

An Insight on Special Education

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The world of special education is composed of different aspects and components. By having knowledge of IDEA and its six pillars, educators have a better understanding of the foundations of special education. By examining Article 7, educators will know how to identify a child with a disability including: the processes of RTI and evaluation. Article 7 is also helpful when handling discipline. Although special education is established on these different aspects and components, they all are under an umbrella that can help in the understanding the insights of special education.

In 1975, The Education for All Handicapped Children Act, which was later renamed Individuals with Disabilities Education Act, or IDEA, in 1990, was established. IDEA changed the world of special education forever (Hulett, 2009). “Although education has been increasingly heralded as one of the most important factors in the development and continued prosperity of the United States, nowhere in the Constitution is education mentioned” (Hulett, 2009, p. 4). However, three areas of the Constitution have affected education throughout the years that serve as the legal foundations for special education. They are the General Welfare and Spending Clause, the 10th Amendment, and the 14th Amendment (Hulett, 2009).

First is the General Welfare and Spending Clause, which is found in Article 1, Section 8. The Constitution states, “The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay that Debts and provide for the common Defence and general Welfare of the United States...” (Hulett, 2009, p. 4). This means Congress has the power to collect taxes and distribute wherever they feel will benefit the citizens. Since, education benefits the common defense and general welfare of the United

States, Congress can collect and distribute the money to education purposes (Hulett, 2009).

Another legal foundation of special education is the 10th Amendment. It states, “The powers not delegated to the United States by the Constitution, nor prohibited by it the States, are reserved to the States respectively, or to the people” (Hulett, 2009, p. 4). The Constitution does not proclaim that education is the federal government’s responsibility; however, it does not clarify if it is the state government’s responsibility either. Therefore, the states have the responsibility of education (Hulett, 2009).

Lastly, the 14th Amendment is the last part of the Constitution that applies to education. The 14th Amendment declares,

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (Hulett, 2009, p. 4)

The most important aspect to remember about the 14th Amendment is “deprive any person life, liberty, or property” (Hulett, 2009, p. 4). Since education is considered a property right, no one can be deprived of it, including people with disabilities (Hulett, 2009).

However, special education laws would have never been established without the help from parents of children with disabilities (Hulett, 2009). Like any loving parent, these parents went to the extremes in order for their children to get the rightful education they deserve. These parents helped form two outstanding organizations that are the social foundations of IDEA, which still exist today: the National Association for Retarded

Citizens and the Council for Exceptional Children. The National Association for Retarded Citizens (ARC) was founded in 1950. ARC is responsible for advocating for families, friends, and the community, who are concerned about education. The Council for Exceptional Children (CEC) was established in 1922, and is now “one of the largest and most influential disabilities-related advocacy organizations for children in the world” (Hulett, 2009, p. 19). CEC is known for promoting a free and appropriate public education in the least restrictive environment for all children (Hulett, 2009).

Free and appropriate public education and least restrictive environment are two of the six pillars of IDEA. The other four are an appropriate evaluation, active parents and teachers, procedural safeguards, and an individualized education program. Each pillar needs the other five in order for a child to pursue his or her best education. These pillars are extremely important to special education because the “six elements of the IDEA constitute the law’s essential support structure” (Hulett, 2009, p. 31).

The first pillar of IDEA is a free and appropriate public education, also referred to as FAPE. FAPE states that a child cannot be deprived of an education, which is known as the principle of zero project. A child however has to fall in between a certain age. On the child’s third birthday until the end of the school year of the child’s twenty-first birthday, he or she is eligible for a FAPE. “It is essential that schools do everything in their power to ensure that every eligible child receives a FAPE” (Hulett, 2009, p. 101). Every child with a disability has the same rights as a child without a disability and therefore can obtain an education.

One important court case that shaped FAPE was the *Board of Education of Hendrick Hudson Central School District versus Rowley*. The plaintiffs, or the person

who brought this legal action, were Mr. and Mrs. Rowley and the defendant, or the person against a charge, is the Board of Education of Hendrick Hudson Central School District (Hulett, 2009; Webster, 2003). Their daughter, Amy Rowley, is a hearing impaired student. “The proposed IEP included placement in a general education class, the use of an FM hearing aid, 1 hr per day of instruction from a tutor for the deaf, and speech therapy for 3 hr per week,” (Zirkel, 2012) but her parents believed she additionally needed an interpreter for the full day. However, the Board of Education pleaded not guilty because they declared Amy does not need an interpreter for the full day. Since Amy reads lips phenomenally and her grades and social life have tremendously improved, the Board of Education believe she does not need an interpreter. In 1982, the final ruling was the Supreme Court favored the Board of Education of Hendrick Hudson Central School District and ruled that Amy was receiving a FAPE. Thus, the Supreme Court ruled, “schools were not responsible for providing maximum educational services; rather, they were responsible for meeting the basic needs of the child in order to provide a FAPE” (Hulett, 2009, p. 95).

Another pillar of IDEA is least restrictive environment also know as LRE. It is crucial for the education of a child with a disability. LRE guarantees,

That students should be removed from the regular education setting only when the nature and severity of their disabilities warrant such a removal and when they are included with their nondisabled peers to maximum extent appropriate. Prior to the removal, supplementary aids and services also must be considered. (Hulett, 2009, p. 107)

The continuums of placements are regular class, special educator consultative, co-teaching, resource, self-contained, hospital or home bound, special day school, or residential placement. Some supplementary aids and services that may be present in a child's LRE are special seating, assistive technology, extra time to complete work, etc. It is important to remember the LRE is based off a child and not the disability and therefore two children with the same disability may have two completely LREs (Hulett, 2009).

IDEA wants children with disabilities to have the best education that they possibly can and in order to make it possible, children have to go through an appropriate evaluation. This evaluation has specific requirements to ensure that a child is receiving the best instruction. These requirements are: "the use of any single procedure as a sole criterion, assessment of the relative contribution of cognitive and behavioral factors in addition to physical or development factors, and protections against evaluation instruments that may be racially or culturally discriminatory" (Hulett, 2009, p. 34). The requirements help the evaluation process. During this process, a child will demonstrate his or her own strengths and weaknesses, which will determine the special education and related services needed. Some examples of a related service are occupational therapy, physical therapy, and psychological services. The evaluation also helps shape a child's individualized education program, or IEP. A specialized team, including the child's parents or guardians, has the final decision of eligibility for this child. After the appropriate evaluation is complete, it guarantees a child with a disability will receive the related services and classroom placement he or she needs (Hulett, 2009).

In addition, it is essential that the child's parents or guardians and teachers, including "other individuals who apply their expertise," (Hulett, 2009, p. 34) stay active

in the child's special education. Professionals who do not inform the parents or guardians can create enormous problems in the child's learning experience. When this happens, a child is not getting the extra help and encouragement at home because the parents or guardians would not know their rights as a family. One right that parents or guardians would be informed about is a procedural safeguard. Besides procedural safeguards, "the law guarantees the right of consent to and participation in every aspect of the educational process, including evaluation and reevaluation, placement, the IEP, and the uses of public and practice insurance" (Hulett, 2009, p. 34). Parents or guardians and teachers participation in a child's education must exist for a child with a disability to obtain a proper education (Hulett, 2009).

The fifth pillar of IDEA is a procedural safeguard. Safeguards guarantee a child with a disability and his or her parents or guardians the following:

The rights to examine all educational records, the right to have an impartial hearing and an impartial hearing officer, the right to receive certain prior notices, the right to be afforded mediation, the right to be accompanied by an attorney, and the right to have a state-level appeal if a hearing has been conducted by a local education agency. (Hulett, 2009, p. 35)

Not only does IDEA assure children with disabilities and their parents or guardians safeguards, but IDEA also protects teachers, any other individual in the school, and the school system. Everyone in the setting of a child with a disability has the right to procedural safeguards (Hulett, 2009).

A child's individualized education program, IEP, is one of the most important pillars of IDEA. "The IEP is intended to ensure that all necessary individuals are aware of

the specific needs, requirements, services, and accommodations deemed essential to meeting the child's individual needs" (Hulett, 2009, p. 145). The law states all children with disabilities eligible for IDEA must obtain an IEP or an individualized family service plan, IFSP. An IFSP is for a child with a disability who is younger; from the time he or she is born to his or her third birthday. Once the child turns three, he or she is qualified for an IEP. In addition, the law states the following: required content of the IEP, how parents receive progress reports, the IEP team, considerations in the development, and the roles of the teachers (Hulett, 2009). At least once a year, the IEP team, consisting of the child's parents or guardians, regular education teacher, special education teacher, local education agency representative, a professional qualified to discuss evaluation results, other necessary authorities, and sometimes the child with the disability, meets to reevaluate the child's IEP and make any necessary adjustments. Parents or guardians should be notified when this meeting will take place because it is part of the procedural safeguards (Hulett, 2009).

An IEP has eight components. The first component is the present level of performance. The IEP team must present the level in order to determine how the child's disability is affecting his or her learning. Annual goals must "address both academic and functional areas," (Hulett, 2009, p. 154) and the specific needs that have resulted from the impact of the disability. It is essential that parents or guardians are informed of their child's progress on these goals, which is another component of the IEP. Mentioning any accommodations, modification, and or support services that a child needs to help further his or her education is also essential. LRE and related services are another element of the IEP. Additionally, "the IEP team must determine how the student will participate in the

mandatory state or local assessments and which accommodations and modifications are necessary” (Hulett, 2009, p. 156). Frequency and duration of services must be decided and documented in the IEP. The last component of the IEP is transition services. At fourteen years old, according to Article 7, which is Indiana State Board of Education’s special education rules, a child must start deciding how he or she will further his or her education after high school, the job he or she is working towards, and where he or she will live. Furthermore, each component must correspond with the other in order for an IEP to be successful. “The IEP has been, and will continue to be, both the cornerstone of the IDEA and the heart of American special education” (Hulett, 2009, p.32).

A student cannot just receive special education services and be given an IEP if a parent or teacher believes the child needs services, instead many crucial events must take place before a child is eligible for services. First, the Child Find section of Article 7 (2008) states, “the public agency shall establish, maintain, and implement written procedures that ensure the location, identification, and all students three years of age, but less than twenty-two...” (p. 55). The public agency, or school, is responsible for the students that live in the school district, attend private schools, are homeless, and are wards of the state. They are also responsible for students who move to their school and students who are suspected of being disabled even though they are proceeding to the next grade level. Additionally, Child Find identifies the children who are in need of special education and related services, but are not yet found (Child Find, 2008).

Article 7 Section 40 also addresses the Early Intervening Services. Students from kindergarten to third grade are the main concern; however, these services could be provided to any student up to twelfth grade. These students are not involved in special

education; however, they need extra help academically and behaviorally. Early Intervening Services provides the assistance these children need in their general education classrooms through their teachers or instructional computer software. These services try to get to the student in his or her appropriate grade level before identifying him or her as a child with special needs (Comprehensive and coordinated early intervening services, 2008).

The traditional model of assessment is a referral-assessment-placement sequence. Norm-referenced tests that compare the students' performances with national ratings are used to assess students to see where they fall academically. However, problems seemed to appear. There were problems with "the referral process, bias in the referral and assessment processes, and overrepresentation of minorities in special education, specifically in the categories of mental retardation and emotional disturbance" (Hulett, 2009, p. 129).

Additionally, educators need to be more aware of cultural and linguistic differences in their students in order to refrain from problems to occur in the referral process.

Cultural differences between educators and culturally and linguistically diverse (CLD) students can have negative effects on the education of CLD learners. Much of the special education literature pertaining to the education of CLD learners has focused on biased assessment practices that lead to overrepresentation. It is important to consider that overrepresentation is also a function of inappropriate referrals from general education teachers. (Chamberlain, 2005)

CLD students are assumed to need special education because they cannot comprehend the information taught to them in the classroom due to their differences. By being alert to cultural and linguistic differences and by using a more reliable system, educators can ensure a more successful evaluation process (Chamberlain, 2005).

Compared to the traditional model, a more reliable system is response to intervention or RTI, which is an intervention system that allows students to receive the extra help they need. “RTI is a multitier process intended to identify, support, and monitor the progress of students struggling to meet age- or grade-appropriate learning expectations” (Hulett, 2009, p.133). The purpose of RTI is to reduce the number of students in special education by early identification and intervening services. Students in need of these services can be placed into one of the three tiers. A student is placed into the appropriate tier by examining his or her level of performance. These tiers are the frameworks of RTI (Hulett, 2009).

Tier 1 is when schools distinguish the students who are lacking academically in their grade level. Teachers assess students by using “universal screeners, curriculum-based measures, state tests, district assessments, norm-referenced tests, and teacher-made tests” (Hulett, 2009, p. 134). Additionally, three times a year teachers collect data by using a benchmark. Once students who are in need of assistance are found, they are immediately placed into intervention (Hulett, 2009). For 90 minutes a day, students are educated on the assessed material, which relates to the curriculum-based content. The general education teacher educates these students and determines if the students are making progress based on the assessments and how well they understand the curriculum

(Mellard, McKnight, & Jordan, 2010). If a student does not make progress in Tier 1, then the student proceeds to Tier 2 (Hulett, 2009).

Targeted interventions are Tier 2. “In public schools the secondary level of prevention is intended for an estimated 15 percent of students for whom the core curriculum is insufficient to ensure learning” (Mellard, McKnight, & Jordan, 2010, p. 218). Students are kept in the general education classroom for the curriculum so they do not fall behind, but also receive small-group instruction, two to five students, from another teacher. The teacher for this intervention is usually a special education teacher or a teacher specialized in the specific area that the student needs extra help. Therefore, these students receive the 90 minutes a day from the general educator. Depending on the school, an additional 30 minutes a day is required from the educator for intense intervention (Mellard, McKnight, & Jordan, 2010). Additionally, teachers are required to evaluate the students at least once a month to determine their performance. If a student does not make significant progress in Tier 2, then the student proceeds to Tier 3 (Hulett, 2009).

Tier 3 contains the students who are having the most difficult time understanding the material. It is estimated that “5 percent to 7 percent of students” (Mellard, McKnight, & Jordan, 2010, p. 218) in a school are in Tier 3. These students “receive intensive, individualized instruction using targeted interventions” (Hulett, 2009, p. 134). The intensive, individualized instruction is usually taught by a teacher specialized in the specific area that a student needs extra help in or a special education teacher. A student in Tier 3 receives the 90 minutes from the general education classroom and depending on the school, an additional hour a day is required from the educator for intense intervention

(Mellard, McKnight, & Jordan, 2010). Additionally, it is important for the teacher to assess his or her students at least twice a week. If a student is not progressing in Tier 3, then a teacher may refer the student for evaluation for special education (Hulett, 2009).

When a student is still struggling in the third tier, the student can go through an evaluation process. One purpose for an evaluation is “to determine if the student meets the criteria for any of IDEA’s 13 categories of disability” (Hulett, 2009, p. 124). It also determines how the student is performing academically and behaviorally. Once the evaluation process is over and the student is found eligible for special education, the Case Conference Committee is informed and starts working on the student’s IEP (Hulett, 2009).

The first step of the evaluation process is informing the student’s parents or guardians about the procedural safeguards and asking their consent to evaluate their child (Hulett, 2009). If the parents say no, then the school has the right to request due process or utilize mediation. If the parents say yes, then the school has 10 instructional days to respond to the parents that an evaluation will take place. Additionally if parents agree, this does not mean that they also agree to receive special education services for their child (Initial educational evaluation; public agency written notice and parental consent, 2008).

Next, a multidisciplinary team, including a school psychologist, general educator, and a special educator, is formed. The school psychologist is responsible for providing any information about the specific disability that will benefit the child. General and special educators’ roles in the evaluation process are to teach the student and provide any information including current evaluations, assessments, notes from parents, and

classroom observations (Conducting an initial educational evaluation, 2008).

Additionally, this team then has to notify the parents about the specific instruments that will be used to help evaluate their child. The parents must sign a form stating they understand the procedure and agree to it (Hulett, 2009).

According to IDEA, once the parents' consent is received, the evaluation must be done in 60 instructional days (Hulett, 2009). Article 7 states it has to be done in 50 instructional days. However, if a student has participated in the RTI process, then the multidisciplinary team has only 20 instructional days to complete the evaluation (Conductional an initial educational evaluation, 2008).

Once the evaluation is complete and the information is obtained, the Case Conference Committee must decide whether the student is eligible for special education and if so what does the student need in order to succeed. If the student is found eligible, then the Case Conference Committee has to develop an IEP (Conductional an initial educational evaluation, 2008).

IDEA requires that a student has to be reevaluated every three years (Hulett, 2009). However, a student can be reevaluated if additional information is needed or if the parent or teacher requests it. The timeline for the reevaluation that is requested is one year. During every reevaluation, the parents or guardians must agree to the evaluation if a teacher requests it. If the parents say no, then the school has the right to request due process or utilize mediation. If the parents say yes, then the school can proceed with the evaluation. The purpose for the reevaluation is to see if a child is still eligible for special education and if any changes need to be made to the child's IEP (Reevaluation, 2008).

Continuing with evaluations, students with disabilities are still guaranteed a FAPE and LRE, even when discipline has to occur. Disciplining students with disabilities has always been one of the most debated topics in special education. Regardless of whether the student has a disability or not, if the student does something wrong, he or she will be disciplined according to the school's rules and consequences. However, when a student without a disability is being removed from school for a long period of time, he or she is not provided services. When a student with a disability is being removed from school for a long period, he or she must still be provided services (Hulett, 2009).

A removal is when a student is taken out of his or her current placement for any period of time because he or she violated a code of student conduct (Hulett, 2009). Even if a student is removed for only part of the day, it is considered a day of removal. If the student's IEP states that the student can be removed from his or her placement for a short period of time, then it does not count as a day of removal. Suspension is also considered a day of removal; however, in-school suspension does not count as long as the student is working on assignments, receiving services, and participating with students without disabilities (Removals in general, 2008).

Once a student has been removed from his or her placement for ten days, which could be either consecutive or cumulative, the ten-day rule comes into effect. For the first ten days of removal, the school is not responsible for providing services to a student with a disability if the school does not provide these services for students without disabilities. However, on the eleventh day the school must provide services to the student with a disability (Hulett, 2009).

If a student's removal process ends in a change of placement, then a manifestation determination must take place within ten days when the student makes a violation (Manifestation determinations, 2008). A manifestation determination is when the IEP team has a meeting to determine if the student should be expelled or not (Hulett, 2009). "First, all information in the student's file must be reviewed, with particular attention to the student's IEP, teacher observations, and information provided by the parents" (Hulett, 2009, p. 183).

Once the IEP team has gathered all of their information, they must ask themselves two questions: Was the violation caused by the student's disability and was the violation a direct result of the Local Education Agency's failure to follow the IEP? If the team decides that a manifestation is found and is caused by the student's disability, then they establish a functional behavioral assessment. A functional behavioral assessment, or FBA, is a "collection and analysis of data prior to and following inappropriate behaviors" (Hulett, 2009, p. 158) that identifies patterns of the student's behavior. If a FBA is already established, then they create a behavioral intervention plan, or BIP (Hulett, 2009). A BIP is developed based off the child's FBA. It contains the behavior targeted in the FBA, behavioral goals to increase or decrease a behavior, intervention strategies, dates to review the plan and evaluate it, and methods for evaluation of the plan (Buck, 2000). If a behavioral intervention plan is already made, then they must review and modify it. The student is also returned to his or her original placement unless the Case Conference Committee decides otherwise (Hulett, 2009). Additionally, if the IEP team decides the violation occurred due to the direct result of not following the IEP, then the agency must immediately take action to fix their problem. On the other hand, a manifestation is not

found when the student's disability did not cause a violation and the Local Education Agency's did follow the IEP. In the event that this occurs, the student is treated as though he or she does not have a disability, but still receives services (Manifestation determinations, 2008).

There are certain situations that a student is automatically removed from his or her placement to an alternate placement for up to 45 days. If the student brings a weapon; knowingly carries, uses, or sells illegal drugs; or inflicts serious bodily injury upon another person while on the school's grounds, then the student is removed immediately (Interim alternative educational setting; weapons, drugs, and serious bodily injury, 2008). On the same day as the violation, the school must notice the parents and give them a copy of the procedural safeguards (Hulett, 2009). Throughout the entire discipline process, the parents of the student with the disability have the right to mediation, due process, or both (Interim alternative educational setting; weapons, drugs, and serious bodily injury, 2008).

Special education has many different aspects and components that form an appreciation and understanding of special education. IDEA's pillars are the fundamentals of special education. The pillars help identify students by RTI and an evaluation process. By comprehending Article 7, educators have the knowledge on how to deal with discipline. IDEA, identifying, and disciplining children are indispensable aspects and components of special education.

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