

# History and Special Education Law

# Context

- Education not guaranteed in the Constitution
- Traditionally education has been a state- and local-level issue
- Individuals with disabilities were primarily educated in institutions or not seen as “educable” before 1800s
  - Many high incidence/ “mild” disabilities weren’t recognized until relatively recently

# Compulsory Attendance

- Compulsory attendance required state by state
  - all states by 1918 (Mississippi)
- In part a reaction to immigration changes and effects of industrial revolution
- Many struggling students attending school for the first time
  - For example, individuals with (mild/moderate) disabilities

# The Beginnings of Special Classes

- First “ungraded classes” were a reaction to diversity of student learning needs
  - Pull out programs started for gifted and students with disabilities
  - Elizabeth Farrell in NYC
- Initially thought of as win/win situation
  - Gen ed teachers referred most difficult to teach students out of class
  - Sp ed teachers had a new mission
  - Parents/ students receiving new educational services
- Concerns quickly arose regarding labeling and testing

# Legalized Exclusion

- Inclusion existed, but typically because separate classes not possible in some schools
  - In small, rural schools
- The “ugly laws” allowed exceptions to compulsory attendance in most states
  - Wisconsin law barred students who had a nauseating effect on teachers and students from attending school
- Early to mid 1900s was also time of eugenics policies
  - Forced sterilization in many states

# Poor Conditions

- Special education relegated to “keep them busy” (and out of the way) curricula
  - In basements, closets, portables
  - Same time as institutionalization for children with more severe disabilities

# Advocacy Groups

- Largely driven by concerned parents
- Council for Exceptional Children, 1922 (teachers, 1st President was E. Farrell)
- United Cerebral Palsy, 1949
- Association of Retarded Citizens, 1950
  - Now just ARC

# Brown v. Board (1954)

- Separate is inherently unequal
  - Based on 14th Amendment
  - Overturned Plessy v. Ferguson (1896)
- Important for special education because
  - Introduced civil rights to educational arena
  - Striking parallels to segregation by disability



# Primary Case Law

- PARC v. Commonwealth of Pennsylvania (1972)
  - US District Court ruled that students with intellectual disabilities were being denied an appropriate education
  - Students with ID must be provided free, public education, optimally like that of nondisabled peers
    - Only applied to schools within Circuit court's jurisdiction
    - Difficult to enforce

# Primary Case Law

- Mills v. Board of Ed. (1972)
  - Brought to US District Court on behalf of all children with disabilities in Washington DC not attending school
  - More detailed and comprehensive ruling than PARC
    - Due process safeguards, labeling, placement, exclusion
    - As with PARC, only applied to schools within Circuit court's jurisdiction, and difficult to enforce

# State Laws pre-PL 94-142

- Most states adopted laws regarding the education of students with disabilities
- But they varied and were often not adhered to
  - Hence the need for PARC and Mills
  - Talk to some veteran teachers and professors about pre-94-142 days

# Federal Involvement

- As in other areas, federal involvement in education has grown considerably since mid-1900s
  - Elementary and Secondary Education Act (ESEA, 1965) (latest version called NCLB): to improve education of disadvantaged children, provision for piloting programs for students with disabilities added in 1966
  - Education of the Handicapped Act of 1970: grew out of ESEA, funded regional resource centers and training of special education teachers
    - Notice these just provide funds and extra programs, not mandated services

# Federal Involvement

- Section 504 of Rehabilitation Act of 1973
  - First civil rights law for people with disabilities (more on that later in course)
  - No person shall be discriminated against on the basis of disability in an activity receiving federal financial assistance

## Leading to ...

- It was in this context that PL 94-142 (now called IDEA) was formed and passed