

Checker Finn:

Greetings. Greetings and welcome. We are going to start a little slowly 'cause usually one or two more people arrive in the last, first couple minutes. I'm Checker Finn with the Fordham Institute. I used to run the place, now I track Mike Petrilli and harass him from time to time. We appreciate your being here today for, I think, a terrific opportunity with Miriam Freedman to talk about her, I think, exciting, provocative, and contentious and very nicely written book.

I should say before we go further, since we are being videoed, I have to give you the Twitter information. The worldwide audience. It's hashtag is #SpecialEd2pt0. #SpecialEd2pt0. We will welcome questions from the worldwide audience, and if anybody in the room is too shy to voice their question I guess you can tweet it. It may or may not reach me that way since I don't do Twitter myself.

Glad you're here. 16 long years ago we at Fordham, jointly with the Progressive Policy Institute, produced a very thick volume called Rethinking Special Education for the New Century, suggesting that special ed as we knew it, this was in 2001, was seriously in need of a major overhaul. That overhaul in these last 16 years has not occurred. Arguably the issues that we thought were problematic at the time have become more serious in the years since then.

No overhaul has occurred and Miriam, with Special Education 2.0, is making a pretty compelling case for an overhaul. She's been at this for a while, she is a veteran public school educator, she is a teacher, she is a lawyer, she's been in special ed for as long as I've known her, certainly, and as you can tell neither of us is exactly young. Her book is also gonna be sold at the end of this session when you've earned your cocktail and snacks, as well, for an incredible bargain price in the back of the room should you like a copy.

We're not gonna do this as a speech, we're gonna do this as a Q&A format. We are here in the context of about two hours ago the House of Representatives, by a very narrow margin, voted to repeal and replace Obamacare. I haven't the faintest idea what's gonna happen to that and we're not here to talk about healthcare but we are here to talk about whether repeal and replace is the right way to think about special education or fine tune and tweak? I'm gonna make that my first opening salvo to Miriam. Are we here to repeal and replace or are we here to fine tune and tweak? Some of both? Some of neither? Something in between?

Miriam Freedman:

I'm gonna take door three. Thank you all for being here. I'm really happy to have an opportunity to talk about doing something about special ed, which is important, and my book is about that.

I am not repeal and replace and I am not tweak but I am coming to you, actually, from Silicon Valley where I moved just recently. I used to live in Boston, I was a hearing officer and lawyer there. The name of the book is Special Ed 2.0. In

Silicon Valley everything gets named a new name, so we have Apple 1, Apple 2, etc. It's very interesting, as I was talking to people about the book in other parts of the country they said, "2.0, is that like a grade?" It's not a grade. It's the fact that I believe what we need to do is take the incredibly powerful and good and successful parts of special ed law.

We begin with the notion that special ed was signed into law by Gerald Ford in 1975 at the time when many students were excluded from school just because they were disabled. The ones that weren't excluded, many of them sat in the back of the room with no services. That is not happening now and I think we should all pat ourselves on the back, have balloons, and cherish the fact that we have come a long way in a successful law.

"So," you say, "why don't we just go home and celebrate?" The problem is that as we have been successful we have also gathered more and more steam of dysfunctionality and problems in how do we implement the law? Who gets served? How much it costs? How many kids? The whole gamut. So my view is take what's good from the old one and rewrite and do a new law, but it's not repealing the old one because I believe special ed has been a successful law, not one that needed repeal.

Checker Finn: So you are not reversing special ed. You are, however, going to suggest what sounds like a major overhaul. Is that fair?

Miriam Freedman: Can I show you an analogy?

Checker Finn: You can try.

Miriam Freedman: All right. This is an advertisement from the Wall Street Journal that I laminated. I don't know if it will show up. Some of you who are old enough to remember may remember Franklin Delano Roosevelt, he was our President. I wasn't around but he was our President.

Checker Finn: I think I had been born.

Miriam Freedman: Yeah. Apparently people suspect that he had polio. In the 1930s he started the National Foundation for Infantile Paralysis and then an actor renamed it the March of Dimes, which was brilliant. People sent many dimes to find a cure or find a vaccine for polio. So from the 1930s to the 1950s and 60s they succeeded and we have the Salk and the Sabin vaccine. Then the question is what is March of Dimes going to do? Are they going to keep looking for a polio vaccine? And they changed their mission. Now it's called March for Babies and they basically work for premature babies and other babies who are struggling in the very early days of life.

That is really my model. We succeeded and we need to change our mission. That's really where we are.

Checker Finn: We could and we will get into what's actually problematic about special education as it is practiced today, but one of the more interesting and provocative points in your book is that special ed, as we work it today, is not good for general education as we work it today, nor for the future of public education as we know it today. This is relevant because, as you know, 18 months ago Congress did pass a pretty substantial overhaul of the main federal law having to do with general education, making some big changes in what had been No Child Left Behind and is now the Every Student Succeeds Act.

Talk a little bit about, before we dig deep into special ed, what about it is negative from your standpoint about general education and public education?

Miriam Freedman: Oh my god. Have I said enough about what's good about special ed? I'd like to actually start there because I really wanna emphasize that we're not tearing things down as much as refocusing. We are serving, I think, six and a half million students now. About 13 or 14% of our school population, a lot more than the law intended. We have learned all kinds of ways of educating kids, teaming up, trying to figure out how children learn using new ways of interventions earlier and earlier. I think a lot of students have been successful.

We have been, however, now to the problems, I should talk to you, shouldn't I? What am I talking to them-

Checker Finn: No, look at them. They're more interesting than I am. But I do want you to talk about the impact on general education and then we'll get into the problems with special ed itself.

Miriam Freedman: Okay. On general education I would say there are two areas of great concern. One is the funding. Special ed is an unfunded, I shouldn't say unfunded although some people think so, but it's a uncapped individual entitlement law, which means that whatever the local IEP team says the student needs the public school is going to fund no matter what their budget looks like.

It's also true that we don't know how much is spent on special ed, really. We are estimating, some of it is Fordham data, we're estimating that we spend somewhere between 21 and 40% of school budgets on educating children with disabilities. What do I mean? About 21 or so percent goes to special education services, whatever you get through a special educator or a guidance, not guidance, but services provided by licensed special ed folks. But the 40% is really that most children with disabilities spend most of their time in general education classrooms. So I think, if you're gonna do honest accounting, you have to add in the special ed and the wider circle of general ed services for those kids.

One way that it affects public schools is that a lot of funding goes to serve one specific set of students, but the part that I wanna focus on really, and the part I focus on in the book, is that so many of our special ed policies are driven by civil

rights notions or notions of equality or notions of how life should be and not driven by pedagogy or what actually works. I spend a lot of time talking about the issues that the inclusion policy is, how it is affecting general ed students and also special ed students as there are many kids with disabilities whose parents adamantly are seeking not an inclusive setting.

I guess the bottom line for me is we need policies in education that are based on data and research and objective data, not someone's ideas of how it would be nice to have it. I think that's where I would start.

Checker Finn: Are you seriously saying that we don't know how much it costs?

Miriam Freedman: I am.

Checker Finn: Nobody has a total budget figure for the costs of special education in American K12 education? We know how many kids have IEPs. We know what percentage of all kids that is. We know what total amount of money spent on public education is. And then there's ancillary costs for Medicaid and other things.

Miriam Freedman: To tell you the truth one of the ways that I'm comfortable saying that I don't know is some of the data and some of the reports you folks have put out talking about the fact that the bottom line is we don't know what is spent. This comes from all different pockets and all we can do, and again I think I'm using Fordham numbers, all we can do is estimate the cost of special ed services. I've only seen one study, actually, that tries to also estimate the cost of general ed services for-

Checker Finn: For kids with IEPs.

Miriam Freedman: Yeah.

Checker Finn: Okay.

Miriam Freedman: It is shocking to me actually that we don't know because we collect a lot of data.

Checker Finn: I'll say.

Miriam Freedman: Yeah.

Checker Finn: It leads me to wonder whether people don't want us to know, actually, whether this is something that is being kept from being totaled up because the total might be terrifying.

You also suggest that the inclusion is maybe not working very well, either, for the kids with disabilities or for the other kids in the classroom or for the teachers. You wanna talk a little bit about inclusion and its consequences?

Miriam Freedman: What I say, very clearly, is we don't know if it's working because no one is looking at whether or not it's working for the other kids. There was one study as I was finishing the book, so I got it in, there was one study recently from the University of California in Santa Barbara by two guys. Called them up, very excited, and they wanted to see how children in primary grades, kindergarten, were affected by having someone in the class with behavioral issues, an IEP for emotional behavioral disturbance. The data was terrible.

Checker Finn: In what sense? The data don't exist or the data were troubling?

Miriam Freedman: Troubling.

Checker Finn: Okay.

Miriam Freedman: Basically what they found was that the other children in the class with these kids were absent more often and their academic scores went down. I called them up, I said, "Wow, this is unbelievable. I haven't seen data like this." It made the front page of Education Week, which I thought was a great venue for that, and I said to this guy, I think his name is Michael, I'm not sure, I said, "Are you continuing the study? This is really important." And they said, "No, no, no. We're studying math now." So I don't know who else is studying it.

I have to say the point I wanna make is I am not anti-inclusion, per se, but I am for actually having data. So some of you picked up the editorial that I had out there from the Wall Street Journal.

Checker Finn: The Wall Street Journal piece? Yeah.

Miriam Freedman: Okay. So after that piece came out about making this argument that we really need to know how it's affecting everyone because we need to know if our public schools are working for everyone. My sense is, okay. So I get lots of emails and lots of hate mail and lots of love notes-

Checker Finn: You'll get some more after today.

Miriam Freedman: It's a controversial issue. One woman wrote me and said that I was wrong, that there was a lot of data about this stuff. I said, "That's awesome, that's fabulous. Send it to me. Let me know what it is." Again, I was very disappointed because the data the person sent, one was from an advocacy group, one was from an inclusion study place, and one was from a brief, an amicus brief for a lawsuit.

So my point is before we do this massive public policy that affects all kids everywhere, all schools, we really should know what we are doing. In the book I have, I think, a really excellent comparable study. How many of you grew up believing that fat is bad for you?

Checker Finn: Fat is bad for you?

Miriam Freedman: Exactly. Because for 50 years-

Checker Finn: Doesn't stop me but I read it.

Miriam Freedman: Because for 50 years the department of, the Heart Association and the Department of Health sold us on the notion that fat is bad for you. It was sold to them -- and there's an incredible story of how all that happened -- by a researcher who had really very poor ways of doing research. Come to find out, now, that how many of you now believe fat is good for you? Exactly. In fact, you shouldn't be-

Checker Finn: We like that finding.

Miriam Freedman: No, no, no because when they said fat is bad for you they said eat sugar and eat carbs.

Checker Finn: Hm.

Miriam Freedman: And all the cereal companies and everybody made piles of money and now we have obesity as an epidemic and we have a lot of diabetes. My point is not that this is about fat but my point is before we do a government policy that affects everyone we really should know that we are doing the right thing for everyone. My focus is on all kids. All kids includes kids with disabilities but it also includes all kids.

Checker Finn: I wanna come back for a minute to the future of public education because, while we are in a city that is trying to avoid talking about special ed, everybody's talking about vouchers. One of the more provocative lines in your book, in essence, is that special ed is helping to bring about a future of vouchers.

Miriam Freedman: That's putting it, well, it's a thought. Let me play it out and see what you think. There are too many people, I believe, too many children whose parents think the schools are not serving them. In my own personal life experience the children who really aren't served well are pretty much the average kids who don't act out. Quiet kids who don't do a whole lot as well as many talented, gifted classes unless they happen to live in lovely suburbs where they get served.

The more we have programs that isolate or that focus on certain pockets of children, in my view, leaving too many parents out there thinking, "This isn't working for my kid. There's no program for my kid. They're not focusing on my kid." Now comes along this whole notion that we can give you money so you can go somewhere else? It's pretty attractive. I personally am not for vouchers, don't get me wrong, but it scares me to think that we are not focusing on all our students and that really is the message I wanna bring out.

The little word "all" is very complicated. It is very complicated. If you want me to go into that I will but if you wanna have ...

Checker Finn: I wanted to push on one more voucher-related question. What about special ed vouchers? Like the statewide program in Florida, the autism scholarships that several states now have. Would this be a good thing in your opinion?

Miriam Freedman: I don't really have a strong opinion about it but I will say, let me say the system is so messed up, so long as we stay with this law with the entitlement I actually don't have a problem with it if the schools that these children go to are good. Now if nobody's minding the store and whether or not the schools are good that's a problem.

Checker Finn: That's true of all voucher programs.

Miriam Freedman: Yeah, but the problem has also been if we are honest about how we resolve disputes in special ed, we haven't even talked about how this works, how families can file a lawsuit against the school and make demands or requests, however you wanna put it. Most of those cases get resolved and settled by, essentially, a voucher meaning the school and the parents write a cost share agreement. "I'll throw in \$10,000, you put in \$30,000 and we'll call it a day or we'll split the tuition."

I think it's complicated and, you know what I should have done if I was more experienced in public speaking and things like this, I would've said, "I don't really get into vouchers. It's not in my area of expertise," and let it at that. It has bothered me, I have to say, that on the settlements, those who can pay to play have always played the game and those who can't, can't.

Checker Finn: That's, of course, one of the arguments that school choice people make for more vouchers is that wealthy people can already afford to send their kids to the school of their choice.

Miriam Freedman: Yeah, but vouchers are not my area of expertise.

Checker Finn: All right. We'll drop that for the moment. But you keep referring to ending the entitlement, so let's go to this core point.

Miriam Freedman: Ooh!

Checker Finn: What, exactly, do you mean by that?

Miriam Freedman: In the book I lay out what I see are the successes of the law and what I see are its challenges. Then I'm thinking how are we gonna resolve this? We're always gonna want to educate kids with disabilities. It's not about the children so they're all in, they're all gonna get their services. But how do we end the

dysfunction of the law? I believe the dysfunction comes from the way this law was set up.

Now I'm gonna ask you a question and, if I haven't given you the answer today, then perhaps you can [inaudible 00:25:05]. This is an entitlement statute, that is the parents of kids with disabilities and the children have a legal entitlement to a free, appropriate public education and to all the procedural requirements and all the notices and paperwork galore.

Checker Finn: They have extra services and extra resources.

Miriam Freedman: Right.

Checker Finn: Yes.

Miriam Freedman: So, when you have an entitlement, who's the enforcer? That's the question. You can't answer it, you can't answer it. Who is the enforcer of this law? And you can't answer it. Yes. The parent.

So this law set up a antagonistic, argumentative, I'm looking for the other A-word-

Checker Finn: Adversarial?

Miriam Freedman: Adversarial, thank you.

Checker Finn: You're a lawyer, come on. Adversarial. That's what you [inaudible 00:26:05]!

Miriam Freedman: That's what I do. Adversarial system right in the classrooms. Right in the school. And I believe that our issues, the reason we have so much paperwork and so much data, is because people are practicing defensive education. Teachers are petrified of being called down to a hearing and so on and so on. So, that's kind of the background.

The way I see this law, we succeeded. All children are getting services. About 20 years into this law it should have had a sunset provision. It should have been ended because we won the access battles. My friend's sister, who was not allowed to go to school in New York City, that does not happen anymore, just because she had Down Syndrome, okay?

It should have had a sunset provision, it didn't. In my view these children are in school, they're not gonna not be in school, and we need to move on to a 2.0 but I wanna put a caveat on that really quickly. I wanna be really careful 'cause that's pretty radical. I'm surprised-

Checker Finn: I said, "repeal and replace," you said, "sunset." But keep going.

Miriam Freedman: Yes, that's true. That's true.

Checker Finn: Keep going 'cause I wanna know where we're going with the 2.0 and how it's different.

Miriam Freedman: They are different, okay. I've lost my train of thought.

Checker Finn: All right. We were, you-

Miriam Freedman: No, no, no. This is the point I wanted to make. I'm back. When I say we should end the entitlement I am talking about 80 or 90% of students only. I'm not talking about all kids with disabilities, I wanna be really clear. When the law was written it was written for children, essentially, with severe and profound needs. Now the kind of students we serve are 80 or 90% of them have mild and moderate needs. Most of the time they spent in education is in public, I'm sorry, in general education classrooms. 10 or 20% of the students have severe and profound needs that are often complicated, difficult to serve, and so on.

Checker Finn: You mean 10 or 20% of the kids with IEPs? Who are in special ed?

Miriam Freedman: Yeah.

Checker Finn: Okay. Go ahead.

Miriam Freedman: Right. My sense about how to move forward is to call a task force or call some kind of a study to figure out how to proceed with that smaller number of students. Maybe we must bring in other social agencies or other medical agencies. These issues are complicated.

So when I'm talking about ending the entitlement I'm talking about the children who are essentially in general ed classes with services, pull out sometimes but often in the classroom.

Checker Finn: Okay, well that's an important distinction. So talk first about how it would continue to work or work in the future for those kids with the more serious disabilities.

Miriam Freedman: I don't know.

Checker Finn: You don't know.

Miriam Freedman: No. I think it's a real challenge. I think schools have done a good job but I think-

Checker Finn: But you would make some kind of an entitlement for them?

Miriam Freedman: I don't know. I would say that, until we know how we wanna proceed, let's study it and then the entitlement continues. Yeah.

Checker Finn: Okay.

Miriam Freedman: I'm very clear, I'm laying out ideas as I think about this field and some things I'm very confident and comfortable in discussing. Other things are not and that would be one of them. I think there are plenty of really excellent people in the field and experts and other people who can figure out how to proceed forward, but just because we wrote this system in 1975 doesn't mean it's still working in 2017.

Checker Finn: I understand that and I even remember that Gerald Ford said when he signed it that he had misgivings about how it was going to play out over the long haul.

Miriam Freedman: He did.

Checker Finn: That was very clear 40 years ago that he said that, anyway. It wasn't clear how it was gonna play out.

Someone pointed out to me the other day that in other OECD-type advanced countries that more like 6% of the kids are getting special ed type services instead of our 13 or 14%.

Miriam Freedman: That could be.

Checker Finn: I'm gonna guess, but tell me if you know differently, that that is because the more severe disabilities are the ones being served with special ed services in those countries.

Miriam Freedman: Yeah. I would not ... The other interesting statistic that people might be interested in is, in our country, different states have very, very, very different identification rates-

Checker Finn: Well we've seen some of the-

Miriam Freedman: ... and we go from a low of 9%, 10%, 11 to a high of 18-

Checker Finn: Yeah, we did a Fordham report out a little while ago on that, which showed the range from, as I recall, Texas to Massachusetts.

Miriam Freedman: Right. And Rhode Island, New Jersey.

Checker Finn: And then there was, of course, a big scandal revealed in Texas a year or so ago that they were supposedly putting a cap or quota on their special ed identification.

Miriam Freedman: Someone else brought that story up to us as we were talking to folks because they're saying, "Well, if you don't have the entitlement how do we protect children from that?" That's a really good question and it's something that we

would think about, but that doesn't mean we need this entitlement system as a way to fix it.

Checker Finn: I get that but you're not quite willing to say what to replace it with.

Miriam Freedman: Oh, what to replace it with?

Checker Finn: Sorry. But that's kind of key if we're not going to have the entitlement as we have it now.

Miriam Freedman: Again, let me back up as to why I wrote this book. You're gonna be unhappy because I will not have "the answer."

Checker Finn: Okay.

Miriam Freedman: But I wrote the book because I was extremely concerned that issues of fundamentally what are we doing are not discussed. They are taboo. People don't, you know, you don't get general ed parents and special ed parents together talking about this stuff. I think it's more than high time that we do that. So the book, if you look at the cover, it basically is an urgent call for a national conversation because I think once we can actually talk about these issues we can figure them out.

Obviously if we're not gonna have individualized IEPs with the threat of lawsuits in classrooms we'll have to come up with other ways of ensuring that children get served but, honestly, I think that's true for all kids. People say, "Well, we don't have good data on, good objective data on outcomes for kids with disabilities." Honestly, how is our data for all kids?

So part of the thing is that, if we're gonna have children in general ed classrooms most of the time, with whatever services they need coming in or going out, I think they need to be part of the mix of general ed.

Checker Finn: As you know, particularly since you live in Silicon Valley, there's quite a lot of push going on around the country for personalized learning for everybody, including Mark Zuckerberg and the Chan Zuckerberg Initiative and so forth and so on. Wouldn't a serious move toward personalized learning be akin to special ed for everybody?

Miriam Freedman: Yeah. It would. Again, I've thought about this only a little bit, I'm not an expert on personalized learning but I do have my-

Checker Finn: There are none as far as I know.

Miriam Freedman: ... I have my skepticism especially since it's coming out of Silicon Valley.

Checker Finn: You moved there voluntarily.

Miriam Freedman: Technology. Well I didn't move there for the personalized learning. But let me tell you what I think does work and what I'm actually, and it is a form of personalized learning and I'm sure it uses technology. Let me push it a little bit just to show you that there are other ways of dealing with different children learning at different rates and having different interests.

So the policy that the federal government is pushing and the policy this law pushes is a free, appropriate public education in the least restrictive environment, the LRE, and that's where this whole issue of inclusion comes in. But there are some schools out there doing another L-word thingamajig and it's called LIN. It's called Least Intervention Necessary. These are the people who are really pushing proficiency-based instruction very much like personalized learning and allowing children to work at their own rates and be challenged at their own rates whether they are behind grade level, or whatever that's gonna be, or very advanced.

I really was enamored when I met this young man in Colorado because he's doing it in Westminster County School District and I was enamored because he doesn't call his teachers special educators or gifted and talented teachers but all the teachers are interventionists and they work with all children. I was happy to see that they took the gamut, English language learners, special ed, gifted and talented, all of them receiving interventions at their levels. So, that is like personalized learning.

Checker Finn: Very much.

Miriam Freedman: But I don't know that they are sitting in front of computers all day long.

Checker Finn: No, no. I don't think-

Miriam Freedman: No, no, but here's the difference: personalized learning, very often, is being sold at least as I understand it, as a way of making inclusion work so that, in a classroom, the teacher can differentiate for all kinds of learners. I am skeptical.

What this LIN is, it's not about LRE, it's about the child learning and he might be with one kid in math but a different kid in English depending on how they're doing. So if personalized learning is about helping kids wherever they're sitting in the school that's one thing, but I believe a lot of times it's being used to promote LRE in the classroom and have 27 learning styles, which don't exist-

Checker Finn: And put the label of differentiated instruction over the whole thing. I hear you and, if it means that, I've got my doubts too. If it means individualization of kids moving at their own speed with appropriate instruction according to where they are and what they need to learn and how fast they're learning it and how they go about learning it, it seems to me that makes total sense for everybody, though. Literally for everybody.

You mentioned states and this was another area I wanted to get into. Why not, with special ed, as ESEA has just done with Title I, turn special ed over to the states? Either entirely or allowing experimentation and innovation at the state level for states that want to, let's call 'em giant waivers, so they can try something different in their state. Not necessarily turning it over willy-nilly to all states, like it or not. What about some state involvement here?

Miriam Freedman: I do raise the issue in the book, too, but all I do is I raise the issue. I don't have the answer. Is that the way to go? I don't know. But I will tell you-

Checker Finn: This isn't an answer question, this is a "should we try it" question.

Miriam Freedman: Should we try it?

Checker Finn: Should states that think they could innovate and do it differently be allowed to do so?

Miriam Freedman: I think, yeah. Well, I mean, asked that way of course they should but the other side will argue that who's gonna protect individual rights?

Checker Finn: I understand. That was a similar argument to what we just went through with ESEA, which is who's gonna look after disadvantaged kids if you turn it over to states who don't like them?

Miriam Freedman: I have a lawsuit in the making, sort of embarrassing to raise it here, but okay.

Checker Finn: You have a lawsuit in the making? Against whom?

Miriam Freedman: If we don't do that, if we don't allow the ESEA, the evolution of responsibility from the feds down to the states, but we only keep special ed, isn't that kind of discriminatory against them and their teachers and ...?

Checker Finn: Well. Could be.

Miriam Freedman: It's something worth pursuing. Again, my goal is to open a conversation so that is an important discussion point. Who should be running this thing? Should it be the federal government's deal in the bureaucracy here in Washington or should it be done at the states? What would be the relation between the federal government and the states? All that to be worked out.

Checker Finn: Before we open the conversation to the people in the room and our worldwide audience let me ask you this: why has it been taboo? Why are we talking about everything else in education except this? What is the source of the taboo? People just don't want a lot of small children in wheelchairs and crutches to be on their doorstep? What is the taboo?

Miriam Freedman: That's a great question.

Checker Finn: Well, answer it.

Miriam Freedman: I think the way the law was set out with this private enforcement system, with the whole advocacy world claiming to be the people who are defending the most vulnerable children, it is very difficult for general ed people to raise any questions about that without feeling like they are opposed to the most vulnerable children. I think it has not been an allowed discussion. It's always shocked me, actually, that ... 'Cause I was in private practice representing school districts. Well, they serve everybody. They don't just serve special ed kids, they serve ... Why there was so little pushback from the general ed community and there really was so ...

Checker Finn: It isn't just that, it's also politicians don't wanna touch it. Nobody in Congress wants to touch it.

Miriam Freedman: Right.

Checker Finn: None of the private foundations, incidentally, want to touch it, incidentally, when we've gone seeking grants for studies of special ed nobody wants to fund it, either.

Miriam Freedman: Because we have very powerful interest groups supporting it on all sides, especially, I don't know. I think it's been a really taboo ... So I like to kind of slide the conversation and bring in general ed people. Let me say that I've been very heartened, actually, in this journey. It's just little old me putting out what I'm thinking and sharing it but I do believe that there's more of an openness and more of a willingness to take a look at trying to do things in a new way.

I gave a talk last year in California. I was invited to speak and I said, about these issues, I said, "I will only come if you get as many general ed people in the audience as we have special ed people because normally when we talk about special ed, it's all about amongst ourselves, the special ed world." They did that and I have to say it was the most open-ended, powerful, positive, exciting discussion.

I think people are ready to take a look at this because there are many people in the special ed community who don't like the way it works. There are many parents who don't wanna be fighting all the time against their school districts. For many parents, I think of my immigrant mother, my cousin is sitting here, my immigrant mother who I wanted to change grades in my little elementary school in Flemington, New Jersey, and that woman, as educated as she was, would never go to the school and ask for anything because the school people are the experts. So we have a lot of parents who don't participate in the system. They're afraid to ask and demand so I think a lot of people realize that, perhaps, there could be a better way. I was very heartened by the discussion we had in Southern California bringing the people in.

Checker Finn: That's contributed to your sense that there's a readiness to have this conversation.

Miriam Freedman: I think so.

Checker Finn: Okay, well, I hope very much that your book kicks it off and that you are right that the conversation will occur 'cause I certainly think it's overdue. As I said, 16 years ago we were recommending such an overhaul and we didn't get much response. Nobody wanted to talk about it. So I hope they do now.

Let us turn to those of you who were kind enough to come today and anybody that's watching. I use the Twitter. Once again, I gave you the hashtag earlier and I certainly don't remember it.

Let's start with the people in the room. Questions, not speeches, and identify yourself please and then speak. There's actually a mic because we're broadcasting to the worldwide audience. So do you have a live mic?

Patrick L.: Okay, can you hear me?

Checker Finn: Yes.

Patrick L.: Okay good. Patrick [Lenohan 00:44:18]. I'm a former school board member. I'm a parent of five children and I just take a little bit of an issue with your comment that you don't have general education and special education parents equally engaged, because frequently the special education parents are also general education parents.

Miriam Freedman: That's true.

Patrick L.: I've got five children, two of 'em were special education, one had a moderate or mild disability and she is now an elementary school teacher out here in Northern Virginia and another one of my sons was severe and profound, so I think that you've got that engagement that you want so maybe you could comment on that.

Checker Finn: Engagement even within the family, you're suggesting?

Patrick L.: [crosstalk 00:44:57]

Checker Finn: Yeah.

Miriam Freedman: I think that's a great point and I appreciate you making it.

Mark H.: I wanted to say something.

Miriam Freedman: Very hard to label, you talk in shorthand and I think I was doing that but I really do, yeah. Good point, yeah.

Mark H.: My name is Mark [Holman 00:45:19]. I was a teacher in Norfolk and also I was a teacher in DC at [inaudible 00:45:23] High School but now I'm a educational advocate for a law firm who, we help the parents of special ed kids if they want to file a due process hearing. So the hearing officer is, in these, also [Aussie 00:45:38]. So both sides battle it out and the hearing officer decides what to do. From there he will, if we win, maybe placement or in a proper placement.

Being a teacher in Norfolk and I also have a disability, so that's my speech is affected a little bit, but anyway now I'll work up the street-

Checker Finn: Right.

Mark H.: ... [Bell and Associates 00:46:08] and so that's my job. Also teacher certifications because I found, being an advocate, some teachers are not certified in special ed.

Checker Finn: Hm.

Mark H.: So when we go to a hearing I get the teacher certifications from Aussie and found out, oh, this teacher's not certified in special ed at all. So sometimes we win by default for that fact.

Checker Finn: Okay?

Mark H.: Also, before I was a teacher in Norfolk, I was a counselor at [Grafton 00:46:45] School for autistic kids.

Checker Finn: Hm.

Mark H.: So I had to do the care plan as well.

Checker Finn: Yeah.

Mark H.: So my Master's Degree is from Cambridge in Boston and my undergraduate is from Hampton.

Checker Finn: Is this turning into a question for Miriam?

Mark H.: I just wanted to know, regarding special ed now, we have Betsy DeVos.

Checker Finn: We do.

Mark H.: So I don't know, so I looked on the web page and it's gone.

Checker Finn: What's gone?

Mark H.: The special ed website is gone, well, it was, like, gone two weeks ago-

Checker Finn: At the Department of Education?

Mark H.: Yeah, it was gone.

Audience: I think it's back.

Mark H.: Okay so it's back because I called, you can still call the number, but I said, "Why is it disappearing?"

Checker Finn: I don't think Miriam erased it.

Mark H.: Anyway.

Miriam Freedman: I was there yesterday. They were all there.

Mark H.: Okay.

Miriam Freedman: At OSERS.

Checker Finn: They were all there. Okay. So it's back, apparently, or at least-

Mark H.: Well hope so, because parents-

Checker Finn: A lot of people in the room saying it's back.

Mark H.: Parents, especially, need to know what to do.

Checker Finn: Yes, okay. Thank you. At some point you were a hearing officer, weren't you? Wasn't that part of your career?

Miriam Freedman: It was. For eight years I was a hearing officer in Massachusetts.

Checker Finn: It was probably a formative experience.

Miriam Freedman: It was awesome. I loved it. I loved all of it. Teaching-

Mark H.: [inaudible 00:48:10]

Checker Finn: All right, all right, we've got other people in the room. Who else has a query? Yes, sir. A mic to hear.

Miriam Freedman: Mic to Mike.

Checker Finn: Are you Mike?

Mike C.: I'm Mike. Thank you, I'm Mike [Curtsig 00:48:25]. Also an educator after my career in agriculture. Education is a big problem in this country. One of the biggest problems is the millions of jobs going begging in this country. That's one side of it. But I wanted to ask, also, and this is not my field obviously, are we training enough teachers in special ed and other to face the problem that is in the class? 'Cause you hear all kinds of stories that they're not prepared to meet the challenge and to meet the need, so what is the situation now?

Checker Finn: Of a teacher training side of it?

Mike C.: Of a teacher training to be prepared.

Checker Finn: We haven't talked about that at all. Please.

Miriam Freedman: We have not talked about it. I didn't write about it. I think, just talking to people, yes it's a big issue. I'm not the expert on that. But I wanna get back to, I wanna go back to your first point. A lot of jobs go begging and I do live in Silicon Valley where sometimes I feel like, as an American, I'm a minority. I mean a lot of people from all over the world working there and the question is why are they coming? And are we educating enough people of high tech and science and STEM and so on? How does it relate to this? I do believe it relates to this. I believe our policies, including special ed but not only, are focusing so much on kids who are not what we call "closing the gap," kids who are not yet proficient on standards that may or may not even be high enough for life and I don't think we focus enough on, as I said earlier, kids who already are proficient and need more challenges. I think that plays into the jobs situation.

Checker Finn: Others in the room. Yes sir.

Bart Devon: Bart Devon from Autism Speaks. I have a logistical-

Miriam Freedman: I didn't-

Bart Devon: My name is Bart Devon, I am the Manager of Public Policy at Autism Speaks.

Miriam Freedman: Oh, good.

Bart Devon: My question is about the line that you've drawn between special ed students who spend most of their time in the general education atmosphere versus pull-out.

Miriam Freedman: Yeah.

Bart Devon: Without an entitlement system how will you know where to draw that line? And if you wanna deny services to those kids who spend most of their time in the

general setting who are receiving services and making the most headway at the least taxpayer cost, why?

Miriam Freedman: Well, you packed a lot into that. I appreciate the question. I wanna be really clear: I'm not about denying services to anybody. I've been clear about that, I've always been clear, it is not about the children. I want the children served, okay. So that's number one.

You asked me about pull-out and percentages.

Checker Finn: Well you did distinguish between the kids who are mostly in the regular, general ed classroom.

Miriam Freedman: It's not so much, I'm trying to distinguish between two groups of students: the ones who are not following the general curriculum most of the time. It is fascinating to me, actually, that the Supreme Court decision that just came out about three weeks ago, *Endrew F. versus Douglas County from Colorado*, unbelievable way that they went about discussing it, which is very much in line with my discussion of the two groups of students.

For those of you who are not as up on legal stuff there was a case about a family in Colorado who believed the public school was not providing their child with a free, appropriate public education. The child had autism and he was not, I mean autism is a wide spectrum disorder, so some of the kids are high functioning, low functioning, whatever. He was not in general education standard classes. The question was what level of services was he entitled to?

But in writing the decision the Court did two things: they said the level of entitlement, to him, was something where he could make progress in accordance with his circumstances. But they differentiated his situation from the old case, which was decided back in 1982, the first case out of the box for this law, special ed law, the *Rowley Decision*, for a girl who was functioning in general ed classes and doing fine, not maximizing her potential but doing well, and the Supreme Court, just a few weeks ago, differentiated these two groups. There may be something there. Obviously my book came out before this Supreme Court decision but, again, in the call for conversation, I think it's important to be open to the possibility of how do we best serve all children?

I wanna be really clear, it's not about not serving some kids.

Checker Finn: But you're saying that, I mean he was asking about how do you draw a line and you're saying the Court did a version of that in this decision?

Miriam Freedman: They actually did, yeah. Yeah. It was kind of surprising for those of us who've been thinking about this situation that these children really do have different needs and not everyone, one size does not fit all.

Checker Finn: All of the reporting, and I only read the reporting, I didn't read the decision, seemed to say the Court recommended more services for this child.

Miriam Freedman: Let's be clear. Yes, they did. Not to get into the weeds but to go into the weeds 'cause I think it's important to be clear-

Checker Finn: Not to get into the weeds but let's go into the weeds. Keep going.

Miriam Freedman: So the lawyers in the Colorado 10th circuit decision, the 10th circuit had said the law only requires, requires nothing more than a merely de minimis progress.

Checker Finn: That was the court of appeals.

Miriam Freedman: Right, 10th circuit. And the Supreme Court said no, no, no. That's really way too little. We don't have this million dollars or billion dollars of structure in order to help kids merely de minimis. However, the situation is those of us in education law, and Sonia you can, none of us, I mean, I think a lot of us were uncomfortable with the merely de minimis idea. I practiced law forever in Massachusetts and our standard always was a meaningful benefit standard or sometimes the court would say a measurable benefit. So I don't know how much difference it's gonna make in the practice in most jurisdictions, actually. Time will tell.

Checker Finn: Okay, others. Or Tweeter, Twitter. Anybody. Getting close to final opportunities.

Mark H.: I just want to say one more thing.

Checker Finn: Meanwhile they're going to bring in drinks and maybe some snacks. The drinks lady is here. All right. Thank you Karen.

One more thing.

Mark H.: The IEP team decides how many hours this kid is going to be having inclusion, maybe it's reading, math, and written expression for the special ed subjects and then history and other stuff in the general ed education. So the IEP team decides what to do and how many hours is on the IEP.

Checker Finn: Yep.

Mark H.: That's all.

Checker Finn: Okay. Got it. Understood. Anybody else before we wind down. Let me repeat that this book is worth reading. It is worth buying and the conversation is absolutely worth having. I don't know whether anybody in the Executive Branch in the current administration, Betsy DeVos or otherwise, is going to have the imagination and the guts to take this on as an issue in any fashion. I don't know whether anyone in the Congress is going to take this on in any fashion.

Miriam Freedman: I'd like to say a word about that.

Checker Finn: Please.

Miriam Freedman: Thank you for supporting the conversation. Personally I think it's premature to go to Betsy DeVos or the Congress.

Checker Finn: Okay.

Miriam Freedman: I think the conversation needs to happen among us, among people in the field, people in the community, allow the discussion to happen, let's see where it goes. Some of the questions that I couldn't answer because I don't have "the answer." Hopefully that'll come out and once we have a sense of how we want to proceed then I think it's a good time to go to Congress.

Checker Finn: I'm glad you're optimistic. The "we" in your sentence is not clear to me that there's a consensus waiting to be found but I can see a lot of contention ahead in this realm. But it is surely worth a try because we're talking about kids who need an education and we're talking about taxpayers who need their money to be well-spent and we're talking about a country that needs a better educated population. So, for all of these reasons, this is a conversation worth having. I hope it gets us somewhere.

Meanwhile the snacks have arrived, the wine and beer here, and thank you very much, Miriam, for joining us today.

Miriam Freedman: Thank you.

Checker Finn: And thanks, all you for joining us today and please help yourselves and stick around.