

## CHAPTER 3

# A SHORT HISTORY OF SPECIAL EDUCATION LAW

To understand the battles being fought today for children with disabilities, it is important to understand the history and traditions associated with public schools and special education.

### Common Schools Teach Common Values

During the last century, waves of poor, non-English speaking, Catholic and Jewish immigrants poured into the United States. Citizens were afraid that these new immigrants would bring class hatreds, religious intolerance, crime, and violence to America. Social and political leaders searched for ways to “reach down into the lower portions of the population and teach children to share the values, ideals and controls help by the rest of society.” (Church, 81)

An educational reformer named Horace Mann proposed a solution to these social problems. He recommended that communities establish common schools funded by tax dollars. He believed that when children from different social, religious and economic backgrounds were educated together, they would learn to accept and respect each other. Common schools taught common values that included self-discipline and tolerance for others. These common schools would socialize children, improve interpersonal relationships, and improve social conditions. (Cremin, 183-194)

### Early Special Education Programs

The first special education programs were delinquency prevention programs for “at risk” children who lived in urban slums. Urban school districts designed manual training classes as a supplement to their general education programs. By 1890, hundreds of thousands of children were learning carpentry, metal work, sewing, cooking and drawing in manual classes. Children were also taught social values in these classes.

Manual training was a way of teaching children industriousness, and clearing up their character problems . . . the appeal of this training was the belief that it would attract children to school, especially poor children, so their morals could be reshaped . . . Manual training would teach children to be industrious and prevent the idleness that accounted for the increasing crime rate . . . it could teach self discipline and will power. (Cremin, 220-222)

Early special education programs also focused on the “moral training” of African-American children. (Cremin, 192-226) When the Individuals with Disabilities Act was reauthorized:

In 1997, Congress found that poor African-American children continue to be over-represented in special education classes:

- (8) (A) Greater efforts are needed to prevent the intensification of problems connected with **mislabeled and high dropout rates among minority children with disabilities.**
- (B) More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.
- (C) **Poor African-American children** are **2.3** times more likely to be identified by their teacher as having **mental retardation** than their white counterpart. (20 U.S.C. §1400)

### Compulsory Attendance Laws

For public schools to succeed in the mission of socializing children, all children had to attend school. Poor children attended school sporadically, quit early, or didn’t enter school at all. Public school authorities lobbied their legislatures for compulsory school attendance laws. Compulsory attendance laws gave school officials the power to prosecute parents legally if they failed to send their children to school. (Sperry, et. al., 139-145; Cremin; *Brown v. Board of Education*, 347 U.S. 483 (1954))

## Handicapped Children Excluded

Until 1975, handicapped children were often excluded from school. When allowed to attend, children with many different disabilities were often lumped together in generic special education classes. Because schools segregated children with disabilities from “normal” children, special education classes were often held in undesirable, out-of-the-way places like trailers and school basements.

Despite compulsory attendance laws, most states allowed school authorities to exclude children if they believed that the child would not benefit from education or if the child’s presence would be disruptive to others, i.e., to non-disabled children and teachers. In 1958, the Illinois Supreme Court held that compulsory education laws did not apply to children with mental impairments. Until 1969, it was a crime in North Carolina for a parent to try to enroll a handicapped child in public school after the child had been excluded. (Weber, “Statutory Background”)

## Brown v. Board of Education, 347 U.S. 483 (1954)

In 1954, the U.S. Supreme Court issued a landmark civil rights decision in *Brown v. Board of Education*, 347 U.S. 483 (1954). In *Brown*, school children from four states argued that segregated public schools were inherently unequal and deprived them of equal protection of the laws. The Supreme Court found that African-American children had the right to equal educational opportunities and that segregated schools “have no place in the field of public education.” The court wrote that:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. 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 which must be made available to all on equal terms.

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other “tangible” factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

In *Brown*, the Supreme Court described the emotional impact that segregation has on children, especially when segregation “has the sanction of the law:”

To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:

Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racially integrated school system.

After the decision in *Brown*, parents of children with disabilities began to bring lawsuits against their school districts for excluding or segregating children with disabilities. The parents argued that by excluding these children, schools were discriminating against the children because of their disabilities.

## P.A.R.C. and Mills

During the early 1970s, two cases were catalysts in special education law: *Pennsylvania Assn. for Retarded Children v. Commonwealth* 334 F. Supp. 1257 (E.D. Pa 1971) and 343 F. Supp. 279 (E. D. Pa. 1972) and *Mills v. Board of Education of District of Columbia*, 348 F. Supp. 866 (D. DC 1972).

*P.A.R.C.* dealt with the exclusion of mentally retarded children from public schools. *Mills* involved the practice of suspending, expelling and excluding “exceptional” children from the District of Columbia public schools.

In *Mills*, the Court found that:

The genesis of this case is found (1) in the failure of the District of Columbia to provide publicly supported education and training to plaintiffs and other “exceptional” children, members of their class, and (2) the excluding, suspending, expelling, reassigning and transferring of “exceptional” children from regular public school classes without affording them due process of law.

In May, 1972, legislation was introduced in Congress after several:

. . . landmark court cases establishing in law the right to education for all handicapped children . . . In 1954, the Supreme Court of the United States (in *Brown v. Board of Education*) established the principle that all children be guaranteed equal educational opportunity. The Court stated “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 . . . is a right which must be made available to all on equal terms.” (At 1430 in the legislative history.)

## Congressional Findings

### Millions of “Invisible Children”

Congress launched an investigation into the status of children with handicaps and disabilities. They found that millions of children were not receiving an appropriate education:

Yet, the most recent statistics provided by the Bureau of Education for the Handicapped estimated that of the more than 8 million children . . . with handicapping conditions requiring special education and related services, only 3.9 million such children are receiving an appropriate education. 1.75 million handicapped children are receiving **no educational services at all**, and 2.5 million handicapped children are receiving **an inappropriate education**. (At 1432)

### Social and Economic Costs

Congress described the social and economic costs of failing to educate disabled children:

The long-range implications of these statistics are that public agencies and taxpayers will spend billions of dollars over the lifetimes of these individuals to maintain such persons as dependents and in a minimally acceptable lifestyle. With proper education services, many would be able to become **productive citizens, contributing to society** instead of being forced to remain burdens. Others, through such services, would increase their **independence**, thus reducing their dependence on society. (At 1433)

There is no pride in being forced to receive economic assistance. Not only does this have negative effects upon the handicapped person, but it has far-reaching effects for such person’s family. (At 1433)

Providing educational services will ensure against persons needlessly being forced into institutional settings. One need only look at public residential institutions to find thousands of persons whose families are no longer able to care for them and who themselves have received no educational services. Billions of dollars are expended each year to maintain persons in these subhuman conditions . . . (At 1433)

Parents of handicapped children all too frequently are not able to advocate the rights of their children because they have been **erroneously led to believe** that their children will not be able to lead meaningful lives . . . It should not . . . be necessary for parents throughout the country to continue utilizing the courts to assure themselves a remedy . . . (At 1433)

### Public Law 94-142

On November 19, 1975, Public Law 94-142 was enacted into law. Public Law 94-142 was called the Education for All Handicapped Children Act of 1975. When the law was reauthorized in 1990, it was renamed the Individuals with Disabilities Education Act (IDEA).

By passing Public Law 94-142, Congress intended that all handicapped children would “have a right to education, and to establish a process by which State and local educational agencies may be held **accountable** for providing educational services for all handicapped children.” (U.S.C.C.A.N. 1975 p.1427)

The Individuals with Disabilities Education Act is in the United States Code, Volume 20 U.S.C. § 1400. The regulations are in the Code of Federal Regulations, Volume 34, beginning at Part 300. The legislative history of the law is in the *United States Code Congressional and Administrative News 1975* beginning at page 1425 (U.S.C.C.A.N. 1975, p. 1425).

The term “handicapped” was used in Public Law 94-142. The term “handicapped” was replaced by the term “child with a disability” in the statute and regulations.

### Board of Education v. Rowley, 458 U.S. 176 (1982)

In 1982, the U. S. Supreme Court issued the first decision in a special education case in *Board of Education v. Rowley*, 458 U.S. 176. The decision includes a comprehensive analysis of the evolution of special education law. This is an excellent source of information and should be read carefully by the student who is doing research about special education law. The analysis begins in the text of the decision and continues into the footnotes. (The *Rowley* decision is the caselaw section of **Wrightslaw: Special Education Law**)

### References:

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Sperry, David, Philip T.K. Daniel, Dixie Snow Huefner, E. Gordon Gee. (1998) *Education Law and the Public Schools: A Compendium*. Norwood, MA: Christopher-Gordon Publishers, Inc.

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*United States Code Congressional and Administrative News 1975* (U.S.C.C.A.N. 1975)