

The U.S. Individuals with Disabilities Education Act (IDEA): Tracing inclusion and exclusion of the disabled from Ford to Bush II.

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The United States Individuals with Disabilities Education Act (IDEA) is almost 30 years of age. IDEA affords individuals with physical or cognitive disabilities (through age 21) a free appropriate public education, an individualized education plan, and many accommodations in an attempt to include those with disabilities in the educational experience. Throughout its brief history, the party in power has, through amendment of the law, presidential action or inaction, or litigation opened the door to those with disabilities in some cases and supported de facto exclusion in others.

This paper will display a timeline tracing the effects of the legislation, in its various forms, on the disabled populace. All manifestations of the law will be examined: from its origin during the Ford administration; amendments in the George Herbert Walker Bush and Clinton administrations, to reauthorization under the current government. Corresponding litigation brought by advocates and opponents will be dissected as to its effects on education access for those with disabilities. Additionally, the effects of educational reform on students with disabilities will be examined by discussion of the controversial “No Child Left Behind” law. This legislation is touted as a way to insure that all students, including those who are disadvantaged, achieve academic

proficiency. However, some claim that it is poorly funded and unevenly administered, thus leaving the very students it is intended to help on the outside. Finally, the presentation will discuss the 2004 election results and its probable implications on the future of disability education legislation.

Litigation-the grease that aids the squeaky wheel: The idea for disability rights in education did not occur overnight. The civil rights movement of the fifties and sixties did much to extend the quest for equality in education to individuals with disabilities. Many court cases facilitated educationally related disability legislation but two major cases in the U.S. Supreme Court had the greatest impact. One was **Brown vs. the Board of Education** of Topeka, Kansas (1954). This case concerned the “separate but equal” provision concerning racially segregated education. The court determined that segregated facilities resulted in diminished educational opportunities and reduced interaction with those of other backgrounds and ethnicity. This finding resulted in an order ending segregation in the schools and was later used by advocates for individuals with disabilities to end segregation of the disabled in education.

The second landmark case concerned the Pennsylvania Association for Retarded Citizens (PARC) vs. the Commonwealth of Pennsylvania (otherwise known as **PARC vs Penn.**) (1972). This case was brought by the parents of children with Mental Retardation who had been denied access to public schools. The court decided that attendance in a public school, with non-disabled peers, is preferable to placement in a special school class.

Disability Legislation in its infancy: While several laws were passed concerning equality and treatment of individuals with disabilities, three seem to form the basis for the educationally related legislation to come. The first one was the Mental Retardation Facilities and Community Mental Health Centers Construction Act (1963). This law contained funding for research centers and implemented the recommendations of the President's Council on Mental Retardation (Kennedy – D). The **Rehabilitation Act of 1973** (Nixon – R) is considered to be the first civil rights legislation for individuals with disabilities. The section having the most impact from this legislation is **Section 504**. This law required access to public buildings for people with disabilities. It also set the stage for IDEA by providing protection of the rights of individuals with disabilities in public education.

The Education for All Handicapped Children Act (EHA)- (1975) Passed during the Ford Administration (R) by a Democratically controlled congress, the purpose of this law was fourfold:

- 1.) To ensure that all children with disabilities have available to them a free, appropriate, public education that includes special education and related services designed to meet their unique need;
- 2.) To ensure that the rights of children with disabilities and their parents are protected;
- 3.) To assist States and localities to provide for the education of all children with disabilities; and

4.) To assess and ensure the effectiveness of efforts to educate those children.

The parts (or subchapters) of this law stressed the following principles:

- a. Zero reject – All children with disabilities, no matter the severity or type of their disability, are entitled to receive a free, appropriate, public education.
- b. Nondiscriminatory assessment – Tests conducted in the child’s native language or appropriate mode of communication, validated for the purpose for which they are being used, and administered by trained personnel.
- c. Procedural Due Process – procedures which protect both parents and school districts when disagreements occur related to identification and program development for children with disabilities.
- d. Parental participation – includes providing written permission for testing and evaluation, participating in the individualized education program, participating in the annual review process, and advocating for their child.
- e. Least restrictive environment – based on the assumption that the preferred placement for students with disabilities is the regular classroom. Other placements on the continuum of alternative placements should only be accessed when success in the regular class cannot be achieved without significant alterations.
- f. Individualized Education Program – A written statement for a child with a disability that both a process for an appropriate program and a document

that directs the education of the child.

These principles have remained as the basic foundation of all disability education legislation to follow. The Education for the Handicapped Act (P.L. 94-142) was to remain in effect for 10 years. Afterwards, in order to continue, it would have to be reauthorized every 3 years. The first reauthorization took place in 1986, during the Reagan administration (R) and a split congress (Democrat House and Republican Senate). This law (P. L. 99-457) would become known as The Infants and Toddlers Act.

Education of the Handicapped Act Amendments of 1986 (P.L. 99-457 – “Infants and Toddlers Act”: This legislation was designed as an expansion to include services to children ages 3 through 5 and also provided funding for planning and implementation of early intervention programs for young children with special needs aged 0-3. While this expansion provided little in the way of detail or additional funding, it served the purpose of reauthorizing the original EHA legislation (P.L. 94-142).

The Individuals with Disabilities Education Act (IDEA)- (P.L. 101-476): This next reauthorization, again served as an expansion of rights and services. Passed during the George H.W. Bush administration (Bush I – R) by a Congress that was controlled by the Democrats, this legislation, first of all, changed the name of the original legislation (Education for the Handicapped Act) to the above title (IDEA). Among other features of the law was the expansion of categories of eligibility to include Autism and Traumatic Brain Injury (TBI). Added were the services for transition to post school environments

and assistive technology. Related services such as rehabilitative counseling and social work were also added. Finally, all language in the original law and its subsequent reauthorizations to this point were changed to reflect “person first” terminology.

The IDEA Amendments of 1997 (P.L. 105-17): The most recent reauthorization of IDEA occurred during the Clinton (D) administration, and passed by a Republican controlled Congress. This amendment at first seemed as if it was written to involve the student with disabilities more in the general education curriculum. However, one could see the early signs of the educational reform movement in its mandates on school discipline and standardized testing. It offered many new protections to students and parents in the form of increased information to be included in the Individualized Education Plan (IEP), and the requirement for states to provide mediation for parents and schools to resolve differences about placement. It also provided flexible funding options for school districts to share the costs of assistive technology devices, supplementary aids and services, and transition services with other agencies. The reform movement’s fingerprints could be seen, however, in new requirements for students with disabilities to take part in state and local assessments and in allowing school administrators more flexibility in dealing with students with disabilities who perceivably endanger teachers, administrators, other students, or themselves.

Elementary and Secondary Education Act of 2001 (P.L. 107-110- No Child Left Behind): This legislation was not specifically designed to address individuals with disabilities, nor was it a part of the IDEA reauthorization process. However, it is mentioned because of

the widespread impact it is already having on students with disabilities, funding, and its' influence on the current reauthorization bill just passed by Congress. This law, enacted during the administration of George W. Bush (Bush II- R) and passed by a Republican controlled congress called for increased accountability by testing ALL students with a goal of 100% proficiency in Math and Reading by 2012. Additionally, it measured schools in terms of Adequate Yearly Progress based on income levels and racial diversity. Finally, it contains a "highly qualified teacher provision" that is being interpreted in such a way that special education teachers will not be allowed to be the teacher of record in core academic areas unless they have specialized training in that core area. This is being widely interpreted by states with some requiring minimal professional development training on one extreme to additional certification on the other. This bill has resulted in lawsuits by the states contending that that the Federal government does not provide enough funding to carry out its provisions. Others contend that the testing and adequate yearly progress provisions are unfair and penalize poorer school districts. Finally, teacher unions, school districts, and teacher preparation universities are all protesting the "highly qualified provision". This bill remains a work in progress as the new reauthorization of IDEA passed Congress and the Bush presidency begins its second term.

IDEA Reauthorization of 2004 Individuals with Disabilities Education Improvement Act

(IDEIA) (P.L. 108-446): This current reauthorization promises to be the most contentious, and perhaps the most damaging to students with disabilities in terms of services denied, and increased accountability requirements. This law links IDEA with No

Child Left Behind in terms of testing and funding. Major features of the law, passed by Congress the day this paper was initially presented at the Society of the History of Education (UK) conference, includes the following:

- Transition services to begin at age 14 (previously 16)
- A redefinition of Learning Disabilities to deemphasize the link between potential and performance.
- Stronger discipline language.
- Protection for school districts against “frivolous” lawsuits.
- More flexibility for states in spending Federal money.
- Links with NCLB in the areas of testing and “highly qualified” teachers

Summary and Conclusions- The Devil is in the Details: As one looks through the various bills, one sees that it has been passed, in its various forms, regardless of who was in the White House (it has never been vetoed) or which party controlled Congress, thus leading one to believe that this bill has consistently been a bipartisan effort (after all, who would want to be on record as voting against a bill for children with disabilities). However, when looking more closely into the battles which ensued during the legislative process one notices the following:

- The original bill called for the Federal share of funding to be 40%
- Although it has consistently risen since 1975, it is still only at 19%, even in face of rising requirements in services and accountability assessment.

- More services tend to be written into the laws when the congress is controlled by Democrats, more school discipline provisions and accountability demanded when Republicans are in control.
- Democrats traditionally have called for full funding for IDEA, one Republican Senator even left the party in frustration over its stance towards full funding (Jeffords- Vermont (I)).

The future – Where do we go from here? President Bush has appointed his new Secretary of Education, Margaret Spellings, to replace Rodney Paige. Ms. Spellings was the principal architect of No Child Left Behind and was Bush's chief education advisor when he was governor of Texas. In her initial press conference as Secretary of Education, she indicated that she intended to further advocate the mandate of NCLB. The Individuals with Disabilities Education Act was not mentioned. Considering the gains that the Republicans have made in both the House and Senate in the 2004 elections, it is no wonder that the new reauthorization is high on accountability, testing, and discipline, but low on funding and services. Given the difficult times that lie ahead in the federal arena, disability advocates would be better served to concentrate their efforts in the states and through the courts. When one reads the reactions to this legislation by parents, advocacy groups, and learned societies associated with education for those with disabilities, it appears that the courts will indeed be busy over the next few years.

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