

Laws Related to Special Education that Affect Teachers

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Chapter 2 of Villa and Thousand (1995), *Contemplating Inclusive Education from a Historical Perspective*, charts over 200 years of history which has brought us as a country to embrace inclusive educational opportunities for all children. What follows is a summary of key court cases and legislation which have shaped special education and the teacher's role in supporting students with varying learning and language differences. For more detail see these two web sites: www.law.cornell.edu/topics/disability.html and www.ed.gov/offices/OSERS/IDEA.

Legislation Related to Special Education

The development of special education services in this country has been greatly influenced by the civil rights movement of the 1960s. Out of the movement came legislation designed to prevent discrimination. For instance **Section 504** of the Vocational Rehabilitation Act of 1973 is a civil rights law that prevents discrimination against all persons with disabilities in programs that receive federal funds. Since all public schools receive federal funds in some form, Section 504 ensures equal opportunity for students' participation in the full range of school activities. Also, through Section 504, some students who are not eligible for special education services may receive accommodations to assist them to be successful in school. For example, students with health problems such as asthma or extreme allergies as well as other challenges that do not make them eligible for special education may receive assistance through Section 504.

The **Americans with Disabilities Act (ADA)**, signed into law by President Bush in 1990 extends the Vocation Rehabilitation Act of 1973 by protecting all individuals with disabilities from discrimination and requires employers to make reasonable accommodations for employees with disabilities. ADA does not deal directly with education; however, it does clarify the civil rights of all people with disabilities and ensures that buildings, transportation, and other public places (including schools) are accessible to people with disabilities. Your school must be accessible to wheelchairs, for instance. If it is not, it must undergo renovations to install ramps, elevators, or wide entryways.

In 1975 the U.S. federal government finally made a legal commitment to the education of students with disabilities. In that year Congress passed **Public Law 94-142, the Education for the Handicapped Act (EHA)** which set federal guidelines for special education services. It translated early court decisions into civil rights principles for students with disabilities and mandated the six concepts that have guided special education practice ever since. Those six principles are:

1. **Free Appropriate Public Education.** Students with disabilities are entitled to attend public schools and to receive the educational services they need. This education is provided at no cost to parents.
2. **Least Restrictive Environment.** Students with disabilities must be educated in the least restrictive environment in which they can succeed with support. For most students, this environment is the general education classroom.

3. **Individualized Education Program.** Services for students with disabilities must be individually tailored. This is accomplished by annually developing or revising an Individualized Education Program (IEP). Every IEP includes a statement of the student's current performance levels, a set of goals and accompanying short-term benchmarks or objectives for achieving the goals. The IEP clearly specifies who is responsible for delivering various aspects of the student's program, how progress will be evaluated, and where and how long services will be provided.
4. **Nondiscriminatory Evaluation.** Students are to be assessed using instruments that do not discriminate on the basis of race, culture, or disability. In considering eligibility for special education, students must be assessed by a multidisciplinary team in their native language using tests that directly relate to the area(s) of concern for which the child was referred.
5. **Due Process.** Due process procedures protect students with disabilities and their parents in all special education affairs. Specifically, if a disagreement occurs between the family and school personnel regarding a student's eligibility for special education, no changes can be made in the student's services until an impartial hearing and, if necessary, the appropriate court resolves the issue. School personnel also are protected if they disagree with parents' requests for services; they also may use due process procedures to resolve the dispute.
6. **Zero Reject and Child Find.** No student may be excluded from public education because of a disability. Each state also must take action to locate children who may be entitled to special education services.

Public laws must be periodically reauthorized. The 1990 reauthorization of P.L. 94-142 described above changed the law to the **Individuals with Disabilities Education Act (IDEA)**. The more suitable person-first language of "individual with disabilities" replaces the unfavorable labeling language of "the handicapped" in the title of the legislation. This law added significantly to providing education to very young children with disabilities and preparing older student for transition to post-secondary life. Two new categories of disability – autism and traumatic brain injury – were added to the already existing categories of learning disabilities, speech or language impairments, mental retardation, emotional disturbance, hearing impairments, visual impairments, deaf-blindness, orthopedic impairments, multiple disabilities, and other health impairments. It also funded projects to promote the inclusion of students with severe disabilities in general education.

In 1997, President Clinton signed into law the second reauthorization of P.L. 94-142 and accompanying amendments know as **IDEA 97**. Seven significant changes greatly affect schools, teachers, and educational and assessment practices.

1. **General Education Teacher Involvement.** At least one general educator must participate as a member of a student's IEP team. The IEP also must directly address the student's participation in general education and must justify placements that are not in general education.
2. **Evaluation and Eligibility.** IDEA 97 clarifies that when parents consent to have their child evaluated, they are not consenting to possible future special education placement. Students cannot be made eligible for special education because of past poor instruction or because of language differences. Previous requirements that a comprehensive reevaluation occurs every three years can be modified if the family desires; already existing information can be used rather than repeated administration of standardized tests.

3. **Assessment of All Students.** Historically students receiving special education services were not included in state, district, or school-wide assessment of student performance. IDEA 97 corrected this by requiring that by July, 2000, each state must assess the academic progress of students who have IEPs by including them in the standardized assessments other students take or by using an alternative assessment process. Students who need appropriate adaptations such as extended time or large print during assessment are entitled to these adaptations.
4. **Discipline.** If needed, the IEP must include strategies for addressing student behavior issues. A behavior plan must be developed, if a student is suspended or placed in an alternative interim placement. If a student with disabilities brings a weapon or drugs to school, the school now has the option to place the student in an alternative placement for up to 45 days; and that placement must provide continued special education services.
5. **Transition.** Beginning at age 14, IEPs must address the transition to post-secondary needs of students eligible for special education. These needs must be updated annually, with increasing detail each year as to the school and outside services (e.g., community vocational education) the student will access.
6. **Paraprofessionals.** Paraprofessionals, teaching assistants, aides, and like personnel must be trained for their jobs and appropriately supervised.
7. **Mediation.** As part of due process procedural rights, each state must make mediation available to parents as an early and informal strategy for resolving disputes over a student with disabilities' identification, placement or services. The State bears the cost of mediation. Parents do not have to mediate; and mediation may not delay a possible due process hearing.

Court Cases Influencing Special Education

Issues concerning students with disabilities are addressed by federal and state laws. How these laws are interpreted often is resolved through the courts. Since 1954, many hundreds of legal decisions have clarified the rights of students with disabilities and the role of educators in supporting these children's education. In many instances court decisions led to the development of and passage of legislation. As you review some of the landmark decisions listed here, you should notice how they influenced legislation described earlier.

- **Brown v. Board of Education (1954).** This probably is the most important case in establishing the principle that school segregation denies equal education opportunity. Although the decision refers primarily to racial segregation, it is viewed as the foundation for ensuring equal educational opportunity for students with disabilities.
- **Diana v. State board of Education (1970).** California was required to correct biased assessment practices with Chinese American and Mexican American students. Students for whom English was not a primary language had to be assessed in both their primary language and English; culturally biased items had to be dropped from tests and alternative intelligence tests had to be developed to reflect Mexican American culture.
- **Larry P. v. Riles (1984).** In California it was ruled that IQ testing as a basis for identifying African American students as mentally retarded for special education purposes was discriminatory. California schools were ordered to reduce the disproportionately high numbers of African American students in special classes for students with mental retardation.

- **Honig v. Doe (1998).** This decision ruled that if a student is excluded from school for more than 10 days, it was a change of placement and all procedures for making a change of placement must be followed.
- **Daniel R.R. v. State Board of Education. (1989).** This decision established the consideration of the following two factors in determining the appropriateness of a placement for a student with disabilities: 1) whether a student can be satisfactorily educated in general education with supplementary supports and services, and 2) whether, in cases in which the general education setting is not successful, the student is mainstreamed to the maximum extent appropriate.
- **Oberti v. Board of Education of Clementon School District (1993).** This case is considered key in establishing the principle of inclusive education. In this case concerning a student with Down syndrome, the district court ruled and the court of appeals upheld the ruling that school districts must make available a full range of supports and services in general education to accommodate the needs of students with disabilities. The court stipulated that because a student learns differently from others does not necessarily warrant exclusion from general education.
- **Doe v. Withers (1993).** Mr. Withers, a history teacher, was responsible for making oral testing accommodations for Douglas Doe, a student with learning disabilities who was in his class. Although a state legislator, Mr. Withers refused to provide the oral testing. Consequently, Douglas failed the class, making him ineligible for athletics. The court awarded the family \$5000 in compensatory damages and \$30,000 in punitive damages. This case is widely cited as an example of general educators' responsibility to make good faith efforts to provide required accommodations for students with disabilities.
- **Sacramento Unified City School District v. Rachel H. (1994).** This case is another historic national victory for inclusive education, not only because the Ninth Circuit U.S. Court of Appeals required the Sacramento school district to place Rachel Holland, a girl with severe disabilities, in regular education classes full-time with non-disabled peers, but because the U.S. Supreme Court refused to hear the school district's 11th hour appeal to overturn the Ninth Circuit's decision. This left the circuit court's landmark decision intact and, in the words of the Holland's attorney, "signaled the end to a system that automatically excludes children with disabilities from the regular classroom and relegates them to segregated 'handicapped only' classes."

Source: Much of the material presented above is adapted from Marilyn Friend and William Bursuch's excellent 1999 text, Including Students with Special Needs: A Practical Guide for Classroom Teachers (2nd ed.), published in Boston by Allyn and Bacon. Many thanks to both authors for their fine analysis and synthesis of complex and often obtuse court decisions and laws.