

Special Education Legislation: An Overview of the Stride Toward Inclusion

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Special education is a relatively new concept despite schooling in the United States having centuries of foundation. For most of education history, students with disabilities have been excluded from the narrative (Yell et al., 1998). The emergence of disability advocacy brought forth a plethora of litigation that resulted in the creation of laws and policies that addressed this negligence in schools. This influx of advocacy is the result of almost half of the students with disabilities in the United States receiving an inadequate education or no education at all (Rogers et al., 1997). The endeavor of ensuring the educational rights of students with disabilities has been a long haul. Overtime, the conversation around educating students with disabilities has shifted from access to quality. An understanding of the litigation and legislation that contributed to the development of special education as we see it today is essential for the prosperity of students with disabilities.

There is an ongoing cycle of litigation that results in legislation followed by further litigation to clarify legislation which is already in place; when considering this cycle, it is a two-step process that continuously repeats itself. This process is grueling, yet it is the foundation of continued developments in special education, therefore, it is proven necessary to address issues faced by students with special needs (Rogers et al., 1997). Bringing inequalities that a student faces in their schooling to a litigious setting or pushing for further clarification of a policy will benefit all students. Moreover, understanding the way litigation and legislation are intertwined contributes to our advocacy for students with disabilities to ensure their prosperity. Developments in education policy and legislation pertaining to individuals with disabilities is essential to prohibit discrimination based on a disability not only in schooling K-12 but in higher education as well.

Ongoing attention brought to the rights of individuals with disabilities is needed, especially in the realm of higher education. As policy and legislation continues to evolve, it is essential to place focus on all stages of a student's education, not solely the early developmental years. The National Center for Learning Disabilities (2022) reports that students with disabilities attend college at half the rate of their nondisabled peers. This jarring statistic brings attention to the need to address the barriers preventing individuals with disabilities from entering higher education.

Legal Developments in Special Education

Developments in special education to provide better education to students with disabilities are the result of the ongoing cycle of litigation and legislation. The unequal treatment of students with disabilities in education was unattested until litigation brought attention to the matter (Yell et al., 1998). Advocates who sought better treatment and educational outcomes brought the unfathomable inequality children with disabilities were facing to the courts to spur change. With the establishment of legal precedent that allowed the exclusion of students from school based on their disability, litigation began to emerge in hopes of mitigating this discrimination (Yell et al., 1998). Over time the cycle of litigation and legislation pertaining to special education evolved to no longer support the intentional exclusion of individuals with disabilities. The implementation of legislation regarding the treatment, access, and quality of education received by students with disabilities in turn changed the way schools needed to operate. However, interpretation of the laws varies. Although legislation regarding special education has been implemented at a federal level, education is mainly a responsibility of state and local governments. As a result, different interpretations of the law at the state level led to more litigation to determine what is truly required by schools to provide to their students with disabilities (Martin et al., 1996). This in turn leads to a continuing cycle of litigation that is initiated to clarify the law which results in refined legislation. This cycle, although grueling, results in the establishment of essential rights and procedures protecting students with disabilities.

Key Terms Pertaining to Special Education

Free Appropriate Public Education (FAPE)

When defining what a free appropriate public education is, the U.S. Department of Education (2010) states: “An appropriate education includes: education services designed to meet the individual education needs of students with disabilities as adequately as the needs of nondisabled students are met, the education of each student with a disability with nondisabled students, to the maximum extent appropriate to the needs of the student with a disability, evaluation and placement procedures established to guard against misclassification or inappropriate placement of students, and a periodic reevaluation of students who have been provided special education or related services, and establishment of due process procedures.”

Individualized Education Program (IEP)

A student’s Individualized Education Program also known as their IEP is a legal document that is crucial to their education. Specifically, the IEP documents a child’s need for special education and creates a plan to provide programs and services that adhere to the student’s needs (U.S. Department of Education, 2010).

Least Restrictive Environment (LRE)

A student is placed in what is considered the least restrictive environment for their learning. The least restrictive environment is different for each student given every child has unique needs. According to the Individuals with Disabilities Education Act (1997), when placed in the least restrictive environment your child will be educated alongside his or her non-disabled peers to the maximum extent appropriate. As a result, removal from the general education classroom only occurs when services or supplementary aids do not prove to be useful given the nature of the disability (IDEA, 1997).

Related Services

As described by the U.S. Department of Education (2010), related services are services that assist a student in receiving a meaningful education. These services are provided to enhance and aid the learning experience. Among these services are counseling, speech-language therapy, and occupational therapy.

Litigation

A series of cases brought attention to the inequity and inequality that students with disabilities were facing in the realm of schooling. As these cases were brought to the courts, the rights of students with disabilities began to be solidified. Consequently, the courts have found that schools are not permitted to deny equal protection under the law on the basis on a student's disability.

Brown v. Board (1954)

Brown v. Board is a landmark case known for the advances it made for civil rights in the United States 1950s. *Brown* addressed the segregation in public schools that was occurring under the standard of "separate but equal." The Supreme Court held that educating students separately solely based on race was a violation of the Equal Protection Clause of the Fourteenth Amendment (*Brown v. Board*, 1954). Ultimately, the Court found that the segregation implemented in public schools caused detrimental effects on the educational and personal growth of African American students (*Brown v. Board*, 1954). Although this case has a foundation addressing racial inequality in schools, *Brown* served as a legal precedent in the future during the Disability Rights Movement.

Disability advocates joined forces with the civil rights movement to gain momentum in their fight for equality (Anti-Defamation League, 2018). Those who fought for the rights of students with disabilities in the classroom used the findings from *Brown* as a legal foundation for their cases. When delivering the opinion of the unanimous Court decision, Chief Justice Earl Warren stated "We conclude that in the field of public education the doctrine of 'separate but

equal' has no place. Separate educational facilities are inherently unequal" (Brown v. Board, 1954). Despite the findings of *Brown* being grounded in racial inequality, the case was adapted to adhere to the needs of students with disabilities.

PARC v. Pennsylvania (1972)

PARC v. Pennsylvania, is a critical case to gain momentum in the efforts for access to education for students with disabilities, was the first case to address the right to an education in the country (The Public Interest Law Firm, n.d.). This lawsuit sought to overturn Pennsylvania law that excluded students with disabilities from receiving an education in the public school system. The plaintiffs of this case argued that the law violated students with disabilities' right to due process and the equal protection clause. *PARC's* ruling was a monumental step in the right direction; the court found that the state must provide a free appropriate public education to students with disabilities.

PARC is a case that formed the foundation for special education. It established the standard of appropriateness for Free Appropriate Public Education (FAPE) (*PARC v. Pennsylvania, 1972*). Establishing the standard of a free appropriate public education required not only providing a free public education to students with disabilities, but also ensuring that the education provided was appropriate to the child's learning abilities and needs (Martin et al., 1996).

Mills v. Board of Education (1972)

Occurring not long after *PARC*, *Mills* brought a suit against public schools in the District of Columbia due to their expelling or denying the enrollment of students with disabilities (*Mills v. Board of Education, 1972*). The exclusion of students with disabilities was attributed to budget constraints. When considering how many students this would affect, the decision would exclude approximately 12,340 students with disabilities (Martin et al., 1996). *Mills* raised the question of whether a school can deny education services to a student with disabilities due to funding issues.

This is an important topic to discuss given that educating a student with disabilities costs more than educating an abled peer. For context, when comparing the expenditures per pupil for general versus special education for the 2017-18 school year, New York State spends \$13,367 per pupil in general education and \$32,359 per pupil in special education (New York State Education Department, 2019). However, despite the extra funding needed to educate students with disabilities, the court held that the burden of insufficient funding is not placed on the child but the school (Martin et al., 1996). Therefore, schools cannot claim they do not have the funds to support the education of a student with disabilities as a reason for not providing them an

equitable education.

Board of Education of the Hendrick Hudson Central School District v. Rowley (1982)

Rowley addressed the question of what a school needs to provide to meet the requirement of a free appropriate public education. This is a critical turning point in special education given the conversation has shifted from access to quality. Prior to *Rowley*, the majority of legislation regarding special education was focused on ensuring that students with disabilities had access to the classroom. Gaining access to the classroom was only half the battle in the enduring fight for recognition for students with disabilities; advocates had to now work on ensuring that adequate resources and services are provided to guarantee an equal education to nondisabled peers.

This case is essential in determining how legislation should be interpreted regarding what resources schools are required to provide. As schools permitted access to students with disabilities into the classroom, schools and parents were conflicted on who should provide the necessary assistance. The Court held that the school is only responsible for services and resources that will ensure the student has an equal education to their non-disabled peers (*Board of Education v. Rowley*, 1982). Therefore, the school is required to provide all necessary aids that level the playing field in the classroom among disabled and nondisabled students.

Daniel R.R. v. State Board of Education (1989)

This case was central to establishing the importance of the least restrictive environment. *Daniel R.R. v. State Board of Education* (1989) is a case that was brought on due to a school denying a student with disabilities placement in a classroom with nondisabled peers. *Daniel R.R.* was influential in the movement to favor mainstreaming students with disabilities rather than excluding them. The Court found that schools must place the student in a learning environment where they interact with their nondisabled peers to the maximum extent possible. Additionally, removal from the general education classroom must be justified and documented.

This case came because of the law not explicitly stating what constitutes a least restrictive environment. However, the general explanation of the least restrictive environment is due to the varying, unique needs of each student. The least restrictive environment that works for one student is not necessarily applicable to all students with the same disability.

Oberti v. Board of Education (1992)

Oberti established that the use of related services, accommodations, and supplementary aids to ensure inclusion in general education classrooms is the standard (The Public Interest Law Center, n.d.). This case determined that if a student can succeed in the general education classroom with needed extra support, that is where they should be placed.

Furthermore, the school must provide the supports needed to ensure the student's success. As a result of *Oberti* a two-prong test was developed to determine if schools were following the requirement to mainstream students if they are eligible.

Ultimately, consideration must be given to whether the student will better succeed in the general classroom with supplemental aids and services or within a segregated special education class. When weighing these two options it is necessary to address the benefits a student receives when integrated with their nondisabled peers. Thinking of this in a higher education context is necessary given at this level there are no longer IEPs; however, under Section 504 and Title II students with disabilities in higher education are still protected from discrimination. The U.S. Department of Education (2020) states: "colleges and universities are required by Section 504 and Title II to provide students with disabilities with appropriate academic adjustments and auxiliary aids and services that are necessary to afford an individual with a disability an equal opportunity to participate in the school's program." The requirement of higher education institutions to accommodate students with the necessary supports or aids to alleviate inequities resulting from their disability is embedded in the outcome of *Oberti*.

Legislation

Advocacy for the rights of students with disabilities through litigation led to legislation. Starting with the parents and loved ones of students with disabilities, the push for change eventually made its way to the federal level. Legislation pertaining to the needs of students with disabilities is relatively new and continues to be redefined and altered to fit the everchanging needs of students as inequities arise.

Much of the existing legislation pertaining to individuals with disabilities applies to K-12 education, however, there are elements in place that adhere to the higher education sector. When transitioning from grade school to higher education, the ways in which the rights of students with disabilities are addressed can change (U.S. Department of Education, 2011). Although legislation such as Section 504 and Title II apply to higher education as well, responsibilities at this level of education differs. For example, according to the U.S. Department of Education (2011), post-secondary schools are not required to provide FAPE in the way that grade schools are. This disparity is significant given the assurance of FAPE is an integral part of ensuring an equitable education for all students despite their abilities. Differences in execution among varying levels of education have led to the introduction of new components to existing legislation as well as the emergence of completely new policies and legislation.

Section 504 of Rehabilitation Act (1973)

The passage of Section 504 of the Rehabilitation Act was the first federal effort to protect

people with disabilities. Originally proposed in 1972, the legislation was not put into effect until 1977 due to political delay. Amending Section 504 extended civil rights protection including all remedies, procedures, and rights under the Civil Rights Act of 1964 to people with disabilities (Yell et al., 1998). The U.S. Department of Health and Human Services (2006) states that Section 504 is a national law that protects individuals from discrimination based on their disability. This law prohibits denying an individual the opportunity to participate in or benefit from federally funded programs, services, or benefits due to their disability.

Subsequently, the Department of Education has established the Office for Civil Rights. Among many other things, the Office for Civil Rights (OCR) has the responsibility of protecting students with disabilities from discrimination in their education. According to the Office for Civil Rights (2020), most concerns are regarding the identification of students who are protected by Section 504 and obtaining an appropriate education for said students. Therefore, OCR is in place to ensure Section 504 is enforced and students with disabilities are receiving the free appropriate public education they are legally entitled to and deserve. This is done by examining school procedures used to identify, evaluate, and place students with disabilities.

The rights afforded to individuals with disabilities continues from their K-12 education on to the higher education sector. Enforced by the Office for Civil Rights at the U.S. Department of Education, Section 504's goal to dismantle discrimination based on disability is applied to postsecondary school to protect students (U.S. Department of Education, 2020). An example of this being, a higher education institution may not deny acceptance to a qualified candidate solely because they have a disability. Moreover, once accepted the institution will need to provide the student with all necessary supports or aids needed.

Education for All Handicapped Children Act (1975)

The passage of the Education for All Handicapped Children Act (EAHCA) recognized the need to help provide a quality education for students with disabilities. This act provided federal funding to states to assist them in educating students with disabilities in accordance with the requirements presented in the Act (Rogers et al., 1997). Consequently, states had to submit a plan to ensure they are enacting the requirements in their schools to receive the funds.

The EAHCA included many protections and rights for students with disabilities. This included the right to nondiscriminatory testing, evaluation, and placement procedures. Therefore, a student with disabilities must be tested, evaluated, and placed in a way that does not make use of their disability as cause for hindering their educational success. Additionally, this Act mandated that students be educated in the least restrictive environment. As addressed in *Oberti* and *Daniel R.R.*, ensuring a student is placed in a learning environment that is

integrated with their peers to the extent most possible is an important aspect of educational equity. In relation to least restrictive environment, EAHCA also requires that a free appropriate public education be provided to students with disabilities. Mandating at the federal level that students with disabilities have the right to a free, public education that adequately fits their unique needs is an integral step in the development of special education (Yell et al., 1998). The EAHCA explicitly laid out expectations for the education of students with disabilities at a national level, representing a dramatic shift in the view of educating students with disabilities.

In terms of higher education, EACHA provides great foundation for providing rights to students throughout their education journey. EACHA has set precedent that aims to dismantle discrimination based on disabilities in education and was renamed to the Individuals with Disabilities Education Act (IDEA) in 1990. The goals and objectives of EACHA are further developed and modernized with the implementation of IDEA.

Americans with Disabilities Act (1990)

The Americans with Disabilities Act (ADA) was put into place in 1990 to prohibit the discrimination against individuals with disabilities. Moreover, through the passage of ADA, individuals with disabilities are afforded civil rights protections like rights based on gender, race, and religion. ADA protects against discrimination of individuals with disabilities in all areas of public life including jobs, transportation, and schooling (ADA National Network, 2022).

There are multiple facets of ADA that contribute to the protection of individuals with disabilities from discrimination. Title I of ADA ensures equal employment access and opportunities for individuals with disabilities (ADA National Network, 2022). This component is designed to ensure employers provide necessary accommodations or modifications that are needed to adhere with an individual's needs. Title II of ADA enforces nondiscrimination based on disability in state and local government services (ADA National Network, 2022). This section of ADA is in place to ban discrimination of individuals with disabilities in programs, activities, and services of public entities. Furthermore, according to the ADA (2022), Title II clarifies section 504 of the Rehabilitation Act by expanding its coverage to all entities. Title III of ADA focuses on prohibiting the discrimination of individuals with disabilities regarding public accommodations. Public accommodations refer to private places that provide public accommodations, for example, a private school. Consequently, Title III requires businesses to make accommodations or modifications to their typical practice when serving individuals with disabilities (ADA National Network, 2022).

Access to higher education is among the most vital goals of ADA promoting equal access to individuals with disabilities. Through Title II of ADA higher education institutions are

not legally allowed to decline a student's enrollment based on their disability (U.S. Department of Education, 2011). Moreover, the passage of ADA has ensured that despite students not having an IEP at the post-secondary level, schools will be accountable to provide the resources and supports necessary to alleviate barriers that may stem from having a disability; difficulties that may arise include possible programmatic, physical, and social barriers (U.S. Department of Education, 2011). The implementation of ADA in higher education can be seen through accommodations and modifications put into place by disability service offices. These offices found at colleges and universities across the nation are in place to alleviate difficulties and disparities that may occur because of differences in expectations from the high school to the post-secondary level (U.S. Department of Education, 2011). Moreover, disability service offices are a way to ensure that an institution is abiding by the legal and ethical obligations set forth by ADA (ADA National Network, 2022). The implementation of ADA provides a foundation of ground rules which provide access to students with disabilities to the higher education environment.

Individuals with Disabilities Education Act (IDEA)

The Individuals with Disabilities Education Act (IDEA) was developed on the foundation set by EAHCA; the 1990 amendments renamed EAHCA to IDEA. The passage of IDEA has subsequently made it the guidebook for all to follow regarding special education rights and procedures. Overall, there are six main components that shape IDEA:

1. Every child is entitled to a free appropriate education.
2. Every student is entitled to an evaluation of all areas relating to the suspected disability.
3. Creation of an IEP to dictate what services and programs will be provided to the child in their education.
4. Education programs and services must be provided in the least restrictive environment.
5. The child and parents' input must be taken into consideration during the education process.
6. When a parent feels the IEP is inappropriate for their child, they are entitled to challenge the treatment with due process rights.

The act continued the establishment of rights already set forth by EAHCA but added additional major changes. Among these changes included emphasis on person first language; this altered language that would be used within legislation and other educational documents from "handicapped student" to "student with a disability." This change has been extremely

influential in the way people with disabilities are acknowledged. The implementation of person first language recognizes the person before the disability; this switch in terminology provides the opportunity to separate the person from their diagnosis (National Aging and Disability Transportation Center, 2020). Much of this change has stemmed from exposure to disability representation at the higher education level; this conversation is necessary as more students with disabilities continue onto enrolling in higher education institutions. In fact, a study done on perception of first-person language in higher education reports that 43% of students were first exposed to person-first language in their university classrooms (Hoffman et. al, 2020). Support of the use of person-first language is essential to create a more inclusive and positive environment in the context of higher education such as on college campuses.

In addition to this, IDEA established distinct categories for students diagnosed with autism or traumatic brain injuries (Rogers et al., 1998). This addition allowed for students with these disabilities to be entitled to all that is covered under the law. Lastly, among major changes is the requirement that a transition plan be developed in the IEP for every student by the age of 16. The development of a transition plan is useful for students with disabilities in the shift from schooling to life after school. Transition plans consider the student's interests, hobbies, goals, and needs (Advocates for Children, 2018). The inclusion of a transition plan within the IEP process is fundamental to planning for a student with disability to transition to post-secondary life including the work force and living skills.

In 1997 amendments were made to IDEA. The Individuals with Disabilities Education Act Amendments of 1997 amended and reauthorized IDEA given the successes the act had in improving the access students with disabilities had to an education (Rogers et al., 1998). The new goal of the federal government was improving the performance and achievement of students with disabilities. As a result, there were several mandated changes to the IEP that focused on improving educational results. One of many of these changes is the requirement of a statement of measurable goals to be included in the IEP. This was added to ensure accurate measurement and reporting of a student's progress in achieving their goals dictated in the IEP. Additionally, the amendment added a section regarding the discipline of students with disabilities. IDEA requires that if a student with disabilities presents behavioral issues, then the IEP team is supposed to implement behavioral interventions, supports, and strategies (Rogers et al., 1998). Beyond this if the student's behavior requires them to be expelled the expulsion exceed ten days.

By 2004, IDEA was amended once again to address current issues in special education. The most recent reauthorization called for early intervention, greater accountability, improved

outcomes, and raised standards for instructors (Individuals with Disabilities Education Act, 2020). These additions are focused on bettering the quality of education received by students with disabilities. There is great importance behind early intervention: The earlier it is provided the more likely it is to be effective (Center for Disease Control and Intervention, 2021). Intervention services can affect a child's developmental path, therefore, the addition of policy regarding early intervention for students with disabilities is a significant step in contributing to educational skills and outcomes. Regarding accountability and outcomes, IDEA mandates that children with disabilities be included in system accountability measures. The inclusion of students with disabilities in the system accountability measures requires recognition that students with disabilities are given the opportunity to succeed and have access to general education standards (National Center on Educational Outcomes, n.d.). In addition, IDEA enforces specific requirements that must be met by special education teachers that categorizes them as "highly qualified." According to IDEA Regulations: Highly Qualified Teachers this includes individuals' minimum degree requirements and certifications.

A major component of the IEP is the inclusion of a transition plan for students by the age of 16. The transition plan is designed to facilitate a student with disabilities' movement from school to post-school activity (Wrights Law, 2020). Post-school activities include post-secondary education, vocational schooling, and community involvement. The transition plan is individualized, incorporating how a student will partake in post-school activities based on their needs and interests. Grounding the transition plan in the student's specific needs and interests aims to ensure the plans will appropriately set the individual up for future success. However, despite the initial steps of incorporating a transition plan into a student's IEP, there continues to be barriers in the transition process that prevent students from going further in their academic careers to higher education. There is a clear and consistent need for more explicit transition planning between high school and higher education institutions.

Moreover, not all aspects of IDEA carry on beyond the K-12 education. An example of this is IDEA's requirement of FAPE; although this is a requirement at the primary levels, higher education institutions are not required to provide FAPE to their students (U.S. Department of Education, 2020). Another example is the shift in responsibility for identifying a disability. While IDEA mandates that school districts are responsible for identifying students' disabilities and assessing their needs, at the higher education level that responsibility falls on the individual (U.S. Department of Education, 2020). This transition of ownership to the individual requires them to initiate the conversation regarding need for support or accommodations.

Higher Education Act

The Higher Education Act (HEA) focuses directly on college and post-secondary plans for students with disabilities. According to the National Center for Learning Disabilities, HEA has two main goals to improve outcomes for students with disabilities – increasing access to college and preparing teachers. Given students with disabilities attend college at half the rate of their nondisabled peers, the measures provided in HEA are necessary to address this inequity in access and outcomes (National Center for Learning Disabilities, n.d.). Although this act serves as a foundation for future legislation that aims to increase opportunity, there is much more that needs to be done to produce results that change the current trajectory.

Conclusion

The process of providing students with disabilities access to an education that is of appropriate quality is still a relatively new endeavor. Students with disabilities benefit from the support of family, educators, and many other professionals addressing the inequality that is faced in school. Ultimately, progress has been achieved from persistent advocacy. Bringing the issues faced by students with disabilities in their education to court has evidently led to legislative outcomes that aim to overcome the obstacles faced by these students.

It is evident that although advocacy and representation of students with disabilities has led to meaningful change yet there is still a substantial way to go. Specifically in the context of higher education, legislation needs to better address issues that arise in post-secondary schooling and beyond the K-12 experience. Current legislation provides a variety of safeguards and a foundation that can be used as precedent in the higher education sector but does not directly address the problems that may be occurring at the higher education level that are not apparent in K-12.

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