposition to change in Illinois. Those mechanisms for maintaining the status quo in Illinois special education that were discussed earlier in Section 1 (such as generally weak state enforcement) were further multiplied when it came to implementing the LRE mandate. Historically, Illinois was one of the first states to require the education of students with disabilities as a matter of state law. However, Illinois established a special education delivery system tightly organized around specific disability categories. The Illinois special education delivery system was based on the view that

disabilities could be identified with precision and that each disability could best be “treated” by a specialist in that disability working solely with students who “had” that particular disability. (As a defender of this approach stated recently at a legislative hearing, “When I have an earache, I go to an ear specialist; I don’t want a foot doctor treating me.”)

Advocates for carrying out the LRE mandate in Illinois were opposed not only by many special educators who supported the state’s segregated special education system, but also by some advocates for students with disabilities and some parents who viewed the mainstreaming of students with disabilities as a threat to the system of separate specialized treatment that they believed provided tailored assistance to meet clearly-documented student needs. Many of these opponents of the LRE mandate also viewed the implementation of LRE as opening the door for school districts to “dump” students with disabilities into regular education programs, where they would be ridiculed, would not actually receive promised support, and would be unable to succeed academically.

As a first step in a systematic campaign to press for the implementation of the LRE mandate, DFC carried out an analysis of the current status of LRE implementation in Illinois, as well as best practices for implementing LRE drawn from across the nation. This analysis led to a draft position paper that DFC circulated in December 1991, with the title *Caught in the Web II: The Segregation of Children with Disabilities in Chicago and Illinois*.³¹ This report summarized research about the benefits of educating students with disabilities in the least restrictive environment, the extreme degree of segregation and isolation of students with disabilities in Chicago and Illinois, and some of the underlying dynamics that led to this segregation.

A key analysis presented in *Caught in the Web II* revealed striking findings about the degree and scope of segregation of Illinois students with disabilities, compared with other states. This analysis drew on annual national reports on the condition of special education prepared by the federal Office of Special Education Programs.³² Each annual report provides state-by-state data — by disability — about the number and percentage of students with disabilities educated in different educational environments along the LRE continuum:

³¹ The final version of the report was released ten months later: Designs for Change (1992, September) *Caught in the Web II: The segregation of children with disabilities in Chicago and Illinois*. Chicago: Author.

³² U.S. Department of Education (1991). *To Assure The Free Appropriate Public Education of All Children with Disabilities: Thirteenth Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act*. Washington, D.C.: uthor.

regular class, resource room, separate class, separate facility, and residential facility. *Caught in the Web II* reported such indicators of the high level of segregation in Illinois as the following for the 1988-1989 school year:

- Only slightly more than 3% of Illinois students with cognitive disabilities were educated in regular classrooms or part-time resource settings. Illinois ranked 49th among the states in segregating students with cognitive disabilities. In contrast, 26 other states educated between 28% and 75% of their students with cognitive disabilities in these less restrictive settings.
- Only 20 percent of Illinois children with physical disabilities were educated in regular classes or part-time resource room settings. In contrast, 36 states educated between 50% and 90% of physically disabled children in regular classes and part-time resource rooms. Illinois ranked 48th among the states in segregating students with physical disabilities.
- Illinois ranked 46th among the states in terms of educating children with disabilities in regular education classrooms or part-time resource placements, considering all disabilities. About 60% of Illinois's students with disabilities were placed in such settings, while 25 states educated 75% or more of their students with disabilities in such settings.
- Illinois' pattern of segregating students with cognitive and with emotional disabilities had worsened over the decade of the 1980's. In 1983-84, about 7% of Illinois students with cognitive disabilities were educated for most of the day in regular or resource classes; by 1988-89, that percentage decreased to just over 3%. Similarly, the percentage of children with emotional disabilities in these less restrictive learning environments decreased from 31% in 1983-84 to 23% in 1988-89.³³

Further analysis presented in *Caught in the Web II* indicated that the segregation that characterized special education statewide was also a reality in Chicago.³⁴

Underlying these statistics was a pattern of practice in Chicago and many other Illinois school districts in which the disability label assigned to a student usually dictated the nature of that student's placement (contrary to federal law). An EMH label in Illinois almost always meant a segregated classroom in a cluster program, usually at a school outside the student's neighborhood to which the student was bused.³⁵ A physical disability label in

³³Designs for Change (1992, September), pp. 21-23a.

³⁴Designs for Change (1992, September), pp. 24-26.

³⁵Essentially no change had been made in Chicago since this issue had been raised by DFC in 1985.

Chicago meant assignment to a handful of accessible schools in which most other students enrolled had physical disabilities. A Trainable Mentally Handicapped or TMH label (moderate to severe cognitive disability) almost always meant that a child was placed in a separate, segregated school.

Further reasons for this segregation included problematic state policies, such as (1) financial reimbursement policies that rewarded placement of students in private segregated settings outside of the public schools and (2) a special education teacher certification system based on a set of narrow categorical disability labels.

The extent of segregation highlighted by the *Caught in the Web II* analysis prompted attorneys from Northwestern University Legal Clinic and Designs for Change to undertake a systematic review as to whether the types of problems being encountered by students with disabilities that the Legal Clinic was then representing could be addressed effectively by a class action lawsuit focused on enforcing the LRE mandate.

For its part, Designs for Change decided that if the attorneys felt that a class action lawsuit was warranted, DFC would support the work of its consulting attorney on such a lawsuit. Further, given DFC's research and experience underscoring the need for multi-method advocacy strategies in bringing about meaningful educational improvements, DFC committed itself to carry out parent education and organizing, research, media activities, testimony before public agencies, and lobbying that was supportive of the thrust of the potential litigation.

After the attorneys determined that it was advisable to proceed with the lawsuit (as discussed below), the first public step in carrying out DFC's commitment to a multi-method advocacy strategy was to hold a press conference (1) to highlight the findings of *Caught in the Web II* about the extreme segregation of students with disabilities in Chicago and Illinois and (2) to enable the plaintiffs' attorneys to publicly communicate the focus and rationale for the *Corey H.* lawsuit.³⁶

³⁶ David Jackson (1992, May 22). Suit seeks to mix disabled kids into school mainstream. *Chicago Tribune*. Chicagoland Section, p. 1.

2. THE *COREY H.* LAWSUIT: FROM FORMULATING THE LITIGATION STRATEGY TO SETTLEMENT

Initial Strategy Decisions

Lessons from Previous Experience

The *Corey H.* attorneys understood the costly multi-year commitment that would be required to carry out a class action lawsuit focused on enforcing the LRE mandate. As they undertook their representation of the plaintiffs, they drew on considerations from their past experiences described in more detail in Section 1, including but not limited to the following:

- Seeking changes in such specific disability categories as “mildly mentally retarded” had had limited impact in securing improvements in the quality of education for students with disabilities, particularly minority and low-income students. A much more promising strategy was to press for the vigorous implementation of the LRE mandate for all students with disabilities, and to ensure that most students with disabilities spent most of their time in the regular classroom, with appropriate aids and supports.
- A meaningful remedy to restructure a highly segregated special education system should view the “school community” as the essential unit of change and should view school communities and the larger systems in which they are embedded as “human systems.” Seeing the school community as the essential unit of change means that the improvement of special education and regular education should be seen as inextricably linked.
- A meaningful remedy should draw on the lessons of research about unusually effective urban schools.
- An effective remedy should both build commitment at the school community level to bring about appropriate changes and bring enforcement to bear from the school district, state, and federal levels in those school communities that fail to improve. (In other words, such a remedy should combine bottom-up and top-down strategies).
- An effective remedy for improving the quality of education for students in the LRE must entail clear obligations to provide adequate staffing, aids, and supports, as well as professional development for special education and regular education staff. Further, the remedy must entail effective mechanisms for ensuring that such commitments are carried out by the school district.
- An effective remedy must address the ISBE’s crucial role in monitoring and enforcing state and federal law in local districts. Further, there must be ongoing, independent monitoring of settlement agreements or court orders, with the possibility of sanctions, to ensure that promised changes in the ISBE’s monitoring and enforcement are actually carried out.

Defining the Class

A key pre-filing decision concerned whether to define the plaintiff class as including all students with disabilities in Chicago or to limit the plaintiff class to those subcategories of students with disabilities who were the most segregated, such as students labeled mildly mentally handicapped and emotionally handicapped. The attorneys decided to include all students with disabilities in the class, since (1) there was evidence of unjustified segregation compared to other states and cities with respect to students in all disability categories, and (2) the remedy envisioned (including a focus on restructuring the school community as the critical unit of change and on restructuring policies that affected all students with disabilities) would have been unworkable if illegal segregation had been established only with respect to particular subcategories of disabled students.

The Defendants

In addition to the ISBE, the attorneys decided that Chicago should be the sole local school district defendant because Chicago was the largest school district in the state (with more than 40,000 students with disabilities in 1990), because the plaintiffs' attorneys had an historical commitment to improving Chicago's schools, and because the attorneys had detailed familiarity with the Chicago school system as a whole and with its special education program in particular. Nevertheless, the attorneys believed that a legal victory would impact ISBE policies and practices statewide — both because some statewide remedies would be deemed necessary to correct specific violations in ISBE policies established by the litigation and because changes resulting from the lawsuit would stimulate advocates in other local districts to press for changes in ISBE policies and practices statewide (for example, pressing for improved ISBE enforcement in other districts to parallel improvements mandated for Chicago).

Pressing for Settlement Based on the Likelihood of Prevailing

The plaintiffs' attorneys pursued one overriding strategy throughout the litigation. Because the plaintiffs' attorneys had already amassed substantial data about Chicago's special education program and about the ISBE's policies and practices (especially the ISBE's special education monitoring and enforcement), the attorneys were optimistic that they could

further buttress their case through focused discovery and could prevail in establishing the defendants' liability. At the same time, the plaintiffs' attorneys believed that it was preferable to reach settlement agreements with the defendants, if possible — rather than to carry out an extended trial and then have remedies imposed by the Court — because such settlements would have the maximum potential to result in coherent remedies that embodied the features that the plaintiffs' attorneys had concluded were most likely to improve educational quality. Thus, the plaintiffs' attorneys sought to demonstrate to the defendants that the plaintiffs would prevail if the case went to trial, and, at the same time, that the plaintiffs were open to serious settlement discussions.

Most optimistically, the plaintiffs' attorneys hoped that they could reach a very rapid settlement with at least one of the defendants. Subsequent to the 1988 Chicago School Reform Act, a new General Superintendent of Schools appointed an outsider with a commitment to the LRE mandate (Dr. Thomas Hehir) to head Chicago's special education program.

Although Hehir had initiated reforms within the school system that were supportive of the LRE mandate, no immediate settlement negotiations ensued after the lawsuit was filed. For the first two years after filing, the litigation followed a traditional path. After nine months of discovery and related briefing concerning the defendants' motions to dismiss and the plaintiffs' motion for class certification, the Court ruled for the plaintiffs on both issues. The plaintiffs then began both depositions and extensive document discovery.

Joint Expert Agreement

An important break from tradition occurred late in 1993 when the plaintiffs suggested that the parties engage a panel of Joint Experts with diverse backgrounds, experience, and perspectives to investigate and draw conclusions about the plaintiffs' claims. Plaintiffs made this suggestion because they hoped that this process would avoid a battle of the experts if the case went to trial and that the process would facilitate settlement discussions. Finally, based on the plaintiffs' extensive knowledge of the Chicago school system, they were confident that the experts' findings would verify the plaintiffs' allegations.

After nine months of negotiations, the parties arrived at a set of key agreements that allowed an investigation by Joint Experts to go forward during the last six months of 1994. Plaintiffs and defendants agreed on:

- A set of questions that would be the subject of the Joint Experts' investigation.³⁷
- A set of rules for the conduct of the Joint Experts' investigation (covering such issues as communications with the Joint Experts by the parties, time frames for the investigation, and the experts' latitude to hire individuals to gather data for the investigation).³⁸
- A set of documents that would be shared with the experts. The documents initially supplied to the experts included data analyses that the parties agreed reflected the most recent, most accurate data available showing the LRE placements of all students in the Chicago Public Schools in the spring of 1994. This Chicago data base was much more detailed than the data that were customarily reported to the state and federal governments.
- A panel of three Joint Experts with collective backgrounds at the university, state department and local district levels, to carry out the investigation.³⁹

The Joint Expert investigation and analysis (which took place during the last six months of 1994) employed qualitative and quantitative methods to assess how well the LRE mandate was being implemented in Chicago. Data were collected through document reviews, interviews of Chicago central office personnel,⁴⁰ interviews with ISBE staff,⁴¹ analysis of quantitative data from national sources,⁴² and a structured qualitative study of 55 Chicago schools.⁴³ These 55 schools were, for the most part chosen at random, although some schools were identified by Chicago Board administrators because, in Chicago's view, these schools

³⁷ *Corey H. Review* (1994, May 18).

³⁸ These agreements were later reflected in the Court's August 25, 1994 Agreed Order to Use Joint Experts.

³⁹ The three agreed upon Joint Experts were: Dr. Brian McNulty, then the Assistant Commissioner of Education for the Colorado Department of Education; Dr. Mary Falvey, Professor of Education, California State University at Los Angeles; and Dr. Donnie Evans, the special education administrator in Tampa, Florida.

⁴⁰ Chicago Board administrators identified central office personnel to be interviewed.

⁴¹ ISBE staff identified ISBE staff should be interviewed.

⁴² These data included data from other cities that the experts considered relevant for comparison with Chicago and data from the annual reports that the OSEP submits to Congress comparing states on a number of quantitative measures relevant to the implementation of the IDEA.

⁴³ According to the original design of the Joint Experts' study, 60 schools were to have been visited. However, because of time constraints, only 55 schools were visited. Dr. Alice Udvari-Solner, who served as the Coordinator for the Joint Expert School Site Data Collection and Analysis, testified at trial that the range of services found in the on-site investigation was representative of the range of services in the Chicago Public Schools, and therefore systemwide conclusions were justified.

represented extremes in terms of effectively educating children in the LRE. Members of the research team visited each school for one-half day to one full day. The team conducted (1) a structured student file review of a random sample of student files and (2) structured interviews with a school administrator, a group of parents, a group of special educators or related services staff, and a group of regular educators.⁴⁴ The team of researchers conducted a four-step data analysis process, the product of which was a set of consistent themes and patterns across schools.⁴⁵

The agreement among the parties provided that the parties would receive a written report from the Joint Experts upon completion of their investigation. Although the Joint Experts were prepared to submit their written report, the defendants requested, instead, that the parties be given an oral report — with the promise that, if warranted, the defendants would begin settlement discussions thereafter.

The Joint Experts subsequently prepared a written report of their findings as trial preparations proceeded in 1997.⁴⁶ Although the report was never publicly released, Dr. Brian McNulty testified at trial regarding the report's documentation of continuing systemic violations of the LRE mandate in Chicago and Illinois.⁴⁷ Further Dr. Alice Udvari-Solner testified at trial to the following key findings:

- There was an overwhelming pattern in which the categorical label given a student through the evaluation process automatically determined the nature of the student's placement.
- IEPs consistently failed to justify the placement of students in segregated settings, as opposed to less restrictive settings.
- Regular classroom educators and school administrators did not have a clear understanding of what the LRE meant or how it should be implemented.

⁴⁴ The local school staff chose the parents and the teachers that were included in the interview groups.

⁴⁵ The analysis involved the following steps: review of findings and experiences on a day-to-day basis during the process of data collection; individual researchers developing emerging themes or patterns in the schools a particular person visited; development of themes and patterns that emerged across all sites; and development of a final set of consistent patterns across schools *See*, Trial Tr. at 288– 291 (Udvari-Solner).

⁴⁶ The Joint Experts completed their report in July 1997 as part of the preparations for the 1997 trial. However, by agreement with the parties and as a condition for reopening settlement discussions with the Chicago Board in 1997, the plaintiffs agreed to a Protective Order, but with the caveat that the Joint Experts could testify at trial about the report's development and its contents. Both Dr. Brian McNulty and Dr. Alice Udvari-Solner testified extensively at trial about the Joint Experts' research and findings.

⁴⁷ Trial Tr. at 454 and 451 (McNulty).

- Regular classroom educators believed that it was the obligation of students with disabilities who participated in their classes to master the regular education curriculum with few modifications, and that it was up to special educators to enable students with disabilities to keep up in the regular classroom.
- Regular education and special education teachers almost never collaborated.
- Adaptations made for students with disabilities in the regular classroom were “very simple or low tech.”⁴⁸

Overall, the experts concluded at trial that Chicago’s special education program was in stark violation of the LRE mandate.

Extended Settlement Discussions

Within two weeks after the Joint Experts’ oral report was delivered, the parties began settlement discussions which would last for nearly two years, but which would be suspended at that point without a settlement. Throughout this period, the plaintiffs’ attorneys sought the advice of dozens of individuals and organizations throughout the country, and relied on the lessons of their organizations’ previous research and experience. In these negotiations, the plaintiffs saw the following as some of the key elements of acceptable settlement agreements:

- Changes in school-level and systemwide policies of the Chicago school system to support education in the LRE — to be immediately binding on all Chicago schools.
- A school-by-school process for bringing about basic restructuring that leads to the education of most students with disabilities in their neighborhood school and in the regular instructional program, with appropriate staffing, aids, and supports.
- Sufficient funding from the Chicago Board and the ISBE to support professional development, expert technical assistance, and other expenses associated with this school-by-school restructuring process.
- Changes in the processes for the development of a student’s IEP that encourage members of the IEP team to keep a student in his/her neighborhood school and in the regular education classroom, with appropriate staffing, aids, and supports.

⁴⁸ Trial Tr. at 290-298 (Udvari-Solner)

- A complete revamping of the ISBE’s oversight strategy and procedures for Chicago, to focus ISBE monitoring on substantive issues that impact the quality of students’ education and to mandate enforcement steps that ensure compliance.
- Change in specific ISBE policies to support the LRE mandate, including a revamping of the teacher certification system statewide and the elimination of state financial incentives for segregated placement.
- Oversight by a court-appointed monitor to ensure that the Chicago Board and the ISBE implement these agreements, with the possibility of recourse to the Court for enforcement of any agreements.

Preparations for Trial and Settlement with Chicago

With no settlement having been reached with either defendant by January 1997, the Court set a trial date for October 20, 1997. In the first half of 1997, the plaintiffs’ attorneys completed depositions and discovery and ensured that the written report from the Joint Experts was completed.

In August 1997, the Chicago Board attorneys and the plaintiffs reopened settlement negotiations, and quickly reached a tentative settlement agreement. This agreement was preliminarily approved by the Court on October 23, 1997⁴⁹ (a week before the scheduled trial) and, with minor modification, was formally approved by the Court in January 1998 at the completion of a fairness hearing. Key provisions of the agreement with the Chicago Board illustrate the top-down, bottom –up nature of the change strategy, including the following:

- A requirement that all Chicago Board policies “promote” the education of children with disabilities in the LRE. In formulating new policies the Chicago Board is required to consider their direct or indirect impact on the education of students with disabilities in the LRE, and, if so, whether the impact is consistent with the agreement.
- Provisions requiring that a number of specific policies that have an impact on educating students with disabilities in the LRE, as well as the implementation of those policies, take into account the needs of students with disabilities (for example, concerns regarding the recruitment, testing, and admissions criteria for magnet, charter, vocational, and gifted programs; concerns regarding the meaningful access of students with disabilities to regular education pre-school services).
- Provisions requiring that Chicago not only administer standardized tests to students with disabilities as determined by each student’s IEP, but also include the individual

⁴⁹ Order Preliminarily Approving Settlement Agreement (October 23, 1997).

test results of such students as part of the public reporting of school-by-school and systemwide test results. Prior to the settlement agreement, Chicago policy required exclusion of most categories of students with disabilities from test reporting. Since a number of Chicago Board's policies are based on the average school-wide test scores (for example, a policy to determine whether a school should be placed on "probation" because it is not adequately serving its students), it is important that students with disabilities be included in the relevant test results.

- A requirement that over six years, all Chicago elementary schools implement a curriculum-based, informal, problem-solving assessment process for students who are at risk of failure or who are having behavior difficulties. Although this process is designed to take place before a referral for special education, it is not necessary for a student to go through this process when a parent or school staff believe that a special education referral should be made immediately. To implement this process systemwide, the Chicago Board is required to provide training (in curriculum-based assessment, assessment of classroom learning environment, and behavior management and assessment) to approximately one-sixth of all elementary schools each year for the next six years.
- A requirement that the Chicago Board change specific aspects of the IEP form used in Chicago, so that it encourages decision making consistent with the LRE mandate.
- A requirement that the Chicago Board develop an IEP report card as a supplement or alternative to the student's traditional report card.
- A requirement that the Chicago Board carry out a school-by-school restructuring process to implement the LRE mandate, through what has become the "Education Connection" program. The Chicago Board committed more than \$24 million for local school systemic change over the seven-year course of the Agreement. Each year, 30 schools are slated to begin a three-year process to design and implement a plan for educating students with disabilities in the LRE. These schools are given \$110,000 to support this educational restructuring process (\$10,000 for planning and professional development in Year 1 and \$50,000 for implementation in both Years 2 and 3). Each school's plan must be approved by the Court Appointed Monitor, to ensure that the plan is appropriately focused on the LRE objectives of the settlement agreement and that funds are allocated for proper purposes.⁵⁰
- Requirements that the Chicago Board provide sufficient staff to provide students with disabilities an appropriate education in the LRE, as well as to carry out other required services for students with disabilities.
- A provision that requires Court appointment of a Monitor to collect information about the implementation of the agreement and to take any reasonable steps necessary to ensure compliance.⁵¹

⁵⁰ See, Chicago Settlement Agreement, pars. 41 and 42. During the course of implementation, these requirements have been made more specific.

⁵¹ See, Chicago Settlement Agreement, par. 76.

Trial and Finding of Liability Against the Illinois State Board of Education

With the settlement with Chicago preliminarily approved, preparations for the October 1997 trial focused on ISBE liability based on the federal IDEA. Plaintiffs' attorneys presented two types of evidence at trial:

- Evidence that students with disabilities in Chicago Public Schools had been unnecessarily segregated in restrictive settings, and evidence that Chicago personnel were failing to make appropriate decisions about how services could be delivered to students in the LRE and were failing to actually deliver services in the LRE.
- Evidence that the ISBE had failed to ensure that students in the Chicago Public Schools were educated in the LRE. The plaintiffs documented, for example, that it was ISBE's policy until 1990 that placement decisions were made prior to writing an IEP and immediately after a student's disability label had been determined; that ISBE's system for monitoring and correcting LRE problems in Chicago was ineffective; that ISBE's system of preparing and certifying special education teachers based on narrow disability categories contributed to student segregation; and that the Illinois special education reimbursement system created incentives for segregated placements.

As noted above, among the key witnesses for the plaintiffs was Dr. Brian McNulty (one of the original Joint Experts), who concluded that continuing systemic violations of the LRE mandate in Chicago and Illinois were "persistent and pervasive." His testimony detailed evidence from 1990 forward to support his conclusions,⁵² such as the following:

- An analysis carried out by the Joint Experts similar to the Designs for Change analysis *in Caught in the Web II*, in which rates of placement in federal LRE categories for Illinois for the 1993-94 school year were compared to the placement rates for other states and to the national average rate.⁵³

⁵² In his analyses, Dr. McNulty utilized *To Assure The Free Appropriate Public Education of All Children with Disabilities: Eighteenth Report to Congress on the Implementation of the Individuals with Disabilities Education Act* (1996) as the source for state-by-state comparisons. This report is required to be submitted annually pursuant to the IDEA. See, 34 C.F.R. §1409(j)(4). The state data is self-reported to the U.S. Department of Education pursuant to the IDEA. See, 34 C.F.R. §§ 300.750, 300.754. Dr. McNulty testified further that the data is relied upon by OSEP and educational professionals. In comparisons between Chicago, Illinois, and the national average, Dr. McNulty used the national report to Congress as the source of data for the national average, and the Illinois system for collection of data for the Illinois and Chicago rates of placement in the various LRE placement categories. The federal report counts children as being in regular classrooms or resource rooms if they are out of the classroom for up to 60% of the day, and the Illinois system for collection of data counts children as being in regular classrooms or resource rooms if they are out of the class for up to 50% of the day. However, Dr. McNulty testified that for his purposes comparisons were still appropriate. Trial Tr. at 424 (McNulty).

⁵³ See, Plaintiff Summary Exs. 3-14.

These data showed that Illinois remained one of the nation's most segregated states for students with disabilities. For example, Illinois ranked 47th among the 50 states in the percentage of all students with disabilities who were educated in either regular classes or resource rooms, as well as 49th among the 50 states in educating students with cognitive disabilities in these less restrictive settings. Only 6% of Chicago's students with cognitive disabilities were educated in these settings, while some states educated more than 90% of their students with cognitive disabilities in these settings.⁵⁴

Further, Chicago's placement rates for various categories of students with disabilities in separate segregated facilities were two to three times the national placement rate. The trial exhibits showed that, while the national placement rate for students with cognitive or multiple disabilities in separate facilities was 9%, the Chicago and Illinois rates were 17% and 21% respectively. The same large gap in placement rates was mirrored in the placement rates for children with behavior/emotional disabilities.

- Investigations or evaluations carried out by the Office for Civil Rights (OCR), the Office of Special Education Programs (OSEP), and the ISBE during the period 1990 through 1996, which confirmed Chicago's systematic LRE violations.
- A "self-monitoring project" involving 95 schools, which was carried out in 1995-96 and 1996-97 by the Chicago Public Schools and which confirmed fundamental problems in IEP decision-making and service delivery (such as failure to include modifications in IEPs to enable students to participate in the LRE, lack of collaboration and consultation among special educators and regular educators in the implementation of IEPs, and lack of knowledge among regular educators about how to adapt instruction for students with disabilities).

In light of the longevity, pervasiveness, and magnitude of the evidence of Chicago's violation of the LRE mandate, Dr. McNulty also concluded that that ISBE's monitoring and enforcement efforts were fundamentally inadequate.

In response to substantial evidence about pervasive LRE violations in Chicago and lack of meaningful ISBE enforcement, ISBE offered no evidence justifying the effectiveness of its monitoring and enforcement efforts. The ISBE's core defense was that oversight of the ISBE's monitoring must be left to the OSEP, not the courts. The ISBE also argued that repeated OSEP approvals of the ISBE's plans for carrying out its obligations under federal law indicated that the ISBE's monitoring and enforcement were adequate. Further, without any case law support, ISBE argued that it was responsible for the "general supervision" of

⁵⁴ This analysis shows that Illinois had the same relative ranking compared to the other states in the 1997 analysis carried out by the Joint Experts as in the 1991 analysis carried out by Designs for Change.

special education in local school districts, rather than for “ensuring” that students with disabilities were educated in the LRE.

Rejecting these defenses, in a February 19, 1998 decision, the Court found ISBE in violation of the IDEA for its continuing failure to ensure that:

- Placement decisions are based on each student’s individual needs as determined by his or her IEP.
- LRE violations are identified and corrected.
- Teachers and administrators are fully informed about their responsibilities for implementing the LRE mandate and are provided with the technical assistance and training necessary to implement the mandate.
- Teacher certification standards comply with the LRE mandate.
- State funding formulas that reimburse local agencies for educating students with disabilities support the LRE mandate.

The Court’s February 1998 decision offered the ISBE an opportunity to submit a comprehensive compliance plan within two months aimed at remedying the deficiencies found by the Court. After briefing by the parties about the adequacy of the ISBE’s proposed plan, the Court rejected the ISBE’s plan in June 1998. Subsequently, the Court engaged its own expert to make recommendations regarding remedy. In December 1998, the Court held an evidentiary hearing on remedies.

Shortly thereafter, the plaintiffs entered into settlement negotiations with the ISBE. Though some progress was made, no settlement had been reached by January 1999. At that point, all parties sought the assistance of the Court, and agreed to the Court’s participation in settlement discussions. Further, in a settlement conference on February 11, 1999, all parties agreed to be bound by the Court’s determination of all unresolved issues, based on a draft settlement agreement and position statements about unresolved issues submitted to the Court by the parties.⁵⁵ By March 1999, the settlement agreement had been completed, based on the Court’s determinations about unresolved issues, and notice of a fairness hearing had been sent out. On June 19, 1999 the Court approved the settlement with one modification.⁵⁶

⁵⁵ See, 2/11/99 Minute Order.

⁵⁶ The modification related to Par. 29 regarding the criteria for a certification redesign to be determined through a process specified in Par. 29(d).

Key provisions of the ISBE settlement agreement include the following:

- The ISBE’s policies must support the education of students with disabilities in the LRE, and the ISBE must provide leadership in the implementation of these policies.⁵⁷
- The ISBE must completely overhaul its process for monitoring and enforcing the LRE mandate in Chicago, with numerous specific requirements as to the content of the ISBE’s procedures — such as whether numerical targets for individual schools and for the entire school district are met, whether students with disabilities have access to and support in specialized schools (including vocational, magnet, and charter schools); whether students in various educational environments are making appropriate progress from year to year; whether IEPs are implemented; whether adequate special education personnel are provided; and whether regular and special educators are adequately trained to carry out the LRE mandate.⁵⁸
- The ISBE must provide \$19.25 million to be used at the local school level to carry out two- to three-year corrective action plans to remedy any problems identified through ISBE monitoring.⁵⁹
- The ISBE must modify specific state policies that have an impact on educating children with disabilities in the LRE, such as state-funded preschool programs, state-sponsored testing, state funding policies, and the state-wide system for certifying special education and regular education teachers.⁶⁰
- The ISBE must establish a state clearinghouse to provide information and assistance to Chicago parents and professionals in support of education in the LRE.⁶¹
- A Court-appointed Monitor will exercise essentially the same oversight responsibilities as those spelled out in the Chicago Settlement Agreement.⁶²

⁵⁷ See, ISBE Settlement Agreement, par. 15.

⁵⁸ See, ISBE Settlement Agreement, pars.18-20.

⁵⁹ See, ISBE Settlement Agreement, par. 34.

⁶⁰ See, ISBE Settlement Agreement, pars. 24-34.

⁶¹ See, ISBE Settlement Agreement, pars.36-37.

⁶² See, ISBE Settlement Agreement, pars. 48-58.

3. INITIAL IMPLEMENTATION AND IMPACT OF THE SETTLEMENT AGREEMENTS

As reflected in the model of the educational system presented in Table 2, the task of advocates is to identify and press for changes in existing policies, prevailing practices, and existing resource allocations at multiple levels of the educational system that will ultimately improve the quality of students' educational experiences and the outcomes of students' education. The plaintiffs' attorneys attempted to embody such beneficial changes in the settlement agreements with the Chicago Board and with the ISBE, as described above.

The implementation of the settlement agreement with the Chicago Board has been in progress for less than 36 months, and implementation of the ISBE agreement has been in progress for 18 months. These agreements will be in force for at least five more years. To date, much of the plaintiff attorneys' time has been dominated by further negotiations and legal advocacy aimed at turning general commitments (as embodied in the two settlement agreements) into more detailed plans that have the specificity to lead to significant school-level improvements. In the first part of Section 3, the authors discuss implementation and impact of the settlement agreements at this early stage of a multi-faceted change process in a complex human system. Section 3:

- Illustrates the types of subsidiary issues around which the plaintiffs' attorneys are constantly negotiating and advocating, in their efforts to secure meaningful implementation of the settlement agreements.
- Presents two examples that illustrate how multiple advocacy methods have been employed to bring about improvements in key policies.
- Briefly describes the initial implementation of a central element of the settlement agreements: the school-by-school change process focused on implementing the LRE mandate that is taking place in an expanding group of "Education Connection Schools."

Advocacy Concerning the Specifics of Implementation

Each settlement agreement includes a commitment for the ISBE and the Chicago Board to develop a major implementation plan. The settlement agreements also call for the development of additional plans (beside the two major implementation plans) to address such specific issues district-wide and school-level targets and benchmarks for progress. The

settlement agreements also call for the production of studies to inform future decisions about specific issues, and the procedures for carrying out these studies are the focus of on-going debate among the parties. In this early stage of implementation, aggressive participation and oversight by the plaintiffs' attorneys and the Court Monitor are critical to move from general commitments to meaningful specifics.

Most key implementation steps are, at best, in midstream. For example, the ISBE has developed a new procedure for monitoring LRE compliance in individual Chicago schools. However, the first monitoring cycle involving 25 Chicago schools is not yet complete. At this point, it is not clear whether ISBE's revised monitoring process is actually resulting in information-gathering sufficient to identify LRE problems and will lead to ISBE's development of meaningful corrective action plans for individual schools.

While some aspects of various agreements require the direct approval of the plaintiffs, the typical procedure is that one of the defendants develops a required document (an implementation plan, a monitoring instrument) and the plaintiffs are then given the opportunity to comment on this document. The plaintiffs can then raise disagreements or alternative recommendations about the document with both the defendants and the Court Monitor. If resolution of disagreements through discussion is not possible, the Court Monitor then makes a determination. Any party is then free to appeal to the Court for relief. Given these dynamics, the plaintiffs' attorneys have spent much of their time for the past three years in commenting on the defendants' plans, discussing these plans with the defendants and with the Monitor, commenting on rulings proposed by the Monitor, and, in some cases, appealing to the Court.

Out of dozens of important issues that plaintiffs' attorneys have focused on during the initial implementation of the settlement agreements, the following examples convey a sense of the types of issues about which the plaintiffs' attorneys constantly need to negotiate and to formulate responses:

- The ISBE's School Monitoring Instrument⁶³. The ISBE proposed the specifics of a new monitoring process that it will employ for conducting intensive LRE investigations at 50 Chicago schools per year, including data and documents that are to be provided by the school, a protocol for school visits, and specific questions to be asked. The plaintiffs have provided detailed, ongoing critiques as these monitoring

⁶³ See, ISBE Settlement Agreement, par. 18, 19, and 20.

materials have been developed, and the plaintiffs have secured a number of significant improvements in these materials.

- Local School and District-wide Targets for Improvement.⁶⁴ Over a period of eight months following the approval of the ISBE settlement agreement, the parties debated what appropriate benchmarks and targets should be established for school and systemwide progress, with the final decision made by the Court. The targets that individual schools must meet focus on such issues as the degree to which students with disabilities have access to the general education curriculum and the degree to which general and special education teachers plan school curriculum and school activities collaboratively.⁶⁵ District-wide numerical targets for the percentage of students in various LRE placements have also been established, relative to national averages in the annual OSEP reports to Congress (the same data base used by the Joint Experts). For example, one district-wide target requires that the number of students with disabilities in regular or resource settings (combined) is within 10% of the national average.⁶⁶
- The Adequacy of Education Connection School Restructuring Plans. Twenty-eight Chicago schools began a three-year restructuring process to implement the LRE mandate in second half of the 1997-1998 school year, with 30 more schools beginning the process in each of the next three school years. Plaintiffs have commented on various documents developed to help local schools to understand the school restructuring process established by the settlement agreement with the Chicago Board, and have made recommendations to the Monitor about some of the specific plans presented by local schools to the Monitor for approval.⁶⁷
- Special Education Teacher Certification. In response to the Court's finding that the teacher certification system in Illinois was contrary to the LRE mandate, the ISBE Settlement Agreement requires the ISBE to redesign special education and regular education teacher certification requirements and procedures statewide.⁶⁸ In March 2000, ISBE submitted its final proposal for restructuring the certification of special education teachers to the Court. Plaintiffs found the plan inadequate in several respects, and the Monitor issued a decision agreeing with many of the plaintiffs' objections to the ISBE's proposal. In September 2000, the Court upheld the Monitor's decision. The ISBE has now appealed the Court's decision to the Seventh Circuit.

⁶⁴ ISBE Settlement Agreement, par. 18.

⁶⁵ The November 11, 1999 *Monitor's Decision Regarding the Establishment of Targets and Benchmarks Pursuant to Paragraph Eighteen of the Corey H. ISBE Settlement Agreement (Monitor's Targets and Benchmark Decision)* at 33 requires that the local school targets be met at an 85% level. The meaning of the "85%" requirement has not been clearly established at this time.

⁶⁶ It is plaintiffs' view that the Court Monitor set these district-wide targets too low. However, the plaintiffs' appeal of the Monitor's decision resulted in the Court's affirming the Monitor. Order of February 17, 2000.

⁶⁷ *See*, Chicago Settlement Agreement, par. 76(d).

⁶⁸ *See*, ISBE Settlement Agreement, par. 29.

- Allocation of State Funds for Corrective Actions by Schools⁶⁹. The ISBE Settlement Agreement requires ISBE to allocate total of \$19.25 million over seven years to be used to carry out corrective action plans in instances where ISBE identifies LRE compliance issues in specific schools. These funds are to be used primarily for professional development and technical assistance. The parties have negotiated an agreement concerning how to allocate these funds to individual schools over the next two years.⁷⁰
- Scope and Methods of a Study of How Students with Disabilities Are Benefiting from State and Federal Categorical Funds. The ISBE settlement agreement requires the ISBE to analyze whether policies and practices for the allocation of state and federal categorical funds to Chicago (such as state and federal vocational funds) support the LRE mandate. The plaintiffs are currently involved in discussions with both defendants about the specifics of carrying out this study.

As such issues arise on a daily basis, the importance of executing the methods of effective advocacy are constantly underscored. Attorneys need to have a clear understanding of how schools work as human systems (so that they can, for example, recommend appropriate improvements in proposed school monitoring protocols proposed by the ISBE). And they need to understand how changes in public policy at one level of the system (such as the state policies that govern the services available to young children with disabilities in state-funded preschool programs) are likely to impact the implementation of the LRE mandate in individual schools.

Multiple Advocacy Methods at Work

As described in Section 1, DFC's research about effective advocacy indicates that there is a constant need to employ multiple advocacy methods in a successful advocacy campaign and that litigation can be supported by the consistent use of these other methods. DFC's Policy Reform Team has attempted to apply this strategy consistently in seeking the beneficial implementation of the *Corey H.* settlement agreements, through such advocacy methods as parent education and organizing, lobbying, coalition-building, testimony before public officials, and securing media coverage. We offer two examples of the multiple methods

⁶⁹ See, ISBE Settlement Agreement, par. 34.

⁷⁰ The parties have agreed that a range for \$50,000 to \$64,000 will be available for these schools, with the possibility of additional amounts with sufficient justification. These monies may be used over a period of years.

employed by DFC to press for changes that support the implementation of the settlement agreements.

Definition of a “Regular Classroom”

The definition of a “regular classroom” is critical to judging progress in the *Corey H.* lawsuit, since one of the major targets for progress hinges on the percentage of students being educated in the regular classroom.⁷¹ After receiving comments from all parties, the Monitor defined a regular classroom as a classroom that enrolled less than 50% students with disabilities, taught the regular education curriculum, and was not remedial.⁷² The plaintiffs had advocated unsuccessfully in an appeal to the Court that a classroom should be considered a regular classroom only if it enrolled fewer than 30% students with disabilities. The Monitor had ruled that there was no justification in law or regulation for adopting this more stringent standard.

Shortly before the Monitor issued his definition of a “regular classroom,” however, the Monitor provided comments to the ISBE regarding newly proposed Illinois special education rules to implement the most recent amendments to the Individuals with Disabilities Education Act. In his comments, the Monitor urged that ISBE to provide an operational definition of the regular classroom, a term that the ISBE employed throughout its proposed rules.⁷³ At the same time, DFC commented on these proposed regulation and urged that any definition of a regular classroom limit the percentage of students with disabilities in a regular classroom to 30%. Subsequently, the ISBE incorporated into its final rules a definition of a regular classroom nearly identical to the Monitor’s definition, except that the ISBE adopted the 30% limitation proposed by Designs for Change as part of its definition. Subsequently the Monitor agreed to adopt a definition consistent with the one that had been adopted by the ISBE.

⁷¹ See, *Board of Education of LaGrange v. ISBE and Ryan B.* (7th Cir.) 1999 No 98-4077 (Pre-school classroom for children with and without disabilities who are at risk of academic failure is not necessarily the least restrictive environment for child with mild cognitive disabilities whose learning would benefit from being educated with “normally progressing” peers).

⁷² *Monitor’s Targets and Benchmark Decision* at 34-35.

⁷³ Comments by Joseph Schneider Court-Appointed Monitor on the Proposed Illinois State Board of Education Rules: Title 23: art 226 Special Education.

Thus, DFC was able to advocate through the ISBE rule-making process to impact a key standard that will now be employed in the *Corey H.* case to determine Chicago's systemwide compliance.

The Teacher Certification Issue

A second illustration of DFC's use of this multi-method approach is DFC's recent advocacy effort focused on the issue of statewide changes in special education teacher certification.

From the time that the initial settlement agreement with the Chicago Board was announced, DFC and other advocacy groups that support the *Corey H.* decision have sought to secure positive media coverage and support among elected officials for the process of change mandated by *Corey H.* DFC was aware that pro-inclusion decisions elsewhere have sometimes resulted in a media backlash, in which defenders of categorical methods for educating students with disabilities have attacked inclusion as a hare-brained scheme that will destroy the effectiveness of special education. DFC was well aware that an Illinois coalition of special education parents, special education teachers, and private schools strongly opposed the *Corey H.* decision and were mobilizing to oppose its implementation.

Thus, when the initial settlement agreement with the Chicago Board was preliminarily approved by the Court in October 1997, DFC and other advocates for implementing the LRE mandate held a press conference stressing the extent of current segregation in Illinois and Chicago, the benefits of education in the LRE, and the opportunities that would be provided through implementation of the agreement.⁷⁴ As each major new development occurred in the case, DFC sought additional media coverage.

As implementation of the settlement agreements began, a coalition opposing aspects of the *Corey H.* decision launched a campaign against the redesign of special education teacher certification required by the settlement agreement with the ISBE, which was to apply statewide. As discussed earlier in this section, the ISBE spelled out a plan for restructuring special education teacher certification in March 2000. Although the plaintiffs' attorneys identified several major weaknesses in this proposal, the proposal moved to a much less categorical system of special education teacher certification.

⁷⁴ Janita Poe and Michael Martinez (1997, November 4). Agreement reached on special ed lawsuit. *Chicago Tribune*. Chicagoland Section, p. 1.

Opponents of significant change in the existing teacher certification system targeted the Illinois General Assembly in April and May 2000, seeking legislation that would prohibit the ISBE from mandating any special education teacher certification system that was not based on existing disability classifications. Proponents of this legislation argued that students with disabilities were best served by experts trained to deal with their particular disability, and that the ISBE proposal would dilute the quality of students' education by leaving their education to inadequately prepared "generalists."

DFC lobbyists worked with parent organizations and groups representing special education professionals to oppose this legislation. Ultimately, over continued DFC opposition, the Illinois House and Senate passed non-binding resolutions urging the ISBE not to implement any new teacher certification program before the General Assembly had an opportunity to examine this issue through public hearings.

After this resolution was passed, the Court stated on the record that he would not be swayed by these legislative actions. Nevertheless, DFC's Policy Team was extremely concerned that the opponents of the LRE mandate were creating the impression that the new teacher certification system was widely opposed by parents of students with disabilities and by special educators. DFC believed that if legislators were not convinced of the merits of restructuring special education teacher certification, legislative opposition could embolden a reluctant ISBE to further drag its feet in enforcing the LRE mandate and could set the stage for subsequent legislative action to undermine the LRE mandate, both in Chicago and statewide.

Thus, DFC's Policy Reform Team carried out a campaign to organize public support for the LRE mandate, including mobilization for the hearing mandated by the legislature on changes in teacher certification (which was ultimately scheduled for July 2000). To do so, DFC took a series of actions:

- DFC countered arguments about the virtues of the current segregated special education system by analyzing and releasing the first achievement test data that have been available in Illinois concerning the test achievement of students with disabilities. These data showed extremely low academic performance by the state's students with disabilities, undercutting the argument that the current segregated system is effectively educating students with disabilities.⁷⁵

⁷⁵. Designs for Change (2000, July 28). Support higher standards for special education in Illinois. Fact Sheet. Chicago: Author.

- DFC advocates spoke repeatedly with the major legislative sponsors of the call for hearings, who back-tracked from their opposition to the new teacher certification system when they further understood the history of the *Corey H.* litigation, about which they said they had been inadequately or incorrectly informed.
- DFC organized a coalition of 30 organizations representing parents of students with disabilities, adults with disabilities, and special educators who endorsed a position statement supporting a restructured special education teacher certification system.
- Along with other supporters of the LRE mandate, DFC organized a spectrum of parents of students with disabilities, special education teachers, adults with disabilities, and disabilities rights organizations to testify at the July 2000 legislative hearings. Those who testified in support of changing the teacher certification system substantially outnumbered those who opposed a change. In the end, several legislators stated that they had been inadequately informed about the history of the *Corey H.* litigation and no longer opposed a new teacher certification system.

This sequence of events illustrates (1) why advocates for the appropriate implementation of court decisions must maintain a far wider focus than simply relying on how the Court will rule on a particular issue, and (2) why the use of multiple advocacy methods is crucial to support the appropriate implementation of a court decision.

An Early View of School Level Implementation

The Settlement's School-by-School Restructuring Initiatives

Central to the *Corey H.* settlement agreements are two school-by-school restructuring initiatives. The Chicago initiative (Education Connection) has been underway for three years, while ISBE's school by school monitoring of schools (which will lead to school-level corrective action plans and financial resources for professional development and technical assistance) has not yet completed a first cycle.

Education Connection Schools. Chicago's Education Connection program (to which schools voluntarily apply), provides \$110,000 over a three-year period to individual Chicago schools to develop and implement a plan to restructure their practices for educating students with disabilities in the LRE. In Year 1, the school receives \$10,000 to develop its LRE Plan; these funds can be used, in part, to support staff involved in developing a school's LRE plan, and for technical assistance for plan development. All LRE Plans must be

approved by the Court Monitor, which often results in extensive negotiations between the Monitor's office and the local school.

In Years 2 and 3, the school receives \$50,000 per year, which can be used for technical assistance and professional development (from a list of resource groups approved by both the plaintiffs and the Chicago Board) in connection carrying out an approved LRE Plan. The development and implementation of the school's LRE Plan are intended to complement an existing school-level planning process already in place in Chicago, in which the principal provides leadership for the development of a "school improvement plan" (with the involvement of school staff and parents), which must then be approved by the school's elected Local School Council. The LRE Plan and related additional funding is intended to serve, in part, as a catalyst for revamping how the school spends its much larger available funding for special education services, as well as to determine how the school will coordinate the implementation of the LRE mandate with other school improvement efforts that impact all of the school's students.

In the first year of implementation, 28 schools began their participation in Education Connection. In each succeeding year, 30 additional schools have been selected to participate. It is expected that over an eight-year period a total of 238 schools will be involved. The Chicago Board has committed in excess of \$24 million to support the Education Connection grants to local schools. Of the first group of 28 schools which were scheduled to complete their three-year cycle at the end of 1999-2000 school year, fifteen schools are currently being evaluated by the Chicago Board and by the Monitor's staff.

One of the plaintiffs' goals is that those Education Connection schools that carry out exemplary plans for serving students in the LRE better can become resources to help other schools make changes as the number of Education Connection schools expands. Education Connection schools with exemplary programs can assist schools just starting the three-year process either through structured visits to these exemplary schools, or through staff from these exemplary schools providing technical assistance to the schools just getting started.

Schools Targeted for ISBE Compliance Reviews. As described above, ISBE's settlement agreement requires it to develop a new school monitoring system that effectively identifies and corrects problems that result in students with disabilities not being educated in the LRE. The ISBE visited 25 schools in March 2000 and will visit 50 schools in each of the

next six years, to determine their level of compliance with the LRE mandate. Those schools will receive an average of \$57,000 in funding to develop and carry out a corrective action plans to remedy deficiencies in implementing the LRE mandate. Over a seven-year period of court supervision, 325 schools will participate in this process. As noted earlier, the ISBE has committed \$19.25 million to support school-focused technical assistance efforts for these schools, which will be provided primarily by independent resource groups.

Since the ISBE did not carry out any monitoring visits until late March 2000, most of the ISBE's initial school monitoring reports have not been made final yet. Thus, related corrective action plans have not yet drafted, and monitoring visits to be carried out in the 2000-2001 school year have just begun.

Since schools targeted for ISBE compliance reviews will typically not be Education Connection schools, a total of about 550 Chicago schools will receive assistance in meeting the LRE mandate through either the Education Connection or the ISBE's compliance process.

Two Examples of the Initial Implementation of the Education Connection Process

As the plaintiffs' attorneys have reviewed plans submitted by Education Connection schools and obtained scattered initial reports about changes in the participating schools, there is evidence of a wide range of individual school responses. At the negative extreme, some schools have sought to use Education Connection as a source of additional operating revenue or have delayed developing or implementing their plans. At the positive extreme, a number of schools have fundamentally restructured the way that they educate students with disabilities. Because the first comprehensive assessment of those schools completing the Education Connection Program has not yet been completed, and because the parties and the Monitor are attempting to incorporate lessons from the experience with this first cohort of schools into the process being carried out with the subsequent cohorts, it is impossible to offer empirically-based conclusions about the overall impact of participation in the Education Connection process at this point.

Below are brief descriptions of two schools that have been receptive to the opportunities presented by the Education Connection program. The accomplishments of these schools, which are largely attributable to the processes established by the remedy in the lawsuit, demonstrate what is possible, but by no means typical, among the schools in the

initial cohort.⁷⁶ (Information about these two schools is drawn largely from site visit reports prepared by the staff of the Court Monitor.)

Example: Mather High School. Located on Chicago’s North Side, Mather High School serves a multi-racial, multi-ethnic student population of 1,900 students (37% white, 28% Latino, 23% Asian, and 8% African-American). The school has historically been considered one of the better non-selective neighborhood high schools in Chicago. In the past decade, Mather’s low-income student population has increased from 22% low-income in 1991 to 74% low-income in 1999. Students whose families speak 27 different languages now attend the school, and about 50% of Mather’s students have been enrolled in English as a second language classes at some time in their elementary or high school careers. Students with disabilities (excluding students who are only identified as speech-impaired) comprise about 11% of the school enrollment.

Mather has completed its three-year Education Connection cycle and was visited by the Court Monitor’s staff in May 2000.⁷⁷ The Monitor’s staff concluded that the school was “superior” in educating children with disabilities in the LRE. They concluded that the Education Connection program was working at this school because of the commitment of the school’s administration and staff, who demonstrated a “collective gut-level instinct” that educating children in the LRE was the “right thing to do” for their students. The Monitor’ staff concluded that the staff and administration at Mather had embraced the philosophy that since students with disabilities would be living in a world along-side students without disabilities, students with disabilities needed to function in that world as much as possible before leaving high school.

Mather has carried out a number of plans aimed at increasing opportunities for students with disabilities, as well as the school staff’s capacity to serve these students more effectively. These methods include the following: (1) developing an LRE School vision; (2) carrying out staff development activities that foster delivery of services in the LRE; (3) creating informal opportunities for teachers to discuss LRE and collaborative teaching models; (4) reviewing IEPs of incoming freshmen to ensure that LRE programs and services

⁷⁶ While other schools may demonstrate progress, these examples are among the best of what is coming out of the Education Connection program.

⁷⁷ Chapman, Bonita and Rodney D. Estvan, consultants to the Court Appointed Monitor in *Corey H. vs. The Chicago Board of Education et al.*, (92 C 3409), “Review of Stephen T. Mather High School’s Progress in Educating Students with Disabilities in the Least Restrictive Environment” (May 24, 2000).

have been recommended; (5) redesigning the resource delivery model and expanding use of the regular classroom facilitator; and (6) increasing teachers' use of alternative assessment methods. For example, Mather's math department redesigned its curriculum and adopted a textbook series that takes a "real world" approach to studying math, specifically because the department members thought it would be a more effective approach to teaching students with disabilities in regular math classes.

Example: Penn Elementary School. Penn Elementary School is located on Chicago's West Side in an extremely poor neighborhood. Ninety-six percent of Penn students are African-American, and 90 percent are low-income.⁷⁸ Safety is a continuing concern and source of stress at the school; in one instance during the 1999-2000 school year, students had to stay at school for three extra hours before it was safe to go home because of gunfire in the neighborhood.

Third graders score extremely low on standardized tests; only about 13% of them scored at or above the national average in reading and math on the Iowa Tests in spring 2000. However, scores improve steadily at higher grade levels; by eighth grade, nearly 50% of Penn students score at or above the national average in reading and math.

In the Education Connection Program, Penn staff focused on the including students in the primary grades in the regular classroom and the regular curriculum who had previously been educated in separate classrooms. School staff accomplished much of this inclusion through effective use of classes co-taught by regular education and special education teachers.

Working with a strong consultant, the staff has generally been convinced that they should have much higher expectations for students with disabilities. Students in the primary grades who are labeled "EMH" have been moved into the regular education curriculum with support, and students labeled "TMH" (moderate to severe cognitive disability) are being educated with students with mild disabilities. Based on a 1999 visit (after Year 2 of Penn's involvement in the Education Connection program), the Monitor's staff noted that "very impressive" units had been developed cooperatively by the regular and special education teachers (based on the city and state learning standards) with titles such as: the Solar

⁷⁸ General information about the school is from the school by school data webpage acct.multi1.cps.k12.il.us.

System, the Community, Classification of Animals, Life Cycles, and Matter and Energy.⁷⁹ From the first to the second year of Penn's Education Connection participation, more than one hundred students with disabilities moved into increased involvement in the regular classroom activities. The Monitor's staff noted that in some instances students who had been in self-contained classes exclusively were spending ninety minutes a day in the regular classroom and that this time was focused on core academic subjects.

The Monitor's staff attributed the progress at Penn to the principal's strong support for implementing the LRE mandate and on-going direct assistance from a very skilled consultant, who helped teams of teachers in developing cooperative relationships and new curricula. The Monitor's staff found "universal enthusiasm" among teachers, with one teacher stating that her students who had historically been segregated were energized by participation in regular classrooms and making significant educational progress.

The next challenge for Penn will be to expand the inclusion process that has begun in the primary grades into the school's upper grades.

Gauging Outcomes for Students

The success of the *Corey H.* agreement must ultimately be judged by its impact on the quality of students' educational experiences and on their academic achievement and school completion. At present, we lack reliable data to judge the extent to which such improvements are occurring. However, systemwide monitoring efforts by the ISBE and studies by the Chicago Board that are required by the settlement agreements will provide reliable information over the next several years about the impact of the *Corey H.* lawsuit on students.

Annual progress towards meeting the district-wide numerical targets will be one measure of progress. However, data that is currently available illustrates the issues entailed in accurately gauging benefits for students. As reported by the Chicago Board, the percentage of Chicago students attending school in regular classroom and resource rooms (combined) has increased from approximately 53% in 1994 to approximately 61% in January 2000. These data suggest an 8% improvement in the percentage of Chicago students attending school in the regular classroom or in part-time resource rooms, but these data still leave many questions unanswered. For example, given the strong incentive that Chicago Public Schools staff now have to show improvements in inclusion, what percentage of students with

⁷⁹ The Monitor's staff's visit took place in May 1999. All references to that visit come from a letter dated June 4, 1999 to Chicago Public School personnel from Rodney E. Estvan of the Monitor's

disabilities listed as participating in a regular classroom are, in fact, participating in classrooms that enroll less than 30% students with disabilities, teach the regular curriculum, and are not remedial classrooms (the current ISBE definition of a “regular classroom,” as discussed above).

Further, even if there is improvement in such numerical indicators of students’ placements in less restrictive settings on a citywide or school level, it is important to be sure that this improvement does not simply represent the “dumping” of students with disabilities into regular education classes without adequate staffing and other aids and supports, contrary to a series of guarantees in the settlement agreements. The ISBE is obligated to annually collect district-wide data to clarify such issues as the following, which will illuminate the quality of efforts to implement the LRE mandate:

- Whether IEP decisions regarding LRE are individualized and justified.
- Whether IEP decisions regarding LRE provide for sufficient staff and other aids and supports necessary for appropriate participation in the LRE.
- Whether IEPs provide the student with access to the regular education curriculum and the supports necessary to master the regular education curriculum.
- Whether IEPs are actually implemented (for example, whether services are actually delivered in the LRE).
- Whether IEPs specify the methods by which progress toward meeting annual goals will be monitored and assessed.
- Whether IEPs of students in more restrictive settings document consideration of less restrictive options and justify the rejection of those options.
- Whether lack of adequate personnel or administrative convenience bar students from less restrictive options.
- Whether students in various educational environments are making appropriate progress from year to year.⁸⁰

⁸⁰ New state requirements to report state achievement test results for students with disabilities (that respond to the Individuals with Disabilities Education Act), coupled with detailed requirements that are part of the *Corey H.* settlement agreement for the reporting of Chicago’s Iowa Test results for students with disabilities, will facilitate the tracking of student achievement over time. *See*, Chicago Settlement Agreement, par. 20.

Beyond these data about the nature of students' educational experiences, it will also be informative to track data over time about the achievement levels and dropout rates for students with disabilities. New state requirements to report state achievement test results for students with disabilities (that respond to IDEA), coupled with detailed requirements for the reporting of Chicago's Iowa Test results for students with disabilities (required by the *Corey H.* settlement agreement), will facilitate the tracking of student achievement over time.

Another research focus of major interest to the plaintiffs is to pinpoint those schools that are doing an exemplary job of improving educational quality and student achievement for students with disabilities and then to analyze the practices of these exemplary schools and the process of change that took place in these schools. DFC has applied a similar research strategy in identifying the practices of exemplary Chicago elementary schools that showed a substantial trend of improved student achievement on standardized tests for all students.⁸¹

⁸¹ Designs for Change (1998, April).

4. SOME IMPLICATIONS AND RECOMMENDATIONS

The resources available for litigation and other advocacy efforts to improve the quality of special education for minority and low-income students are extremely limited, and the organizational resistance to significant improvement in the educational systems that these students with disabilities attend is potent.

The *Corey H.* settlement agreements are in an early stage of implementation, and systematic data about impacts on students' educational experiences and student outcomes will not be available for several years. Nevertheless, the plaintiffs have been successful in winning extremely detailed and coherent settlement agreements. Further, one can conclude that, at the very least, significant changes in policy, customary practice, and resource allocations are beginning to occur with respect to both the Chicago Board of Education and the Illinois State Board of Education. Further, the plaintiffs' strategy for catalyzing school-level initiative to improve the quality of education in the LRE has, at the very least, resulted in substantial improvements in a number of schools.

Coupled with the authors' past research and reform experience, accomplishments to date in carrying out the *Corey H.* reform strategy strengthen the authors' conclusion that key features of this strategy merit serious consideration by other advocates. Thus, the authors urge that advocates for improving special education for minority and low-income students give serious consideration to the following features that we conclude will dramatically enhance the prospects for achieving significant improvements in the educational experiences and academic achievement of minority and low income students with disabilities:

- A multi-method advocacy strategy in which litigation is viewed as one among a number of methods that are carried out to bring about changes in educational policy and practice that will improve the quality of students' educational experiences and outcomes.
- A focus on the "school community" as the essential unit of change and an analytical approach that views the school community as a "human system" with complex organizational and political dynamics that need to be understood to craft changes that will improve educational quality.
- A focus on the utility of crafting educational reform strategies (including legal remedies) in light of four decades of research about the practices of effective urban schools.

- The perspective that the school community is nested in a series of other human systems (including the school district, state government, and federal government) and that a key task for effective reform advocates is to determine what changes in policies, characteristic practices, and resource allocations at various levels of the educational system will improve educational practices in school communities and thus the quality of students' educational experiences and educational outcomes.

Further, the research strategy which led to DFC's conclusions about the practices of effective advocacy groups can be applied productively to the specific issue of improving special education for minority and low-income students. Implementing such a research strategy would entail (1) identifying advocacy initiatives that appear to have improved educational quality for minority and low-income students in special education, (2) verifying this beneficial impact, and (3) using a combination of qualitative and quantitative research methods to identify effective practices of these advocacy initiatives.

Table 1. Five Areas of Effective Advocacy Practice

Area 1. Maintaining a Strong Organization

1. Leadership for the project.
2. Staff dedication to improve services for substantial numbers of children at risk.
3. Commitment to improve the group's maintenance activities (e.g., clear definition of responsibilities, accurate internal communication, clear decision making).
4. Sustaining needed funds.

Area 2. Developing a School Improvement Strategy that Shapes Action

5. Cycle of analysis and intervention.
6. Clarity of the advocates' strategy for improving services for substantial numbers of children at risk.
7. Focus on a subsystem of the education system that shapes services to a particular group of children at risk.
8. Focus on central issues determining the quality of services to children.
9. Envisioning a clear solution.
10. Bringing about or capitalizing on a major policy change.
11. Focus on implementation.

Area 3. Gathering Comprehensive Accurate Information

12. Documenting problems and solutions.
13. Gathering comprehensive accurate information about the educational system.

Area 4. Building Support

14. Using media effectively.
15. Developing a support network.
16. Building a committed constituency.

Area 5. Intervening to Improve the Schools

17. Intervening at multiple levels.
18. Using multiple tactics.
19. Carrying out specific intervention tactics competently.
20. Bargaining orientation.
21. Persistence.

TABLE 2. Educational Quality and Student Performance Are Determined by a Nested Set of Complex Human Systems

