

TUNE IN TO THE
SOUND OF DEMOCRACY

Justice Talking Radio Transcript

A Special Look at Special Education – Air Date: 10/31/05

This fall the U.S. Supreme Court will examine the Individuals with Disabilities Education Act, the law that requires school systems to develop individualized education programs for children with mental and physical disabilities. As the Court looks at how to resolve disputes between parents and schools, Justice Talking will take a special look at special education: Is the special ed. system working for students? For schools? For families? For taxpayers?

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MARGOT ADLER: From NPR, this is Justice Talking.

UNIDENTIFIED FEMALE: Dan's in some regular classes and some special ed., but I don't know what Dan's official disability is, and I don't really want to.

UNIDENTIFIED FEMALE: Any student with an identified disability is entitled to a free appropriate public education in the least restrictive environment.

UNIDENTIFIED MALE: In a large part of the country, school districts have said to parents, this is all we have to offer for your child and pretty much take it or leave it, and a line is drawn in the sand.

UNIDENTIFIED MALE: It is a civil rights issue. It is a human rights issue. And for us to say that we are equally keeping students in mind, it's just a joke.

MARGOT ADLER: I'm Margot Adler. Whose job is it to educate children with special needs? Stay with us.

MARGOT ADLER: This is Justice Talking, I'm Margot Adler. Our educational system has always reflected the priorities of our culture as well as our attitudes about difference. For example, one way to support separation between whites and blacks in our society was by making sure schools were segregated. The same was true of people with disabilities. Many schools denied access to children with special needs. Now all public schools must provide a free and appropriate education to every child. This mandate, along with the No Child Left Behind Act, creates new challenges to schools, teachers, parents and children. On today's show, we'll talk to a lawyer who is an advocate for families who have children with special education needs, and we'll bring you a debate between two people who have very different perspectives about special education. But first, let's find out more about the past and the current reality of special education in our country. Alicia Broderick is assistant professor of education in the department of curriculum and teaching at the Teachers College at Columbia University. Welcome Alicia.

ALICIA BRODERICK: Thank you Margot. It's nice to be here.

MARGOT ADLER: Alicia, the field of special education has been around for over 40 years. Can you give us a brief history of special education and how it has changed since then?

ALICIA BRODERICK: Well, there were a variety of forms of special education provided by different states prior to 1975. But in 1975, federal legislation was passed. It was originally called the Education for All Handicapped Children Act, often referred to as Public Law 94-142. And at that point it was established that there were well over a million children who were not being served at all, children who had disabilities. And so the basic substantive provisions of the law at that time, which are still in place today, are that any student with an identified disability is entitled to a free appropriate public education in the least restrictive environment.

MARGOT ADLER: Now, for a while, mainstreaming was the main approach, and now it's something called inclusion classrooms. What does it mean to mainstream a child and what are inclusion classrooms?

ALICIA BRODERICK: Mainstreaming is a term that was used fairly commonly in the late '70s, more so in the early '80s, and it typically referred to the practice of taking a student who had an identified disability, who had been receiving services in a segregated special education classroom from a special educator, and integrating that student into a general education classroom on a part-time basis typically for what were considered to be social opportunities rather than academic opportunities. So very often, students were mainstreamed for things like gym class, music, art—those sort of specials—lunchtime, recess, that sort of thing. And it was considered much more of a social opportunity for a student to interact with non-disabled students rather than for any opportunity to receive direct academic instruction in the general ed. setting.

MARGOT ADLER: And so inclusion means they're included totally?

ALICIA BRODERICK: Commonly, inclusion is much more about participation rather than presence. It's not just about being there and it's not just about being there for part of the time. It's about being in an integrated setting, closer to full-time if not full-time, and in a meaningful way in which you can participate. So it's not just about, well, you're going to be granted the opportunity to be physically present in this classroom, but we're actually going to plan for your needs academically so that you can actually participate and contribute and benefit.

MARGOT ADLER: Now in 1975, federal legislation was passed creating an equal educational opportunity for all American children, the Individuals with Disabilities Education Act, or IDEA. It created education rights for children with disabilities. What does the act mandate?

ALICIA BRODERICK: The act mandates that students with identified disabilities, who fall into one of, I believe, 13 federally recognized eligibility categories of disability. So a student who is eligible for special education is entitled to a free appropriate public education in the least restrictive environment.

MARGOT ADLER: So when they talk about six million or at least six million students who receive special education services in America, what are the most common diagnoses of those 13 that you mentioned?

ALICIA BRODERICK: The most common are the ones that are, I think, the most nebulous. About half those students served under IDEA fall under the category of learning disability. Other large categories include emotional behavior disturbance, which again is a very, very difficult category to define. When we look at the numbers across states we see that there's a vast overrepresentation of poor students and students of color in those categories which raises huge red flags in my mind about how useful these categories are and if they are actually providing students with necessary educational supports, or if they are becoming a mechanism for sorting students out.

MARGOT ADLER: So do you believe that some of these students, some of these minority and poor students, have been improperly classified when it comes to special education?

ALICIA BRODERICK: I think that's a distinct possibility, yes. When we look at the numbers, it just doesn't make sense to me at all that there should be such a vast overrepresentation of poor students and students of color in the categories in which students would be most likely to be segregated. The categories of EBD...

MARGOT ADLER: What's EBD?

ALICIA BRODERICK: I'm sorry, Emotional and Behavior Disturbance. Students with that label are very, very likely to actually be segregated into a special separate setting away from non-disabled peers. You know, we look into the segregated classrooms as opposed to students who have access to a more inclusive setting where they are actually members

in a general education classroom, and you sometimes...you can just walk into these classrooms and you look around and you see brown faces. You don't see very many white faces. And that's really, really very problematic.

MARGOT ADLER: Do you thin that special education has essentially been a benefit to education in America? Do you think that it's improved? Do you think there are fewer students that are being overlooked?

ALICIA BRODERICK: I think it's been very necessary. Prior to the enactment of the legislation there were over a million students who simply were not being educated and whose parents had really no recourse other than institutionalization for their children. And now we have a statute in place where parents are entitled to...students are entitled to receive appropriate services. And so I think, yes, it's better than it not having been there.

MARGOT ADLER: Now, in your view, do you think that children fair better when mainstreamed or when they are in segregated classrooms?

ALICIA BRODERICK: I'm a very strong advocate of inclusive education for students. I really believe that there's...

MARGOT ADLER: Integration, in other words, right?

ALICIA BRODERICK: Yes. I don't think that because a student has an identified disability it's a justification for segregation on the basis of that disability. There's really no reason why we cannot provide intensive services in an integrated setting. When we look at segregated special education classrooms, first of all I think we have to question the efficacy of them. I'm not so sure that students who are educated in segregated settings necessarily fare any better than their peers who are educated in integrated settings. In fact, I think they often fare far worse. And they seemed to have an entitlement, in my mind, to receive those services without having to receive them in segregation from their peers.

MARGOT ADLER: Thank you so much, Alicia, for talking with us.

ALICIA BRODERICK: Thank you, Margot.

MARGOT ADLER: Alicia Broderick is assistant professor of education in the department of curriculum and teaching at the Teachers College at Columbia University.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. Peter Wright is a Virginia attorney. He specializes in education law and represents parents of special education students. He runs WrightsLaw.com, a special education and advocacy website. Pete, thank you so much for being with us on Justice Talking.

PETER WRIGHT: Well thank you Margot for asking me to be here.

MARGOT ADLER: We would like to talk to you about the court's most recent case, Schafer vs. Wiest, regarding special education. The case was heard in October in the Supreme Court. What's at stake here?

PETER WRIGHT: How school districts and parents will negotiate with each other when a school district wants to change the services, cut back on services, or doesn't even want to provide services. In a large part of the country, school districts have said to parents, this is all we have to offer for your child and pretty much take it or leave it, and a line is drawn in the sand. And the school district will say it's appropriate for your child because we have a one-size-fits-all program, which is not appropriate. And so in about half the country, parents are forced to either accept it as it is or to ask for what's called a special education due process hearing. And if they ask for a hearing, the burden is on parents to prove that the one-size-fits-all program or whatever else it might be is not appropriate for the child, the child will not benefit from it. And in the other half the country, the law is that the burden is on the school districts.

MARGOT ADLER: Now, let's say I'm a parent with an autistic child. Walk me through what the IDEA law requires the school system to do for my child.

PETER WRIGHT: First, there has to be an evaluation of the child, and the evaluation has to determine whether the child's eligible for services or not. Assuming the child is eligible then the other purpose of the evaluation is to determine the educational needs of the child. From that then there has to be an IEP—Individualized Educational Program—written for the child and implemented. And the program is designed to provide the child with educational benefit to meet the goals of the special ed. law to prepare for further education employment and independent living. That's the goal of the special ed. law.

MARGOT ADLER: And so when you work with all these families who have special needs kids, what do you hear from them about what they're facing and how do you advise them?

PETER WRIGHT: I, of course, hear a specialized segment of the population. They don't contact a lawyer unless they are upset as a general rule. And what I hear from them is essentially that the child has been receiving special ed. services for several years, and they've been assured that everything is coming along just fine, and then there's been some testing—on reading, writing, arithmetic, spelling skills—and the youngster is no better off. In fact, they may even have fallen further behind their peer group. There's a lot of frustration and anger and guilt that the parents are dealing with, and that interferes with their ability to successfully negotiate for services.

MARGOT ADLER: Thank you so much for talking with me, Pete.

PETER WRIGHT: Thank you very much. My pleasure.

MARGOT ADLER: Pete Wright is a Virginia attorney who specializes in education law. Coming up, about six million students in the United States receive special education, but who pays for it and what happens when parents don't think enough is being done to help their child? Don't go away.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. Walk into any classroom in America and chances are there'll be at least one special education student there. You may not be able to pick him or her out of the crowd. His disability could range from dyslexia or attention deficit disorder to cerebral palsy. Once segregated from the general school population, special ed. students are now often integrated into general education classes. Parents fought hard for this inclusion. But as independent producer Tanya Ott reports, despite significant gains, it's still an uphill struggle for schools and families.

TANYA OTT: Watley K-8 school in Birmingham, Alabama is just one of many battlefields for special education right now. Watley students are overwhelmingly black and low income, and a lot of the school's students—about 16 percent—are special needs. Principal Michael Wilson says combine that with a teacher shortage and he feels like his hands are tied.

MICHAEL WILSON: I have one special ed. vacancy, and it's going to take a big effort. There just aren't enough special ed. teachers out there to go around. My hopes are high that I'll find somebody, but the reality of it is that I probably won't and I'll probably end up having to put a substitute in that position and then overtaxing my other two special ed. teachers.

TANYA OTT: Pamela Wimbesh is Watley School's speech language pathologist.

PAMELA WIMBESH: The two people that we have are really, really working hard, trying to service the children and provide them what they need. But that extra person is just essential to make sure that they're getting the services they need and the small group instruction that some of them still do require.

[Speaking to the class] Now, why are we writing number patterns in algebra on the front flap?

TANYA OTT: The pressure is on. Watley's special education students missed their No Child Left Behind benchmarks for math last year. That put Watley on the list of underperforming schools. It had to offer students the opportunity to transfer to another school, and the state and federal money allotted to them went as well. That's a major flaw, says Principal Michael Wilson.

MICHAEL WILSON: It is a civil rights issue. It is a human rights issue. And for us to say that we are equally keeping students in mind, it's just a joke. In some ways, I believe this whole No Child Left Behind is pointed at making urban and poor rural systems look bad.

TANYA OTT: Urban and rural districts often have higher percentages of special education students. With No Child Left Behind up for reauthorization next year, lawmakers are crafting ways to shift some federal and state funding from richer suburban school districts to struggling urban and rural ones. Some of that money could go to training. Classroom teachers often have only minimal training to deal with special needs children, and Birmingham Public Schools Director of Special Education Ruth Tucker, says they often underestimate what a child can learn.

RUTH TUCKER: Most of the children can learn and learn well if the teacher teaches them. However, teachers tend to see the IEP and generalize and assume that the child cannot learn. And what happens is the teacher, subconsciously perhaps, decides, this is the way I'm teaching it, and that's that; he doesn't learn this way—he's special ed. Let's not use the term excuse, but that's what it is. Rather than try another way to teach this child what you need him to learn.

TANYA OTT: Parents of special needs kids often complain they have to fight to get services for their children. The public opinion research group Public Agenda surveyed 510 parents of special needs kids. 35 percent of the parents surveyed said they found it frustrating to get the services they need. One in six said they considered suing their school districts. In August, a court awarded a California family nearly \$7 million to settle a case alleging their local school district didn't do enough to educate their child. And the Supreme Court recently heard a case involving whether a school district should have to pay for private education for a child if the public school can't meet the child's special education needs.

GLORIA KEENAN: [Speaking to a group of parents] I have heard some teachers say, well, I never see the parents...

TANYA OTT: Hoping to stave off similar lawsuits here, Birmingham City Schools has hired a family intervention teacher. On this day, Gloria Keenan is meeting with about a dozen parents.

GLORIA KEENAN: You need to form a relationship with the teachers...

TANYA OTT: Keenan talks about how parents can get involved at schools, offers information about community resources, and just generally works to allay parents' concerns.

PARENT: ...'cause he's getting ready to go to high school. And I'm so concerned which high school he's going to go to, which program he's going to be in, how he's going to fit in. I'm concerned about something that I hear about the high school, how the kids' behavior...

GLORIA KEENAN: I'm going to form a support group so I need...

TANYA OTT: Keenan's background is in counseling. She's a welcome addition to the staff, says Special Education Director Ruth Tucker.

RUTH TUCKER: She's not all wrapped up in the laws associated with it and the risk of being sued and those kinds of fears. She comes to parents from a counselor's perspective. She listens to them and she is available to attend meetings with them at the school to help insure that their concerns are addressed.

TANYA OTT: Special education advocates say programs like this can go a long way towards diffusing the tension between parents and teachers, especially as schools like Watley face shrinking resources and increasing demands. For Justice Talking, I'm Tanya Ott in Birmingham, Alabama.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. We're talking about special education in America. For many parents, getting the best education possible for their children is paramount. But what happens when a child's unique learning needs cannot be met by the local public school? What does the law require and what can parents do? Joining me to talk about special education is Patty Ralabate, special education policy analyst with the National Education Association. Welcome, Patty.

PATTY RALABATE: Thank you very much.

MARGOT ADLER: Also with me is Sara Mead, a senior policy analyst at Education Sector, an independent Washington, DC-based think tank focused on education policy. She is a fellow with the Progressive Policy Institute. Thanks for coming on the show, Sara.

SARA MEAD: Thanks for having me.

MARGOT ADLER: Patty, I want to start out with some basics. Who currently pays for the cost of special ed.? The local school systems, the states, the federal government?

PATTY RALABATE: Well all three, except that the amount of money or the proportion of payment is very different than some people think. Typically, on a national level, only about 19 percent of what would be spent on special education comes from the federal government, and as that weeds through to the state governments and then again to the local school districts it's decreased even more. So the primary groups paying for special education are our local taxpayers.

MARGOT ADLER: Sara has this number—the number of students receiving special education—has this number grown significantly in recent years? And if so, why?

SARA MEAD: Well, over the course of time since the Education for All Handicapped Children Act was initially passed in 1975, the number of students and the percentage of the student population identified with disabilities has increased greatly. And most of the

growth has been in the group with moderate/mild disabilities, particularly among students with learning disabilities. Around the time the law was passed, about one percent of students in the American public education system were identified with some kind of learning disability. Now the number is closer to about six percent, and it's partly, you know, a growth in the knowledge that people have of the concept of learning disability.

I think there are other factors driving it. Some people say that there are parents who are seeking the diagnosis for their children for a variety of reasons. It's also an issue where some of the other streams that we have for funding, such as Title 1, have changed their focus. Special education is increasingly one of the few areas that educators can turn to for additional assistance for students who have some kind of need beyond what is provided to all the students in the traditional system. And so increasingly, I think we see educators turning to special education to get extra assistance for kids who may not actually have a disability. I mean, they have a need for additional help, but it may not necessarily be what most people think of as a disability.

MARGOT ADLER: I'm going to make a guess, but, you know, I could be completely wrong about both of you. I'm going to guess that you, Sara, don't believe that increased spending on special education always leads to improved education. And I would imagine that you, Patty, would mostly believe that more money for special education would improve it. You can tell me if I'm wrong about that, but I'd love each of you to make your best argument for the actual position that you do have. Sara.

SARA MEAD: I mean, the issue of does increase funding always lead to improvements is sort of a straw man, because it depends on what you do with the money. I think where Patty and I probably will have a little bit of a difference is in terms of how we think the federal government should spend more money on special education. Traditionally, there's been this notion of full funding of IDEA, which is based on sort of a strange mathematical compromise that was fairly arbitrary when the law was passed, that we should fund special education—the federal government—at 40 percent of the average per person expenditure per the number of students of special needs in the country. The problem with that is that it's not actually in any concrete way connected to how much it costs to educate these students. And my argument would be that it's time. We have much better data now about how much it costs to educate these students, about what are the kinds of interventions that help students with different disabilities. It's time to go back to that formula and look at it and come up with a more scientific approach that takes into account the different types of needs that students have, that takes into account how having different populations burdens different communities. I think that would help a lot with some of the issues that local school districts are facing.

MARGOT ADLER: Patty?

PATTY RALABATE: Well, my view is a little bit different in that this is a federal mandate. It's different than the state constitutional requirement in every state to educate all kids. This is a mandate the federal government made in 1975. It was a promise that they made at that point in time that if the states stepped up to the mat and decided that they would

indeed educate these kids with disabilities, that the federal government would come through with 40 percent of the average per person expenditure, as Sara has explained, and they've never done that. They've never done that. They've never even gotten over the halfway mark.

MARGOT ADLER: Now, some school systems are unable to provide appropriate placement, so they end up sending children to private schools. Is it fair that disabled children get offered a private education at public expense, Sara?

SARA MEAD: I think what's important is that we, as a nation, have made this commitment that we will provide these children that have special needs with a free and appropriate public education. And sometimes, as Patty was talking about, the thing that, you know, the education system and the parents and all the experts sit down and decide is the best thing for the kid—and frequently the best thing for the taxpayers—is to send children, particularly children with particularly unique or hard to serve needs, into a private placement.

MARGOT ADLER: In many cases, in order for a special ed. student to get the most out of public school education, it requires a dedicated steadfast advocate—someone who will go to bat with administrators and teachers, who will go against the school system when necessary. This takes a lot of time and energy. Patty, do you find that students who have strong advocates fair better than those who don't, and does this play out on class lines? Do people who are mostly white, rich, etcetera, get more of these advocates?

PATTY RALABATE: I think it differs across the country in different places. For the most part, the system of defining an educational plan at the local level—which is how special education works—allows the school staff the opportunity to advocate on behalf of those kids who may not have family advocates. And that is one of the real strong points of the federal special education law. There are cases where families come in with attorneys and other kinds of advocates and they push for things that the school staff might feel are really unreasonable, unnecessary kinds of accommodations or programs for those kids. But from our perspective, as much parental engagement in advocacy that you can have, the better the programs are for kids.

MARGOT ADLER: Patty, research has shown that there's an overrepresentation of minority students in special education programs. At the same time, there are fewer minority students in gifted and talented programs, which I think are funded by the same pot of money. What does this data tell us about how we educate and care for minority students in our country?

PATTY RALABATE: There are several elements that play into how kids are identified for special education services. Number one, there has been an identification process through the special ed. law that really has primarily focused on IQ tests and standardized assessment results that many of our kids from low income families may not be as well prepared to show what they know in that kind of assessment environment. So they end up scoring lower, even though they may not necessarily have a disability in that area.

The other part of it is that because we've been relying so much on special education to help deal with kids who are struggling, many schools have not been putting in place the kinds of prevention and early intervening kinds of programs that help kids who are behind catch up. And that's really something that, again, the new special ed. law is emphasizing, that school systems have to have that kind of early intervening kind of program where they provide special reading services to kids or whatever it is, before they consider a special education referral.

MARGOT ADLER: Sara, do you agree?

SARA MEAD: Yes I do, and particularly about the importance of prevention and intervention. I mean, historically, the definition that we use to identify students with disabilities was almost like a wait-to-fail idea, because the whole idea of discrepancy between IQ and achievement relied on the child falling behind in achievement at some point. And I think we're increasingly learning that the more sort of scientific knowledge we have about how children learn, the better we can identify students sooner who are not responding properly to scientifically-based reading instruction or other things who may be in need of assistance before they get to the point where they're behind and need to catch up.

MARGOT ADLER: I'm talking with Sara Mead from the Progressive Policy Institute and Patty Ralabate from the National Education Association. Coming up, a mother whose 13-year-old son has Down's Syndrome, tells us about his experience in public school. Stay with us.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. We've been looking at the history of special education in America, and at some of the challenges for both families and school districts. I have two guests with me to talk about the state of special education in America—Patty Ralabate, from the National Education Association and Sara Mead from the Progressive Policy Institute.

I'd like to bring Ricky Sabia into this conversation. Ricky Sabia lives in Montgomery County, Maryland, and she has a son, Steven, who is 13-years-old and has Down's Syndrome. She is the associate director of the National Down's Syndrome Society Policy Center. Hi Ricky.

RICKY SABIA: Hi.

MARGOT ADLER: Ricky, your son Steven has always attended public school. Tell us what your experience has been and how you've had to advocate for him over the years.

RICKY SABIA: It has been difficult, more so at the beginning with the learning curve being so high to come into a whole system of special education not really knowing anything about that system. And I have backgrounds as an attorney and had the time,

fortunately—because I was a stay-at-home mom, at the time—and the resources. But even with all those three things, I found it to be very difficult. And even though I think the teachers generally had Steven's best interest at heart, they didn't necessarily have high expectations for him. And so when I started to push a little more for inclusion, to have him educated in regular education classes, we would reach an impasse as to whether or not that was possible. And this is where the other issue you're talking about—funding—would come in and the argument would be that they didn't have the resources. And I was fortunate that I was able to get this to happen for him and have been successful at keeping that happening for him.

MARGOT ADLER: Now what grade is he in now?

RICKY SABIA: He is in seventh grade. And a big change that happened along the way was that before No Child Left Behind, we would say we want what's best for our child, and that was always a mistake because we would hear back, well, you know, IDEA only provides what's appropriate for your child. And since No Child Left Behind, the language has really changed. I have not heard that said again. They are looking more for ways to make sure these kids with disabilities—even disabilities where there's cognitive issues involved like Down's Syndrome—get as much access to the general grade level general curriculum as possible, to see what is possible for that child.

MARGOT ADLER: Thank you so much, Ricky, for talking with us.

RICKY SABIA: Thank you.

MARGOT ADLER: Ricky Sabia is associate director of the National Down's Syndrome Society Policy Center. Sara and Patty, it's very interesting that Ricky mentioned No Child Left Behind and said that it was really positive for her child. I would've assumed that the NCLB would've conflicted with the Individuals with Disabilities Education Act, or IDEA. I'd like both of you to respond to that. Why don't we start with you, Patty?

PATTY RALABATE: Well, there really isn't a conflict with No Child Left Behind and IDEA, the special ed. law, with regard to expectations for kids. But I think Ricky makes a very good point. No Child Left Behind is changing how general education does its job. There is far more individualization going on so that it is more possible to include kids with more significant disabilities in general education classrooms. But there are some negative consequences as well. As kids with disabilities, as a group, end up failing to meet the adequate yearly progress targets across the country, that subgroup, if you will, is causing many school districts and schools to fail to meet the No Child Left Behind expectations. As a result, in some communities, we're concerned about the kind of backlash that might occur where parents of kids who aren't receiving special ed. services may begin to point some fingers. Now we want to see if there's something that we can do to prevent that from happening.

MARGOT ADLER: Sara.

SARA MEAD: I was really pleased to hear that Ricky had had such a good experience in terms of No Child Left Behind. I think that that's an example of the law doing some of the kinds of things that we really hoped it would do. Particularly because, as she mentioned, expectations are such a core issue and one of the things that we see is No Child Left Behind really forcing educators to look at the traditional expectations we've had for certain groups of kids—not just students with special needs, but also students from minority ethnic groups and also students from disadvantaged homes—and really raised those expectations because No Child Left Behind requires not simply that you achieve certain levels of achievement for your overall student population, but for specific subgroups, including students with special needs, as Patty was talking about. And this is something that the disability community really advocated for in the passage of the law because they wanted to make sure that their students weren't excluded and weren't left behind.

MARGOT ADLER: Thank you both for coming on Justice Talking and having a conversation about special education.

PATTY RALABATE: Well, thank you very much for the opportunity. I really appreciate it.

SARA MEAD: Thank you.

MARGOT ADLER: Patty Ralabate is a special education policy analyst with the National Education Association, and Sara Mead is a fellow with the Progressive Policy Institute.

MARGOT ADLER: Autism is a neurological disorder. People with autism typically have language difficulties and trouble relating to other people. Many children with autism are placed in special ed. classrooms, but increasingly they're attending general education classes. Alex Smith is 15 years old, a high school sophomore in northern New York state, and autistic. Independent producer Gregory Warner spent a day with him at school.

GREGORY WARNER: Like a lot of teenagers in his northern New York town, Alex likes his Playstation and fishing with his dad and listening to country music. But from an early age, he's been different.

ALEX SMITH: Well, my mom actually told me about this; I don't personally remember it myself. It was when we were going on a walk a long time ago when I was very little, and I would cry whenever we would change directions, and that's when they discovered that I didn't like transition.

GREGORY WARNER: That was when Alex was three, when he was first diagnosed with autism. Now he's a sophomore in high school, which, in a way, is nothing but transition, just navigating the hallways and the daily schedule.

ALEX SMITH: You only have three minutes to go to your locker, get all the materials you need and then get to your class on time. I had always wished it'd be like five minutes from as long as I can remember, in middle school. Actually, my mom says this is the neatest that I've ever had my locker before. Three years ago, it was so bad we had to bring everything out in what my mom called the "hernia bag."

GREGORY WARNER: Alex's mother, Carol Smith, says that Alex deals with change by naming things in his world.

CAROL SMITH: For example, if I call it a planner, he will correct me and say, "That's my assignment pad." You know, he has very strong rules about right and wrong, like swear words. When he was working on a global studies assignment, it bothered him to see the reference to the Hellenistic period because the word "hell" is embedded in Hellenistic.

GREGORY WARNER: Kissing in public, Alex calls "weak-mindedness." Romeo and Juliet, he says, is full of weak-mindedness, but so are the hallways. And smokers and spit wad throwers—boneheads, Alex calls them. School counselor Cathy Crow works with Alex on social skills and negotiating the classroom.

CATHY CROW: ...so that he feels like there are more people than just the boneheads that he can talk to. Like he can look at somebody's face—and that's the other thing is reading faces. So if he sees somebody who also looks annoyed, then he knows he can have them as an ally.

GREGORY WARNER: In physics, the kids group up for lab. Alex is left alone until the teacher helps him out.

TEACHER: You want to work with Alex there?

STUDENT: He can work with us.

GREGORY WARNER: I'm watching whether Alex is included by his peers, and the answer seems to be yes.

STUDENT: Hold it there, Alex.

GREGORY WARNER: But Alex sees it differently. For him, it's not a matter of being included, but whether he'll accept the invitation.

ALEX SMITH: Normally, I would've done it independently, but I decided that it would be better to do it with three people, and it worked out very well.

JEFF JONES: Before, you'd hardly notice he was there because he'd come in and then he'd go to his teachers and they'd help him with the worksheet or with notes and he'd never really be with the class.

GREGORY WARNER: Jeff Jones has known Alex since fourth grade; he's seen the change.

JEFF JONES: Earlier, when we'd have to do a presentation, if he got in front of an audience, he'd balk at it. And this year, he went last. So he's progressing with that and he's getting more involved and he's coming out of his shell, in a sense.

GREGORY WARNER: To Alex, all this feels pretty normal. Being autistic is less and less an issue.

ALEX SMITH: It may pop up once in a while depending on the situation, but I usually don't think about autism at all, or being autistic.

GREGORY WARNER: About his future, Alex isn't sure whether he'll apply to college or train for a job. Right now he says he's enjoying just being a kid. For Justice Talking, this is Gregory Warner in Canton, New York.

MARGOT ADLER: For many students, high school is a time when fitting in is a big priority. Being different isn't easy. Senior Lauryn Silverman from Youth Radio tells us about her experience reaching out to a fellow student who is very different from her.

LAURYN SILVERMAN: I have this buddy; I'll call him Dan. He's a scrawny, blonde-haired boy who wears oversized basketball jerseys and a UC Berkley baseball cap every day, like a uniform. Dan's an avid sports fan, and he often brings up last night's game, only to hear me apologize, "I don't really watch sports." In a more spontaneous friendship, the fact that Dan and I have almost nothing in common would most definitely present a problem. But I was set up with Dan through a high school program called Best Buddies. The organization pairs up students with physically or mentally disabled peers. I joined the program because it sounded like something I would describe as priceless and meaningful when I got older. Dan's in some regular classes and some special ed., but I don't know what Dan's official disability is, and I don't really want to. Best Buddies emphasizes seeing kids in the program as people first, and the disability as just a part of their personality.

I decided the best way to get to know Dan's personality was to talk over lunch. The first time, it was awkward. I had to pry Dan from the cafeteria table where he ate all by himself so he could sit in the sun on the grass instead. I try to eat lunch with Dan every Thursday. A lot of the time, he doesn't say anything. Whenever I attempt to initiate a conversation, Dan whips his head around and turns the question into yet another opportunity talk about college sports. Even though Dan almost never shares his own opinions, he talks endlessly about what his imaginary friend, the UC Berkley mascot, thinks about any number of topics. The mascot is a brown bear named Oski. Dan tells me Oski hates phone calls, which means I can't call Dan, but Oski loves snow. I'm thinking maybe he's talking about his own ideas that he's afraid to share so he expresses them through Oski. I used to play along thinking he'd get over it. Boy was I wrong. I

feel like I'm patronizing him whenever he says, "Oski's going to the game tonight." And I respond, "What are you doing tonight?" The fact of the matter is, even though I meet up with Dan every week during the school year, I wouldn't say we have a close knit friendship. The counselors at Best Buddies never prepped me on how to hold a good conversation with kids in their program. But honestly, in my case, the most helpful hints would've taught me how to read a basketball scoreboard.

I wish I could really get to know Dan, like I know my best friends, but when I try to picture his life beyond the green grass we always sprawl out on, I realize I am making up a story, piecing together the fragments of Dan's personality I have caught a glimpse of in order to feel like I know who he is. The Dan I do know is puzzling and foreign to me, but I do value our relationship. Maybe just as I can't fully understand football, I can't comprehend the thoughts and actions that make Dan who he is. For Justice Talking, I'm Lauryn Silverman.

MARGOT ADLER: That commentary was produced by Youth Radio.

MARGOT ADLER: When Supreme Court nominee Harriett Miers withdrew her nomination, I called long-time Supreme Court reporter, Lyle Dennison, the day she made the announcement. Hello, Lyle.

LYLE DENNISON: Good day to you, Margot. Glad to be with you again.

MARGOT ADLER: So, were you expecting this?

LYLE DENNISON: Yes. For perhaps two out of the three-plus weeks that her nomination has been pending, it's been pretty clear that the nomination was probably doomed, and the only remaining question was whether or not she would be able to survive the Senate Judiciary Committee hearings or whether it would be withdrawn before. My sense was that she would get the drift of what was happening in the Senate and in the activist groups on the right—that she would make up her mind before the hearings began, and that she had to withdraw in order to spare the President and protect the White House records.

MARGOT ADLER: And do you think there's any substance to this reason that she gave, that as White House counsel she would not give senators access to internal White House legal papers, executive privilege and so forth.

LYLE DENNISON: Well, I think that probably in the end was the real reason that they decided not to go forward with it, though I think her decision was heavily colored by the fact that the nomination was in such deep trouble. I think it was probably a combination of the reality that the Senate was going to insist upon having more from her, given the fact that she was largely a blank slate, and the fact that the nomination was in such trouble, particularly on the President's right flank.

MARGOT ADLER: What kind of person do you see the President nominating to replace Miers?

LYLE DENNISON: Well, I think in order to give you a dependable answer about that, I'd have to get into his head because, for example, I don't know whether he is really angry at his conservative followers, and so angry that he wants to stick it to them.

MARGOT ADLER: In other words, name Gonzales again.

LYLE DENNISON: Yes, well, that would be the gesture that he could make that would be the most serious affront to his conservative followers. But the problem with Gonzales, among other things, is that he would have the same difficulty with the Senate over White House documents because he was the White House counsel before Harriet Miers. My own sense about him, Margot, at this point, is that the political reality is that he's got to reach somewhere outside his closest circle—in other words no more cronyism. But he also, in order to satisfy his own desires, has got to stick with somebody who's quite conservative. So, I think what is going to happen next is that there's going to be a search for somebody who looks as close to being a John Roberts clone as you can find. And he has to remember now, I think, that the next nomination is going to be a tough one, not only with the Democrats, but also with the moderate Republicans in the Senate who are going to insist on somebody other than a thoroughly right-wing judge.

MARGOT ADLER: Lyle, thanks so much for talking with me.

LYLE DENNISON: Okay, Margot, call any time.

MARGOT ADLER: Lyle Dennison is a long-time Supreme Court reporter who is now writing about the court at scotusblog.com. In the weeks to come, we'll continue to follow the unfolding Supreme Court nomination process. Thanks for listening to Justice Talking, I'm Margot Adler.
