

Legal Rights and Protection Unit

Introduction

In this module we will be taking a look at the legal aspects of disability. First, you will be presented with an overview of the history of discrimination for people with disabilities. We review this history to give you a better understanding of when and why the laws we have were put into effect. Within this overview you will learn about two landmark cases [*Mills v. Board of Education*, and *Pennsylvania Association of Retarded Citizens (PARC) v. Commonwealth of Pennsylvania*] that helped pave the way for the rights of people with disabilities. Following this brief history, we will focus on three important laws for people with disabilities. First is the Individuals with Disabilities Education Act (1975). This law has been revised several times and we will be looking at the most current revisions of this act. Next is Section 504 of the Rehabilitation Act (1973). This is an important law that extended civil rights to people with disabilities. The third law we will discuss is the Americans with Disabilities Act (1990). This law is similar to Section 504 of the Rehabilitation Act and we will overview the similarities and differences. So let's get started, beginning with a trip back through time and a look at the history of disability discrimination.

History of Discrimination

People with disabilities have always been a part of our society. But as a part of society, their needs were largely ignored in times past. Why was this? It was probably due to a lack of knowledge regarding people with differences of any kind. As you are probably well aware, it has been our society's nature to segregate and discriminate against those groups of people who look, act, or think differently than the majority. No exception was made with people who had disabilities. In fact, publicly supported programs of education very often *excluded* persons with disabilities. And until the 1970s, there were actually state laws that allowed public schools to deny enrollment to children with disabilities. For many of these individuals, especially people with severe disabilities, placement in an institution was the norm. This is quite shocking considering we now have laws that require children with disabilities to receive an education. Consider the case of *Beattie vs. Board of Education* (1919). In this case, a student had a disability that caused him to drool, have involuntary facial contortions, and have speech problems. Although his disability was strictly physical, and his intellectual ability was not affected, he was expelled from school because "this condition nauseated the teachers and other students" (Yell, 1998). This case went before the Wisconsin Supreme Court and the court ruled that school officials could indeed exclude students with disabilities. Once this student was removed from a public education setting, it was actually suggested that he attend a school for students who were deaf. Hardly an appropriate placement! Just imagine for a moment if this case were to take place today. Fortunately, the outcome would be quite different. Eventually, schools began to allow children with disabilities into their classrooms. However, these children were still very much segregated. They

were kept separate from their peers in the regular education program and were confined to isolated classrooms. To make matters worse, these children were referred to as “crippled”, “retarded”, or “disturbed”. Luckily, we have come a long way since those days. But bear in mind, the changes that have been made are still very recent. It wasn’t that long ago that these conditions existed.

The first significant movement that helped pave the way for gaining rights for people with disabilities came in 1972 with two court cases called *Mills v. Board of Education*, and *Pennsylvania Association of Retarded Citizens (PARC) v. Commonwealth of Pennsylvania*. If you plan to pursue a career in special education, remember these names because you will run into them again! In the PARC case, it was argued that students with mental retardation in Pennsylvania were not receiving a publicly supported education. Witnesses for this case made the point that children who have mental retardation are absolutely capable of benefiting from education. The decision in this case was that children in Pennsylvania between the ages of 6 and 21, who have mental retardation, must be provided a free public education. It was also determined that it would be most beneficial to enroll these children in a program that was the most similar to the programs developed for their peers without disabilities. This was a great step towards equality for youth with disabilities.

Soon after the PARC decision, another lawsuit was filed. This was the case of *Mills v. Board of Education*. This suit was brought forth by the parents and guardians of children who represented a wide range of disabilities in Washington DC, our nation’s capital. These advocates based their argument on the Fourteenth Amendment (equal protection) and stated that their children were excluded from school without due process

of law. The ruling in this case was that all children with disabilities in the District of Columbia must be provided a publicly supported education. This case was also responsible for gaining the right to due process safeguards for these students. These safeguards include: the right to a hearing, the right to appeal, the right to have access to records, and written notice requirements. The PARC and Mills cases are similar in their rulings. Note that the major difference is that in the PARC case, only children with mental retardation were represented, whereas in the Mills case a wide range of disabilities were represented. Together, these two cases blazed the trail for educational rights for people with disabilities. These court cases, and others like them, caused Congress to act in 1975 in passing the law we now know as IDEA – the Individuals with Disabilities Education Act.

Now that you know how some of the first laws for the rights of people with disabilities have come about, let's look at some of the specific legislation that influences the realm of education in our country. To begin, please proceed to the unit titled Individuals with Disabilities Education Act (IDEA).

Individuals with Disabilities Education Act (IDEA)

Special education could not be what it is today without IDEA. It was passed by Congress in 1975 and has been revised several times since then. IDEA was enacted into law in order to ensure that all children with disabilities were protected and entitled to their rights. In 1986, IDEA was revised to include infants and preschoolers. Until this revision, IDEA only covered individuals with disabilities who were in the age range of 6-21. In a nutshell, IDEA was created to make sure children with disabilities received a free and appropriate education specifically designed to meet each student's unique needs.

There are six major principles that support this notion of a free and appropriate education.

They are:

- **Zero Reject:** The zero reject principle states that it is the school's responsibility to educate ALL children with disabilities. The nature or severity of the disability is irrelevant. It is the responsibility of the state education agency to locate and evaluate all children who have disabilities or are suspected of having disabilities, from birth to age 21 who live in that state.
- **Nondiscriminatory Identification and Evaluation:** When determining if a child has a disability or is in need of special education, the school must use fair and accurate evaluation procedures that are unbiased and multifaceted. Evaluations should always be given in the child's native language. Evaluations should also control for any possible bias of race, culture, or language.

■ **Free, Appropriate Public Education (FAPE):** This is to assure that all students with disabilities receive an appropriate public education that is provided at no cost to the family. Also, an individualized education program (IEP) must be developed for any child receiving special education. Each child receiving special education must have his or her educational goals included within the IEP.

■ **Least Restrictive Environment (LRE):** This principle demands that students with disabilities be educated with their peers without disabilities to the maximum extent appropriate. If this means a student can function in the same classroom as his peers so long as he has aids or supports, those aids or supports should be provided to that student by the school. Students with disabilities should only be removed to separate classes or schools if the nature or severity of their disabilities prevents them from receiving an appropriate education in the general education classroom, even with aids and supports.


■ **Due Process Safeguards:** Safeguards are included in IDEA to protect the rights of students with disabilities and their parents. These major safeguards are:

(a) Parental consent must be obtained before any evaluations are conducted or placement decisions are made in regards to special education.

(b) Confidentiality of all student records must be maintained by the school, although records must be made available to the child's parents should they request them.

(c) If parents disagree with the school's evaluation decisions regarding their child, they may get an independent evaluation at public expense.

(d) If parents disagree with the school's decision(s) regarding identification, evaluation, placement, or services, they may request a due process hearing.

 **Parent and Student Participation and Shared Decision Making:** The parents and students (whenever possible) must be included in all decisions regarding the student's education. This includes designing and implementing special education services, placement decisions, IEP objectives and goals, and related services.

As a peer tutor, the least restrictive environment principle described above affects you also. As more students who have disabilities become more included in the general curriculum, there is more of a demand for support in the general education classes. It is typically more comfortable for a student with a disability to have a peer assist him or her in the classroom instead of one of the teacher's assistants. This is more natural and keeps the student with a disability from standing out among the rest of his or her peers in the classroom.

IDEA is one of the most significant and positive things to happen to the field of special education. Now let's look at some *anti-discrimination* laws that protect individuals with disabilities, starting with Section 504 of the Rehabilitation Act. These anti-discrimination laws are important because they are not only concerned with education, but with other aspects of society as well.

ACTIVITY

Visit the following website: <http://www.ideapractices.org/qanda/index.php> and look at the section marked “topics”. Pick one of the seven topics for review and click on the link. After reading about the topic of your choice, write a one page reflection on what you learned.

Section 504 of the Rehabilitation Act

This law was put into effect in 1973 and extended civil rights to people with disabilities. Basically, this is an anti-discrimination clause that was included within a broader piece of legislature titled the *Rehabilitation Act of 1973*. Section 504 states that no person can be discriminated against or excluded, or denied benefits from any institution, program, or activity *receiving federal funds*. This law helped open the door for people with disabilities to many different settings including, schools, and places of employment. This law also required that necessary supports be made available for those who may need them. This does not mean that a school or an employer must have all necessary supports at all times, just that a person can not be excluded due to the lack of supports. Section 504 does not actually provide funds for people with disabilities; instead,

it ensures that those who do receive federal monies can not discriminate against people with disabilities. This law is very similar (in fact the wording is almost identical) to the Civil Rights Act of 1964 (the prohibition of discrimination based on race, national origin, or color).

Who exactly is protected under Section 504? There are three categories that are represented by Section 504. These categories are:

- Any person who has a physical or mental impairment that significantly limits one or more of his or her major life activities
- Any person who has a record of such an impairment
- Any person who is regarded as having such an impairment

The first two points are fairly straight forward. But what about this last point—anyone who is *regarded* as having a physical or mental impairment? You may be wondering what this means. If a person fits into this category, that person may be covered under Section 504 even if he or she does not actually have a disability. That is, individuals may have physical or mental impairments that don't actually limit their functioning in any way, but because of the impairment, they are treated as if their functioning is limited. Or, a person may not have any kind of impairment whatsoever, but is treated as if he or she does. For example, a person who has been the victim of burn injuries and therefore has major visible scarring, may be treated by others as if he or she has a disability based on his or her appearance—even if that person, in fact, has no disability at all. The purpose of this category of Section 504 is to protect those at risk of being perceived as having a disability simply because of stereotypical beliefs and reactions of others.

Now let's move on the Americans with Disabilities Act (ADA). It is extremely similar to Section 504 - with one major difference. Please continue to learn more.

ACTIVITY

Think about issues in your community that impact people with disabilities. Write a letter to a government official of your choice, or your local newspaper editor, in support of the principles of Section 504 as it pertains to the issue(s) you discovered in your community.

The Americans with Disabilities Act (ADA)

You have already learned that Section 504 was created so that people with disabilities can not be discriminated against by any institution, program, or activity that receives federal funds. The *Americans with Disabilities Act* maintains this same anti-discrimination principle with one difference: it extends beyond 504 to include private sector employment, public services, public accommodations, and transportation - that is, those companies and entities that *do not* receive federal funding. A few examples are restaurants, amusement parks, theaters, hotels, city buses and grocery stores. ADA was signed into law in 1990, and it includes several major provisions. They are:

- Employers who have 15 or more employees can not refuse to hire or promote a qualified individual simply because he or she has a disability. The employer is also required to make accommodations (within reason) to assist a person with disabilities in performing essential job functions.
- Any new vehicles that are purchased by transportation authorities must be accessible to people with disabilities. Likewise, rail stations are required to be accessible, and trains should have at least one car that is accessible.
- No public accommodation (restaurants, hotels, grocery stores, etc.) can refuse or exclude a person based on his or her disability. New buildings must be made accessible, and old buildings that are not accessible need to remove any barriers if it is feasible. The one exception to this requirement are churches and places of worship; because of the separation of church and state in our Constitution,

churches and places of worship do not have to meet the accessibility requirements for new buildings.

- Public telephone services must provide relay services to those who use any kind of telecommunication devices for the deaf.

The ADA was actually patterned after Section 504, and as you can see is essentially the same thing – with one major difference! That one difference lies in who is receiving federal funds and who isn't. Just remember: Section 504 covers federally funded establishments, and ADA covers non-federally funded establishments.

ACTIVITY

Conduct a survey on a building of your choice. This may be where you work, your favorite restaurant, your local grocery store, etc. Determine if it meets ADA standards based on what you have read. Some things to look for: Is the building accessible to individuals with disabilities? If accessible entrances/exits are not obvious, are there signs to direct a person with disabilities to an accessible entrance/exit? Are restrooms, drinking fountains and elevators accessible? It may help during this exercise to imagine where your eye level would be if you used a wheelchair. Would you be able to reach all necessary buttons, door handles, water fountain spouts, etc.? After conducting your survey write up your findings and any suggestions for making that location more accessible.

Conclusion

In this unit of instruction we covered three major laws that impact special education:

Individuals with Disabilities Education Act (IDEA)

Section 504 of the Rehabilitation Act: 1973

Americans with Disabilities Act (ADA): 1990

IDEA was introduced so that states would be held responsible for educating all individuals who have disabilities. IDEA states that every child is entitled to a free and appropriate education (FAPE) in the least restrictive environment (LRE) possible. IDEA also set up due process safeguards to protect the rights of students with disabilities and their families.

Section 504 of the Rehabilitation Act was patterned after the Civil Rights Act of 1964 and serves to protect the civil rights of people who have disabilities. Section 504 states that any business, institution, or agency that *receives federal funds* can not discriminate against any person because that person has a disability, or is regarded as having a disability.

The Americans with Disabilities Act is also a civil rights law that has the same stipulations as Section 504. The ADA just expanded these stipulations to cover those entities that are *not* federally funded. This includes both public services, and private sector employment.

By learning about these three laws, you have gained valuable information that impacts the fields of special education and human services every day. If you plan to pursue a career in one of these fields, you will be at a great advantage by having this knowledge. Laws are always evolving and being amended as time passes. In the future, when you hear that one of these laws is being reauthorized, you will have a better understanding of what is being changed, and why. Knowing how these laws impact special education and life in our society is a key element in working with people who have disabilities. And no matter what career you choose, knowing how our laws protect the rights of individuals with disabilities will help you better protect the rights of others!