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## Inclusion and Placement Decisions for Students with Special Needs: A Historical Analysis of Relevant Statutory and Case Law

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Inclusion and Placement Decisions for Students with Special Needs:

A Historical Analysis of Relevant Statutory and Case Law

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Abstract

Due to the current political climate, the issues surrounding inclusion have come to forefront in schools across the nation. Today, schools are more focused on achievement testing and provisions associated with the *No Child Left Behind Act* of 2001. Schools are increasingly concerned with the testing and achievement of students enrolled in Special Education, and therefore, placement options that will increase achievement are being debated more often. The following review traces the inclusion movement through relevant court decisions and can be used as a guide for those interested in the history of inclusion in the public schools. Further, the review serves as a basis for understanding the current focus on inclusion and possible future decisions surrounding the issue.

**Inclusion and Placement Decisions for Students with Special Needs:**

**A Historical Analysis of Relevant Statutory and Case Law**

Special education and the law associated with it are very often difficult to interpret for a plethora of reasons. This is the case for the various aspects of special education including discipline, curriculum, and placement. The placement debate has particular relevance in the current political

climate due to the passage of the *No Child Left Behind Act* in 2001 in that schools today are more focused on increasing achievement for students with disabilities and placement options that better increase achievement has moved to the head of discussions in schools today.

Inclusion generally refers to the placement of a student with a disability in the regular education environment and the provision of necessary support in order for the student to be successful in the special education environment. Whereas a more restrictive placements constitutes any setting along a continuum where a student is removed from the regular education environment including a resource room with specifically designed instruction or a residential treatment facility. Educators are sometimes caught between the overall push for inclusion and the needs of the student with a disability, and their peers, in situations that may warrant a more restrictive placement. This situation becomes exponentially more difficult as one examines the law behind inclusion and more restrictive placements.

The inclusion movement found its roots in *Brown v. Board of Education* (1954). The landmark 1954 decision, while specifically relating to racial segregation, did provide fuel for the special education movement. In the opinion delivered by Chief Justice Warren the following statement was of particular importance in furthering the plight of special education, "To separate them from others of similar age qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone" (*Brown V. Board, 1954*). At a time when the vast majority of special education students were being educated in separate schools this statement had particular relevance regarding their inclusion in the regular school. The fight for the inclusion of students with disabilities continued as a civil rights issue in the federal courts.

#### *Early Decisions*

*Pennsylvania Association for Retarded Children (PARC) v. Pennsylvania* (1972) was the first case that addressed the issue regarding the right of a student with a disability to be educated in an

environment where placement decisions are made with the overriding principal that a student should be educated in a setting as close to the regular education classroom as possible (PARC v. Pennsylvania, 1972). The case dealt with the education of children with mental retardation who were being educated in subpar environments and excluded them from public schools. The court ordered Pennsylvania to address the issue of placement calling for a free educational program within the school. The decision further indicated that placing a child in a public program was preferable to a more restrictive placement. Here is the beginning of a development of a continuum for placement options ranked in a hierarchical order such that the general education classroom is considered the best option whenever possible.

The same year another federal case dealt with such issues. *Mills v. Board of Education of the District of Columbia* (1972) reinforced the PARC decision by extending such a decision to all students with disabilities. The decision indicated that no child with a disability should be educated in an environment not within the regular public school unless they were granted due process proceedings, prior to removal, to establish appropriateness of such placement (*Mills v. Board of Education of the District of Columbia*, 1972). With the decisions in PARC and Mills, cases of this matter were being heard resulting in similar decisions across the country, and Congress subsequently took action.

#### *Congressional Response and Rowley*

In 1975, Congress passed the *Education for All Handicapped Children Act* which was later assumed into the *Individuals with Disabilities Education Act* (IDEA) in 1990 and subsequent amendments in 1997. These statutes have laid the framework for the inclusion debate, as well as all issues related to the education of students with disabilities. The IDEA ensures all students with disabilities be educated “to the maximum extent appropriate” with “children who are not disabled” (IDEA, 1997). The IDEA states that students should only be removed from the regular education environment when circumstances make it unfeasible to educate that student in the general education environment, after the school has provided aids and services. However, the statute does not indicate that a student must

be educated in the general education classroom, and to the contrary, it calls for a continuum of services and placements. Further, IDEA recognizes that if a child's disability is such that it requires a residential program in order for the education to be appropriate, then the school district may have to assume the financial burden of such a program.

Noteworthy regarding the statutes is the continual use of the term "appropriate." With educators and parents coming together to make placement and curricular decisions in the context of the child's Individual Education Plan (IEP) there were bound to be tests of such an ambiguous word choice. There are differing thoughts on what an "appropriate" education means and to what extent the school must go to in pursuit of "appropriate" (for in depth review see Dupre, 1997).

This question regarding "appropriate" education was addressed in the 1982 Supreme Court decision of Board of Education of the Hendrick Hudson Central School District v. Rowley. In a battle with the school system, parents of a student with a hearing impairment fought for services above and beyond what the school system felt were appropriate. The court sided with the school system indicating that all the school was mandated to provide was a program of support in which the student could demonstrate educational benefit. In his opinion, Justice Rehnquist determined that as long as the student was demonstrating benefit that the school was not held responsible for maximizing the potential of all students. This decision becomes important to the inclusion movement and placement considerations in what has become a system where parents and schools are often at odds regarding what is the appropriate level of support that schools are required to provide under the free and appropriate public education mandate.

Schools and parents are often at odds regarding the provision of services for students with disabilities that require exorbitant amounts of money, time, and effort. It is not a wonder that educators often feel as though they must provide any service requested by parents along the broad spectrum mandated by IDEA. While it is important to keep the Rowley decision in mind when evaluating

court cases surrounding the placement issue, there is concern that schools simply seek to demonstrate any educational benefit to justify the placement option that is least taxing for the district. “The lack of substantive standards for FAPE, when combined with the current “Cadillac versus Chevrolet” perspective, lowers expectations and facilitates a minimalist view of the substantive education that students with disabilities are entitled to receive” (Johnson, 2003, p. 565).

#### *Circuit Court Cases Involving Placement*

Circuit courts have evaluated placement options from both sides. The cases evaluated parents who sought a general education inclusive placement against a school district that felt as though such a placement was inappropriate, and those parents who seek a more restrictive placement when schools argue that a student can benefit from a less restrictive placement therefore the more restrictive placement is not warranted.

With differing results many cases have dealt with parental requests to have their students educated in a restrictive, often private, placement. Parents have requested such placements with success including the case of *Mather v. Hartford School District* (1996) in which parents sought a residential placement for their child, and in this case the school felt as though the child would benefit mainly from general education classes with some resource placement. The court further ruled for a more restrictive placement at parental request in *Gladys J. v. Pearland Independence School District* (1981).

Parents have also brought various cases in which they have requested just the opposite in that they advocate for an inclusive placement. After debate regarding placement for a nine-year old boy in the *Roncker v. Walter* (1983) case, the 6<sup>th</sup> Circuit ruled in favor of inclusion despite testimony that the boy was receiving little to no educational benefit from the general education classroom. The court indicated that in order for a student to be removed there must be substantive benefits over the

general education placement and that the school district must evaluate the social benefits of inclusion in the decision to place a student in a more restrictive environment.

The circuit courts have established tests other than that used in *Roncker* for determining when inclusion is appropriate such as in *Daniel R.R. v. State Board of Education* (1989). The parent of a six-year old with Down Syndrome argued for inclusion while the school argued that the student was not benefiting academically from such a placement. The court indicated that the social benefits of inclusion may outweigh the academic benefits. The court concluded that the student's inclusion in non-academic settings was enough for him to experience the social benefits of inclusion.

In *Greer v. Rome City School* (1991) the parent also argued for inclusion and won because the court determined that the school had not provided all supplementary aids and services that could have been used to promote an inclusive placement. On the other hand, in *A.W. v. Northwest School District* (1987), the 8<sup>th</sup> circuit court ruled in favor of the school in a similar case bowing to the school's argument that if a child is only going to receive a minor benefit from inclusion that extraordinarily costly services required for such a placement are not required on the part of the school due to the fact that this may hinder the educational benefit of others.

Lastly, the opinion in the similar case of *Beth V. V. Van Clay* (2002), the 7<sup>th</sup> Circuit Court ruled that if a child cannot be educated in an inclusive setting then they should be removed. The court relied solely on the IDEA to make its decision stating that the student's could not be educated in the general education environment as evidenced by a lack of educational progress and lack of socialization with others while previously in the general education environment.

Clearly, there is inconsistency when the circuit courts have evaluated at the issue of inclusion, and although the review of cases provided here is not exhaustive, they provide a range of the differing opinions offered by the courts. While many parents argue for, and receive, substantial amounts of services in the form of restrictive residential placements when requested, the courts have also issued

opinions indicating that as long as a child is marginally benefiting academically from inclusive placements that they are entitled to such placements. Courts have also stated that marginal benefit alone does not obligate a school to provide costly support. There has yet to be a definitive answer to the question regarding how much a school must do in order to provide a student with an inclusive placement. Courts have ruled, such as in *Daniel R.R. (1989)*, which schools are not required to provide an inordinate amount of support, and other court decisions have indicated that a student needs to be provided any aid or service that will afford them success in an inclusive environment (*Oberti v. Board of Education, 1993*).

Such differential rulings and lack of consistent findings has led the way to school's having little guidance as to what they need to do to satisfy the mandates set forth in IDEA. Further, it has given rise to situations where parents request, and are awarded, extraordinary amounts of services on both ends of the placement continuum. Such awards are seemingly in an effort to maximize the potential of their child. Although the *Rowley (1982)* decision expressly stated that this was not the duty of the school, court cases involving placement and inclusion do not consistently apply such concepts. It is important now to examine why this debate will continue to be on the rise and why the inclusion debate may have particular significance in the current political climate.

#### *Political Issues Regarding Inclusion*

*Achievement.* The passage of the *No Child Left Behind Act (2001)* may have many practical implications on the inclusion of students with disabilities in the general education environment. Schools are required to demonstrate adequate yearly progress (AYP) for all students with and without disabilities. While the 1997 revision of IDEA and the subsequent 1999 regulations mandated that students with disabilities participate in the general education assessments, they could easily exempt from such participation, and this was often the case. However, *No Child Left Behind* has subsequently changed this, and now not only must students participate, but the results of the state assessments are

reported to the federal government both aggregated and disaggregated with the results of special education students being evaluated both in conjunction with regular education and alone. This has caused some serious consideration with respect to the inclusion of students with disabilities in the general education environment. Special educators are not, generally, content-area specialists. With that in mind, students with disabilities need to be able to demonstrate passing scores on state assessments in order for schools, districts, and states to make AYP. So, special educators are, at times, opting on the side of inclusion versus pull-out resource programs in favor of allowing the child access to the curriculum and a teacher trained in the content-area. How exactly *NCLB* may impact the inclusion movement overall, is at this point speculation at best, but it is noteworthy in such a review.

*Discipline.* Discipline is yet another issue that may impact the inclusion of students with disabilities in the general education environment. Courts have upheld the right of schools to remove a student with disabilities to a more restrictive placement if the behavior of the student impedes the learning of others, but it is clear that the rights of the student with a disability may clash with the rights of others to be educated in an environment free from harassment (Bennett, 2004). Such was the case in *Clyde v. Puyallup School District No. 3* (1994). The 9<sup>th</sup> circuit indicated that a fifteen-year-old student with Tourette Syndrome and Attention Deficit Disorder could be removed, against the argument of the parents, to a more restrictive setting due to behavioral outbursts including hitting, kicking, profanity, and sexual comments.

However, in the *Oberti* case referenced above the behavior of the student in this case was of issue including hitting, kicking, and choking, and the court ruled that he must be returned to the general education environment because the school had not provided appropriate support for the student in the general education environment. The 3<sup>rd</sup> circuit went so far as to speculate that the school may be partially to blame for the child's behavior due to a lack of support despite the school's provision of an extra aid for the classroom. Educators and administrators must not allow a student with a disability to

disrupt the education of others, but they must try to provide adequate support for disruptive students. This is not an easy line to walk, and school districts are consistently at odds with parents of students with disabilities over such issues. Whether dealing with disruptive, violent, or sexually aggressive behavior the issue is still the same, in that all students have a right to be educated in an environment free from harassment, these needs are in conflict with the right of a student with a disability to be included in the general education environment (Dupre, 2000).

### Conclusion

The placement of students with disabilities is an ongoing issue that may only become more problematic. Various circuit courts have offered differing opinions on placement, and the IDEA does not offer substantive guidance on the issue. Educators are left with many problems and little answers upon evaluation of placements decisions. Educators may be trying to balance the issues involving the general education students, the special education students, the parent of the student with a disability, as well as practical matters such as cost of supplementary services and supports and AYP. While there may never be, and probably should not be, a definitive guideline regarding inclusion, schools need to have clear statutory and case law guidance on how to proceed in such cases. At this point in time, there is little guidance, and what is available often leads to more questions.

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