

DP2 Research Paper:

Paper One and Two

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Special education is founded on a complex legal history. The individuals involved in the creation of today's special education traveled a long road. The legal path began with the vague guidelines of the U.S. Constitution in the mid 1700's, and traveled through to the most recent improvement of the Individuals with Disabilities Education Act (IDEA) in 2004. In the beginning, students with disabilities were placed in institutions, denied an education, or placed in a segregated special school. Today, we have come a long way, and it is because of the families and educators who fought for the rights of those with disabilities from the very beginning. The legal foundations of the U.S. Constitution and the foundations of IDEA have not only shaped every aspect of special education, but they have strongly affected the cognitive and social development of individuals with disabilities.

The legal foundations of special education that are found in the U.S. Constitution begins with three basic concepts. The first being Article 1, Section 8, Clause 1 of the Constitution, or the General Welfare Clause. The General Welfare Clause states that the federal government may lay and collect taxes to provide for the common defense and general welfare of the United States. Congress may not provide for the general welfare in any other way. This means that the federal government may only regulate education through the administration of federal grants (Yell, Law and Special Education, 2012). The second concept is the Tenth Amendment to the U.S. Constitution. This amendment allots the responsibility of public education to the government of the states. Third, the Fourteenth Amendment provides all citizens with the right to due process and equal protection under the law. Moreover, citizen cannot be denied life, liberty, or property without due process of the law. Because states make education a requirement, education then becomes a property and a right of all citizens. These three beginning concepts provide a check

system for education today. The states must provide an education to everyone, and if they do not the state will lose its federal funding (Yell, Law and Special Education, 2012).

The defining moment of the 14th Amendment is found in the court case of *Brown v. Board of Education* in 1954. In this court case, the Supreme Court ruled that it was a violation of the Fourteenth Amendment to educate black students in segregated schools because it was a deprivation of the students' property. This ruling was then applied to students with disabilities in relation to those being educated in special schools. The *Brown v. Board of Education* ruling jump-started many other legal battles in support of students with disabilities receiving their right to an education (Yell, Law and Special Education, 2012). Another breakthrough court case in the development of equal education was the *Pennsylvania Association of Retarded Citizens (PARC) v. the Commonwealth of Pennsylvania* in 1972. In this case, the federal district court ruled that children with mental retardation cannot be denied educational services without due process of the law. *PARC v. Pennsylvania* established the idea of integrated education as well as established the right of students with disabilities to a Free and Appropriate Public Education (FAPE). These initial court cases lead to the creation of today's special education laws (Yell, Law and Special Education, 2012).

The Education for All Handicapped Children Act was established in 1975, and was later named Individuals with Disabilities Education Act (IDEA) in 1990. This was the first law to guarantee specific educational rights to students with disabilities. The IDEA is the federal government's established minimum requirement that all states must follow when providing special education. The states may establish further requirements from their school districts, but they must at any rate follow the guidelines found in IDEA. Indiana's state laws on special education under IDEA requirements are stated in Title 511, Article Seven under the Indiana State

Bored of Education (Yell, Law and Special Education, 2012). Socially and morally, IDEA was a law of relief for those who experience the hardships of the treatments that individuals with disabilities faced before the law was enacted. Many students were rejected from schools or very often placed in institutions for people with disabilities. One example of such a place is Willowbrook State School of New York, founded in 1947. According to the documentary, Willowbrook housed 6,000 individuals with a seventy to one staff-client ratio. The school was often unclean and unsafe. The students rarely received any actual education, and little to no individualized attention (Warmflash, 1996). Due to public outcry, the institution was closed in 1987, and with the federal education laws in place, there was a brighter outlook on the rise for students with disabilities.

The special education laws that were created in 1970 directly mandate special education today. The Individuals with Disabilities Education Act has been revised most recently in 1997 and 2004, but the core of the law is still followed. IDEA is based on six essential pillars that must be followed when educating students with disabilities in order to be in compliance with the law (Yell, Law and Special Education, 2012). If a school, or state, is ever found to be disregarding a student(s) in any of the six categories, the school will be found neglectful and will face the appropriate consequences of the law.

The first pillar of IDEA is the most essential. This is that all students with disabilities have a right to a Free and Appropriate Public Education. The ages that students with disabilities are eligible for public education are three through eighteen and ages nineteen through twenty-one. The free aspect of a FAPE is interpreted as “no cost to parents.” A student with a disability must pay the same fees that a student without a disability would pay. However, the school is required to come up with their own means of paying for any services or equipment, pertaining to

the student's disability, that a child must have in order to attend school or receive a beneficial education. A school cannot deny a student an education or any type of services due to cost or type of disability. An appropriate education is defined as an education that is specifically designed for the student. The education plan will be tailored to the needs of the student in relation to his or her disability. The school is required to provide what ever is necessary to give the student a beneficial education (Latham, 2014). The term "public" in FAPE is referring to the public school system. All children, regardless of disability, are entitled to the right to attend public school. Education in FAPE redefines that all students are entitled to a beneficial education that shows some progress in relation to the students education plan (Latham, 2014). In the beginning some schools still struggled to follow the guidelines to provide a FAPE. This resulted in families taking schools under case law to ensure their rights.

This was the situation in the case of *The Hendrick Hudson School District v. Rowley* in 1982. This case involved a young girl named Amy Rowley who was deaf and attended public school with special education accommodations. Amy had many services including a sign language interpreter during her kindergarten school year. Half way through the year the interpreter said that Amy was making great progress and learning well and did not need the interpreting service. When Amy entered first grade, her parents requested an interpreter again. The school denied this request because Amy was able to make academic progress without the service, therefore the school found it unnecessary. The parents took this issue to state court. As the plaintiff, the parents argued that Amy was denied a FAPE because she could progress even further with an interpreter, which she was denied. The school district, as the defendant, rebut with the fact that IDEA did not require schools to provide the best education, only that the school provide a beneficial education showing progress. The court ruled in favor of the school, because

they had not deprived Amy of a FAPE. The parents then took this matter to the federal court where they won their case. The school then filed in the U.S. District Court of appeals where the court ruled in favor of the parents again. The school then took the case to the U.S. Supreme Court where the court sided with the school (Yell, Law and Special Education, 2012). The court stated that schools were not required to provide the best education, only an education that showed benefit and progress. This opened the door to schools across the country to follow this same pattern.

The second pillar of the IDEA is the right to an Individualized Education Plan (IEP). The IEP is the core of the IDEA. All students with disabilities who are eligible for public education in the allotted age groups are entitled to an IEP. This plan is written, revised, and reviewed by teachers and parents of the student to meet the educational needs of a student as they progress through their education. An IEP assures that a student is receiving a FAPE. The process begins with the student being referred to special education, and, with permission from the parents, the students being tested for a disability. In order for a student to receive special education, a student must have the presence of a disability and have a disability that negatively impacts their education. If both of these things are found, the school will then hold an initial conference to create the IEP for the student and determine the best way to provide a FAPE for the student (Yell, Law and Special Education, 2012).

Individual Education Plans have a detailed list of requirements and protocols. These include telling the parents about the meetings, involving the parents in the decisions in the meetings, and holding a new meeting, or conference, every year. The plan includes an explanation of the child's disability and what accommodations the child needs to receive an education (Yell, Law and Special Education, 2012). There are also evaluations of where the

student stands educationally compared to state standards for his or her grade norm. The IEP lists measurable goals for the student that helps the student to progress in their education. These goals are addressed at every annual meeting, and new ones are set. The plan must address how the progress of goals will be measured. The IEP also ensures that the student will receive special education based on scientific research (Yell, Law and Special Education, 2012). The most crucial part of the IEP is the placement of the child. This is determining if the child will be placed in a special education class or a general education class. The members of the meeting are also monitored. There should always be the parents of the student, the special education teacher, a public education representative, a general education teacher, and any aids or other individuals involved in the services of the student (Yell, Law and Special Education, 2012). The IEP is an amazing and superior aspect of the IDEA, and is the key to a child receiving special education.

Least Restrictive Environment (LRE) is the third pillar of the IDEA. This term is defined as: children with disabilities should be educated with children without a disability to the highest extent possible that is appropriate (Yell, Law and Special Education, 2012). Separating student with disabilities into special education schools or classes should only occur when the severity of the disability results in the student not being able to receive a beneficial education in the general education classroom. The IDEA requires schools to make every attempt to integrate students receiving special education with their peers without disabilities. LRE acknowledges that separate is not equal (Yell, Law and Special Education, 2012). This concept provided many grey areas after it was established, and often resulted in law deciding the details.

The Hartmann v. Loudoun County Board of Education case in 1997 is an example of the details of LRE needing to be clarified. This case involved an 11 year old boy with Autism named Mark. Mark was placed in the general education classroom with a full time aide per his parent's

request. Mark did not receive educational benefit from the general education classroom and had many physically violent outbursts in class (Yell, Law and Special Education, 2012). His behavior took away from the other student's education in the class, so the school suggested that Mark be placed in a classroom for students specifically with Autism. Mark would be in this class for academics and would be with his general education peers during nonacademic times. Mark's parents refused this placement, so the school filed for a hearing. The court decided in the school's favor; the parents filled an appeal which also resulted in favor of the school. The case went into several higher courts, but the end result was in favor of the school. The court reported that the school did place Mark in a LRE and made every attempt to place him in a general education setting. The court ruled that the special education class was the LRE for Mark because he was not receiving education benefit in the general education classroom and his behavior was impairing the learning of others (Yell, Law and Special Education, 2012). This case provided an example for many LRE issues to come and explained the details of LRE.

The fourth pillar of IDEA is appropriate evaluation. This pillar requires schools to ensure a student receives the correct testing to determine his or her disability. This includes a school must make sure each student receive the correct accommodations in relation to disability diagnoses. The members of the IEP meetings will be responsible for making sure the evaluations are appropriate for the specific student. It is equally necessary the IEP team determine they have discovered all disabilities the student may have (Yell, Law and Special Education, 2012). This pillar is specific, but essential in receiving an appropriate special education.

Parent and Teacher involvement is an essential part of special education for students with disabilities, and it is the fifth pillar of IDEA. Parents involvement is a necessity for every aspect of a child's IEP. This helps to establish a relationship between the family and the school. IDEA

requires schools to inform parents of all IEP meetings, and of any changes involving their child. Parent permission is also required for many aspects of special education. Teacher involvement includes the special education teacher and the general education teacher. The special education teacher must be involved in the education plan for each student, so the teacher will have a good understanding of what he or she needs to do in order to provide a beneficial education for the student (Yell, Law and Special Education, 2012). The general education teacher should be involved in the IEP, so the teacher will be knowledgeable of what a student needs when he or she is integrated into the teacher's general education classroom. These involvements are for the benefit of the student, and are an intricate part of student's education.

Procedural safeguards are the sixth and final pillar of the IDEA. Procedural safeguards are legal aspects of the IDEA that protect all parties in special education. These safeguards give parents the right to view all of the student's educational records. Both the parents and school have the right to an impartial hearing with an impartial officer if an issue should arise (Yell, Law and Special Education, 2012). The essential purpose of this pillar is to help resolve any disagreements between school and family. This pillar also represents the rights provided by the IDEA. Procedural Safeguards are a way to help with a smooth, professional, legal, and effective educational process.

The six pillars of the IDEA cover almost all of the aspects of special education. However, students with disabilities can receive many services outside of the special education classroom. These continued services include occupational therapy, behavioral therapy, physical therapy, and many more. These services are afforded by the school, and can make a dramatic difference in the progress of a student's education. Continued services are also included in the IEP and are factored into the LRE for the student.

The legal foundations and the IDEA have created an incredible educational system for students with disabilities. Students receiving special education have come a long way since the 1700s and are continuing on a positive path. Today, the federal government provides funding to states that can prove they are following the IDEA mandates for every student. All fifty states are compliant with the laws of IDEA, and there are special education laws in individual states. The families and educators who fought for special education laws and equality have experienced a great success.

Special education includes a broad range of services under the IDEA. The goal of the IDEA is to help children with disabilities as early in life as possible. Special education services can begin as young as age three and continue into age twenty-one. Beginning services in special education include processes called Child Find and early intervention services. IDEA has also mandated a Response to Intervention program, and an evaluation process if a child is suspected of having a disability. All of these programs have their own stipulations and requirements, but they are designed to provide the maximum benefit to students.

As of 2004, IDEA mandated a program called Child Find. This program requires all school districts to locate, find, and evaluate all children who may have a disability who live in a school's jurisdiction (Special Education Advisor, 2012). This includes all children no matter what school they attend, if any. Article seven, Indiana's state laws over special education in accordance with IDEA, states their requirements for the Child Find program as follows:

“The public agency shall establish, maintain, and implement written procedures that ensure the location, identification, and evaluation of all students three (3) years of age, but less than twenty-two (22) years of age, who are in need of special education and related services, regardless of the severity of their disabilities...”(Identification and

Evaluation, Child Find, 2008)

Article seven continues to elaborate that this mandate includes students who are homeless, wards of the state, attend nonpublic school, highly mobile students, and students who are suspected of having a disabilities, but are still passing from grade to grade (Identification and Evaluation, 2008). This program was created because it is crucial to find children with disabilities and intervene as soon as possible. This program could make a huge difference in whether or not a person with a disability is able to function, even independently, as an adult. The Child Find program is the cornerstone for early intervention services.

Early intervention is defined as providing support, services, and education to infants and children up to age two (sometimes used for children in kindergarten through third grade) who are regarded as having a physical or mental disability, delay, or are at risk of developing a delay or disability. The goal and purpose of early intervention is to lessen the effects of the disability on the child. Early intervention services may take place in a variety of settings, but there is a strong emphasis on natural environments. Natural environments are environments in which children without disabilities would be placed. Early intervention services focus on five main areas of development. These areas include support in physical development, cognitive development, social/emotional development, communication, and adaptive development (Wright's Law, 2012).

Article seven provides Indiana's guidelines on early intervention services as well. The guidelines provide that a school district may use no more than fifteen percent of its allotted special education funds from the state to provide early intervention services. These services are defined as support, education, and related services for children ages zero to two, but can be used for children who are not yet determined to have disability up to the third grade. Under article

seven, schools are required to report how many students use these services yearly to the department of special education (Identification and Evaluation, 2008). Early intervention services can make all the difference for children with disabilities, and provide these children with a chance to gain development before beginning school.

Response to Intervention programs are another way to support all students in education, and can help to determine if a student has a learning disability. Response to Intervention (RtI) is a progress-monitoring tool for students with and without disabilities. RtI is a program based off a baseline of data to determine which students are developing according to grade standard (Yell, The Law and Special Education, 2012). This can be used in any subject, and is designed to help all students. RtI is designed to implement a series of interventions to support students in areas that they may struggle, and assist students to progress to grade standard. If a student does not respond to any of the interventions in this program, then the student will be referred to special education (Yell, The Law and Special Education, 2012). The purpose of RtI is to catch students before they fail, and get them the support they need.

There are three tiers of intervention to the RtI process. The first tier includes all students and is the responsibility of the general education teacher. In this tier, the core curriculum is used in the general education classroom, and it is designed to be effective for 80% of students. This tier must be based off research materials. Universal benchmarking is often used in this tier as well, and grade level teams are developed. The groups of students in this tier are generally larger, and the students that respond to this tier are the students that meet the grade standard (Yell, The Law and Special Education, 2012). Data collecting and trying different strategies in the classroom is the responsibility of the general education teacher. This teacher may try different approaches in the classroom, and if students do not respond then they are moved to the second

tier of RtI.

The second tier of RtI is designed for students who do not respond to the first tier, which is about 20% of students. When students are placed in the second tier, assessments are done to determine what exactly the students are struggling. Supplemental supports and interventions are used at this time within smaller groups of students. These supports in small groups are given in addition to original in class instruction. Interventions are given at a higher frequency in this tier. Core teams continuously monitor their progress, and determine if these students are responding to these interventions (Yell, The Law and Special Education, 2012). About 15% out of the 20% that did not respond to tier one, will respond to tier two. The remaining 5% that did not respond to either tier, will be referred to tier three.

Tier three of RtI consists of very small groups of student or even one on one instruction. These interventions are much more intense, longer in duration, and higher in frequency. Tier three is also highly individualized, and focuses on the specific skill in which the student needs support. These interventions can be done by whom ever is deemed appropriate by the school. This may be a specialized instructor, a special education teacher, or the general education teacher. The setting is also chosen by the school, but is usually outside the general education classroom (Yell, The Law and Special Education, 2012). Students who do not respond to the interventions in this tier are referred to special education. The special education teacher's responsibility is to then determine if testing for a disability is necessary, and if there is enough data to support testing.

Response to Intervention is an intense, but very rewarding program. It helps all students, but is able to catch students who are struggling before they fail. Before RtI was established in

2004, the traditional model of special education included little progress monitoring and there was no attempt to help students before they failed. There was no middle ground for students who just needed a little extra support in a certain area (Williams, 2012). Students either did well in the core curriculum, or were referred to special education after they failed. RtI now focuses on environmental factors, duration, intensity, and frequency to help students (Williams, 2012). Before, none of this took place, and education focused on the student having the problem. This program has also strongly benefited students who are culturally diverse or students who are English language learners. Before RtI was used, these students were placed in special education because they were thought to have a disability because they did not understand. This was not true. If a student is an English language learner, this does not mean they have a disability. Now that RtI is being used, teachers can determine that these students do not need special education services; they just need extra support in understanding the language, and are fully capable of staying at grade level standards with this support (Yell, 2012). RtI more thoroughly examines the needs of students, so students are receiving the appropriate support. This program also requires schools to send a written notice to parents about intervention services. RtI has been a revelation for students and special education.

Whether a teacher refers a student to special education, parents, or other individuals, an evaluation process takes place before a student can receive special education services. In order for a student to be eligible for special education services, the student must have the presences of a disability and need the services, because the disability is negatively affecting his or her education (Yell, The Law and Special Education, 2012). The purpose of the special education evaluation is to determine if a student is eligible for services and to determine the student's present levels of performance. The evaluation also determines the student's strengths and areas

of concern. All of this information is needed in order to make an educational plan for the student. Parents play a critical role in evaluation. A student's parents must provide written consent in order for a school to begin special education evaluation (Yell, The Law and Special Education, 2012).

The process of special education evaluation is very particular. If a parent, or a teacher, suspects a student may have a disability, they can request a student be evaluated for special education needs. Parent's must provide written consent before testing can begin. This is the first time parents receive their procedural safeguard rights as well (Special Education Advisor, 2012). The school has 50 school days upon receiving written parent consent to evaluate the student and hold an initial case conference to determine if the child will receive special education. However, if a child has went through RtI services and is still not responding to interventions, then the school has only 20 school days to complete the testing and hold the case conference (Yell, The Law and Special Education, 2012).

After written permission is received, a multidisciplinary team is formed. This team consists of individuals that can provide information on the student's evaluation results, present levels of performance, medical standing, and his or her abilities in the general education classroom (Yell, The Law and Special Education, 2012). This team also consists of someone who can provide a baseline of standard performance for the student's grade standard. All of these individuals work together to compile facts about the student that can help determine eligibility for special education. After the multidisciplinary team is formed, the school may begin evaluating the student. The school then schedules an initial case conference where the multidisciplinary team and case conference committee (including the parent) determine if the student is eligible for services (Yell, The Law and Special Education, 2012). The evaluation

process for special education is very thorough, but is effective in determining if a student is eligible and in need of special education services.

How students begin to enter special education is a process that involves many people. However, with the additions of the Child Find program and early intervention services to the IDEA in 2004, children are getting services and support much sooner in life. This is making a really positive impact on special education and the lives of children with disabilities. Response to Intervention has become a great program to give students extra support if they need it, without referring them to special education unnecessarily, or letting students fail before helping them. The evaluation process that takes place in order for a student to receive special education is thorough, and is able to place students in the correct educational program. All of these programs and interventions combine to take special education to the next level towards providing the best education to students with disabilities.

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