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ABSTRACT

Children and youth with disabilities have historically received unequal treatment in the public education system. In the early 20th century, the enactment of compulsory attendance laws in the states began to change the educational opportunities for these students. Opportunities for admittance to public schools were greater, but many students nevertheless did not receive an effective or appropriate education. Beginning in the late 1960s and early 1970s, parents and advocates for students with disabilities began to use the courts in an attempt to force states to provide an equal educational opportunity for these students. These efforts were very successful and eventually led to the passage of federal legislation to ensure these rights. The purpose of this article is to examine the legal history of special education. We will examine these early efforts to ensure a free appropriate education for students with disabilities up to and including the enactment of the individuals with Disabilities Education Act Amendments of 1997.

In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right that must be made available to all on equal terms.-- Chief Justice Earl Warren, *Brown v. Board of Education* (1954), p. 493.

THE HISTORY OF SPECIAL EDUCATION LAW IS A chronicle of the efforts of parents and advocacy groups in the courts and legislatures of this country. The purpose of this article is to provide a brief examination of these efforts. First, we will review the historical development of special education from the initiation of compulsory attendance laws to the exclusion of children with disabilities. Next, the effects of the Civil Rights Movement on special education will be discussed, with particular attention to *Brown v. Board of Education* (1954), as well as the equal opportunity movement. Landmark cases of the equal opportunity movement and other significant cases related to special education will be presented as a part of this discussion. The manner in which these cases led inexorably to legislation will be explained. Finally, the major federal legislative mandates, Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act of 1990 (IDEA) will be briefly examined.

COMPULSORY ATTENDANCE

Public education is viewed as a birthright in our country that leads to an educated electorate without which there would be no viable democracy (Levine & Wexler, 1981). A common misconception regarding public education is that it is guaranteed by the federal Constitution. In fact, education is the business of the states. The Tenth Amendment to the U.S. Constitution implies that education is the responsibility of state government. That education is a state--not federal--matter was seen as essential by the

founders of this country. This was because state governments were seen as being closer and more connected to the needs of the people.

Rhode Island was the first state to pass a compulsory education law in 1840; Massachusetts passed the second in 1852, with the other states following suit. By 1918 compulsory education laws were in place in all states (Ysseldyke & Algozzine, 1984). Despite the enactment of compulsory education laws, however, children with disabilities were often excluded from public schools.

THE EXCLUSION OF STUDENTS WITH DISABILITIES

The continued exclusion of students with disabilities, notwithstanding the compulsory education laws enacted by the states, was upheld in the courts. In 1893 the Massachusetts Supreme Judicial Court ruled that a child who was "weak in mind" and could not benefit from instruction, was troublesome to other children, and was unable to take "ordinary, decent, physical care of himself" could be expelled from public school (Watson v. City of Cambridge, 1893). Almost 30 years later the Wisconsin Supreme Court, in *Beattie v. Board of Education* (1919), ruled that school officials could exclude a student who had been attending public school until the fifth grade. The student had a condition that caused him to drool and have facial contortions, as well as a related speech problem. School officials claimed that this condition nauseated the teachers and other students, required too much teacher time, and negatively affected school discipline and progress. The school officials expelled the student from school and suggested that he attend a day school for students who were deaf. In 1934, the Cuyahoga County Court of Appeals, in Ohio, ruled that the state statute mandating compulsory attendance for children ages 6 through 18 years gave the state department of education the authority to exclude certain students (Winzer, 1993). This type of ruling indicates the internal contradiction frequently presented in legal rulings on students with disabilities of the time. The court stated that students have a right to attend, noting the importance of education as evidenced by the compulsory education statute. It acknowledged the conflict between compulsory education and the exclusionary provisions, but did not rule to resolve this conflict.

States continued to enact statutes that specifically authorized school officials to exclude students with disabilities. As recently as 1958 and 1969, the courts upheld legislation that excluded students whom school officials judged would not benefit from public education or who might be disruptive to other students. In 1958, the Supreme Court of Illinois, in *Department of Public Welfare v. Haas*, held that the state's existing compulsory attendance legislation did not require the state to provide a free public education for the "feeble minded" or children who were "mentally deficient" and who, because of their limited intelligence, were unable to reap the benefits of a good education. In 1969, the State of North Carolina made it a crime for parents to persist in forcing the attendance of a child with disabilities after exclusion from public school [Weber, 1992]. By the late 1960s and early 1970s, nevertheless, most states had passed laws requiring schools to educate students with disabilities. The state efforts, however, were uneven, with some providing substantial educational rights to students with disabilities and others providing

little beyond admittance to public schools. Additionally, many states were hampered by lack of funds.

In 1975, federal legislation brought the various pieces of state and federal legislation into one comprehensive law regarding the education for students with disabilities. Congress passed, and President Gerald Ford signed, P.L. 94-142, the Education for All Handicapped Children Act of 1975 (EAHCA). This dramatic shift in the government's view on educating children with disabilities would not have been possible without the history of case law and legislation that preceded the EAHCA. One of the precursors of the state and federal legislation and case law regarding the education of students with disabilities was the Civil Rights Movement.

THE CIVIL RIGHTS MOVEMENT

Every year thousands of people immigrate to the United States of America. Many are escaping war or economic and political persecution. Many come not to avoid hardship, but seeking the promise of greater individual rights that are provided for the citizens of the United States under its Constitution. The civil rights that are protected under the Constitution and enforced by legislation, however, have not always been provided to all citizens on equal bases.

Brown v. Board of Education (1954)

In the 1950s and 1960s, the Civil Rights Movement, which sought changes in society that would allow minorities, particularly African Americans, equality of opportunity, led to litigation and changes in legislation. This legislation provided greater constitutional protection for minorities and eventually persons with disabilities. A landmark case, *Brown v. Board of Education* (1954; hereafter *Brown*), was a major victory for the Civil Rights Movement and has been the major underpinning for further civil rights action. The *Brown* decision not only had a tremendous impact on societal rights for minorities, but also affected many aspects of educational law and procedure (H. R. Turnbull, 1993). Although it took time, the precedents set in *Brown* resulted in sweeping changes in the schools' policies and approaches to students with disabilities.

Central to *Brown* was the constitutional guarantee of equal protection under the law found in the Fourteenth Amendment. This amendment stipulates that the states may not deny any person within its jurisdiction equal protection under the law. If states have undertaken to provide an education to its citizenry, then they must do so for all its citizens.

State-mandated segregation of the races in the schools denied Black students admission to schools attended by White students. The plaintiffs maintained that the practice of segregating schools was inherently damaging to the educational opportunities of minorities, that segregated public schools were not, and could not, be made equal, and that segregated public schools violated Black students' constitutional rights under the Fourteenth Amendment. As an extension to this argument, the Supreme Court maintained

that state-required or state-sanctioned segregation solely because of a person's unalterable characteristics (e.g., race or disability) was unconstitutional. The High Court also determined that segregation solely on the basis of race violated equal protections and denied minorities equal educational opportunity. This decision opened a number of legal avenues for those seeking redress for students with disabilities.

The Court reasoned that because of the importance of education in our society, the stigmatizing effects of racial segregation, and the negative consequences of racial segregation on the education of those against whom segregation was practiced, segregated public schools denied students equal educational opportunities. This basic truth was considered by many to be equally applicable to those denied equal opportunity to an education because of a disability.

PARENTAL ADVOCACY

An outcome of the Brown case was that the equal protection doctrine was extended to a "class" of people, in this case racial minorities (H. R. Turnbull, 1993). Advocates for students with disabilities, citing Brown, claimed that students with disabilities had the same rights as students without disabilities. There were two key elements in their argument. First, they pointed out that there was an unacceptable level of differential treatment within the class of children with disabilities. Second, they argued that some students with disabilities were not furnished with an education, whereas all students without disabilities were provided an education. These crucially important inconsistencies gave rise to a series of court cases in which individuals both challenged and sought redress for similar inequities.

Parents led the way in seeking redress for the inequities in the for their children with diswin ectucauonal programming abilities. The parent movement had its genesis during a time of change in special education programs that reflected changes in the social climate of the turn of the century. The nation, having long ignored individuals with disabilities, focused on the need to humanely treat and educate these individuals, particularly children. In order to understand the impact parents had on legislation to protect the rights of children with disabilities, it is thus helpful to examine the evolution of special education in the first three decades of this century.

The White House Conference of 1910

National attention was focused with the first White House Conference on Children in 1910. One goal of this conference was to define and establish remedial programs for children with disabilities or special needs. This goal reflected a broader societal shift in perspective on the treatment of children with disabilities. There was an increased interest, albeit limited, in educating these children in public school settings, rather than insitutionalizing them. As children with disabilities were moved from the institutions to public schools, permanent segregated classes were formed in public schools to meet their needs, resulting in a change from isolation to segregation (Winzer, 1993). Educators believed that the segregated classes were beneficial to the children because smaller class

size would allow more individualized instruction, homogeneous grouping would facilitate teaching, and the less competitive nature of these classes would do much for the self-esteem of the children. Thus, the number of special segregated classes and support services increased significantly from 1910 to 1930 (Winzer, 1993).

Despite the increase in the numbers of special education classrooms, many children with disabilities were struggling in general education classrooms and remained unidentified. Furthermore, many were beyond the reach of special education; they had dropped out of school, had been expelled or excluded from school, or were considered unteachable (Winzer, 1993). In contrast with the growth seen in the previous two decades, the 1930s brought a decline in programs.

Many factors contributed to this decline in support for and provision of special education classes for students with disabilities. The country was in the midst of the Great Depression and many, including public entities, were struggling with the resulting fiscal constraints. The public school system had been developed as an ideal for a democratic society. Compulsory education laws resulted in an increasingly heterogeneous student population, leading to a conflict between the democratic ideal and maintenance of order and high standards in public schools. The result of this conflict was to further separate children with special needs from the mainstream. Under increasingly grim conditions, the special classroom placements became as restrictive and custodial as placements in institutions had been (Winzer, 1993).

[The Organization of Advocacy Groups](#)

In response to the deplorable conditions that their children with special needs had to endure in school, as well as the increasing exclusion of children with disabilities from school, parents began to band together. They came together as a support for one another and in order to work for change. In 1933 the first such group formed in Cuyahoga County, Ohio. The Cuyahoga County Ohio Council for the Retarded Child consisted initially of five mothers of children with mental retardation who banded together to protest the exclusion of their children from school (Levine & Wexler, 1981; A. P. Turnbull & H. R. Turnbull, 1990; Winzer, 1993). This protest resulted in the establishment of a special class for the children, sponsored by the parents themselves. These types of local groups emerged throughout the nation during the 1930s and 1940s, although they did not begin to band together at the national level until the 1950s. These local organizations served several purposes. They provided an avenue of support for parents, allowed for a venue to express frustration, afforded a means to band together to make change locally, and ultimately set the stage for a national advocacy movement on behalf of individuals with disabilities.

The advocacy movement on behalf of individuals with disabilities was critical to the development of special education services as we know them today. The activities of interest groups were critical in terms of providing information, stimulus, and support to Congress when it was considering, developing, and acting on legislation. Congress cannot function without such interest groups (Levine & Wexler, 1981). What follows is a

summary of the development of a few national advocacy groups that expanded the constituency of individuals with disabilities.

The National Association for Retarded Citizens. The National Association for Retarded Citizens (now ARC/USA--The Association for Retarded Citizens) was organized in Minneapolis, Minnesota, in September 1950. Forty-two parents and concerned individuals from 13 local and state organizations met to establish what has become a powerful and significant organization of parents, families, and other persons with an interest in persons with mental retardation. ARC's mission is to provide information, monitor the quality of service given individuals with mental retardation, and to serve as an advocate for rights and interests of individuals with mental retardation.

The Council for Exceptional Children. The Council for Exceptional Children (CEC) is a professional organization concerned with the education of children with special needs. Based in Reston, Virginia, CEC was founded in 1922 by faculty and students at Teachers College, Columbia University, in New York CEC is a longtime advocate for rights for individuals with disabilities and has been a leader in the movement to obtain these rights at the federal and state levels. CEC membership exceeds 60,000 and the organization remains a major force in the development of innovative programming, teacher preparation, and policy making for exceptional individuals.

The Association for Persons with Severe Handicaps. The Association for Persons with Severe Handicaps (TASH) is another organization that has provided strong support for individuals with disabilities. TASH was established in 1974 and is composed of teachers, parents, administrators, and related service providers. TASH disseminates information on best practices, publishes research reports, and supports the rights and humane treatment of persons with severe and multiple disabilities through active involvement in court cases (Siegel-Causey, Guy, & Guess, 1995).

Additional Advocacy Groups. Other advocacy groups founded primarily by and for parents and families of individuals with disabilities include the United Cerebral Palsy Associations, Inc., founded in 1949; the National Society for Autistic Children, founded in 1961; the National Association for Down Syndrome, founded in 1961; and the Association for Children with Learning Disabilities (ACLD), founded in 1964. More recently the Federation of Families for Children's Mental Health was formed after a group of 60 parents and professionals interested in children and youth with emotional, behavioral, or mental disorders met in 1988 (A. P. Turnbull & H. R. Turnbull, 1990).

The progress made in special education can be attributed in great part to the success of parents as advocates for their children. Parents have worked together, and continue to do so, at the local level by pushing local school boards, administrators, and teachers to provide appropriate educational programming for their children. Parent groups, such as ARC and ACLD, banded with professional organizations to challenge state and federal government in the courts and ultimately to establish federal legislation that mandated a free and appropriate education for all children with disabilities.

[THE EQUAL OPPORTUNITY MOVEMENT](#)

The Brown decision was important for students with disabilities because the concept of equal opportunity was applicable to them as well as to students of minority background. Sixteen years after the Brown decision, the concept of equal opportunity was applied to children with disabilities judicially in federal district court. Two landmark decisions in which action was sought against state statutes and policies that excluded students with disabilities were Pennsylvania Association for Retarded Citizens (PARC) v. Commonwealth of Pennsylvania (1972) and Mills v. Board of Education (1972).

[Pennsylvania Association for Retarded Citizens v. Pennsylvania \(1972\)](#)

In January 1971, the Pennsylvania Association for Retarded Children brought a class action suit against the Commonwealth of Pennsylvania in Federal District Court (Pennsylvania Association for Retarded Citizens [PARC] v. Pennsylvania, 1972; hereafter PARC). Specifically, the suit named the state's secretaries of education and public welfare, board of education, and 13 school districts. The plaintiffs argued that students with mental retardation were not receiving publicly supported education because the state was delaying or ignoring its constitutional obligations to provide a publicly supported education for these students, thus violating state statutes and the students' rights under the Equal Protection of the Laws clause of the Fourteenth Amendment to the U.S. Constitution. Witnesses for the plaintiffs established four critical points. The first was that all children with mental retardation are capable of benefiting from a program of education and training. Second, education cannot be defined as only the provision of academic experiences for children, thereby legitimizing experiences such as learning to clothe and feed themselves as an outcome for public school programming. A third point was that having undertaken to provide all children in the Commonwealth of Pennsylvania with a free public education, the state could not deny students with mental retardation access to free public education and training. Finally, it was stipulated that the earlier students with mental retardation were provided education, the greater the amount of learning that could be predicted, a point related to denying preschoolers with retardation access to preschool programs available to children without disabilities (Levine & Wexler, 1981; Zettel & Ballard, 1982).

PARC was resolved by consent agreement specifying that all children with mental retardation between the ages of 6 and 21 years must be provided a free public education and that it was most desirable to educate children with mental retardation in a program most like the programs provided for their nondisabled peers (Levine & Wexler, 1981; Zettel & Ballard, 1982). The decree, which was amended a year later, set the stage for continued developments regarding the educational rights of students with disabilities.

[Mills v. Board of Education \(1972\)](#)

Soon after the PARC decision, a class action suit was filed in the Federal District Court for the District of Columbia. This suit, Mills v. Board of Education (1972; hereafter Mills), was filed against the District of Columbia's board of education on behalf of all

out-of-school students with disabilities. The action was brought by the parents and guardians of seven children who presented a variety of disabilities including behavior problems, hyperactivity, epilepsy, mental retardation, and physical impairments. These seven children were certified as a class, thereby representing over 18,000 students who were denied or excluded from public education in Washington, DC. The suit, which was based on the Fourteenth Amendment, charged that the students were improperly excluded from school Without due process of law (Zettel & Ballard, 1982). Mills resulted in a judgment against the defendant school board that mandated that the board provide all children with disabilities a publicly supported education. In addition, the court ordered the District to provide due process safeguards. Moreover, the court clearly outlined due process procedures for labeling, placement, and exclusion of students with disabilities (Zettel & Ballard, 1982). The procedural safeguards included the following: the right to a hearing with representation, a record, and an impartial hearing officer; the right to appeal; the right to have access to records; and the requirement of written notice at all stages of the process. These safeguards became the framework for the due process component of EAHCA.

[Additional Cases](#)

The PARC and Mills decisions set precedents for similar cases to be filed across the country. In the 2 1/2 years following the PARC and Mills decisions, 46 right-to-education cases were filed on behalf of children with disabilities in 28 states (Zettel & Ballard, 1982). The outcomes of these cases were consistent with those established in Mills and PARC. Notwithstanding the judicial success, many students with disabilities continued to be denied an appropriate public education (Zettel & Ballard, 1982). School districts continued to argue that sufficient funds did not exist, that facilities were inadequate, and that instructional materials and adequately trained teachers were unavailable. By the early 1970s, the majority of states had passed laws requiring that students with disabilities receive a public education. These laws, however, varied substantially, resulting in uneven attempts to provide education to these students. For these and other reasons, it became obvious to many that some degree of federal involvement was necessary.

[LEGISLATIVE MANDATES Early Federal Involvement](#)

The first significant federal involvement in the education of students with disabilities came with the passage of the Expansion of Teaching in the Education of Mentally Retarded Children Act of 1958. In this statute, Congress appropriated funds for the training of teachers of children with mental retardation. The National Defense Education Act of 1958 dramatically increased federal funding for the education of children in public schools. In 1965, the Elementary and Secondary Education Act provided additional federal funds to improve the education of certain categories of students, including those with disabilities. The following year an amendment to this act included Title VI, which added funding for grants for programs for children with disabilities. This title was replaced in 1970 by the Education for the Handicapped Act (EHA). This law became the basic framework for much of the legislation that was to follow.

[Section 504 of the Rehabilitation Act of 1973](#)

[Section 504] is the civil rights declaration of the handicapped.

It was greeted with great hope and satisfaction by Americans who have had the distress of physical or mental handicaps compounded by thoughtless or callous discrimination. These Americans have identified [Section] 504 with access to vital public services, such as education...; they consider it their charter... it is a key to, and a symbol of, their entry as full participants in the mainstream of national life. (Senator Hubert H. Humphrey, principle Senate author of Section 504, Congressional Record, April 26, 1977, p. 12216)

In 1973, the first major effort to protect persons with disabilities against discrimination based on their disabilities took place when Congress passed Section 504 of the Rehabilitation Act. President Nixon signed the Act into law on September 26, 1973. Section 504 was seemingly out of place, located in a labor statute, and its existence thus had a rocky start (Zirkel & Kincaid, 1995).

What was to become Section 504 was originally proposed in 1972 as an amendment to the Civil Rights Act of 1964 by Congressman Vanik of Ohio and Senator Humphrey of Minnesota. Section 504 was passed later that year as an amendment to the revision of the Rehabilitation Act. The Rehabilitation Act provided for federally assisted rehabilitation programs for persons with disabilities. The law, however, was vetoed twice by President Nixon, primarily due to budgetary concerns. The following year it was rewritten and passed. This time it was signed by President Nixon.

Section 504 was originally written in the same antidiscrimination language as Title VI of the Civil Rights Act of 1964 (prohibiting discrimination based on race and national origin) and Title IX of the Education Amendments of 1972 (prohibiting discrimination based on gender). It was not clear, however, what protections were actually extended to persons with disabilities through the statute. Many believed that the purpose of 504 was merely to correct problems in the rehabilitation of persons with disabilities, while others understood the law to be an extension of the Civil Rights Act of 1964. Because Congress failed to include any means of eliminating discrimination based on disability in Section 504, such as civil or criminal remedies, it seemed that the law was not a civil rights statute.

The Education Amendments of 1974, which amended Section 504, and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978 clarified these ambiguities (Schoenfeld, 1980). The result of these clarifications was to extend civil rights protection to persons with disabilities by including all the remedies, procedures, and rights contained in the Civil Rights Act of 1964.

The actual issuance of regulations to implement and enforce Section 504 took an interesting route. Because of confusion over the original intent of Congress in passing Section 504, as well as political concerns (e.g., coverage of alcoholics and drug addicts), there was a 4-year delay in promulgating regulations to implement the law. A lawsuit was

filed that protested the government's failure to issue the regulations under Section 504. In 1976 in *Cherry v. Matthews*, the Federal District Court of Washington, DC, held that the Secretary of Health, Education, and Welfare (HEW; see Note) was required to issue the regulations implementing the act. In the opinion, the court sarcastically noted that Section 504 was certainly not intended to be self-executing.

Because of the importance of the regulations, the HEW secretary for the administration of President Ford, David Matthews, felt that the incoming Carter administration should assume responsibility for them. Matthews, therefore, left HEW without issuing the 504 regulations. The secretary of HEW in the Carter administration, Joseph Califano, also appeared to some to be stalling on the issuance of the regulations for political reasons. Advocacy groups for persons with disabilities began to exert political pressure on the new secretary. Sitins at regional HEW offices were held, and in one action advocacy groups blocked Secretary Califano's driveway in Washington, DC, and blocked various regional HEW offices with their wheelchairs. The weight of litigation and political pressure finally led to the issuance of the Section 504 regulations. According to Gerry and Benton (1982), "On May 4, 1977 the political system finally gave life to the promise of equal opportunity made in September 1973" (p. 47). Section 504 states that

no otherwise qualified handicapped individual in the United States... shall solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subject to discrimination under any activity receiving federal financial assistance. (Section 504, 29 U.S.C. section 794(a))

In both language and intent, it mirrored other federal civil rights laws that prohibited discrimination by federal recipients on the basis of race (Title VI of the Civil Rights Act of 1964) and sex (Title IX of the Education Amendments of 1972). A "handicapped" person was defined as any person who has a physical or mental impairment that substantially limits one or more of that person's major life activities, or a person who has a record of such an impairment, or a person who is regarded as having such an impairment.

The primary purpose of Section 504 was to prohibit discrimination against a person with a disability by any agency receiving federal funds. These agencies are any that receive funds, personnel services, and interests in property, whether receiving these benefits directly or through another recipient. Section 504 requires agencies that are the recipients of federal financial assistance to provide assurances of compliance, to take corrective steps when violations are found, and to make individualized modifications and accommodations to provided services that are comparable to those offered persons without disabilities.

P.L. 93-380, Education Amendments of 1974 The Education Amendments of 1974, P.L. 93-380, was an amendment to the Elementary and Secondary Education Act of 1965 (ESEA). The ESEA provided funding for a variety of programs for children who were disadvantaged and for students with disabilities. The ESEA also authorized the creation of the Bureau of Education for the Handicapped as well as the establishment of the

National Advisory Council on Handicapped Children. The purpose of the 1974 amendments was to require that each state receiving federal special education funding establish a goal of providing full educational opportunities for all children with disabilities.

Public Law 93-380 was a significant piece of legislation for both children with disabilities and children who are gifted and talented (Weintraub & Ballard, 1982). The amendment acknowledged the right of students with disabilities to an education, provided funds for programs for the education of students with disabilities under Title IV-B, specified due process procedures, and addressed the issue of least restrictive environment. This amendment provided the first national initiative toward meeting the needs of students who are gifted and talented as well as those with disabilities. The act, however, was not sufficiently enforceable in the eyes of many advocates for students with disabilities (Weber, 1992). Furthermore, very few teachers were being trained to work with students with disabilities and extremely small amounts of funds were available to universities to support research (Levine & Wexler, 1981).

[The Education for All Handicapped Children Act of 1975 \(EAHCA\)](#)

We must recognize our responsibility to provide education for all children [with disabilities] which meets their unique needs. The denial of the right to education and to equal opportunity within this nation for handicapped children--whether it be outright exclusion from school, the failure to provide an education which meets the needs of a single handicapped child, or the refusal to recognize the handicapped child's right to grow---is a travesty of justice and a denial of equal protection under the law. (Senator Harrison Williams, principle author of the Education for All Handicapped Children Act, Congressional Record, 1974, p. 15272)

In early 1973, four bills were before the Senate regarding the education of students with disabilities. They were S.896, introduced by Senator Jennings Randolph, to extend the life of the Education of the Handicapped Act for 3 years; S.34, introduced by Senator Ernest Hollings, to fund research in the problems of children with autism; S.808, introduced by Senator Mike Gravel, to provide federal funds for screening preschool children for the presence of learning disabilities; and S.6, introduced by Senator Harrison Williams, a comprehensive bill for the education of students with disabilities based on the two landmark cases, *Pennsylvania Association for Retarded Citizens (PARC) v. the Commonwealth of Pennsylvania* (1972) and *Mills v. Board of Education* (1972). The purpose of the Williams bill was to mandate that a free appropriate public education be available to all students with disabilities by 1976. These four bills were the subject of Senate hearings held in 1973. Eventually, conference committees agreed on a bill that would be known as the Education Amendments of 1974, P.L. 93-380. The 93rd Congress, however, failed to act on this bill before adjournment.

Because bills pending at the end of a final session of Congress die, Senator Williams had to reintroduce his bill, S.6, the Education for All Handicapped Children Act (EAHCA), in the next session. In April 1973, the Senate Subcommittee on the Handicapped held

hearings on this bill in Newark, New Jersey; Boston, Massachusetts; Harrisburg, Pennsylvania; St. Paul, Minnesota; and Columbia, South Carolina. Even though the years since the passage of Title VI of the Elementary and Secondary Education Act had seen great progress in the education of students with disabilities, the hearings on Senator Williams' s bill indicated that significant problems remained.

The Senate passed S.6 and the House passed a similar bill, H.7217. The conference committee resolved differences in the two bills and sent one bill, the EAHCA, to both houses of Congress. The Senate and the House approved the bill and sent it to the President for signing. On November 29, 1975, the 142nd bill passed by the 94th Congress the EAHCA-- was signed into law by President Gerald Ford.

The EAHCA, also called P.L. 94-142, provided federal funding to states to assist them in educating students with disabilities. States receiving federal funding were required to submit a state plan to the Bureau of Education for the Handicapped. The plan was to describe the state's policies and procedures to educate students with disabilities in accordance with the procedures contained in the EAHCA. If the plan was approved by the bureau, the state was obligated to guarantee a free appropriate public education to students with disabilities in return for the federal funding. Federal regulations implementing the law took effect on August 23, 1977.

All but one state, New Mexico, submitted state plans for federal funding under P.L. 94-142. New Mexico decided not to accept the funds or implement the act. An advocacy group for citizens with disabilities, the New Mexico Association for Retarded Citizens, sued the state for failing to provide an appropriate education for students with disabilities under Section 504 of the Rehabilitation Act of 1973. Section 504 prevents entities that receive federal funds from discriminating against persons with disabilities by denying students an appropriate education. The association, in *New Mexico Association for Retarded Citizens v. New Mexico* (1982), prevailed. The decision indicated that even though a state did not accept federal funding and the requirements attached to the funds (adherence to P.L. 94-142), it would still have to comply with Section 504, a civil rights law that contained no funding provisions. New Mexico, therefore, was required to provide a free appropriate public education to students with disabilities even though the state received no federal funding under the IDEA. New Mexico subsequently submitted a state plan to the Bureau of Education for the Handicapped, opting to implement the law and accept the federal funding. Following this action, all 50 states were participants in federal funding through the EAHCA.

The EAHCA mandated that qualified students with disabilities had the right to (a) nondiscriminatory testing, evaluation, and placement procedures; (b) be educated in the least restrictive environment; (c) procedural due process, including parent involvement; (d) a free education; and (e) an appropriate education.

The Individualized Education Program (IEP) was the centerpiece of the EAHCA (*Honig v. Doe*, 1988). The goals and objectives of the student's program as well as the educational placement, the length of the school year, and evaluation and measurement

criteria that are developed in the IEP process are contained in the document. An IEP must be developed for each student in special education.

The EAHCA both delineated the educational rights of students with disabilities and provided the promise of federal funding to the states. Funding would flow from the federal government to the state educational agencies (SEAs) and finally the local educational agencies (LEAs). Local school districts had to have programs meeting the state requirements. Federal funding was to supplement state and local dollars and could not be used to supplant these funds. Additionally, 75% of the federal funds were to flow through the state to the local school districts.

Legislation since the passage of 1975 has served to clarify and extend the requirements of EAHCA. The Handicapped Children's Protection Act of 1986 was passed as an amendment to the EAHCA, providing for the award of reasonable attorneys' fees and costs to parents who are prevailing parties. In 1986, Congress passed an amendment to the EAHCA, P.L. 99-457, Education of the Handicapped Amendments, which added Part H to the law.

[The Individuals with Disabilities Education Act of 1990](#)

The 1990 amendments to P.L. 94-142 renamed the EAHCA the Individuals with Disabilities Education Act (IDEA). Major changes included in the IDEA were that (a) the language of the law was changed to emphasize the person first, including the renaming of the law to the Individuals with Disabilities Education Act, as well as changing the terms handicapped student and handicapped to child/student/individual with a disability; (b) students with autism and traumatic brain injury were identified as a separate and distinct class entitled to the law's benefits; and (c) a plan for transition was required to be included on every student's IEP by age 16 years.

[The Individuals with Disabilities Education Act Amendments of 1997](#)

On June 4, 1997, President Clinton signed the Individuals with Disabilities Education Act Amendments of 1997, P.L. 105-17, into law. This law amended and reauthorized the IDEA. In passing the law, Congress stated that the IDEA had been extremely successful in improving students' access to public schools, and the critical issue in 1997 was to improve the performance and educational achievement of students with disabilities in both the special and general education curriculum (Senate Report, 1997). To this end, Congress mandated a number of changes to the IEP and the inclusion of students with disabilities in state- and district-wide assessments. Regarding the IEP, changes include the requirement that a statement of measurable annual goals, including benchmarks or short-term objectives, that would enable parents and educators to accurately determine a student's progress be specified in the IEP. The primary difference in the statement of goals from that of the original IDEA is the emphasis on accurately measuring and reporting a student's progress toward the annual goals.

Congress also attempted to alleviate what was believed to be the overly adversarial nature of special education by encouraging parents and educators to resolve differences by using nonadversarial methods (IDEA Amendments of 1997). Specifically, the 1997 amendments require states to offer mediation as a voluntary option to parents and educators as an initial process for dispute resolution.

A very significant addition of the 1997 amendments was a section affecting the discipline of students with disabilities. Congress heard testimony regarding the lack of parity school officials faced when making decisions about disciplining students with and without disabilities who violated the same school rules (Senate Report, 1997). To address these concerns, Congress added a section to the IDEA in an attempt to balance school officials' obligation to ensure that schools are safe and orderly environments conducive to learning and the school's obligation to ensure that students with disabilities receive a free appropriate public education.

To deal with behavioral problems in a proactive manner, the 1997 amendments required that if a student with disabilities has behavior problems (regardless of the student's disability category), the IEP team shall consider strategies, including positive behavioral interventions, strategies, and supports, to address these problems. In such situations a proactive behavior management plan, based on functional behavioral assessment, should be included in the student's IEP.

School officials may discipline a student with disabilities in the same manner as they discipline students without disabilities, with a few notable exceptions. If necessary, school officials may unilaterally change the placement of a student for disciplinary purposes to an appropriate interim alternative setting, another setting, or they may suspend the student to the extent that these disciplinary methods are used with students who are not disabled. The primary difference is that with students who are disabled, the suspension or placement change may not exceed 10 school days. School officials may unilaterally place a student with disabilities in an appropriate interim alternative educational setting for up to 45 days if the student brings a weapon to school or a school function or knowingly possesses, uses, or sells illegal drugs at school or a school function. The alternative educational setting must be determined by the IEP team. Additionally, a hearing officer can order a 45-day change in placement if school officials have evidence indicating that maintaining the student with disabilities in the current placement is substantially likely to result in injury to the student or others and that school officials have made reasonable efforts to minimize this risk of harm. State Education Statutes As stated earlier in this article, education is the business of the states; however, with the passage of the EAHCA, special education essentially became federally controlled. States were not required to follow the EAHCA requirements, but by choosing not to, they forfeited federal funding for special education. All states have chosen to comply with the federal regulations based on the EAHCA. States that had special education programs in place were required to make the necessary changes to comply with the EAHCA, and states that were not providing special education programs for children with disabilities were required to develop them. Some states developed statutes and regulations that expanded the federal special education requirements. Kansas and New

Mexico, for example, have included children who are gifted and talented as eligible for special education services. A few states have set higher standards regarding what constitutes a free appropriate public education for students with disabilities (e.g., California, North Carolina). States set their own regulations specifying teacher certification regulations, teacher-pupil ratios, transportation time, and age-span requirements in the classroom. State statutes and regulations must meet the federal requirements as outlined in the EAHCA; however, they may go beyond these requirements.

SUMMARY

This article has provided an examination of the history of special education law. More specifically, we focused on the historical development of special education as advanced through case law and legislation. This development has resulted in students with disabilities moving from exclusion to inclusion in the American public education system.

By the early 1900s, all of the states had compulsory education laws, yet the exclusion of children with disabilities was still widely practiced. The educational rights of children with disabilities were gained largely through the efforts of parents and advocacy groups. The Civil Rights Movement, specifically the U.S. Supreme Court's decision in *Brown v. Board of Education* (1954), provided impetus for subsequent legislation and litigation granting students with disabilities the right to a free appropriate public education. Two seminal cases in securing these rights were *PARC v. Pennsylvania* (1972) and *Mills v. Board of Education* (1972). The early 1970s witnessed a number of federal legislative efforts to improve the education of students with disabilities. The major pieces of legislation to emerge in this decade were Section 504 of the Rehabilitation Act and the Education for All Handicapped Children Act. These two laws have certainly been major successes for students with disabilities.

President Clinton, in the IDEA Amendments signing ceremony, summarized the progress this legislation has meant to the education of students with disabilities. His remarks apply equally to the efforts of parental advocacy groups and other legislative and litigative developments.

Since the passage of the IDEA, 90% fewer developmentally disabled children are living in institutions---hundreds of thousands of children with disabilities attend public schools and regular classrooms; three times as many disabled young people are enrolled in colleges and universities; twice as many young Americans with disabilities in their twenties are in the American workplace ... We have to continue to push these trends, to do everything we can to encourage our children with disabilities... To the millions of families (with children with disabilities)... we are saying, we are proud of you for your devotion to your children, for your belief in them, for your love for them, and we are going to do everything we can do to help you succeed in preparing them. To the teachers and administrators who make all the difference, we are saying, we are depending on you and we are going to do what we can to support you... To the American people we are

saying that we do not intend to rest until we have conquered the ignorance and prejudice against disabilities that disable us all. ("Remarks of President Clinton," 1997, p. 24)

NOTE

HEW was later divided into the Department of Health and Human Services (DHHS) and the Department of Education (DOE).

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