

**THE LEGAL FRAMEWORK FOR INCLUSION OF STUDENTS WITH DISABILITIES:
A COMPARATIVE ANALYSIS OF JAPAN AND THE UNITED STATES**

Mayumi Nagano

Kansai University

Lois A. Weinberg

California State University

Japan faces an educational challenge even after the start of a new special education system (Tokubetsushienkyouiku). This article addresses the legal framework of the special education system in Japan and analyzes the issues needed to be addressed to reinforce the inclusion of children with disabilities in public regular school settings. The analysis uses published documents, including journal and newspaper articles, government notifications, government data, and court rulings, available through university library databases in Japan and the United States. Articles and court cases selected for review were those that highlighted legal issues in special education related to inclusion of children with disabilities in public regular school settings as well as the underlying philosophies of the legal decisions. Three Japanese cases involving students placement in regular schools were reviewed for comparative analysis to depict the differences in standards and underpinning philosophies in the two countries. This article argues that the U.S. special education system can provide some implications for the Japanese special education system.

In this paper, we analyze the extent to which the laws in Japan support the inclusion (i.e., placement in the least restrictive environment) of children with disabilities in regular public schools and compare this legal framework to that of the United States. By focusing on the inclusion of students with disabilities – a main tenet of the legal foundation of the special education system in the United States – the gap between the special education system in Japan and the United States becomes apparent.

In 2007, Japan started the Tokubetsushienkyouiku (Education for Students with Special Needs). The goal of this new system was to meet the individual needs of children with disabilities, similar to the Education for All Handicapped Children Act of 1975 (currently called the Individuals with Disabilities Education Act or IDEA) in the U. S.. In 2006, Japanese education scholar Kazuhiko Ueno (2006) stated that Japan lagged behind the U.S. by 30 years in its program for children with disabilities.

In the U. S., IDEA states a statutory preference for placement of children with disabilities in the least restrictive environment (LRE). IDEA also requires that students with disabilities receive related services (e.g., psychological s, speech and language, orientation and mobility) if such services are required for them to benefit from their educational programs. Court cases such as *Irving Independent School District v. Tatro* (1984) and *Cedar Rapids Community Sch. District v. Garret F.* (1999), have established a legal test, known as the bright-line test, which clarifies the types of related services that school districts are required to provide in order to assure access to a public school (and specifically a regular public school) for children with disabilities who have health-related needs. Other cases, such as *Daniel R. R. v. State Board of Education* (1989) and *Sacramento City Unified School District v. Rachel H.* (1994), have delineated the criteria for examining the appropriateness of a mainstream school or class placement for a child with a disability.

In Japan, parents and students with disabilities are still filing court cases in order to obtain placement in regular neighborhood schools for children who use wheelchairs or have health-related needs. There is no clear standard to examine whether placement in regular schools is the appropriate setting for them. The

placement decision is made solely by the local authorities. Furthermore, in Japan there is no legislation that explicates a clear standard by which necessary services would be provided for children with disabilities in regular school settings. Although inclusion is not stated in public education rulings (i.e. laws, court cases) in Japan, in practice, some inclusion does exist (Jimenez & Ochiai, 2004). If some children, in fact, are being included in regular schools and classes but they are not being provided the necessary supports needed for their success in these settings, there then is the potential risk that the local authorities are simply *dumping* children with disabilities in regular school settings.

Is Japan really 30 years behind? It is no exaggeration to say that Japan is not even standing on the starting line in terms of assuring access to regular school and classroom settings for children with disabilities. If the goal of Tokubetsushienkyouiku is similar to that of IDEA, a comparison of the Japanese special education legal framework to that of the U.S. is likely to be an important step in moving Japan toward more inclusion of children with disabilities in regular school and classroom settings.

Legal Framework of Special Education in Japan

The School Education Act was enacted in Japan in 1947. There was no statement defining what constitutes special education in the Act; however, in the Ministry of Education Establishment Act of 1949, it was stipulated that special education means education provided at special education schools. Later in 1971, the Amendment of the Ministry of Education Act included education provided at special education classes at regular schools (Watanabe, 2004). In 1979 the Compulsory Special Education System started. Before the implementation of this system, many students with disabilities were at home without any schooling. The purpose of the Compulsory Special Education System was to provide public education to all children with disabilities; however, it was designed to educate children with disabilities in special education schools. Nationwide at this time there was debate over whether to *separate or include* children with disabilities in regular public schools. Okamura & Furukawa (1986) stated *the Compulsory Special Education System was regarded as an establishment of a separate education system for children with disabilities, not the assurance of public education for them*. In the 1980's some cases were brought to the court for the purpose of seeking placement of students with disabilities in regular classroom settings; but most cases ended up with reconciliation and the cases were discontinued (Furukawa, 2003).

In 1993, the resource room system was added to the School Education Act, and it became officially possible for children with mild disabilities who spent most of their days in regular classrooms to receive special education services. In 2002, the Ninteishugakusha system was started so that children with severe disabilities could be placed in regular neighborhood schools if the education board determined that they could be appropriately educated in the regular schools. In 2007 Japan started a new system and the name was changed from *special education* to what is known as *special needs education* (*Tokubetsushienkyouiku*). The goal of this new system was to meet the individual needs of children with disabilities. However, the reform ended up with only a slight modification of the former education laws. Shimizu (2004) and Watanabe (2004) have pointed out that the new system still lacks the concept of the rights of students with disabilities, as well as the concept of inclusion. Furukawa (2003) analyzed the legal history of special education in Japan, and stated *Japan has placed emphasis on creating productive people to strengthen the nation in order to compete in the international society*. He also stated that as a result, the government decided to ignore the philosophies of inclusion of children with disabilities and reinforce separate education.

Current Laws Related to Special Education in Japan

The Constitution of Japan

In the Constitution of Japan, there are three articles frequently equated in court cases dealing with inclusion issues: articles 13, 14 and 26. Article 13 stipulates the rights to life, liberty, and the pursuit of happiness. Article 14 prohibits discrimination of political, economic or social relations because of race, creed, sex, social status or family origin. Article 26 stipulates the right of students to receive an equal education that *corresponds to their ability*.

Because there are no specific provisions about the rights of students with disabilities and their parents in the education laws, students with disabilities and their parents often have to file lawsuits based on their constitutional rights. In some cases they have argued their rights based on Article 13, the right to the pursuit of happiness. However, since the right to happiness is not a very specific right it cannot be interpreted as a strong underpinning for the inclusion of students with disabilities. In addition, it must be noted that discrimination against people with disabilities is not included in Article 14, which makes it

even more difficult for students with disabilities and their parents to exercise their right to general education based on this constitutional right. In terms of Article 26, the interpretation of the phrase *correspondent to their abilities* has been discussed by Furukawa (2003) who has pointed out that based on this phrase some education officials argue that separate education is imbedded in the constitution. In *Yamazaki v. Rumoi Board of Education* (1993), the Asahikawa district court ruled that since Article 26 does not provide specific standards on how children with disabilities should be educated, it is difficult to assume that children with disabilities have the right to be educated in regular classroom settings based on this article.

Basic Education Act

The Basic Education Act was amended in 2006. This amendment was to provide more respect for individual students with disabilities; however, some who have analyzed the intent of this amendment indicate that the change was aimed at strengthening the power of government in the education field. Prior to the 2006 amendment, Furukawa (2003) points out the agenda behind this amendment was to strengthen governmental control over public education, and to emphasize academic achievement in public education.

In Article 1 of the Basic Education Act of 2006, the aim of Japanese education is that: *Education shall aim at the full development of personality, striving to nurture the citizens, sound in mind and body By reading this article, the emphasis of education in Japan is placed on striving to nurture the citizens, in both mind and body. To place too much emphasis on sound mind and body has the potential risk of leaving the education of students with disabilities aside* (Furukawa, 2003).

School Education Act

The School Education Act specifies the types of schools that are available in the Japanese education system. It states that *special needs schools provide education to children with visual impairment, hearing impairment, mental disorder, physical disabilities, and health-related needs in order for those children to acquire necessary knowledge and skills to overcome the difficulty in their daily life and promote their independence* (School Education Act, 2009).

Article 74 states that *special needs schools must try to provide advice to regular kindergarten, elementary schools, and secondary schools upon request*. It also states in Article 81 that *in regular kindergarten, elementary schools, and secondary schools, education service can be provided to the children with disabilities who fall into one of these disability categories: mental disorder, physical disabilities, health-related, moderate visual impairment, moderate/mild hearing impairment, and other disabilities*. However, this section is followed by the regulations about special needs classrooms. They state that those schools can establish special needs classrooms to accommodate children with disabilities that are listed in Article 81.

By reading these provisions of the School Education Act, it is obvious that the law assumes that children with disabilities are to be educated in special needs schools or special needs classrooms. In addition, Attention Deficit/Hyperactivity Disorder (ADHD), learning disabilities (LD), and high functioning autism are frequently mentioned in the notifications (i.e. policy statements) of the Ministry of Education, Culture, Sports, Science and Technology; however, they are not included in the categories in this Act. This presents a problem in relation to both identifying children with these high incidence disabilities and providing necessary supports for them in the regular classroom setting.

Enforcement Order for School Education Act

Article 5 of the Enforcement Order for the School Education Act stipulates that *the local education board shall notify the parents of children to be admitted to local elementary schools or middle schools except for children with visual impairment, hearing impairment, mental disorder, physical disabilities, and medical needs whose disabilities are as severe as those listed in Article 22. 3*. Article 5.2 states that for children with severe disabilities that are listed in Article 22, if the local education board agrees that there are special reasons to admit these children and, furthermore, it is considered appropriate for them to be educated in regular public schools, considering their disabilities, their parents then will be notified by the local board of their admission to regular schools (Ninteishugakusha system). This article was added in 2002.

The categories of disabilities that would not be admitted to regular schools unless otherwise agreed to by local education board are specified in Article 22 and listed in Table 1. For those whose disabilities do not

rise to the levels of severity stated above, they still may be excluded from regular public school if they have difficulty in adjusting themselves to social life (Okamura, Shinohara, & Tamada, 2003).

Table 1. Disability Categories List

Categories	Disabilities conditions
Visual impairment	Sight in both eyes less than 03 and with the use of magnifying lenses it is impossible or difficult to recognize letters or shapes
Hearing impairment	Hearing level lower than 60 decibel and with the use of an amplifying ear phone it is impossible or difficult to be engaged in usual conversation
Mental disorder	1. There is a delay in mental development, it is difficult to communicate with others, and need assistance frequently in daily life 2. For those whose mental conditions do not rise to the levels of severity stated above, those who have difficulty adjusting themselves to school life will be included
Physical disabilities	1. Using supplemental equipment, it is impossible or difficult to walk, write, or be engaged in basic everyday errands 2. For those whose physical conditions do not rise to the levels of severity stated above, those who need continuous medical attention will be included
Health-related conditions	1. Having chronic respiratory, kidney, psychological disease, or other sickness on continuous basis which needs medical care and limits daily life activities 2. Having continuously weak body conditions which limit daily life activities

Note. Adapted from Enforcement Order for School Education Act, Article 22.2

By looking at these provisions, it is clear that they are contrary to the IDEAs presumption of mainstreaming children with disabilities in regular schools and classroom settings unless such placement would be inappropriate for the child. Education laws in Japan presume removal of children with disabilities unless regular school placement is exceptionally appropriate for the child.

School Health and Safety Act

The School Health and Safety Act (1959) requires a pre-school health checkup for all children, which is to be conducted no later than Nov. 30th of the prior school year before the children turn six as of April 1st (Article 11). Based on the result of the check up, if a child is considered to have disabilities, the Schooling Guidance Committee is set up by the school education board as stipulated in Article 13. This committee discusses the placement of children with disabilities. This system has played a role in assigning children with disabilities to special schools, and children without disabilities to regular schools (Furukawa, 2003)

Current Special Education System in Japan

According to the 2009 Report of the Ministry of Education, Culture, Sports, Science and Technology, there are 1,026 special needs schools in Japan, including 84 schools for visual impairment, 116 schools for hearing impairment, 619 schools for cognitive disorder, 282 schools for physical disabilities, 124 schools for health-related children. Table 2 shows the number of special needs schools and the students placed in these schools. There are some schools that have students with multiple disability categories. Compulsory education in Japan is in 1st to 9th grades; however, these schools serve children with disabilities from kindergarten through 12th grade. They are self-contained special education schools.

Special classrooms are usually located in regular schools, and they are intended to serve children with milder disabilities than those who are placed in special needs schools. Japan has 40,004 special needs classrooms in elementary and middle schools and 124,166 students were placed there (See Table 3). Special education classrooms do not exist in kindergarten and high schools, and most of the children with disabilities in kindergarten and high schools are encouraged to be placed in special needs schools. At the high school level, there is no compulsory education in Japan and children with disabilities must take entrance examinations to be admitted to regular high schools. If children with disabilities are in regular junior high schools, it is difficult for them to be admitted to special needs high schools because priority is given to students who have finished special needs middle schools. This system makes it harder for children with disabilities and their parents to consider regular junior high school placement.

Table 2. Number of Special Needs Schools in Japan

	No. of schools	No. of classes	No. of students				
			K	Elementary	Jr. High	Sr. High	K-12 total
Visual impairment	84	2,137	274	1,673	1,036	2,816	5,763
Hearing impairment	116	2,703	1,279	3,044	1,798	2,292	8,413
Mental disorder	619	24,450	249	29,631	22,638	44,406	96,942
Physical disabilities	282	11,342	176	13,177	7,759	9,251	30,363
Health-related conditions	124	7,066	45	7,432	5,403	6,054	18,934

Note. Adapted from Japan Ministry of Education, Culture, Sports, Science and Technology, (May 1, 2008). Survey on Tokubetsushienkyouiku.

Table 3. Number of Students Receiving Special Needs Education in Japan

	Compulsory education (1-9)	K-12
Students in special needs schools	60,302 (0.6%)	112,334 (0.7%)
Students in special needs classrooms	124,166 (1.2%)	124,166 (0.8%)
Students receiving services from resource room	45,685 (0.5%)	49,685 (0.3%)
Total no. of students receiving special needs education	234,153 (2.2%)	--
Students who are exempt from compulsory education	58 (0.001%)	--
Total number of students	10,785,303 (100.0%)	15,885,834 (100.0%)

Note. Adapted from Japan Ministry of Education, Culture, Sports, Science and Technology, (May 1, 2008). Survey on Tokubetsushienkyouiku.

Resource rooms are for students who are placed in regular classrooms to receive special education services. Resource rooms usually provide services for children with speech disorders, autism, emotional disturbance, LD, ADHD, mild visual impairment or mild hearing impairment, although there is no legal requirement to provide services to children with LD or ADHD. It is not unusual for resource rooms to be located outside the neighborhood of the regular schools attended by the children with disabilities; therefore, they have to commute to another school to receive the special education services. A very small number of children with physical disabilities receive services from resource rooms.

Table 3 shows the ratio of students receiving special needs education. The ratio of students with disabilities is only 2.2% of the total students in compulsory education. Among those students receiving special needs education services, 25.8% were placed in special needs schools, 53.0% were in special classrooms, 21.2% were receiving services from resource rooms. This means that 78.8% of children with disabilities are not placed in regular classroom settings.

In the new system of Tokubetsushienkyouiku started in 2007, students with LD, ADHD, and high functioning autism who are placed in regular classrooms should receive special needs education.

According to the survey conducted in 2004 by the Ministry of Education, Culture, Sports, Science and Technology, the estimated number of those students amounted to 680,000 nationwide, reaching 6.3% of K-12 students. However, they are not included in the categories of disabilities listed in the School Education Reinforcement Act, and the identification and assessment procedure of students with those disabilities remains un-established.

Inclusion Issues in Japan

Shimizu (2004) points out the lack of the rights in Japan of children with disabilities and their parents. Watanabe (2004) also identifies the lack of terms such as human rights or rights of children with disabilities in the report to change the special education system by the Ministry of Education, Culture, Sports, Science and Technology. Furthermore, he states that the understanding of the concept of normalization is pretty shallow in Japanese society and the concept of equal access is changed to another concept that emphasizes the independence and community involvement of people with disabilities instead of further clarifying their rights to equal access.

The barriers to inclusion for students with disabilities in Japan are manifested mainly in three ways: (1) the law does not include the concept of LRE; (2) the rights of children with disabilities and their parents are weak; and (3) there is little support in the law and in practice for children with disabilities to receive appropriate support in general classroom settings. In relation to the first barrier, there is no language regarding the preference of inclusion or the concept of LRE in Japanese education laws. In the United States, IDEA provisions require school districts to ensure that each student with a disability receives services in the LRE. In IDEA it is specified that *to the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled . . .* Therefore, *before a student can be removed, it must be considered whether the student is unable to achieve satisfactorily in the regular classroom environment with supplemental aids and services* (Howard, 2004). Furthermore, the tests to consider if the LRE mandate is met have been established through several court cases that each set a precedent in a specific region of the U.S. In *Roncker v. Walter*, (1983) the court set out a test that requires that the benefits of segregated placement 'far outweigh' the benefits of the regular classroom for segregation to be justified. In *Daniel R.R. v. State Board of Education* (1989), a two-pronged test was set out. The first prong requires asking whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactory for a given child. If it cannot and the school intends to provide special education or to remove the child from regular education, then the second, prong of the test requires that we ask whether the school has mainstreamed the child to the maximum extent appropriate. In *Sacramento City Unified School District v. Rachel H.* (1994), four factors were taken into account to examine the appropriateness of the inclusion placement for the child with a disability: (1) the educational benefits available in the regular classroom; (2) the non-academic benefits of interaction between a student with disabilities and those without disabilities; (3) the impact of the student with disabilities on the teacher and other children in the regular classroom; and (4) the cost of supplementary aids and services required for mainstreaming the student (Howard, 2004). Those tests are explicit and, it can be said that in the U.S., the standards to examine the appropriateness of inclusion of children with disabilities have been established. More importantly, the trend has been toward the appropriate inclusion of children with disabilities into the general education setting (Howard, 2004).

On the contrary, in Japanese education law, students with disabilities are presumed to be educated in special education environments. Before a student can be removed from special education settings to regular education settings, it must be considered whether the students are able to be educated in regular schools possibly without supplemental aids and services. Even though a child is admitted to a regular school as a Ninteishugakusha, the decision whether the child is placed in a regular classroom or a special needs classroom can be made solely by the principal of the school. Students with disabilities and their parents do not have the right to make the decision (*Yamazaki v. Rumoi Board of Education*, 1994).

Secondly, the weakness of the rights of children with disabilities and their parents must be addressed. Since procedural safeguards are not included in Japan's education laws, it is extremely difficult for students with disabilities or their parents to argue for a change of school placement for a child with a disability. The decision is made by a Schooling Guidance Committee after the preschool check up, which comprises doctors, psychologists, teachers, and education board officials. If children with disabilities and their parents are not satisfied with the placement decision made by the committee, their options are to either continue having time-consuming discussions regarding the placement with government employees, or, in some cases, to file a case in court based on their constitutional rights. Furukawa (2003) points out the lack of language about parental rights or student rights in education laws in Japan,

including the Constitution. On the other hand, in the U.S., special education law recognizes the importance of the parents' role in educational decisions: for that reason, a child cannot be placed in special education unless his or her parents agree to such placement (Fitzgerald & Watkins, 2006). IDEA describes the procedural safeguards designed to protect the rights of children with disabilities and their parents. Changes to Japanese education law should be made to protect the rights of children with disabilities and their parents.

Thirdly, the lack of regulations to assure appropriate support for children with disabilities in regular classroom settings must be considered. In some cases parents of children with physical disabilities are asked to come to school to provide support for them (*Yamazaki v. Rumoi Board of Education*, 1994; Furukawa, 2003; Shimizu, 2004). If they cannot, the regular school and class placement would be difficult. Even if children with severe disabilities are placed in regular classrooms, it is extremely difficult for them to adjust themselves to the regular classroom settings if appropriate services are not provided (Okamura & Furukawa, 1986; Ando, 2001; Watanabe, 2004). In many cases, bullying or harassment of children with disabilities by teachers or other students has been reported (Furukawa, 2003). Since LD, ADHD, and high functioning autism are not included in the categories for special needs education listed in the School Education Reinforcement Act, therefore, children with these disabilities are likely to be placed in regular classrooms without necessary support. In many cases, children with special needs are overlooked and left unsupported in regular classrooms (Yamaoka, 2004).

In the U.S., IDEA assures all students with disabilities the right to a free appropriate public education (FAPE). FAPE consists of special education and related services to meet the unique needs of a child with disabilities. Related services are defined in the IDEA as *supportive services . . . as may be required to assist a child with a disability to benefit from special education* (IDEA Regulations, 2004). When related services are provided to a student with a disability, they must be included in the Individualized Education Program (IEP) and be provided at no cost. It is imperative that Japanese education laws include provisions about related services and decisions about inclusion of children with disabilities should be examined with the assumption that those services can be provided in a regular classroom setting.

The issue of inclusion affects almost all children with disabilities in Japan. If Japanese laws were to include a preference for placement of students with disabilities in the LRE it would affect all the students who are placed in special needs education schools or special needs education classrooms. The issue of children with disabilities and their parents having rights is important if they are not satisfied with the current school placement. This is particularly true for those children with severe disabilities who, it is assumed, are to be educated in special need schools. If they want to go to regular neighborhood schools, they do not have rights that are protected by education law. Consequently, it is extremely difficult for them to change their placement once the decision is made. The number of Ninteishugakusha (those who are exceptionally admitted to be appropriately educated in regular classrooms) were only 2,516 in 2008 reaching 0.9% of the total number of children receiving special needs services (Japan Ministry of Education, Culture, Sports, Science and Technology, 2008).

The need for supportive services in the regular classroom would appear to affect a larger population than those that currently are identified as having disabilities. This is because the total number of children with disabilities who are receiving special needs education is only 2.2% of the total number of students in grades 1-9; whereas in the U.S. it is around 10% (Shimizu, 2004). Consequently, it appears that many children with high incident disabilities (e.g. learning disabilities) are not identified and stay in regular classrooms without receiving appropriate educational services. This issue of supportive services is also important when trying to institute inclusion of students with physical disabilities and those who have medical needs. Part of the problem of under-identification of these with high incidence disabilities and failure to provide necessary support services in the regular classroom for such students is that due process rights and legal redress that is built into the law in the U.S. does not exist in Japan.

Important Case Law in Japan

One reason that the U.S. is further ahead in this area is that people in the U.S. have a history of fighting for their rights. Shimizu (2004) stated that in the U.S., people resolve issues by confronting each other; in contrast, Japanese people tend to avoid confrontation. Shimizu's point can be seen in the significantly fewer number of lawsuits dealing with special education issues in Japan. In the U.S., approximately 3,000 due process hearings are held annually under IDEA, and ten percent of these cases are appealed to court (Wright, 2007). On the other hand, according to research conducted by Yoshida and Moribe (2007), the number of special education cases in Japan has only totaled 67 since World War II. The

following are the some of the important cases dealing with inclusion issues of children with disabilities in Japan (See Table 4).

Table 4. Important Cases/Laws Involving Placement of Students with Disabilities in Regular Schools in Japan and the U.S.

Year	Important Cases/Laws in Japan	Important Cases/Laws in U.S.
1947	School Education Act Enacted	--
1959	School Health and Safety Act Enacted	--
1975	--	Education for All Handicapped Children Act Enacted
1979	Compulsory Special Education Started	--
1983	--	Roncker v. Walter
1984	--	Irving Independent Sch. Dist. v. Tatro
1989	--	Daniel R.R. v. State Bd. of Educ.
1993	Yamazaki v. Rumoi BOE	--
1994	--	Sacramento City Sch. Dist. Bd. of Educ. v. Rachel H.
1999	--	Cedar Rapids Community Sch. District v. Garret F.
2006	Aoki v. City of Higashiyamato	--
2007	Tokubetsushienkyouiku Started	--
2009	Taniguchi v. Town of Shimoichi	--

Yamazaki v. Rumoi Board of Education

Background. Megumi Yamazaki, a student who used a wheelchair because of a spinal injury at birth, and her parents filed a suit seeking placement of Megumi in a regular classroom in a junior high school. In 1980, she was admitted to her neighborhood elementary school on the condition that one of her family members come to school to provide necessary services for her, mainly transportation. She was placed in the regular classroom for two years. When Megumi became a 2nd grader, she had to give up on going to the neighborhood elementary school because her family members could not come to school to provide services for her any longer. Her parents sought alternatives; however, the education officials recommended that they place Megumi in a residential special school. They refused the recommendation, because they wanted to live with her and raise her in her community. Instead, they accepted receiving special education teacher visitation home teaching services twice a week, two hours each time. Megumi and her parents were not satisfied with the services provided by the teacher visitation. When she became a 5th grader, they started to discuss with the education board that she be admitted to the neighborhood elementary school again. However, her family members were still unable to accompany her to school, so the school refused to place her in a regular classroom. She was placed in a special classroom and was provided with a so-called cooperative education program, which limited her mainstreaming to only some of the subjects taken in the regular classroom.

Based on her experience of limited mainstreaming at the elementary school, Megumi and her parents sought a full-time mainstreaming placement in junior high school at the time of her transition. They started to discuss this issue with the education board in October 1990. The official of the education board promised the parents that she would not be placed in a special classroom in junior high school unless the parents agreed. However, when Megumi started junior high school in April, 1991, she was placed in a special classroom. Megumi and her parents continued the discussion with the school and the education board, but the school kept on refusing her placement in a regular classroom. Megumi and her parents filed this case in Asahikawa district court in July, 1991.

Legal Arguments. Megumi and her parents alleged that the unilateral decision to place her in a special classroom was a violation of her constitutional rights. They alleged that Article 26.1 of the Constitution assures that all children, including children with disabilities, are to be provided with general education. They also emphasized the importance of the interaction of children with disabilities with children without disabilities. In addition, they alleged that Article 13 of the constitution assures the rights of

children with disabilities and their parents to choose the appropriate placement for the children. On the other hand, the defendant alleged that the placement decision should be made solely by an administrator of the school, and the children with disabilities and their parents do not sustain the right to choose the placement for them. They also alleged that in Article 26 of the constitution, it is stated that education shall be provided *correspondent to their abilities*, which means education should be provided based on their individuality and different needs. They stated it is not against the constitution if general education is provided to children with disabilities in special schools.

Decision and Implications. In 1993, the District Court rejected the plaintiff's allegation and ruled that the school decision to place Megumi in the special classroom was not illegal. The Sapporo Court of Appeal, in 1994, affirmed the decision. On examining the issue of whether children with disabilities have a right to placement in a general education school, the judge stated *from the era of Meiji (1868-1912), the education system in Japan has been developed on the assumption that children who are extremely far from the norm cognitively, physically, and in other areas are not placed in regular classrooms*. Based on this doctrine, he ruled that it is difficult to understand that children with disabilities have the right to be educated in regular classrooms based on Article 26 of the Constitution. He also stated, in terms of the equal protection clause, if the child is receiving the same quality of services in a different place, the separation does not constitute illegality. This logic sounds very similar to the separate but equal doctrine embraced in the *Plessy v. Ferguson* case (1896) in the U.S.. Of course, this doctrine was disputed more than 50 years ago in *Brown v. Board of Education* (1954), where the U.S. Supreme Court ruled that separate education facilities are inherently unequal.

It must be noted that Japan ratified the United Nations Convention on the Rights of the Child on May 22, 1994. Two days after the ratification, the court of appeal affirmed the district court decision in *Yamazaki v. Rumoi Board of Education* (1994). In the district court, the plaintiff alleged that children with disabilities have the right to be educated with children without disabilities based on the convention. However, the court ruled that it is erroneous to try to apply the philosophies of the convention which was not even enacted in Japan at the time of the trial. The court ignored the philosophies of the international convention even though they were endorsed by Japan as part of the process of ratification.

At the review of this case, Furukawa who worked as one of the advocators who supported Megumi, stated that he eventually realized that children with disabilities and their parents do not have the law or regulations to support them in their fight (Furukawa, 2003). In fact, the rights of children with disabilities and their parents are not spelled out in any education laws. Without laws or regulations spelled out, it is almost impossible to overturn the decision made by the education board. In the same way, the rights of the education board and school personnel are not specifically spelled out as well. The decision has to be made based on a very vague statement in the education laws or constitution. The special education system in Japan is based on law that has ambiguous language and it is likely to be used to create an interpretation in favor of the government policy, which is not clearly stated, either.

Megumi, who was at the age of 14 when she got involved with this case, was a brilliant young person who could reasonably seize the situation around her and was aware of what role she should play in terms of reinforcing inclusion of students with disabilities in Japan. Her belief in inclusion of children with disabilities inspired many children with disabilities and their parents (Furukawa, 2003). This case also lead to the awareness of the lack of laws to assure the rights of children with disabilities in Japanese education laws. However, even after the Tokubetsushienkyouiku reform in 2007, the laws are not changed to assure parental rights. Further discussion about the lack of law to spell out the parental rights is needed.

Aoki v. City of Higashiyamato

Background. The parents of Suzuka Aoki, a five-year old girl who had a tracheal tube that needed suctioning every hour, brought a suit in Tokyo District Court seeking placement in a general education preschool in the city of Higashiyamato. Suzuka was born with a throat disease, which required surgery when she was one year old. She started to attend an institution for children with physical disabilities when she was two because her family needed daycare for her. At the institution she was provided with early intervention to reinforce her independent skills, and there were nurses on staff; however, it was not a full day program. Since both of her parents had jobs, they wanted to send their daughter to a general education preschool, that provided a longer daily program and had children closer to her age with whom she could interact. The City of Higashiyamato refused the parents application reasoning that it was difficult to assure the appropriate care for Suzuka. The city stated that mucus extraction is a medical

activity and the school is not able to perform it. The parents alleged that Suzuka could be appropriately cared for in the nursery school if the suctioning of the tracheal tube could be taken care of properly; therefore the refusal of her admission to the preschool was illegal. They also sought monetary compensation for the damages caused during the application procedure.

Legal Arguments. Child Welfare Act Article 24.1 stipulates that if a child's lack of sufficient care exists, local authorities must provide appropriate care for the child. Lack of care includes parents/guardians having a job or housework outside of the home, or taking care of a relative who has a long-term illness. The court examined the parents situation, and found that they were eligible to apply for the preschool care for Suzuka, because Suzuka's father had his own business outside of the home and her mother was helping him with bookkeeping.

Then the court addressed whether Suzuka could be appropriately cared for in a general education preschool. Child Welfare Act Article 1 stipulates that *all citizens shall endeavor to ensure that children are born and brought up in good mental and physical health*. Based on this article, the court stated that it is understood that the responsibilities rest on local authorities to provide appropriate care for a child in order for the child to grow up in good mental and physical health, if the parents are eligible and apply for the care.

The city alleged that there was only one nurse at the preschool and it was beyond her capacity to meet Suzuka's needs while providing services for the other 180 children. The parents submitted doctors recommendations stating that except for her respiratory problems, Suzuka was making good cognitive progress; therefore, it was desirable for her to be placed at the same school as other children without disabilities. The doctor also offered training programs for the staff at the preschool.

Presiding Judge Hiroyuki Kanno noted that Suzuka's medical conditions *have improved as she has grown. She can take care of the suctioning by herself. It is possible for an ordinary nursery school to admit her*. The court further stated that in order to implement truly appropriate childcare, it was unforgivable to exclude all children with disabilities, solely because of their disabilities. Taking the conditions of the disabilities into account, if the child can be regarded as having almost the same conditions in terms of his or her physical, developmental and cognitive level as other children without disabilities, and it is possible to provide childcare for the child, the preschool should admit the child.

Decision and Implications. In 2006, the Tokyo District Court ruled that the Higashiyamato Municipal Government's refusal to let a girl with a throat disease enter its preschool was illegal. This case is not regarded as an education case, because compulsory education in Japan is 1st - 9th grades, and the law covers education primarily in elementary and secondary schools. Therefore, the applicable law is not the School Education Act, but the Child Welfare Act. However, the philosophy and interpretation of this case has a great impact on the interpretation of the School Education Act, and it will be applied to the students in elementary and secondary schools.

The court addressed whether Suzuka's condition, even with her disability, was not that different from children without disabilities so that she could be taken care of in a general education preschool, not whether local authorities should meet the needs of the children with medical conditions. The ruling is based on the assumption that Suzuka was able to take care of the suctioning by herself and her cognitive and developmental levels were adequate. This case presents clear guidelines regarding whether a child with health-related needs can be accepted into a general education preschool. If a child with health-related needs functions as well as other children without disabilities in terms of her cognitive and developmental levels, and if the child can take care of her needs herself, the child then has the possibility of being accepted into a general education preschool.

In the U.S. the standard for providing health-related services to children with disabilities is far beyond Japan's approach. In the *Tatro* case, the bright-line test was established and further reconfirmed in the *Garret F.* case. If the child needs health-related services in order to attend school, and if the services are provided by a qualified layperson or nurse, school districts are required to provide those services. The developmental or cognitive level of the child was not addressed in those cases nor was the ability to take care of the health-related needs independently. The gap between Japan's and the U.S.'s approach to these issues is wide.

In spite of the positive court ruling in Suzuka's case in favor of a child with a medical condition, the case revealed that Japanese schools are not ready to provide health-related services to all students with medical conditions. The question remains: how far can Japan move toward a policy closer to the U.S.'s on this issue?

This case presents two main issues that must be addressed in Japan in order to bridge the gap. First, a provision is needed that would specify that supportive services that a child may need can be provided in regular classroom settings. Providing necessary services for children with disabilities often becomes the sticking point in discussions regarding serving them in regular classroom settings. Local authorities often recommend that parents of children with disabilities place their children in special education settings, based on the reasoning that it is difficult to accommodate them in regular classroom settings. In the U.S., the legal standard for placing children with disabilities in regular classroom settings and for providing necessary services for them to benefit from their education are discussed separately. Wherever they are placed, in regular or special classrooms, necessary services for them to attend school must be provided.

Second, the lack of a preference for LRE is presented again in this case. The reason why local authorities often recommend special classroom settings is that there is no preference for LRE of children with disabilities in the education laws as well as in the society. This makes it harder to argue for providing necessary services for children with disabilities in regular classroom settings.

Taniguchi v. Town of Shimoichi

Background. Meika Taniguchi was a 12-years-old girl who has physical disabilities because of cerebral palsy and used a wheelchair. She attended a public elementary school and was placed in a regular classroom on a full-time basis where she was provided with supports by special education teachers. Upon finishing her elementary school in March 2009, Meika and her parents wanted her to attend a public neighborhood junior high school with other classmates. They informed the Shimoichi Municipal Board of Education of their preference, and started negotiations with them. The Board of Education replied that Meika was eligible for special education, and they found that she was not regarded as an exception that would make her eligible for general education (Ninteishugakusha) in public junior high school in the city. Therefore, the Board of Education refused Meika's admission to the public neighborhood junior high school and decided to place her in the junior high school section of a special needs school, which is a special education school for children with disabilities. Meika's parents filed a case in Nara District Court seeking for Meika's admission to the neighborhood junior high school. The board alleged that the facilities of the school Meika wanted to attend could not accommodate a child who used a wheelchair. They pointed out the non barrier-free structure of the school buildings and the lack of appropriate personnel to provide services to support a child in a wheelchair.

Legal Arguments. The court mainly addressed the issue of whether this case reasonably fulfills the eligibility for exceptional regular school placement of the child under an Enforcement Order for School Education Act Article 5.1. In an Enforcement Order of the School Education Act it is stated that eligibility of children with disabilities will be met only when local authority agrees that the child with disabilities can be appropriately educated in a general elementary or a junior high school. In determining the eligibility, several factors are to be taken into account: accommodations of the school facility, appropriate personnel at the school, and the child's disability conditions and the extent to which extra supports will be needed to ensure safety and the appropriate education for the child. The court stated that it is possible to educate Meika in the public neighborhood school, and it is also possible for her to attend the school without making any modifications to the school buildings. The court also stated it had not been proved that the special needs school was the best placement for the child to meet her special needs. The court condemned the education board for refusing her admission to a public neighborhood school without making any possible efforts to meet her needs, and thereby determining that she was not eligible for the exceptional regular school placement. Taking these into account, the court ruled that the decision of the education board to refuse her admission to the public general junior high school was illegal because the decision ignored the philosophy of special needs education.

The right of local authorities to examine and decide the eligibility for placement in general public schools for children with disabilities was discussed as well. The district court agreed that municipal boards of education do have the right to decide the eligibility of children with disabilities for public schools to some extent; however, it ruled in favor of the child considering the conditions of the disability, facilities of the school, and school personnel to accommodate the child. The District Court also stated

that it is quite reasonable to leave the right to local authorities, because the educational conditions vary depending on local areas.

It must be noted that unlike the Yamazaki case, this case did not address the full inclusion of students with disabilities. The issue was whether Meika should be admitted to the neighborhood regular junior high school. Meika and her parents did not seek a placement in a regular classroom. The education program that would be provided in the regular junior high school was not discussed at all.

Decision and Implications. The Nara District Court, in 2009, ordered the town government of Shimoichi, Nara Prefecture, to admit Meika to a local junior high school before the court issued a ruling in a trial over her admission, in an acknowledgement of the matter's urgency. The Court issued a provisional injunction. The education board appealed the decision to the Osaka High Court; however, later the board discontinued the case.

This case ruling was quite recent and there are few analyses of this case; however, it is undoubted that this ruling is highly acknowledged as one of the landmark rulings in favor of children with disabilities (Oshima & Orihara, 2010; Tanaka, 2009). Leaving the historical review of this case to a later analysis, this case has many implications that delineate the differences regarding a preference for LRE of children with disabilities in Japanese education law and American education law. Even under the School Education Act of 2009, children with disabilities are still presumed to be educated in special needs schools. Only when the local authority agreed that it is appropriate for the child to be educated in a public school, the regular school placement of the student becomes possible. The Nara district court ruled that the refusal of Meika's admission to the public junior high school ignored the philosophy of special needs education. However, the court failed to clarify the philosophy of special needs education, nor did it state a preference for LRE. It emphasized the importance of meeting the needs of individual children with disabilities, but did not go further. Besides, after this case was closed, Meika was admitted to the neighborhood regular school and she was placed in a special needs classroom. Only limited hours of inclusion in a regular classroom were provided. Meika and her parents were not seeking full inclusion. What they wanted was just for Meika to go to the same school as her friends from the elementary school. If they had sought a placement in a regular classroom, the ruling might have gone the other way, like the Yamazaki case.

The Ninteishugakusha system started in 2002. This case presents a clear picture of the process for placing children with severe disabilities in Japan in regular schools, as well as how difficult it is for them to be admitted to a regular school under this new system. As long as there is a presumption that children with severe disabilities are to be placed in special needs schools, being admitted to a regular public school will prove difficult. The process has to be simple and based on a clear standard; otherwise, the process itself discourages children with disabilities and their parents from seeking less restrictive placement alternatives.

In addition, the non barrier-free structure of the school buildings were identified as one of the reasons why it was difficult to accommodate Meika in the regular school. Sometimes this problem is raised when a child who uses a wheelchair requests placement in a regular school. In the U.S., ensuring that public school buildings are barrier free is required by the Americans with Disabilities Act (ADA) (1990). Therefore, accommodations must be made so that students in wheelchairs can attend regular public schools. Barrier-free structures must be addressed in a separate law in Japan to prohibit discrimination against people with disabilities.

Special Education Reform in Japan

The new special needs education system, Tokubetsushienkyouiku in Japan started in 2007. Prior to the start of the new system, the Ministry of Education, Culture, Sports, Science and Technology established a committee in 2001 to address special needs education reform. The committee addressed two main themes: how to change the special education schools to accommodate the growing number of children with more complex and severe disabilities; and how to change the support system of services for children with LD, ADHD, or high functioning autism who are placed in regular schools. It seemed very relevant and appropriate to discuss these issues at that time. This committee issued some suggestions in order to change special education to special needs education and to meet the individual needs of children with disabilities. These suggestions were: (1) develop an individual support plan for every student with a disability; (2) assign a special needs education coordinator in not only special education schools but also in every regular elementary and middle school; (3) make interorganizational collaboration efficient (i.e.,

all prefectures are to establish local special needs education collaboration committees); (4) change the special education school into a special needs education center to give support to children in the area; and (5) change the special education classroom and resource room system so that children with disabilities in regular classrooms can receive services.

The status of each suggestion is briefly reviewed. In terms of the first suggestion, the individual support plan has started to be developed; however, it is not mandatory by law and, therefore, there is no legal requirement that the educational services on the individual plans be implemented. According to a study conducted by the Ministry of Education, Culture, Sports, Science and Technology in 2008, only 38.9% of K-12 schools had started to develop the individual support plans. It is far from the IEP in the U.S., where parents are required to attend the meeting and make decisions about eligibility, placement, and services with school district representatives. In the Ministry of Education, Culture, Sports, Science and Technology Manual for individual support plans, it is stated that the aim of the individual support plan is to identify the individual needs of students with disabilities, to deal with these needs appropriately in terms of their education, and to provide them with the educational support long term from infancy to graduation. However beautiful the aim it can end up as meaningless effort if the plan does not involve the parents of the children with disabilities nor have legal requirements.

As for the second suggestion, the same study by the Ministry of Education, Culture, Sports, Science and Technology showed that over 80 % of K-12 regular schools in Japan had successfully assigned special needs education coordinators to each school. However, this system is not designed to assign personnel who specialize in special education. It turns out to be a system in which one of the regular education teachers is appointed as the special needs education coordinator. It creates new burdens on those assigned to this position without providing necessary support or training.

Thirdly, each prefecture has established the local special needs education coordination committee to reinforce the coordination between related schools or organizations. Those committees usually consist of five to seven people, such as administrators of special needs schools or special education researchers. Typically, they meet twice or three times a year to discuss the coordination issues between special education organizations. It is just a committee based on the request by prefectures, not a fixed organization to provide continuous support to schools, related organizations, or the parents of children with disabilities. In the U.S., organizations like California's SELPAs (Special Education Local Plan Areas) provide continuous services to school districts and the parents of children with disabilities. This type of fixed organization must be considered.

A fourth suggestion is to change special education schools so that they can assume responsibility for providing supports such as training for general education teachers and consultation to parents. However, those schools are also designed to educate students with severe disabilities and the total number of students placed in those schools amounted to 60,302 in 2008. This new system requires special needs school teachers to educate students with severe disabilities as well as providing supports to the general education teachers and the parents of children with milder disabilities in regular schools.

The fifth suggestion relates to inclusion of children with severe disabilities. It is clear that the new system is targeting mainly children with LD, ADHD, and high functioning autism who are already placed in regular classrooms. Even after the 2007 reform the total number of children with severe disabilities who were admitted to regular classrooms were only 0.9% of the total number of children receiving special needs services (Japan Ministry of Education Culture, Sports, Science and Technology, 2008).

It was a landmark change that in 2002 the Ninteishugakusha system was started, so that children with severe disabilities could be placed in regular classrooms if the education board makes an exception and specially admits them to be appropriately educated in regular classroom settings. However, the standard required to be admitted to regular schools is not clearly stated in the law and it is up to the board of education to make the decision. In the 2003 report of the Ministry of Education, Culture, Sports, Science and Technology, it was suggested that special classrooms in regular schools be changed to special needs classrooms so that children with disabilities in regular classrooms could receive special needs services. It might seem like the system is targeting inclusion for all students with disabilities; however, the targeted population is mainly children with high incident disabilities or milder disabilities. Watanabe (2004) points out that this change lacks systematic support such as guidelines to limit the number of students in one classroom or to suggest what kind of services can be provided in those special needs classrooms. In

addition, those classrooms might not be able to deal with the growing number of children with disabilities. He also states that it is desirable to have a variety of alternatives to meet the individual needs of children with disabilities.

In 2004, the Enforcement Order for the School Education Act was amended and it became a requirement that parents preferences must be heard by the Schooling Guidance Committee. Nevertheless, parents of children with disabilities still cannot participate in the decision making meetings. It is necessary to further strengthen the rights of children with disabilities and their parents in the decision making process of the placement.

Furukawa (2003) criticized the 2007 Tokubetsushienkyouiku reform and stated that the Ministry of Education, Culture, Sports, Science and Technology is playing with the wording and created a new vague system in order not to change the system toward inclusion. He further argued that nothing had been changed to strengthen the rights of children and parents. In order to make the philosophy of special needs education real (i.e., to address the individual needs of children with disabilities), the Japanese education system should not avoid the inclusion issue, and the special education reform needs to address more drastic changes, not slight modifications in the wording of current law.

Recommendations for change

As stated above, there are three main issues that must be addressed to increase the inclusion of students with disabilities in Japan: (1) the lack of a preference of LRE in special education laws, (2) the weakness of the rights of the children with disabilities and their parents, and (3) the lack of supportive services for students with disabilities in regular classroom settings. All three of these issues must be addressed to support an inclusive, nondiscriminatory education for all students with disabilities.

The lack of a preference of LRE in the education laws must be addressed. There are no terms like LRE, normalization, mainstreaming, or inclusion in Japanese education laws and the preference of inclusion for children with disabilities has never been stated. In some reports by the Ministry of Education, Culture, Sports, Science and Technology, the term *normalization* is mentioned; however, it just emphasizes the importance of acknowledging the movement toward normalization, to meet the individual needs of children with disabilities, and never further states how to actualize the preference of normalization in school settings. We strongly believe that the preference of LRE must be stated in Japanese education laws in order to reinforce the understanding that children with disabilities should be educated in regular schools in Japan. Typical children lack the experience of interacting with children with severe disabilities, because, in most cases, they are not placed in regular classroom settings. If more students with disabilities were placed in regular classrooms, typical children and children with disabilities would have more opportunities to get to know each other. To make this change possible, the Enforcement Order for the School Education Act has to be modified so that it reflects the concept of LRE.

The easiest way to change the current laws to reflect a preference for LRE is to amend the language in Article 5 of the Enforcement Order for the School Education Act. Article 5.1 should be changed as follows:

The local education board shall notify the parents of children to be admitted to local elementary schools or middle schools *including* children with visual impairment, hearing impairment, mental disorders, physical disabilities, and medical needs whose disabilities are as severe as the list in the article 22.

Article 5.2 should read:

Among those children with severe disabilities listed in article 22, if the local education board *and the parents of the children* agrees that there are some special reasons that make it appropriate for the children with disabilities to be properly educated in *special needs schools* based on the children's disabilities, the parents of the children with disabilities will be notified that their children will be admitted to *special needs schools*.

These changes in the language of these articles are an important first step in bringing about change in thinking by people in the special education in relation to children with more severe disabilities and where

they should receive their schooling. If we really want the law to reflect the international trend, then these are the changes that are needed.

In order to strengthen the rights of students with disabilities and their parents in terms of decision making procedures for school and classroom placement, the parents must be included on the Schooling Guidance Committee. Under the current system, the parents' preferences must be heard by the committee comprised of doctors, psychologists, teachers, and education board officials; however, parents cannot attend the decision making meetings. Parents' involvement in the decision making meetings is a good start in strengthening the rights of children with disabilities and their parents and to begin to assure procedural safeguards for them. However, following Furukawa (2003), some believe that the Schooling Guidance Committee must be abolished because these committees have played the role of removing children with disabilities from the regular classroom setting. Some of the local education boards have started discussing the abolishment of the Schooling Guidance Committee; however, this movement toward abolishment has the risk of making the decision making process unclear, including who would be making the decisions. Instead, if we include parents of students with disabilities on the Schooling Guidance Committee a clear process can be maintained.

The issue of providing supportive services for children with disabilities in regular classroom settings must be addressed. There is no education law that requires schools or local authorities to provide supplementary services for children with disabilities in the regular classroom setting. In the current system, regular teachers or students without disabilities are told to provide services necessary for children with disabilities in the regular classroom if family members cannot come to school to provide these services. This system is very problematic because it creates tension between teachers and parents and, in many cases, it even creates hatred among students without disabilities and their parents (e.g., *Yamazaki v. Rumoi Board of Education*, 1994). It is necessary to make it clear that necessary supportive services must be provided for children with disabilities in the regular classroom in order for these children to be placed appropriately in the least restrictive school setting. Furthermore, guidelines spelled out in laws or regulations are needed that specify the kinds of services (e.g., one-to-one aide, modified curriculum, assistive technology) that can be provided in regular classrooms.

It is easy to just state needed changes in the law or in the current system; however, such changes require drastic school system and social reform. General education teachers would face challenges dealing with students with disabilities without proper training. Some typical children would likely feel uncomfortable initially with children with disabilities in their classes. A presumption of inclusion is totally opposite from current practice in Japan. If change in the law occurred, the number of children who would be placed in special needs schools and regular schools would drastically change. Children with and without disabilities would start growing up together. General education teachers would learn more about children with disabilities and eventually, they would feel comfortable with them (Scruggs & Mastropieri, 1996). Even if it is difficult to bring about a change in attitudes, the system must change to meet the current international movement toward inclusive education.

Conclusion

Comparison of the language used in the court decisions in Japan to the ones used in the LRE cases or related services cases in the U.S., such as *Tatro* or *Holland*, can provide important guidance for Japan in bringing about educational change. Japan is facing a new challenge in responding to a global admonition for its failure to place and support student with disabilities in general education settings (Jimenez and Ochiai, 2004).

Education laws and systems are different from country to country; therefore it is difficult to simply compare special education systems in Japan and the United States. However, America has a long history of striving to meet the individual needs of children with disabilities by providing the appropriate education for them. Special education in the U.S. has much to offer Japan in addressing the changes that need to be made to Japanese education law. Shimizu (2004) points out that our special education system should be more like America's in terms of educational policy and law. Japan needs to place more emphasis on strengthening the rights of students with disabilities and their parents as well as providing students with disabilities with appropriate services and education in regular classroom settings.

References

- Ando F. (2001) *The truth about inclusive education*, Tokyo: Gakuehsha Press.
Aoki v. City of Higashiyamato (Tokyo District Court, 2006), *Hanrei Jiho (Precedent Times)*, 1931, 10.

- Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).
- Cedar Rapids Community Sch. District v. Garret F., 526 U.S. 66 (1999).
- Daniel R.R. v. State Board of Education, 874 F.2d 1036 (5th Cir. 1989).
- Fitzgerald, J.L. & Watkins, M.W. (2006) Parents' rights in special education: The readability of procedural safeguards, *Exceptional Children*, 72 (4), 497-510.
- Furukawa, S. (2003) *Seeking for inclusion presumption*, Tokyo: Senshobo Press.
- Howard, P. (2004). The least restrictive environment: How to tell? *Journal of Law and Education*, 33, 167-180.
- Individuals with Disabilities Education Act (formerly the Education for All Handicapped Children Act of 1975), as amended by the Individuals with Disabilities Education Act of 1997, P.L. 105-17 (June 4, 1997) and the Individuals with Disabilities Education Improvement Act of 2004, P.L. 108-446 (Dec. 2004), 20 U.S.C. § 1400 et seq.
- Irving Independent School District v. Tatro, 468 U.S. 83 (1984).
- Japan Ministry of Education, Culture, Sports, Science and Technology, (2008). Survey on Tokubetsushienkyouiku.
- Retrieved from http://www.mext.go.jp/a_menu/shotou/tokubetu/material/1279975.htm
- Jimenez L. P. & Ochiai T. (2004) Inclusion versus institutionalization: Japan's educational challenge. *Electronic Journal for Inclusive Education*, 1(8)., Retrieved from http://www.cehs.wright.edu/~prenick/Summer_fall04/Inclusion%20vs.htm
- Okamura T. & Furukawa S. (1986) *Post compulsory special education system*. Tokyo: Tokushokushobo Press.
- Okamura T., Shinohara M., & Tamada K. (2003). *The new horizon for human rights*. Tokyo: Gakujutsutosho Press.
- Oshima, K. & Orihara, N. (2010). The court order to place a student with disability in a regular school. *Doshisha University Studies on Policy*, 4, 78-95.
- Plessy v. Ferguson, 163 U.S. 537 (1896)
- Roncker v. Walter, 700 F. 2d 1058 (6th Cir. 1983)
- Sacramento City Unified School District v. Holland, 14 F. 3d 1398 (9th Cir. 1994).
- Shimizu S. (2004) *Education for children with moderate developmental disorder in America*. Kyoto: Kamogawa Press.
- Scruggs, T. & Mastropieri, M. (1996) Teacher perceptions of mainstreaming/inclusion, 1958-1955: A Research synthesis. *Exceptional Children*, 63(1), 59-74
- Tanaka, T. (2009) A court order to place a student with physical disability in a regular junior high school, *Law Seminar*, 6, 33-36.
- Taniguchi v. Town of Shimoichi (Nara District Court, 2009), *Hanrei Chihojichi*, 328, 21.
- Ueno K. (2006) *LD and dyslexia*. Tokyo: Kodansha Press.
- Watanabe A. (2004) The reform of Tokubetsushienkyouiku and its problems. *Quarterly Journal of Law & Education*, 140, 4-9.
- Wright P. W. D. (2007) Analysis of *Arlington v. Murphy*. Retrieved from <http://www.wrightslaw.com/law/art/arlington.murphy.pwanalysis.htm>
- Yamaoka O. (2004) The actualization of Tokubetsushienkyouiku . *Quarterly Journal of Law & Education*, 140, 31-35.
- Yamazaki v. Rumoi Board of Education (Asahikawa District Court 1993), *Hanrei Jiho (Precedent Times)*, 1490, 49.
- Yamazaki v. Rumoi Board of Education (Sapporo Court of Appeal 1994), *Hanrei Jiho (Precedent Times)*, 1519, 67.
- Yoshida K. & Moribe H. (2007) The judgment cases on education for individuals with special needs. *Gunn University Journal of Education*, 56, 249-277.