

COMPETENCY 1.0 KNOWLEDGE OF FOUNDATIONS OF EXCEPTIONAL STUDENT EDUCATION

Skill 1.1 Identify state and federal legislation and case law that have affected the education of students with disabilities

Background: The U.S. Constitution does not specify protection for education. However, all states provide education, and thus individuals are guaranteed protection and due process under the 14th Amendment. The basic source of law for special education is the Individuals with Disabilities Education Act (IDEA) and its accompanying regulations. IDEA represents the latest phase in the philosophy of educating children with disabilities. Initially, children with disabilities often did not go to school. When they did, they were segregated into special classes in order to avoid disrupting the regular class. Their education usually consisted of simple academics and later, training for manual jobs.

By the mid-1900s, advocates for handicapped children argued that segregation was inherently unequal. By the time of P.L. 94-142, about half of the estimated 8 million handicapped children in the U.S. were either not being appropriately served in school or were excluded from schooling altogether. There were a disproportionate number of minority children placed in special programs. Identification and placement practices and procedures were inconsistent, and parental involvement was generally not encouraged. After segregation on the basis of race was declared unconstitutional in Brown v. Board of Education, parents and other advocates filed similar lawsuits on behalf of children with handicaps. The culmination of their efforts resulted in P.L. 94-142. This section is a brief summary of that law and other major legislation that affect the manner in which special education services are delivered to handicapped children.

Significant Legislation with an Impact on Exceptional Student Education

Brown v. Board of Education, 1954: While this case specifically addressed the inequality of “separate but equal” facilities on the basis of race, the concept that segregation was inherently unequal—even if facilities were provided—was later applied to handicapping conditions.

Diana v. the State Board of Education, 1970: This case resulted in the decision that all children must be tested in their native language.

Wyatt v. Stickney, 1971: This case established the right to adequate treatment (education) for institutionalized persons with mental retardation.

Pennsylvania Association for Retarded Citizens (PARC) v. Commonwealth of Pennsylvania, 1972: Special Education was guaranteed to children with mental retardation. The victory in this case sparked other court cases for children with other disabilities.

Mills v. Board of Education of the District of Columbia, 1972: The right to special education was extended to all children with disabilities, not just mentally retarded children. Judgments in PARC and Mills paved the way for P.L. 94-142.

Public Law 93-112 (Rehabilitation Amendments of 1973): The first comprehensive federal statute to address specifically the rights of disabled youth. It prohibited illegal discrimination in education, employment, or housing on the basis of a disability.

Section 504, Rehabilitation Act of 1973: Section 504 expands an older law by extending its protection to other areas that receive federal assistance, such as education. Protected individuals must (a) have a physical or mental impairment that substantially limits one or more major life activities, such as self-care, walking, seeing, breathing, working, or learning; (b) have a record of such an impairment; or (c) be regarded as having such an impairment. A disability in itself is not sufficient grounds for a complaint of discrimination. The person must be otherwise qualified, or able to meet, the requirements of the program in question.

Public Law 93-380 (Education Amendments of 1974): Public Law 94-142 is the funding portion of this act. It required states to provide full educational opportunities for children with disabilities. It addressed identification, fair evaluation, alternative placements, due process procedures, and free, appropriate public education.

Public Law 94-142 (Education for all Handicapped Children Act), 1975: This law provided for a free, appropriate public education for all children with disabilities, defined special education and related services, and imposed rigid guidelines on the provisions of those services. (Refer to Objectives 2 and 3 in this section). It paralleled the provision for a free and appropriate public education in Section in 504 of Public Law 94-142 and extended these services to preschool children with disabilities (ages 3-5) through provisions to preschool incentive grants.

The philosophy behind these pieces of legislation is that education is to be provided to all children 6-18 who meet age eligibility requirements. All children are assumed capable of benefiting from education. For children with severe or profound handicaps, "education" may be interpreted to include training in basic self-help skills and vocational training, as well as academics.

The principles of IDEA also incorporate the concept of "normalization." Within this concept, persons with disabilities are allowed access to everyday patterns and conditions of life that are as close as possible or equal to their non-disabled peers. There are seven fundamental provisions of IDEA.

1. **Free Appropriate Public Education (FAPE).** Special Education services are to be provided at no cost to students or their families. The federal and state governments share any additional costs. FAPE also requires that education be appropriate to the individual needs of the students.

2. **Notification and procedural rights for parents.** These include:

- Right to examine records and obtain independent evaluations.
- Right to receive a clearly-written notice that states the results of the school's evaluation of their child and whether the child meets eligibility requirements for placement or continuation of special services.
- Parents who disagree with the school's decision may request a **due process** hearing and a **judicial hearing** if they do not receive satisfaction through due process.

3. **Identification and services to all children:** States must conduct public outreach programs to seek out and identify children who may need services.

4. **Necessary related services:** Developmental, corrective, and other support services that make it possible for a student to benefit from special education services must be provided. These may include speech, recreation, or physical therapy.

5. **Individualized assessments:** Evaluations and tests must be nondiscriminatory and individualized.

6. **Individualized Education Plans:** Each student receiving special education services must have an **individualized education plan** developed at a meeting that is attended by a qualified representative of the local education agency (LEA). Others who should attend would be the proposed special education teachers, mainstream teachers, parents, and, when appropriate, the student.

7. **Least Restrictive Environment (LRE):** There is no simple definition of LRE. LRE differs with each child's needs. LRE means that the student is placed in an environment that is not dangerous or overly controlling or intrusive. The student should be given opportunities to experience what other peers of similar mental or chronological age are doing. Finally, LRE should be the environment that is the most integrated and normalized for the student's strengths and weaknesses. LRE for one child may be a regular classroom with support services, while LRE for another may be a self-contained classroom in a special school.

Goss v. Lopez, 1975: This case ruled that the state could not deny a student education without following due process. While this decision is not based on a special education issue, the process of school suspension and expulsion is obviously critical in assuring an appropriate public education to children with disabilities.

Public Law 95-56 (Gifted and Talented Children's Act), 1978: This case defined the gifted and talented population, and focused upon this exceptionally category, which was not included in Public Law 94-142.

Larry P. v. Riles, 1979: This case ordered the reevaluation of black students enrolled in classes for educable mental retardation (EMR) and enjoined the California State Department of Education from the use of intelligence tests in subsequent EMR placement decisions.

Parents in Action on Special Education (PASE) v. Hannon, 1980: This case ruled that IQ tests are necessarily biased against ethnic and racial subcultures.

Board of Education v. Rowley, 1982: Amy Rowley was a deaf elementary school student whose parents rejected their school district's proposal to provide a tutor and speech therapist services to supplement their daughter's instruction in the regular classroom. Her parents insisted on an interpreter even though Amy was making satisfactory social, academic, and educational progress without one. In deciding in favor of the school district, the Supreme Court ruled that school districts must provide those services that permit a student with disabilities to benefit from instruction. Essentially, the court ruled that the states are obligated to provide a "basic floor of opportunity" that is reasonable to allow the child to benefit from social education.

Public Law 98-199 (Education of the Handicapped Act [EHA] Amendments), 1983: Public Law 94-142 was amended to provide added emphasis on parental education and preschool, secondary, and post-secondary programs for children and youth with disabilities.

Irving Independent School District v. Tatro, 1984: IDEA lists health services as one of the "related services" that schools are mandated to provide to exceptional students. Amber Tatro, who had spina bifida, required the insertion of a catheter on a regular schedule in order to empty her bladder. The issue was specifically over the classification of clean, intermittent catheterization (CIC) as a medical service (not covered under IDEA) or a "related health service" which would be covered. In this instance, the catheterization was not declared a medical service, but a "related service" necessary for the student to have in order to benefit from special education. The school district was obliged to provide the service. The Tatro case has implications for students with other medical impairments who may need services to allow them to attend classes at the school.

Smith v. Robinson, 1984: This 1984 case concerned reimbursement of attorney's fees for parents who win litigation under IDEA. At the time of this case, IDEA did not provide for such reimbursement. Following this ruling, Congress passed a law awarding attorneys' fees to parents who win their litigation.

Public Law 99-372 (Handicapped Children's Protection Act of 1985): This law allowed parents who are unsuccessful in due process hearings or reviews to seek recovery of attorneys' fees.

P.L. 99-457, 1986: Beginning with the 1991-1992 school year, special education programs were required for children ages 3-5, with most states offering outreach programs to identify children with special needs from birth to age 3. In place of or in addition to an annual IEP, the entire family's needs are addressed by an Individual Family Service Plan (IFSP), which is reviewed with the family every six months.

Public Law 99-457 (Education of the Handicapped Act Amendments of 1986): It reauthorized existing EHA, amended Public Law 94-142 to include financial incentives for states to educate children 3 to 5 years old by the 1990-1991 school year, and established incentive grants to promote programs serving infants with disabilities (birth to 2 years of age).

Public Law 99-506 (Rehabilitation Act Amendments of 1986): It authorized formula grant funds for the development of supported employment demonstration projects.

School Board of Nassau County v. Arline, 1987: This case established that contagious diseases are a disability under Section 504 of the Rehabilitation Act and that people with them are protected from discrimination if otherwise qualified (actual risk to health and safety to others make persons unqualified).

Honig v. Doe, 1988: Essentially, students may not be denied education or exclusion from school when their misbehavior is related to their handicap. The "stay put" provision of IDEA allows students to remain in their current educational setting pending the outcome of administrative or judicial hearings. In the case of behavior that is a danger to the student or to others, the court allows school districts to apply their normal procedures for dealing with dangerous behavior, such as time-out, loss of privileges, detention, or study carrels. Where the student has presented an immediate threat to others, that student maybe temporarily suspended for up to 10 school days to give the school and the parents time to review the IEP and discuss possible alternatives to the current placement.

Americans with Disabilities Act (ADA), 1990: This law bars discrimination in employment, transportation, public accommodations, and telecommunications in all aspects of life, not just those receiving federal funding. Title II and Title III are applicable to special education because they cover the private sector, such as private schools, and require access to public accommodations. New and remodeled public buildings, transportation vehicles, and telephone systems now must be accessible to the handicapped. ADA also protects individuals with contagious diseases, such as AIDS, from discrimination.

Public Law 101-336 (American with Disabilities Act ADA), 1990: This law was patterned after Section 504 of the Rehabilitation Act of 1973 and gives civil rights protection to individuals with disabilities in private sector employment, all public services, public accommodations, transportation, and telecommunications.

In 1990, the U.S. House of Representatives opened for citizen comment the issue of a separate exceptionality category for students with attention deficit disorders. The issue was tabled without legislative action.

Public Law 101-476 (Individuals with Disabilities Education Act/IDEA), 1990: Reauthorized and renamed existing EHA. This amendment to EHA changed the term “handicapped” to “disability,” expanded related services, and required individual education programs (IEPs) to contain transitional goals and objectives for adolescents (ages 16 and above, special situations).

Florence County School Dist Four v. Shannon Carter, 1993: This case established that when a school district does not provide FAPE for a student with a disability, the parents may seek reimbursement for private schooling. This decision has encouraged districts to be more inclusive of students with autism who receive ABA/Lovaas therapy.

IDEA 97 reauthorization: This amendment retains the major provisions of previous federal laws and also includes modifications to the law. Some of the changes include: participation of students with disabilities in statewide assessment programs with accommodations when required; changes to the IEP with emphasis on students with disabilities participating in the general curriculum and regular education teachers taking part in developing the IEP; lowering the age to begin focusing on transition service needs from 16 to 14; and guarantees that no student with a disability is deprived of continuing educational services because of behavior.

No Child Left Behind Act (NCLB), 2002: No Child Left Behind, Public Law 107-110, was signed on January 8, 2002. It addresses accountability of school personnel for student achievement with the expectation that every child will demonstrate proficiency in reading, math, and science. The first full wave of accountability will be in 12 years when children who attended school under NCLB graduate, but the process to meet that accountability begins now. In fact, as students progress through the school system, testing will show if an individual teacher has effectively met the needs of his/her students. Through testing, each student's adequate yearly progress, or lack thereof, will be tracked.

NCLB affects regular and special education students, gifted students and slow learners, and children of every ethnicity, culture and environment. NCLB is a document that encompasses every American educator and student.

Educators are affected as follows. Elementary teachers of grades K-3 are responsible for teaching reading and using different, scientific-based approaches as needed. Elementary teachers of upper grades will teach reading, math and science. Middle and high school teachers will teach to new, higher standards. Sometimes, they will have the task of playing catch up with students who did not have adequate education in earlier grades.

Special educators are responsible for teaching students to a level of comparable proficiency as their non-disabled peers. This will raise the bar of academic expectations throughout the grades. For some students with disabilities, the criteria for getting a diploma will be more difficult. Although a small percentage of students with disabilities will need alternate assessments, they will still need to meet grade-appropriate goals.

In order for special education teachers to meet the professional criteria of this act, they must be *highly qualified*, that is certified or licensed in their area of special education, and show proof of a specific level of professional development in the core subjects that they teach. As special education teachers receive specific education in the core subjects they teach, they will be better prepared to teach to the same level of learning standards as the general education teacher.

M.L. v. Federal Way School District (WA) in the Ninth Circuit Court of Appeals, 2004: This case ruled that absence of a regular education teacher on an IEP team was a serious procedural error.

IDEA 2004 reauthorization: The second revision of IDEA occurred in 2004. IDEA was reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA 2004) and is commonly referred to as IDEA 2004. IDEA 2004 was effective July 1, 2005.

It was the intention to improve IDEA by adding the philosophy/understanding that special education students need preparation for further study beyond the high school setting by teaching compensatory methods. Accordingly, IDEA 2004 provided a close tie to PL 89-10, the Elementary and Special Education Act of 1965, and stated that students with special needs should have maximum access to the general curriculum. This was defined as the amount for an individual student to reach his/her fullest potential. Full inclusion was stated not to be the only option by which to achieve this and specified that skills should be taught to help students compensate later in life in cases where inclusion was not the best setting.

IDEA 2004 added a new requirement for special education teachers on the secondary level, enforcing NCLBs "Highly Qualified" requirements in the subject area of their curriculum. The rewording in this part of IDEA states that they shall be "no less qualified" than teachers in the core areas.

Free and Appropriate Public Education (FAPE) was revised by mandating that students have maximum access to appropriate general education. Additionally, LRE placement for those students with disabilities must have the same school placement rights as those students who are not disabled. IDEA 2004 recognizes that due to the nature of some disabilities, appropriate education may vary in the amount of participation/placement in the general education setting. For some students, FAPE will mean a choice as to the type of educational institution they attend (private school for example), any of which must provide the special education services deemed necessary for the student through the IEP.

The definition of *assistive technology devices* was amended to exclude devices that are surgically implanted (i.e., cochlear implants) and clarified that students with assistive technology devices shall not be prevented from having special education services. Assistive technology devices may need to be monitored by school personnel, but schools are not responsible for the surgical implantation or replacement of such devices.

Child with a disability, the term used for children ages 3-9 with a developmental delay, now has been changed to allow for the inclusion of Tourettes Syndrome.

IDEA 2004 recognized that all states must follow the National Instructional Materials Accessibility Standards, which states that students who need materials in a certain form will get those at the same time their non-disabled peers receive their materials. Teacher recognition of this standard is important.

Changes in Requirements for Evaluations

The time allowance between the request for an initial evaluation and the determination of whether or not a disability is present has been changed to state that the finding/determination must occur within 60 calendar days of the request. This is a significant change as previously it was interpreted to mean 60 school days. Parental consent is also required for evaluations and prior to the start of special education services.

No single assessment or measurement tool may now be used to determine special education qualification. Assessments and measurements used should be in *language and form* that will give the most accurate picture of the child's abilities.

IDEA 2004 recognized that there exists a disproportionate representation of minorities and bilingual students and that pre-service interventions that are *scientifically based on early reading programs, positive behavioral interventions and support, and early intervening services* may prevent some of those children from needing special education services. This understanding has led to a child not being considered to have a disability if he/she has not had appropriate education in math or reading, nor shall a child be considered to have a disability if the reason for his/her delays is that English is a second language.

When determining a specific learning disability, the criteria may or may not use a discrepancy between *achievement and intellectual ability* but whether or not the child responds to scientific, research-based intervention. In general, children who may not have been found eligible for special education (via testing) but are known to need services (via functioning, excluding lack of instruction) are still eligible for special education services. This change now allows input for evaluations to include state and local testing, classroom observation, academic achievement, and related developmental needs.

Changes in Requirements for IEPs

Individualized Education Plans (IEPs) continue to have multiple sections. One section, *present levels*, now addresses *academic achievement and functional performance*. Annual IEP goals must now address the same areas. IEP goals should be aligned to state standards; thus, short-term objectives are not required on every IEP. Students with IEPs must not only participate in regular education programs to the full extent possible, they must also show progress in those programs. This means that goals should be written to reflect academic progress. For students who must participate in alternate assessment, there must be alignment to *alternate achievement standards*. Significant change has also been made in the definition of the IEP team, as it now includes *not less than 1* teacher from each of the areas of special education and regular education be present.

IDEA 2004 recognized that the amount of required paperwork placed upon teachers of students with disabilities should be reduced if possible. For this reason, a pilot program has been developed in which some states will participate using multi-year IEPs. Individual student inclusion in this program will require consent by both the school and the parent.

