

# Landmark Special Ed. Case Confirming ‘Zero Reject’ Rule Marks 25 Years



By [Christina A. Samuels](#) — December 08, 2014 4 min read

Around this time 25 years ago, the U.S. Supreme Court made special education history for a case that it chose not to take.

On Nov. 27, 1989, the high court declined to hear the Rochester, N.H., school district’s appeal of a judicial decision ordering it to provide educational services for a severely disabled child. The school district’s argument was that the child, known as Timothy W. in the legal proceedings, needed medical care, not school.

Rochester prevailed in the lower court, where a district court judge agreed that Timothy was not capable of benefitting from an education, and thus was not entitled to one under the provisions of what would come to be known as the Individuals with Disabilities Education Act. But the U.S. Court of Appeals for the 1st Circuit in Boston [reversed that decision](#). The judges wrote, in *Timothy W. v. Rochester*:

In the more than three years of legislative history leading to passage of the 1975 [Education for All Handicapped Children Act], covering House and Senate floor debates, hearings, and Congressional reports, the Congressional intention is unequivocal: Public education is to be provided to all handicapped children, unconditionally and without exception. It encompasses a universal right, and is not predicated upon any type of guarantees that the child will benefit from the special education and services before he or she is considered eligible to receive such education. Congress explicitly recognized the particular plight and special needs of the severely handicapped, and rather than excluding them from the Act’s coverage, gave them priority status. The district court’s holding is directly contradicted by the Act’s legislative history, as well as the statutory language.

The *Timothy W.* case technically only applies to four New England states and Puerto Rico, which are part of the 1st Circuit. But no other school district has chosen to challenge a special education case by explicitly arguing that a child is not educable, said Antonis Katsiyannis, a professor of special education at Clemson University in Clemson, S.C.. This core principle of IDEA is known as “zero reject.”

“This particular case was very important,” said Katsiyannis, the president-elect of the Council for Exceptional Children. “Once you qualify for services under the IDEA, there is no reason whatsoever to be denied services. This is a definite rule and very clear. We don’t have very many cases in special education that are that clear.”

Timothy was born two months premature in December 1975. He suffered from several disorders including “complex developmental disabilities, spastic quadriplegia, cerebral palsy, seizure disorder and cortical blindness,” according to court records. Several therapists and physicians testified that Timothy could benefit from physical and occupational therapy.

Raymond K. Yeagley, currently the vice president of research and chief academic officer of a nonprofit research and test-development organization, became Rochester’s superintendent right around the time the lower court case was decided and Timothy’s family indicated it would appeal.

“I told my school board, ‘You’re going to lose that case,’” said Yeagley, who had just completed a dissertation on special education policy. He would serve as superintendent in Rochester for 17 years. “They said they were trying to get people to look at what was the right source of money” to provide services for Timothy.

In retrospect, Yeagley said that the appeals court “got it exactly right,” from an equity standpoint.

The special education law was promulgated because districts all over the country were denying children needed services, Yeagley said. “What the Timmy W. case did is say, essentially, don’t look for excuses and ways to get out of it.”

Ronald K. Lospennato, the lawyer who represented Timothy and his family in court, is still deeply involved in disability rights cases related to education. Formerly the legal director of the Disabilities Rights Center, New Hampshire’s protection and advocacy program, he now works for the New Orleans-based Advocacy Center, which serves children and adults with disabilities. He also worked for the Southern Poverty Law Center in Montgomery, Ala., as director of their School to Prison Reform project. That initiative was aimed at ensuring schools provide the special education services they are required to under federal law.

“I’m very pleased with the impact we had,” Lospennato said. However, from his perspective, students with disabilities are still being [wrongly excluded from school](#), such as through disproportionate suspensions and expulsions. “I think it’s very difficult for

parents to enforce their educational rights in court,” Lospennato said. “The next step is to make sure the educational rights that students have are meaningful.”

Timothy, who was 14 at the time of the appeals decision, received services at school until he aged out of public education at age 22. “His mother was empowered by the case. She didn’t settle for just anything,” Lospennato said. News accounts at the time said the services cost the district about \$15,000 a year. For years, one of the goals on his individualized education program was simply to follow a light consistently with his eyes, Yeagley said.

Both Yeagley and Lospennato said that Timothy died a few years after leaving high school. His mother, known only as Cynthia W. in court records, could not be reached for comment.

“Rochester moved forward—we were not going to quibble,” Yeagley said. “We accepted [the decision], and I hope we made Timmy’s life and the life of his family a little better than it would have been.”

*Library intern Maya Riser-Kositsky contributed to this story.*