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ABSTRACT

Various state and federal laws related to education of the handicapped are outlined to aid state educators in identifying needs and formulating public school policy. Constitutional and statutory law concerning the educational rights of the handicapped are listed, including the Constitution, state constitutions, Public Law 94-142, and Section 504 of the 1973 Rehabilitation Act. The following statutory rights provided in Public Law 94-142 and Section 504 are identified and explained in detail: free appropriate public education, Individualized Education Programs (IEP's), education in the least restrictive environment, fair evaluation, related services, extended school year, sports participation, and fair discipline. Several innovative state provisions are also described. The paper concludes with a list of recommended reading. (LP)

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10. Special Education and the Law

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10. Special Education and the Law

The Issue

Only 10 years ago, public schools routinely excluded handicapped children. Today, state and federal law guarantee these children a free public education. Approximately 4.1 million handicapped children received special education in 1981, at an average cost of \$4,800 per child. The average cost of educating a nonhandicapped child in 1981 was estimated at \$2,200.

Every state now has a special education statute, and two major federal statutes have been enacted. During the past decade, in more than 300 litigated cases, both federal and state courts have extensively interpreted the scope of federal and state law, and generally bolstered the education rights of handicapped children.

The Task Facing State Education Policy Makers

State education leaders must determine how to provide these rights. They must identify the services to which these children are entitled, in the face of court decisions that limit state discretion in what services must be provided.

Another key aspect of special education policy making is defining which children are eligible for these services. The states have adopted diverse definitions of which populations are to be served.

How to pay for multiple services related to the education of handicapped children is a crucial question. Obviously, an accurate identification process is a first step in equitably distributing limited financial resources. In order to benefit from education, some handicapped children require services that in the past often have been delivered by public health or social services agencies. Interagency cooperation is one key to both effective service delivery and efficient financing of special education.

The Legal Context

The education rights of handicapped children derive from a mosaic of constitutional and statutory law.

- o The U.S. Constitution provides relatively permanent protection to all handicapped students in every state.
- o Every state constitution contains language assuring some right to education, along with general guarantees of fairness and equality under law.
- o The Education for All Handicapped Children Act of 1975 (PL 94-142) requires that participating states provide a free appropriate public education to children who require special education because of a handicap.
- o Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibits discrimination against handicapped persons in any federally funded program. Persons are considered handicapped if they have physical or mental impairments that substantially limit at least one of their major life activities.
- o Special education statutes in all states require special education for handicapped children. Some state laws closely track PL 94-142, while others apply to different populations, different age spans, and different handicapping conditions. There are significant disparities among these statutes.

Public attention has focused on the federal statutes. But, if federal requirements were weakened, handicapped students would assert more claims under the state statutes.

Constitutional Rights

In the landmark 1972 court cases of Pennsylvania Association of Retarded Children v. Pennsylvania (PARC) and Mills v. Board of Education (Mills), federal courts heard convincing expert testimony that all children are capable of benefiting from some education, and decided it is irrational for the state to deny education to some of them. In fact, the Congressional perception that states were unconstitutionally excluding handicapped children from schools was based on PARC and Mills, and led directly to the passage of PL 94-142.

Every state constitution guarantees at least some education to handicapped children, even though the courts have interpreted the variably worded state education clauses differently. Furthermore, Massachusetts and Florida's constitutions broadly prohibit discrimination against handicapped persons. Some state courts have required states to justify classifications of handicapped students with exacting proof, while others merely require rational bases for the classification policies.

The due process clause of the U.S. Constitution, as well as similar clauses in state constitutions, sets outside parameters for fairness in the education of all children. It is unconstitutional to base the treatment of handicapped children on stereotypical assumptions. The Constitution also requires notice and opportunity for hearing before any significant change is made in the education of handicapped children -- from the initial classification as handicapped to disciplinary action affecting their placement. Further, the Constitution forbids determinations tainted by racial or cultural bias.

The precise outlines of constitutional protection have yet to emerge, since most litigation focuses instead on statutes. Nevertheless, federal constitutional law continues to be a baseline with which all states must comply.

Statutory Rights in a Nutshell

Whereas many state special education statutes, as well as PL 94-142, specify numerous rights, Section 504 simply mandates that the services handicapped children receive be as good as those received by non-handicapped children. Like state civil rights statutes, it does not require extra benefits or affirmative action for the handicapped. PL 94-142 and some state special education statutes do mandate services for

handicapped children that nonhandicapped children are not entitled to. Some of these state statutes are far-reaching, others are modest. Some are very prescriptive while others are general, even vague. Thus, the specific rights discussed below are not necessarily common to all statutes.

o The Right to a Free Appropriate Public Education

This right is at the heart of approximately two-thirds of the state special education statutes, as well as PL 94-142. The U.S. Supreme Court interpreted the term in Board of Education of Hudson Central School District v. Rowley to mean an individualized education program "reasonably calculated to enable the child to receive educational benefits," but expressly denied that appropriate meant equal, and deferred to school policy within the parameters of law. Rowley is likely to influence state courts. Although the federal term "appropriate" does not require a potential-maximizing education, some state special education statutes do use language requiring schools to "maximize the capabilities of handicapped children." The legal effect of such language is unclear. One state high court, for example, ruled that such language "does not require the 'best' or 'maximum' program in the sense of an unlimited commitment of resources and effort to meet the needs of each handicapped child."

o The Right to an Individualized Education Program (IEP)

The Individualized Education Program (IEP) gives content to "appropriate" education. Many state statutes, like PL 94-142, require that every handicapped child be given an IEP. There has been substantial litigation about the content of these plans.

o The Right to Be Educated in the Least Restrictive Environment

A recurring flaw found in some IEP's has been inadequate provision for contact with nonhandicapped children. About half the state special education statutes require that the child be educated in the the "least restrictive environment" appropriate to his or her needs. This does not amount to a right to be educated in the regular classroom. On occasion, placement in a regular classroom will be outweighed by other physical factors, such as sound medical evidence of risk to the physical health of other children.

o The Right to a Fair Evaluation

The handicapped child has a right to be classified fairly. To assure this right, PL 94-142 requires the appointment of surrogate parents to represent an abandoned child, validation of tests used for evaluation, the right to an independent evaluation, "stay-put" rules prohibiting a change in placement pending disputes, and the right to impartial review of any disputes. Some state statutes contain similar provisions, but as a group they are much less specific than PL 94-142. However, state administrative regulations often contain such specific provisions.

o Additional Rights

-The Right to Related Services. Schools have been required to provide many other services related to education of the handicapped, such as nonmedical health services, mental health services and private school placements. While PL 94-142 requires such "related services," Section 504 generally does not. State statutes vary considerably. Many, like PL 94-142, also authorize placement in private schools under certain circumstances.

-The Right to an Extended School Year. Since handicapped children are entitled to individualized programs based on actual abilities and needs, they may be entitled to a longer or shorter school year than usual, and special residential placement when needed.

-The Right to Participate in Sports Programs. Here again, the handicapped child is entitled to an individual determination of whether he or she is capable of participating in school sports programs.

-The Right Not to be Disciplined Because of a Handicap. Handicapped children are entitled to procedural safeguards to insure that they are not disciplined for behavior resulting from their handicap.

Innovative State Provisions

Provisions in some state special education laws are particularly innovative for specific issues. New York, for instance, has established a special legal procedure for determining the physical capacity of a student to participate in athletic programs. A number of state statutes (such as

Minnesota, New Hampshire, North Dakota, Oklahoma and Wisconsin) specify that an extended school year must be provided when evidence shows that a summer interruption would result in severe regression, negating a child's ability to benefit from special education. Several state statutes require a student's education to continue during any period in which he has been disciplinarily removed from school (i.e., Connecticut, Minnesota, North Carolina and Oregon). Some states have adopted comprehensive civil rights acts for handicapped persons, such as Michigan's "Handicappers' Civil Rights Act", and other states have broad laws prohibiting discrimination in education institutions (i.e., Louisiana, Minnesota, Montana, North Carolina, New York and Oregon).

The Outlook

Handicapped students have some legal rights based on federal statutes that are not necessarily found in state laws. With these discrepancies in the federal and state laws and with a shrinking national economy, constitutional guarantees may become more significant than statutory law in protecting the rights of handicapped students. Courts have told parents of handicapped children that they have no right "to write a prescription for an ideal education for their child and to have the prescription filled at public expense." But even with fiscal constraints, the courts generally have not accepted inadequate funds as a reason to deprive the handicapped of education.

Recommended Reading List

- Citron, Christiane H., The Rights of Handicapped Students. Denver, Colo.: Education Commission of the States, 1982. \$6.
- McGuire, C. Kent, State and Federal Programs for Special Student Populations. Denver, Colo.: Education Commission of the States, 1982. \$4.
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