History of Special Education: Important Landmark Cases

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FORTE LAW GROUP PRACTICE PAPER:

Abstract

Historically, children with disabilities received unequal treatment in the public education system throughout the United States. During and shortly thereafter the civil rights movement of the 1950s and 1960s, many parents and advocacy groups for children with disabilities began their own movement by using the U.S. federal court system to compel states to provide equal educational opportunities and rights for children with disabilities. The early cases discussed in this practice paper reflect how the legal rights of students with disabilities emerged, eventually leading to FAPE (free appropriate public education) and the enactment of the IDEA (Individuals with Disabilities Education Act) 20 U.S.C. Section 1400.

"In these days, it is doubtful that any child may be reasonably expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right that must be made available to all on equal terms."

– Chief Justice Earl Warren, writing for the unanimous United States Supreme Court, *Brown v. Board of Education*, 347 U.S. 483, 493 (1954)

Purpose

The purpose of this practice paper is to provide a brief examination and overview of the history of early disability litigation by focusing on the foundational cases that paved the way for the right to education of children with disabilities. The cases that will be discussed include:

- Brown v. Board of Education, 347 U.S. 483 (1954)
- P.A.R.C v. Pennsylvania, 343 F. Supp. 279 (E.D. Pa. 1972)
- Mills v. Board of Education of the District of Columbia, 358 F. Supp. 866 (D.D.C. 1972)
- Board of Education v. Rowley, 458 U.S. 176 (1982)
- Honig v. Doe, 484 U.S. 305 (1988) and
- Timothy W. v. Rochester, New Hampshire, School District, 875 F.2d 954 (1st Cir. 1989)

Constitutional Right to Education: A Misnomer

To most Americans, there is a common misconception that providing a child with the right to a public education is guaranteed by the Constitution of the United States of America. This is incorrect. Education is the responsibility of the states.

"The Tenth Amendment of the U.S. implies that education is the responsibility of the state government. That education is a state – not federal matter – was seen as essential by the founders of this country. This was because state governments were seen as being closer and more connected to the needs of the people." Yell, M. L., Rogers, D. & Rogers, E. L. (1998); see also, The legal history of special education: What a long strange trip it has been, *Remedial and Special Education*, *19*, 219-228.

Despite the lack of an inherent federal right to public education, the United States Supreme Court in the early disability cases applied the due process and equal protection clause of the 14th Amendment to compel states to not "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Constitution, Amendment 14.

Exclusion Was the Rule

Prior to the foundational disability rights cases being decided, exclusion of students with disabilities was the rule across the United States. One of the earliest reported cases that supported the philosophy of excluding students with disabilities was decided in 1893, where the Massachusetts Supreme Court upheld the "expulsion of a student solely due to poor academic ability" on the ground that the student was too "weak minded" to profit from instruction. Watson v. City of Cambridge (1893); see also Principal Web Exclusive, "The Evolution of Special Education," Keli J. Esteves and Shaila Rao, November/December 2008, pg 1.

Nearly thirty years later in 1919, the Wisconsin Supreme Court, in ordering the exclusion of a child from public school, held that "the very sight of a child with cerebral palsy will produce a depressing and nauseating effect" upon others. Beattie v. Board of Ed. of Antigo, 169 Wis 231, 232, 172 N.W. 153 (1919); see generally, Wrightslaw.com. Even the Supreme Court of the United States, on the issue of involuntary sterilization,

ruled that "[i]t is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind … Three generations of imbeciles are enough." Justice Oliver Wendell Holmes – Buck v. Bell, 274 U.S. 200 (1927). Throughout U.S history, states consistently and routinely enacted state statutes and regulations that allowed school officials and administrators to exclude children with disabilities from receiving public education. All of this changed with the landmark U.S. Supreme Court decision, Brown v. Board of Education, 347 U.S. 483 (1954).

Brown v. Board of Education

Decided in 1954, the *Brown* decision ruled that segregation within public schools was illegal, thereby ending as a matter of law segregation based on race. The *Brown* case determined that the "separate but equal" doctrine established by the Court in *Plessy v. Ferguson*, in providing "separate education facilities" based race was, in fact, inherently unequal and violated the equal opportunity and due process clause of the 14th Amendment.

As relating to education rights, the *Brown* court held "education is perhaps the most important function of state and local governments … It is the very foundation of good citizenship" and "such an opportunity where the state has undertaken to provide it, is a right that must be made available to all on equal terms." *Id.*, at page 493.

Notably immediately after the *Brown* decision in 1954, the Executive Director of the then-named "National Association for Retarded Children," Dr. Gunnar Dybwad, drew attention to the Supreme Court's decision with parents and disability advocacy groups, suggesting that this historical case had huge potential and opportunities for children with special needs. See, http://www.disabilityjustice.org/right-to-education.

Based on the *Brown* decision, one of the first and early pieces of federal legislation that was established to provide federal aid to assist Local Education Agencies (LEA) in meeting the needs of "educationally deprived" children was the 1965 Elementary and Secondary Education Act (P.L. 89-10) (ESEA). Authorized for one year, the ESEA authorized federal funding to states to establish sponsoring institutions and centers for "children with handicaps." ESEA was amended and improved for nearly over the next two decades until it was renamed the Individuals with Disabilities Education Act (IDEA) in 1990 and then reauthorized in 2004..

Extending Brown to Children with Disabilities: P.A.R.C. & Mills

There are two cases from the early 1970's, *P.A.R.C. and Mills*, that used the *Brown* decision to specifically address the issue of education for children with disabilities. At this point in American history, unlike today, there were millions of children with disabilities that were either denied enrollment in public schools, insufficiently served by public schools or alternatively were sent to institutions of

deplorable conditions. In both of these cases, the courts applied the *Brown* decision by using the due process clause of the 14th Amendment to provide parents of children with disabilities specific rights to challenge and strike down state law that denied their child from the right to a public education.

P.A.R.C v. Pennsylvania

In *P.A.R.C.*, the Commonwealth of Pennsylvania argued that the exclusions of "retarded children" complained of are based upon four state statutes. The first state section provided, in part, that the state board of education is relieved from providing a public education to any child that a psychologist determines is "uneducable and untrainable." The second section allowed the state to indefinitely "postpone" the admission to public school any child who has not attained the "mental age of five years." The language of the third and four sections provided additional unreasonable excuses for the state board of education to deny disabled children the right to a public education.

Thomas Gilhool, is the attorney that represented the Pennsylvania Association for Retarded Children (P.A.R.C.). Attorney Gilhool relied on the *Brown* case to bring forth a class action for P.A.R.C. on behalf of 14 children with developmental disabilities. He argued that under PA state law, these children were denied access to public education based on these four state sections. The plaintiffs argued that, under *Brown*, their rights were violated under the equal protection clause and due process clause of the 14th Amendment.

The parties entered into a consent agreement, which was then approved by the District Court for the Eastern District of Pennsylvania. The court entered the consent agreement. Much of the court language used by the parties and the court in this case laid the framework for the rights which are now provided to children with disabilities within federal and state statutes under the IDEA. For example, in clause two of the consent agreement, we find the framework language to what is now referred to as an IEP meeting, as well as due process: "No child of school age who is mentally retarded or who is thought by any school official…or by his parents…to be mentally retarded, shall be subjected to a change in educational status without first being accorded notice and the opportunity of a due process hearing…" Clause three also provides court-made language that laid the groundwork for an IEP meeting. Most importantly, the consent agreement stated "Expert testimony in this action indicates that all mentally retarded persons are capable of benefitting from a program of education and training … It is the Commonwealth's obligation to place each mentally retarded child in a free, public program of education and training appropriate to the child's capacity." This is, in part, the framework for FAPE and the IDEA.

Mills v. Board of Education of the District of Columbia

As the *P.A.R.C.* case was being decided in Pennsylvania, the *Mills* case was being decided in the District of Columbia. *Mills* expanded the ruling of *P.A.R.C.* beyond children with developmental disabilities to children with behavioral, mental, hyperactive and emotional disabilities from being denied placement in a public education.

Similar to *P.A.R.C.,* the school system in *Mills* agreed that it had a legal obligation "to provide a publically supported education to each resident of the District of Columbia who is capable of benefiting from such instruction." However, unlike *P.A.R.C.*, the school system in *Mills* argued that it was incapable to do so because of lack of financial resources.

The court held that no child may be denied a public education because of "mental, behavioral, physical or emotional handicaps or deficiencies." The court further provided that the defendant school system's failure to provide an education could not be excused by claiming insufficient funds, specifically stating "if sufficient funds are not available to finance all of the services and programs that are needed and desirable in the system, then the available funds must be expended equitable in such a manner that no child is entirely excluded from a publicly supported education consistent with his needs and ability to benefit therefrom."

Subsequent to *P.A.R.C.* and *Mills*, twenty-seven other federal courts followed these two decisions, which eventually lead to the federal legislature passing federal laws in which to guarantee a free appropriate public education for all children with disabilities. One of the federal laws that emerged from these decisions was the 1975 Education for all Handicapped Children Act, now called the Individuals with Disabilities Education Act (IDEA).

Under the IDEA, all public schools that accept federal funding must provide a free appropriate public education for children with disabilities. IDEA also requires that each child with a disability have an "individualized education program" (IEP) that must be implemented in the "least restrictive environment" (LRE). One of the very first cases that addresses the term "appropriate" is Board of Education v. Rowley, 458 U.S. 176 (982).

Board of Education v. Rowley

In *Rowley,* the Court further elaborated on what is deemed appropriate under FAPE. Amy Rowley was a deaf child that performed better than the typical child in her mainstream classroom and was easily advancing from grade to grade in LRE with the use of a FM hearing aid. During an IEP meeting, Amy's parents requested the school district provide Amy with a qualified sign-language interpreter in all of her classes, asserting that under the IDEA, such measures were deemed "appropriate." After losing at due process and the review levels, the Rowleys appealed to the U.S. District Court

and won. The school district then appealed and the U.S. Court of Appeals for the Second Circuit affirmed the District Court's decision whereby the school district then appealed to the U.S. Supreme Court.

The issue before the U.S. Supreme Court in *Rowley* is what is meant by the IDEA requirement to a free "appropriate" public education. After reviewing the legislative history and intent of the IDEA, the Court held "the intent of the Act was more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education … We conclude that the "basic floor of opportunity" provided by the act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the child." Thus, the *Rowley* decision clarified that children with disabilities were entitled to "access" to an education that provided an "educational benefit." A school district does not have to "maximize" each disabled child's potential.

The *Rowley* decision also held that the "Procedural Safeguards" of the IDEA are just as equally important as the substantive program offered to the disabled child. Therefore, a court's inquiry under the IDEA has two parts. First, whether the state complied with the procedural safeguard of the act. Second, whether the child's IEP is reasonably calculated to enable the child to benefit from his educational plan. The Court also held that under the IDEA, the burden of proof is a preponderance of the evidence standard.

Honig v. Doe

The *Honig* decision is a landmark case in which the U.S. Supreme Court dealt with the issue of expelling a disabled child based on actions arising out of that child's disability. In *Honig,* the Court ruled that a school district may not unilaterally exclude or expel a disabled child from the classroom setting for dangerous or disruptive conduct growing out of their disabilities.

The child in this case, John Doe, was a 17-year-old boy that had significant challenges in his ability to control his behavior, impulsivity and anger towards others. His grandparents argued that a child with a disability, who is disciplined based on actions arising out of that child's disability, may not be subjected to school disciplinary actions including expulsion, without the right to due process under the IDEA. The court emphasized the importance of a school district following the procedural safeguards contained with the IDEA, which includes the right to due process and an IEP meeting.

The *Honig* case is a landmark decision because the Court created what is now known as the "ten-day rule," which allows a school to only suspend a child for up to ten days without parental consent or court intervention. Moreover, the Court ruled that a student could not be removed from school if the inappropriate behavior is a result of their disability. Now, under the IDEA, a child may be expelled for up to ten days for disciplinary infractions and up to forty-five days for dangerous behavior involving

weapons or drugs. However, if a school is seeking a change of placement, suspension or expulsion of a child in excess of ten days, an IEP meeting must be held to review the causal relationship between the child's misconduct and his disability. This specific meeting has become known a "manifestation determination" review. From a clinical prospective, the *Honig* decision also gave rise to the need of BCBAs conducting what is known as a "functional behavioral assessment" or an FBA.

Timothy W. v. Rochester, New Hampshire, School District

The last landmark case in the context is special education law is the *Timothy W.* case. In this case, the plaintiff-appellant Timothy W appealed an order from the district court that held that a child that is profoundly handicapped is not eligible for special education if he cannot benefit from such education.

The First Circuit reversed the district court's decision and stated that the purpose of the Education for All Handicapped Children Act is "to assure all handicapped children have available to them … a free appropriate public education which emphasizes special education and related services designed to meet their unique needs …"

In this case, Timothy W disabilities were severe. The school district argued that his disability was so severe that he was unable to benefit from any provided education. The Court held that the act provides for a zero-reject policy and that under the act such severally disabled children are in fact given the highest priority and protection under the act itself. Related services were also defined as equally important as special education needs. Thus, related services, such as OT, PT, SLP, AT, socialization, eating, dressing and daily living skills are all encompassed under related services within the act.

Conclusion

In conclusion, this practice paper addresses what are the landmark cases that helped to develop the educational rights of children with special needs and disabilities. As an attorney that exclusively represents children with special needs, it is up to us to help further expand and define these rulings to continue to improve and build upon our client's rights to a free appropriate public education.