

---

# THE FUTURE OF LEARNING DISABILITIES AS FEDERAL LAWS CHANGE AGAIN

---

*Reed Martin*

---

*REED MARTIN, J.D., is an educational consultant at reedmartin.com.*

---

As federal special education laws change once again – with the passage of the 2004 Individuals with Disabilities Education Improvement Act (IDEIA) amendments – what impact is it likely to have for parents, students, teachers, evaluators, school administrators, and the courts? Is it too optimistic to hope that we might learn to avoid some mistakes of the past 35 years and to build on our many successes?

This writer is an attorney who became involved with the field of learning disabilities before special education problems were even being taken into the courtroom. While serving as a legislative assistant to the United States senator who chaired the Senate subcommittee on education as the country began to deal with special education, we realized that we needed to have federal laws and federal oversight of what was happening to these millions of students in state and local programs.

The Elementary and Secondary Education Act passed in 1968 promised to help states and local schools develop “a comprehensive system of personnel development by which we would acquire and disseminate promising educational practices and thereby assure an adequate supply of appropriately trained personnel” (U.S. Code 1412(a)(14), 34 C.F.R. 300.135). The majority of those personnel would learn that students with learning disabilities were about half of the population with disabilities that would be served in the public schools and that they could be as “severely” disabled educationally as many students in other categories of disability.

In 1973 Section 504 of the Rehabilitation Act was finally passed after two presidential vetoes. With the first federal statute supporting rights of students specifically with disabilities, this writer turned to litigation in special education. We were told by the U.S. Department of Education that our Section 504 complaint involving a student with a learning disability as well as other problems was the first in the nation. Our client eventu-

ally got everything we asked for, including an independent evaluation, an IEP meeting (the first in our state), a program tailored to her unique needs, and written reports on her progress.

Our first lawsuit under Section 504 produced the second federal court decision in the country, *Howard S. v Friendswood Indep. School Dist.*, 454 F. Supp. 634 (S.D. TX1978). Our client, a student with learning disabilities, was discriminated against and denied simple accommodations. Many argued that Section 504 dealt only with physical barriers to accessibility, failing to understand that learning disabilities were also covered. In fact, in some procedural ways Section 504 offers stronger protections to parents than the IDEA.

In 1975 The Education for All Handicapped Children Act went into effect, and was later amended to be The Individuals with Disabilities Education Act. I did not imagine that we would need additional federal laws to protect students with learning disabilities, but from 1984 to 1990 I was a member of a task force that developed recommendations that resulted in the Americans with Disabilities Act (ADA). The ADA places many requirements on public schools for accessibility. Thus, Section 504 and ADA complaints and litigation have provided strong support for students with learning disabilities. We have also filed successful complaints under Section 504 and the ADA on behalf of teachers with learning disabilities who faced discrimination in required evaluations and tests.

The initial federal disability statutes began to bring onto school campuses millions of students who had previously been denied admission, particularly children with physical disabilities, serious intellectual disabilities, and conduct that could not be controlled on a regular campus. Elaborate and sometimes costly programs were set up for these students.

If we could create elaborate and costly programs for those populations, why couldn't students with learning

---

disabilities get the rather simple accommodations that could make them successful on a regular campus? What were we missing to bring the population with learning disabilities to the front of the line?

We know what to evaluate for, and that we need to plan an intervention as early as possible. We have had a federal mandate for early intervention for 35 years. We have adopted a federal standard that has proven accurate over years of studies; that is, if your child is “reading to learn” at the third-grade level, he or she will likely graduate with a regular diploma and attempt college, but if the child is still “learning to read” by the end of the third grade, he or she will not likely graduate or attempt college.

But the evaluation for a learning disability is not triggered only by failure. It is designed to determine if the student has a learning disability no matter how well the student is currently performing. What happened to the federal requirement for a “comprehensive system of personnel development by which we acquire and disseminate promising educational practices and thereby assure an adequate supply of appropriately trained personnel”? Where is the training among staff that will help trigger the “identification” process so that we can consider appropriate services?

These avoidances of the clear laws under Section 504, the IDEA and the ADA with regard to early identification, evaluation, and placement have robbed many students of an appropriate program at the appropriate time.

This writer represented a student with learning disabilities in one of the first cases in the nation (*Howard S.* cited above). The student’s inability to correctly get his in-class assignments, which he had to read from the black board, and his difficulty in getting the daily homework and upcoming test assignments, which were called out over the teacher’s shoulder as the students raced out of the room to the next class, caused failure. We asked simply for the in-class and homework assignments to be written on the board during the class so that he could get them copied correctly, but the teacher refused.

The federal judge felt our requests were reasonable and that the teacher’s refusal was not. The school district argued that those problems were not connected directly to the diagnosis of a learning disability, but we argued successfully that a “learning” disability affects every element of the day, at school and after school. To bring a student up to grade level, we got the courts to order compensatory services delivered over the summer break and after school as well as in private schools.

Involvement in so many cases over the years has taught me a lot about what works for students with learning disabilities. This author wrote an *amicus curiae*

(Friend of the Court) brief in a U.S. Supreme Court case, *Burlington School Committee v. Department of Education*, 471 U.S. 359 (1985), in which a parent, with a son who was failing reading, placed his child in a private school over the summer. The entry and exit tests showed that the student came up almost three grade levels over the summer. The next fall the parent asked the public school to adopt the methodology that had proven successful for the young man, but the school refused, expressing the belief that the private school had faked the evaluations to sell its services.

By the end of that school year the student was again several grade levels behind in reading. The next summer the parent again placed the child in the private summer program, saw success, kept him in the private school during the next school year, and finally sued for the expense of the private program. The court found the student’s success to be documented and, therefore, ruled for the parent. We offered to make information on that methodology available to the public school but they refused it.

Chief Justice Rehnquist ruled in the first special education disability case to come before the U.S. Supreme Court that many students with disabilities were “left to fend for themselves in classrooms designed for the education of their nonhandicapped peers,” *Board of Education v. Rowley*, 458 U.S. 191 (1982), and to tailor their education appropriately, the IEP committee must choose “the methodology most suited” to meet that one child’s needs, *Board of Education v. Rowley*, 207.

This writer also did a brief in another case at the U.S. Supreme Court for a student with learning disabilities who was falling further and further behind, *Carter v. Florence County*, 950 F.2d 156 (4th Cir. 1991). The school wrote an IEP that accepted a “goal” of only four-tenths of a grade-level growth in reading and math for each year of instruction, which meant the student would fall further and further behind. The parents’ placement of the student in a private school led to more than one grade level of growth for each year of instruction, and this potential dropout not only graduated from high school but went on to become successful in college. The school district did not see failure as something they were obligated to respond to, but the law requires an “appropriate education,” not abandonment.

The final academic concern of most parents is that their child with learning disabilities will be successful at the college level. The key here is the transition planning required under the ADA, Section 504, and the IDEA, yet many IEP meetings ignore it.

One final warning sign for the future are two new provisions placed in the 2005 IDEIA. One amendment structures a trap door for the IEP meeting or for a medi-

---

ation conference that parents who do not have an attorney present would likely fall through, and that might cause them to permanently lose needed services. Another amendment allows schools to use their public funds to sue parents who have complained about their child's program, and take the parents to court. That intimidation, paid for with public dollars, is likely to spur a wave of very adversarial conduct. Parents might be forced to find and pay attorneys to represent their children against their school district when they argue for a change in their child's program needed to obtain an appropriate public education. If the parents lose, this new amendment could cause them to have to pay the school district's attorney's fees as well as their own attorney's fees.

The sponsors of these new amendments clearly intended them to stifle parent advocacy, but the learning disability movement will not let them. Parents have never given up in their fight to secure appropriate serv-

ices for their children, and they never will. Even with these intentionally punitive and confusing amendments to the IDEIA, we can draw on our history to work together, especially with national, state, and local organizations, to make this new statute even more successful for our students with learning disabilities, their parents, and their teachers. The three federal laws taken together still support us.

We are not trying to give students with learning disabilities an unfair advantage over other students. We are simply trying to afford them the opportunity that other students have. That creed was stated perfectly by Senator Robert Stafford in 1975 on the day the U.S. Senate passed the original Education for All Handicapped Children Act: "This thing that we do, then, is not only an act of law for equality in education, but an act of love for all those *extraordinary* children who wish only to live *ordinary* lives" (*Congressional Record*, November 19, 1975, p. S-37412).