

Article

Triennial Evaluations: Divorcing the Means from the Ends

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Abstract: Confusion among stakeholders regarding some aspects of the special education process—chiefly the triennial reevaluation—leads to misapplication of rules across districts and states based on interpretations of informal lore-based reasoning. Local education agencies (LEA) can determine that no additional data are needed and advise parents to forego the evaluation. Too, often, families who fear losing special education services for their child will acquiesce and decline the evaluation. Although this may be appropriate for some students, for others it can be a highly questionable and counterproductive decision. We illustrated the ways that avoiding triennial evaluations could hamper the ability of the LEA to adequately foster the student’s independence, monitor the student’s disability condition, and set and reach the student’s Individual Education Plans (IEP) goals. We argued that the major issue in decisions regarding triennial evaluations is centered on determining if a student is still eligible for special education services. This places too much attention on test-based eligibility and too little on educational needs, transition needs, and the instructional program. Triennial reevaluations should pivot from an “eligibility” focus to a “needs” focus, allowing schools and parents to gain a fresh understanding of the individual receiving the services. Failure to do so raises questions about the fidelity of assessment within the structure of special education service provision. Finally, we suggested that the motives underlying the practices for triennial evaluations illustrated here call the pragmatic acceptability of “full inclusion” into question.

Keywords: assessment; inclusion; students with disabilities; secondary education; triennial evaluations



Citation: Brigham, F.J.; Claude, C.M.; McKenna, J.W. Triennial Evaluations: Divorcing the Means from the Ends. *Educ. Sci.* **2021**, *11*, 314. <https://doi.org/10.3390/educsci11070314>

Academic Editors: Garry Hornby and James M. Kauffman

Received: 31 March 2021

Accepted: 8 June 2021

Published: 23 June 2021

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1. Introduction

The twin pillars of special education in the United States are a free and appropriate public education (FAPE) that is delivered in the least restrictive environment (LRE). We previously argued that FAPE should be the driving force in a rational education system [1,2]. With the Endrew F. decision, demonstration of “appropriate” progress is now required for all students with disabilities [3]. Demonstration of appropriate progress and delivery of FAPE require timely and accurate assessment data. Many proponents of inclusion of students with disabilities [4,5] suggest that general education settings are optimal environments for the education of all students with disabilities. However, a misguided interpretation of federal policy too often prevents the collection and utilization of potentially important assessment data for students with disabilities, that is, triennial evaluations, which are necessary to ensure a FAPE in either general or special education settings. Therefore, the practices associated with the implementation of this policy suggest that full inclusion is a questionable option in the minds of some people with disabilities, their parents/guardians, and school officials. We next turn to the requirements for triennial evaluations.

Students receiving special education services are required by law to “appropriately” benefit from them [6]. Thus, it is imperative that LEAs are capable of determining who is eligible for special education services so that they may receive the benefits to which they are entitled. However, these benefits come at a price. For example, according to the Overview

of Special Education in California [7], the state spends \$17,000 more per pupil on students who receive special education services compared with students who do not. While the cost varies based on what the provided services are and where they are provided, stakeholders may consider the financial gravity accompanying special education services. Thus, there is a potential financial disincentive for schools to carry out triennial evaluations.

2. Eligibility

Eligibility for special education services is based upon a positive finding in each of the elements of a two-pronged test. In order to be determined eligible for special education services the individual must (a) have a disability and (b) require the provision of special education services to benefit from school due to the manner in which the disability adversely affects performance, and not some other problem such as lack of appropriate instruction in reading or math or having limited English proficiency [8]. The exclusion of performance problems not related to disability indicates that a number of influences can lead to characteristics that bear superficial resemblance to disabilities. Individuals with problems that are not the result of a disability are not eligible for special education services under IDEA. It is, therefore, reasonable to periodically reexamine individuals receiving services to screen out those false positive identifications (i.e., those who were mistakenly identified as eligible for services), as well as identify students who have a disability but no longer require special education services to make effective progress in school.

3. Independence

A clear purpose of special education is to provide instruction that encourages individuals with disabilities to become as independent and self-directed as possible [9]. Many students with disabilities are capable of continuing academic growth in general education settings after exiting special education services [10]. Providing unneeded services can prevent an individual from attaining independence because of the opportunity cost of engaging in the services as opposed to other activities. In addition, the expense of providing special education services is borne on top of the expenses of the regular per-pupil costs that the school incurs, so providing unnecessary services or services to those who are ineligible to receive them can drive up educational costs. When educational costs are unnecessarily inflated, the financial burden is spread across all of the programs in the school, reducing funds available for other purposes. Thus, decisions to determine a person to be eligible for special education services are weighty and not to be made impulsively or without deliberation and supportive data. The same can be said for the decision to continue or discontinue eligibility for special education services. The Individuals with Disabilities Education Act [11] outlines the process for reevaluating students to determine their continued eligibility—both to empower the student towards independence and to consider the finances needed to enact services.

4. Monitoring Disability Condition

IDEA outlines 13 distinct disability designations. It is, therefore, reasonable that the reevaluation process may be more nuanced for some students than others. For example, individuals with more pervasive disabilities may be less likely because of their defining characteristics (e.g., IQ scores at or below a given level) to approximate grade level academic performance and/or perform adaptive behaviors consistent with age/grade norms over time than individuals with other, less-pervasive disabilities (e.g., some forms of specific learning disabilities). Additionally, individuals who are identified at early ages may have more unstable scores over time, at least until they are assessed when they are older. Most scores on a test-retest study with an interim period of approximately 2.84 years of the Wechsler Intelligence Scale for Children—Fourth Edition remained stable within a few points. However, 25% of the individuals in this study had full-scale IQ scores that varied by ten or more points between measurements [12]. Therefore, it is unwise to assume that

all scores will remain stable over time, particularly when students are provided consistent access to research-based instruction and interventions.

We wish to note that we are neither stating nor implying that all individuals with learning disabilities or any other disability condition face fewer challenges than do individuals with other disabilities simply because of their condition. Challenges are based on the interaction of one's goals, personal characteristics, and the environment in which they are instructed. Thus, knowing the disability category in which one is eligible tells us only part of the story.

5. Meeting Educational Needs

Score-based eligibility determination is one part of the puzzle for re-evaluations. The other is determination of educational needs. Special educational needs are based upon the demands of the curriculum one faces and the nature of one's disability conditions. It is foolish to suspect that educational needs will remain constant in the face of changing demands of the curriculum. As students grow older, our expectations for their performance grow and the increased challenges can bring out different facets of the disability condition. Further, secondary and tertiary problems related to the disability can arise. Students may develop maladaptive behavior related to frustration or avoidance behaviors requiring different or additional interventions and instructional methods [13]. Therefore, it is unwise to assume that, once identified, an individual's needs will remain constant across the school year or their K-12 educational career.

6. Updating Educational Goals

An additional element that requires consideration in triennial evaluations, as well as evaluations that occur more frequently, is the actual progress an individual is making on the educational goals declared in the IEP. Given the requirement that students show more than de minimis progress relative to their IEP goals, it seems that having the same goal appear in several IEPs should be a cause for alarm [2]. One reason that goals may appear across IEPs is that they are written so broadly that it is difficult or impossible to detect meaningful progress. A triennial evaluation could set the stage for a refinement of the goal so that meaningful assessment data could be collected. Another reason that a goal may persist across multiple IEPs is that it is written in language that sounds impressive but is actually meaningless [14,15]. A triennial evaluation could serve as the setting event for honing and refining educational goals into more meaningful statements of what is intended for the student. Given that many special education teachers are underprepared for their roles—working on emergency licenses and teaching in demanding situations while they are being trained to do their jobs [16]—it makes sense to provide the support of a multi-disciplinary team working with fresh data in at least some cases.

7. Procedural Requirements

IDEA part B, subpart D, Section 300.305 outlines additional requirements for reevaluations. The first step is for the LEA to review existing data of the student, including test scores, observational data, and information provided by the family of the student. Importantly, the LEA can then decide that no additional data are needed to determine if the child is still eligible for special education services. In this instance, IDEA states:

1. If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of—
 - I. That determination and the reasons for the determination; and
 - II. The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.

2. The public agency is not required to conduct the assessment described in paragraph (d) (1) (ii) of this section unless requested to do so by the child's parents [17].

Some states mirror this language verbatim in their department of education's regulations for special education, but others do not. By and large, states paraphrase the wording in IDEA and use it as a baseline from which they can choose to add more regulations. See Table 1 for examples.

Table 1. Examples of State Triennial Evaluation Regulations.

State	Reevaluation Language
California	<p>Requirements if additional data are not needed</p> <p>a. If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the local educational agency shall notify the child's parents of—</p> <ol style="list-style-type: none"> 1. That determination and the reasons for the determination; and 2. The right of such parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs; and <p>b. Shall not be required to conduct such an assessment unless requested to by the child's parents.</p> <p>Sec. 1414. Evaluations, eligibility determinations, individualized education programs, and educational placements, section C paragraph 4 https://caser.specialedreference.com/, (accessed on 6 March 2021).</p>
Virginia	<p>Requirements if additional data are not needed:</p> <p>a. If the team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the local educational agency shall provide the child's parent(s) with prior written notice, including information regarding:</p> <ol style="list-style-type: none"> 1. The determination and the reasons for it; and 2. The right of the parent(s) to request an evaluation to determine whether the child continues to be a child with a disability and to determine the child's educational needs. <p>b. The local educational agency is not required to conduct the evaluation to gather additional information to determine whether the child continues to have a disability and to determine the child's educational needs, unless the child's parent(s) requests the evaluation for these specific purposes.</p> <p>c. The child's parent(s) has the right to resolve a dispute through mediation or due process as described in this chapter.</p> <p>d. This process shall be considered the evaluation if no additional data are needed. https://www.doe.virginia.gov/special_ed/regulations/state/reg_speded_disability_va.pdf, (accessed on 6 March 2021).</p>
Maryland	<p>If after the review of existing data and information from the parents, the IEP team and parents agree no additional data or assessments are necessary to determine whether the student continues to be a student with a disability requiring the provision of special education and related services that date is the date of the reevaluation.</p> <p>Requirements if no additional data are needed to determine eligibility: IEP team must provide written notification to the parents of that determination and the reasons for the determination. This notification must also indicate that parents have the right to request MCPS to conduct assessment procedures to determine whether the son/daughter continues to be a student with a disability and to determine the student's educational needs https://www.montgomeryschoolsmd.org/departments/specialed/resources/handbook.pdf, (accessed on 6 March 2021).</p>
Pennsylvania	<p>When additional information is needed to complete a reevaluation, the school must receive your permission to perform the additional evaluation using the Permission to Reevaluate-Consent form. Also, if the school determines that no additional data is needed, they will notify you of this determination. You may agree in writing to your LEA's recommendation that the three-year reevaluation is not necessary. If the LEA proposes to not conduct the reevaluation, they will issue you an Agreement to Waive Reevaluation form. This is not an option if your child has an intellectual disability. https://www.pattan.net/assets/PaTTAN/2a/2a2a5b53-4694-41c8-aea6-0769490a89ed.pdf, (accessed on 6 March 2021).</p>

Table 1. Cont.

State	Reevaluation Language
Nebraska	<p>If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs the school district or approved cooperative:</p> <p>Shall notify the child's parents of:</p> <ul style="list-style-type: none"> • That determination and the reasons for the determination; • The right of the parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs. 006.06D2 • The school district or approved cooperative shall not be required to conduct such an assessment unless requested to by the child's parents. <p>https://cdn.education.ne.gov/wp-content/uploads/2017/10/Rule51_2017.pdf, (accessed on 6 March 2021)</p> <p>page 31(title 92 chapter 51)</p>

The utility of this written guidance is questionable. A recent study conducted by Gray and colleagues [18] suggested that the readability of IDEA is cause for concern. Specifically, according to the findings of the study, no procedural safeguard was written below an 11th grade level, and 74% of them were written at a graduate level. Thus, the readability of IDEA, or lack thereof, begets confusion, distrust, and many differing perceptions regarding the reevaluation process. Under such circumstances, advice from local schools or parent support groups can be highly influential.

The webpages of many parent advocacy groups discuss the dissonance between the available guidance and its practical utility. The reevaluation process, subsequent conflict resolution, and the provision of services are but a few of the areas on which advocacy groups disagree. Some advocacy groups encourage parents to review their child's evaluation more than once every three years to hold LEAs accountable to provide needed services [19,20], positing that LEAs may shrink from their responsibility regarding the reevaluation process to save time and money [21]. In fact, parents/guardians of students with disabilities have the right to call an IEP meeting at any time. Some parents prefer to waive the reevaluation process to ensure that their child keeps all of their services [22] while others prefer to avoid special education services entirely for fear of the associated stigmatization and label [10].

When there is disagreement between the family and the LEA, conflict resolution procedures may be necessary. Some groups objectively define the parent's rights to an Independent Educational Evaluation (IEE) at the school's expense [18]. However, other groups hold a more pessimistic perception of the conflict resolution process, maintaining that federal courts are more likely to side with the LEA than the family's IEE [23]. Some commentators and advocates have noted that schools tend to settle out of court and only choose to engage in legal actions when they are certain that they will win [24]. Thus, the preponderance of decisions favoring the schools in published legal disputes may reflect the approach that schools take toward disagreements with parents rather than a predisposition of courts and hearing officers to side with schools. Nevertheless, the willingness of school officials and parents to engage in potentially costly legal procedures is a factor in considering the adequacy of IDEA dispute procedures.

8. Exit Data

According to IDEA, the US Department of Education must collect data on students receiving special education services [25]. The department collects data on the number of students served in each setting as well as the number of students who exit special education services into general education. While interesting and potentially useful, these data are incomplete. Specifically, the *Exit and Child Count and Environment* data from the 2018–2019 school year from Wisconsin and Louisiana lacked data for students served in each setting and the number of students transferring out of special education services, respectively. Moreover, these data are not disaggregated by disability designation or demographic

information, rendering the picture painted by the data incomplete. However, using data for the remaining 48 states, Washington DC, and the Bureau of Indian Education, it is possible to begin to assess the ability of states to enable students to exit special education services.

Nationally, 3.5% of students in special education services in the secondary setting will transfer out of special education services into the general education setting. The range of such transfers is variable, with New Hampshire at 10.4% and Indiana at 0.8%. Given the purported similarity of curricula across states resulting from the No Child Left Behind Act [26] and the common Core Standards Initiative begun in 2009 [27], and the consistency of procedures carried out at least at the “floor level” required by IDEA, it seems likely that the variability is related to interpretation of the regulations rather than differences in the regulations across states.

9. Lore-Based Decision-Making

We contend that there is often a local lore that is employed to guide decisions in much of human endeavor and particularly in special education practice rather than reasoned policies. Such is the case in the area of interventions and volumes of rebuttals [28,29] that have been published. Similar problems of lore-based reasoning to the exclusion of clear contra-indicative evidence also exists in the realm of educational assessment [30]. Kurt Anderson produced a history of political and economic development in the late 20th century and early 21st century and concluded that among several destructive tenets held by many people in this time period are: (a) “establishment experts are wrong, science is suspect,” and (b) “[we are] entitled to our own facts” [31] (p. 369). Given the ubiquity of such problems in other areas, it is difficult to imagine that such lore-driven advice is absent from the domain of triennial evaluations in special education.

We have described several of the purposes of triennial evaluations and now turn to problems that such lore-driven decisions create at the local level. There is very little empirical research on this topic in the literature. The references on this topic that we located [32,33] were not directly related to the arguments we developed herein. That could be because there are no problems in this realm. We doubt that. It could also be that, when issues arise and parents stand their ground to insist upon meaningful evaluations, schools back down and negotiate with the parents. That is possible. It could also be the case that parents do not know the intricacies of special education regulations [34] and, therefore, either take bad advice about securing triennial evaluations or do not know what their options may be. We believe that this is plausible.

10. Case Examples

We illustrated some of the problems with misapplication of triennial evaluation rules through a series of case examples. “Humans understand the world through narratives; however much we flatter ourselves about our individual rationality, a good story, no matter how analytically deficient, lingers in the mind, resonates emotionally, and persuades more than the most dispositive facts or data” [35] (p. 7). The cases that follow are real and, we think, illustrative of several problems that exist within current lore-based practices regarding triennial evaluations and, relatedly, the pragmatic attitudes they demonstrate towards inclusion. Our cases involved students in secondary settings because the cases that we collected at this level rendered the problems clear. We turn first to the story of Jesse.

10.1. Jesse

People who have characteristics similar to Jesse are very likely the reason that Congress amended the triennial evaluation requirement to allow extant data to suffice rather than to require duplicative administrations of tests when the scores are unlikely to change. Jesse was identified as eligible for early childhood special education services around the time she was 30 months old. She appeared unresponsive to most verbal stimuli and was not attaining her developmental milestones. Her family was worried that she might be deaf when they approached the local special education services unit for an evaluation.

Due to her young age, Jesse was declared eligible for special education services in the category of developmental delay. In essence, that means that there were a number of issues present, but it was too early to tell which ones were the major contributors to her performance and whether or not the measures that were used were stable and clear enough for a firm identification of the ongoing issues at her young age. She began receiving intensive services about the time of her third birthday.

By the time she turned seven, it was evident that Jesse had a substantial intellectual disability. Measures of intellectual ability indicated standard scores that consistently fell in the mid-to-high thirties. Language, communication, and adaptive behavior scores consistently rated her as far below age or grade level, as did measures of motor performance and coordination. Additionally, these measures were consistent with informal observations made by medical personnel and educators who worked with Jesse and her family. Scores on such measures from young children are often unstable and open to change. Additionally, scores as extreme as Jesse's are sometimes vulnerable to the effects of regression toward the mean. That is, scores this low are likely to be somewhat higher on repeated measure simply because extremely low scores are associated with "unlucky" error that may not be as prominent in the subsequent measure. Therefore, subsequent measures of the same elements may have yielded different results as she grew older. Such was not the case. Her scores remained in the same range for the rest of her schooling, and every three years a complete battery was administered.

Every three years, Jesse's parents received a formal report from school officials indicating that she still had an intellectual disability and that her language, motor, and academic abilities (i.e., reading, math, written language) were far below her grade level and that of her age-mates. Although her family was disappointed in this news, hoping that somehow her education could "cure" her disability, they were unsurprised. They were, however, alarmed that the reports simply repeated that she was far below the normative expectations for her age or grade mates. They would have been elated had Jesse's behavior indicated that she no longer needed special education services, and thought that the requirement to apply formal tests to corroborate the things that were evident in Jesse's interactions with others and performance of various developmental tasks was "just silly". They were correct in this judgment, and this is very likely the reason that complete triennial evaluations are no longer required when the team deems the extant data to be adequate. Even in this obvious case, there is a clear downside.

Jesse was included in her school's academic program for half of each day and participated in the school's community-based education program the other half of the day. The school maintained essentially the same goals for Jesse on every one of the 17 IEPs that guided her education from kindergarten to the year that she turned 21 and aged out of school services. As time wore on, some of the goals were altered to include the use of technology (e.g., she will read words presented on a computer screen rather than from printed media), and more attention to vocational settings (e.g., she will remain on task while carrying out [task] in the workplace rather than in the classroom). Nevertheless, the goals were the same; only the setting had changed. The pain that this caused the family was clear in the response from Jesse's mother to the question delivered in the IEP meeting just before Jesse aged out of school: "And, are there any special things that you would like to see in this, your daughter's last IEP?" Her mother replied, "Just pick one from the previous years and actually do it this time".

Analysis. Jesse's evaluation complied perfectly with the letter of the law and completely missed the purpose of the law. It is of no value to repeat that she was far below expectations on such normative measures and fail to discuss what she could do at the time of a given evaluation that she was unable to do during a previous evaluation. Normative measures are of great utility in the range of the mean plus and minus one, if not two standard deviations. But to say that Jesse was functioning far below the typical range is as useful as evaluating the competence of cellist Yo-Yo Ma by stating that he is way better than most players [36]. Good assessment of individuals in the extreme tails of the

distribution of any characteristic requires more attention to the actual performance of individually meaningful tasks than to comparative evaluation of normative tasks. Triennial evaluations, if they were focused upon performance rather than eligibility, could easily do this. Additionally, by having Jesse be present in general education settings for half of the day, the school was able to report her as a student with disabilities who received substantial amounts of instruction in general education. By reporting where she sat during the school day without concern for educational benefit and failing to respond to the clear lack of progress in her IEPs, Jesse's school made themselves look good but denied her both inclusion in a meaningful sense and a free appropriate education as required by federal special education mandates.

10.2. Lyle

Lyle was fourteen years old when his family relocated to a different state for work. He had been served in a dedicated setting for individuals with emotional and/or behavioral disorders for five years and was doing quite well in that setting. We prefer the term "dedicated" over pejorative terms such as segregated, or misleading terms such as self-contained; Lyle's special education services were provided in an environment that was dedicated toward the issues that he faced. He was making strong academic progress and was repairing the damage done to his achievement during the time before intervention when he was described as a school-refuser. He was due for his triennial evaluation at the beginning of the next school year.

Upon relocation, Lyle and his family decided that they no longer wished for him to receive special education services and removed the information about his educational evaluations and IEPs from the records that they delivered to his new school, telling the new school that he had been dismissed from special education services. They told the teachers at his former school that the new school district was much larger than the one he was leaving, so they did not trust the bureaucracy.

Lyle was enrolled in the ninth-grade general education program and did well for the first six or seven weeks. After the first month and a half, Lyle began to exhibit the school-refusal behaviors that had been the reason for his original placement. His grades fell from the mid-B range to the low C and D range, mostly due to failure to complete or submit assignments. Never an outgoing individual, Lyle withdrew from the few friendly contacts that he had established with his new peer group and avoided making new contacts with students at his school.

His parents clearly recalled that these were the kind of problems with which they and their son had been able to cope with through the services in his previous school system and decided that it was time to resume such supports in his new school. They contacted the local district for help. They were informed that Lyle would need to undergo a complete re-evaluation because he was dismissed from special education services and had been served adequately in a general education setting thus far in the school year. His parents questioned the adequacy of his services given his declining academic and social performance but agreed to the evaluation.

Upon completion of the evaluation, they were told that although Lyle clearly was experiencing increasing difficulty in his present setting, his problems were not so serious as to qualify for special education services. During a subsequent conversation with Lyle's former teachers, his father complained that it appeared that Lyle would need to revert to behaviors as serious as he had displayed in order to re-gain access to special education services.

Analysis. Lyle's family made the false conclusion that his performance without supports would equal or exceed his performance with supports. That is somewhat akin to concluding that because one's broken leg feels better with a cast, it will feel even better with the cast off. In some ways, it will, maybe, but the long-term healing of the limb may be impeded if not prevented by the premature removal of the support.

Lyle's family and his new school also made the false conclusion that special education was an all-or-nothing proposition. He was making remarkable progress with supports

from special education service providers, and he may well have been at a point where it was time to reduce his services. Rather than removing him “cold turkey” from a dedicated setting, it might have been more appropriate to reduce the amount of time that he spent in that setting and increase the amount of time he spent in other settings. Because he was removed from services, Lyle saw little hope for success in his new environment. It seems that the change of educational environment would have made more sense had it been done incrementally, but also had the option of returning to the dedicated setting remained viable for him. Even the most experienced and skilled sky divers regularly carry reserve parachutes [37].

A triennial evaluation could easily include considerations of the need for current levels of support. Also, we found no indication in the policy statements that once an individual with a disability exits special education services, regardless of the reason, they must exhibit problems as severe as those present at the initial evaluation to regain the services. Given what we know about the trajectories experienced by individuals with emotional and/or behavioral disorders, such a policy would make no sense. Indeed, it would be counter-productive and create a perverse incentive to avoid triennial evaluations lest the student be declared “ineligible for services”. Additionally, a truly inclusive educational system would also be supportive of people exiting services when they are not needed and returning to them when they are once again needed. In addition to acknowledging individual differences, such a policy would clearly be supportive of individual risk-taking and independence. It also would acknowledge that disabilities tend to be life-long propositions that do not respond to a “fix-it” shop conception whereby a student, once again successful, will remain so.

10.3. Helen

Helen was a seventeen-year-old junior in high school when her parents were notified that it was time for her triennial evaluation. Her mother and father were very appreciative of the special education services that she was receiving as a student with learning disabilities and very proud of the high grades (A's and B's) that she had been earning in recent years with the support of her school's special educators. Helen's school employed the discrepancy model of eligibility for learning disabilities that required a large difference between her measured achievement and estimated ability levels. When she was re-evaluated, the discrepancy between her achievement and ability estimates narrowed and the school stated that she was no longer eligible for services.

As the school moved forward with plans to dismiss Helen from services, her family began to build the case that she was relying heavily upon her services and that ending them would seriously undermine her educational progress. The evidence that they amassed included statements from her special education teacher regarding the regularity and diligence of her efforts in accomplishing her tasks during school hours as well as corroboration of Helen's claim that she regularly was working on school assignments well past midnight for what appeared to be an average of four and a half to five hours of schoolwork every night. Helen's special education teacher noted that the language of Section 504 regarding eligibility based upon having a disability, being considered to have a disability, or having a history of a disability would make her eligible for a 504 plan that could require the same level of services [38]. When the family retained an attorney, who filed a request for a due process hearing, the school backed down. Helen retained her special education services and graduated from high school the next year.

Analysis. Helen's triennial evaluation focused almost exclusively, if not exclusively on her eligibility based upon the assumption that the characteristics present at her initial determination of eligibility needed to remain in order for her to have continued eligibility. Expression of this belief has a long history in special education practice and policy [38]. However, it appears to be a serious misunderstanding of the effect that special education services can have on a student. The suggestion that, in order to maintain special education services, one must continue to exhibit problems as severe as observed at initial

determination of eligibility is tantamount to declaring that if special education services work for one and one improves with them, they cannot have them anymore. However, if the services are not helpful and one makes little or no progress, one can have more of them. It is possible, and perhaps even probable, that individuals making little or no progress compared with their trajectory before identification and commencement of special education services would benefit from greater amounts and intensity of services. However, to remove services because they appear to be working is nonsensical.

The triennial evaluation could easily have examined the extent to which Helen was using the services provided and also consider the amount of effort that Helen was expending on her schoolwork in its decision. It is ironic that individuals who are resistant to our attempts at instruction are readily provided special education services but individuals who, like Helen, expend tremendous amounts of personal effort are less likely to receive services. Consideration of how a person uses their services could help to diminish this perverse incentive that seems to reward indolence and punish effort, at least, in some cases.

Helen was aware of her school's initiative to serve students with disabilities in general education settings. Many of the students that she knew in her school were considered to be included in that they were supported by co-teachers in their general education classes. She doubted that it would be sufficient support for the issues she faced in her studies. Her work habits demonstrated that she was far from indolent in her studies and was likely, therefore, to have good awareness of the kind of supports and intensity of supports that she needed. When offered the opportunity to return to general education, she balked, and her family sought legal advice to maintain her IEP services. A full inclusion model would, thus, appear to diminish her agency as an individual with a disability by forcing her into a model that was not of her choosing.

10.4. *Dion*

Dion was concluding her junior year in high school and was well on-track for graduation with the support of the school's special educators. She had good grades and was well into the process of applying for admission to colleges and universities. Well-liked by her peers and her teachers, she was a model student. The assistant principal for special education at her school contacted her family and suggested that even though she was due for a triennial evaluation, he recommended that she decline a formal evaluation lest she "test out of special education". After all, he said, she was doing fine and the data in the file had been fine for the two previous triennial evaluations.

Dion received very little dedicated specialized instruction from special education teachers or instructional assistants. Her IEP contained a list of fourteen accommodations that she claimed that she regularly employed, including extra time on everything (150%), small group testing, and a read-aloud accommodation that required staff read the tests to her. A review of the past IEPs indicated that she had been pursuing the same goals for four and a half years, since seventh grade. Those goals included: remaining on task during class, not talking during class, and improving reading comprehension. One of the teachers working with Dion noticed the similarity of goals over time and suggested to the parent that they might want to have some additional assessment work done, even if it was not completed at school.

Her family contacted a member of a local university's special education department who agreed to conduct an independent review. Much of what was previously known about her academic performance was re-confirmed. However, during the sessions the evaluator noticed that Dion almost always began working on her tasks before the instructions were completed. At the completion of the session, the evaluator reviewed the data and the qualitative results with Dion and her parents.

Her reading scores were in the middle of the typical range of performance for her age group. That made the read-aloud accommodation seem unnecessary. Dion admitted that she just let the teacher read away while she worked ahead on the test items. The individually administered assessments yielded no information that would be helpful

in considering the small-group accommodation. However, the habit that Dion had of beginning to work before the instructions were completed seemed to be damaging to her overall performance. Three subtests had to be repeated on a subsequent day because she began working before she understood the task. When asked about that behavior Dion stated, “Oh I need extra time, so I start as soon as I can. That way, I won’t run out of time”.

The evaluator suggested that this behavior might be the root of the perceived need for reading comprehension training in her IEP despite the adequacy of her test scores. By beginning too soon, she seemed to be making more errors than would be the case if she understood the task. In further consultation with the family, it was agreed that they would approach the school with the request that she be allowed to take her tests in a room by herself or with a school staff member as proctor so that she could read the instructions and test items out loud to herself. Her performance began to improve and, as she developed confidence in her own abilities, she became more relaxed about time limits on her work. Dion graduated from high school with the extended time accommodation and received it in college. At the end of her second year, she reported that she had kept the accommodation but had not needed to use it. She told the evaluator that after having it all the way through school, it was just too hard to walk away from it in college.

Analysis. Dion is a success story and might have enjoyed acceptable performance throughout her college education without the evaluation she received. If one only considers the scores, the evaluation may have seemed redundant to what was already known, but test results are sometimes more than just the numbers generated by a computer-based scoring program.

A norm-referenced measure presents the individual with a structured task that is presented and completed the same way by most other test-takers. The qualitative aspects of the responses in such a situation can be helpful to understanding the “how’s and why’s” of the individual’s performance as opposed to simply determining the level of the individual’s performance.

Dion probably needed a read-aloud accommodation at some point earlier in her academic career, but the results indicated that it was no longer necessary. She may have needed extended time earlier in her academic career, but, by now, she had become so convinced that she was a slow worker that she developed a set of maladaptive responses relative to this belief. By considering the “how’s and why’s” of performance, sensitive evaluators can gain insight into the continued need for existing accommodations and the developing need for other accommodations. A good evaluation is not just about the numbers but also about understanding the student. Having an evaluation that is different from the on-going classroom routine, at least triennially, seems a good way to make certain that our assumptions about a given individual are periodically put to the test and validated.

Dion was served in an inclusive setting in a high school located in a well-educated and wealthy community. The general education teachers, by school policy, taught “from bell to bell” (i.e., actively taught the entire class from the opening moment of the class period to the end of the class period) and were evaluated for doing so by the school administrators. The co-teachers in her classes rarely worked with individuals or small groups because that would remove them from instruction being provided by the general education teacher. Rather, her special education teachers sat in the back of the classroom, collecting behavioral data on their students and trying to document ways that the general education teacher delivered instruction to meet the IEP goals of the students with disabilities. Dion and her classmates with disabilities were considered to be served in an inclusive setting. However, her educational program was neither inclusive (her needs were not actually being met) nor individualized (she received very little individual attention directed toward her learning). As such, she was provided an education that was a perversion of the stated aims of both inclusion and special education.

11. Summary

We agree with the logic behind the decision to allow schools to forego additional assessment when current data is sufficient for providing educational services. Triennial evaluations that are conducted when test data are unlikely to change are wasteful. The option to forego this kind of assessment should remain. However, the focus of triennial evaluations in the language provided in the regulations is misleading and non-productive. As such, it neither serves the goals of high-quality special education services or the aims of inclusion.

The indication that the purpose of a triennial evaluation is to determine if the individual is still eligible for special education services leads, in some cases, to a seriously flawed outcome whereby individuals who are benefitting from these services will be dismissed because their scores are rising, whereas individuals who are showing no clear benefits according to the test data will be retained on the roles of eligible services. This is nonsensical, and ignores the evolving understanding that most of the disabilities that are the focus of special education are persistent problems that are not likely to vanish simply because their symptoms, low test scores, are ameliorated.

Triennial evaluations that focus on continued eligibility focus too much on the wrong thing, whether or not services can continue. As a result of this focus, many school officials advise parents to forego the evaluation. Parents, fearing loss of services, agree. The focus of triennial evaluations needs to be redirected from eligibility to a focus on need. To make this happen, Congress would be wise to adopt an element from Section 504 and state that having a history of a disability establishes continued eligibility but does not necessarily constitute a need.

The decision to carry out a triennial evaluation should include the IEP as a data source and not just the extant data in the files. Seeing the same goals on an IEP for several years should be a red flag that something is wrong. A good triennial evaluation can help detect these failures of the special education system and provide the impetus for the family and the school to amend the program so that it is more productive. It can also lead to increased scrutiny of the measures and data sources employed as well as the frequency of the data collection.

An additional but rarely considered advantage of a triennial evaluation is the evaluation of the individual by a professional who does not see the individual in the day-to-day routine of the classroom. Such a practice allows the individual to be seen with “fresh eyes” that may be free from prejudicial conditions, positive or negative, thereby providing a better understanding of the individual. The qualitative insights gleaned from a good evaluation can provide clues as to what is working and what is no longer functioning as it was intended. Considering the “how’s and whys” of performance provides sensitive evaluators insight into the continued need for existing accommodations and the developing need for other accommodations, as well as the need for specially designed instruction that is the backbone of special education service provision. Having an evaluation that is different from the on-going classroom routine, at least triennially, seems a good way to make certain that our assumptions about a given individual are periodically put to the test and validated.

The efforts that school administrators exhibit to avoid having students complete triennial evaluations may be a demonstration of their skepticism that students with disabilities will be adequately supported in the general education settings in their schools. It is the case that educational leaders sometimes find themselves needing to choose between pursuing a policy of full inclusion or pursuing the best interest of the student [39]. Were the goals of full inclusion and the interests of the student clearly aligned, there would be no issue. Additionally, the efforts of parents and the individuals with disabilities themselves to maintain access to special education services demonstrates skepticism in the promise of full inclusion as a way of promoting their well-being in the educational system. After all, if parents were unwilling to have their children receive special education services, they could simply opt out. Given the high demand for special education teachers [16], it seems that

the consumers of special education services do not perceive the promise of full inclusion is anywhere near fruition. Otherwise, the demand for special education teachers would be much closer to the supply than it is currently.

With a small change, Congress could eliminate the perceived risk of a triennial evaluation that leads parents to avoid the procedures. An emphasis on identifying student strengths and interests that could potentially be leveraged during transition, skills and competencies for development, and response to a year of instruction and services could also be made. When assessing student response, IEP teams could consider and discuss the degree to which students with disabilities had access to instruction, interventions, and supports that have a research base of effectiveness. Assessment data could be used to frame discussions not just around school practice, but the need for additional resources and training to enact units of activity within the proposed IEP. Thus, the triennial evaluation could potentially serve as a reset for the provision of special education services and the conferral of FAPE. Parents need to be aware that they can request an evaluation if the school is unwilling to carry one out. Educators will benefit from more recent evaluation data and the consideration of the current educational program in the light of this data in many cases. These assessments are the means to the ends that we pursue. Current educational policy or educational lore too often divorces the means from the ends of providing high-quality and effective educational services to children and youths with disabilities.

Author Contributions: Conceptualization, F.J.B.; Writing—original draft, F.J.B.; Writing—review and editing, C.M.C. and J.W.M. All authors have read and agreed to the published version of the manuscript.

Funding: This research received no external funding.

Institutional Review Board Statement: Not applicable. The George Mason University Institutional Review Board (IRB) Office has determined this project does not meet the definition of human subject research under the purview of the IRB according to federal regulations.

Informed Consent Statement: Not applicable.

Data Availability Statement: Not Applicable.

Conflicts of Interest: The authors declare no conflict of interest.

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