

# "Our School Doesn't Offer Inclusion" and Other Legal Blunders

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**Common misunderstandings about schools' legal responsibilities under the Individuals with Disabilities Education Act have slowed implementation of the law. School authorities who understand the law can provide a better education for all students.**

In 1975, Congress passed the Education for All Handicapped Children Act (Public Law 94-142), guaranteeing for the first time that all students with disabilities would receive a public education. The law, whose name changed in subsequent reauthorizations in 1990 and 1997 to the Individuals with Disabilities Education Act (Public Law 101-476; Public Law 105-17), set the stage for inclusive schooling, ruling that every child is eligible to receive a free and appropriate public education and to learn in the least restrictive environment possible. Specifically, the law ensures

*that to the maximum extent appropriate, children with disabilities, including children in public or private institutions and other care facilities, are educated with children who are not disabled. (Individuals with Disabilities Education Act, 20 U.S.C. § 1412 [a][5])*

In 1994, the U.S. Department of Education's Office of Special Education Programs issued policy guidelines stating that school districts cannot use the lack of adequate personnel or resources as an excuse for failing to make a free and appropriate education available, in the least restrictive environment, to students with disabilities.

Schools have taken much time to implement the law. Although many schools and districts have been educating students with disabilities in inclusive settings for years, families often still have to fight to get their children into general education classrooms and inclusive environments.

An analysis of U.S. Department of Education reports found that in the dozen years between 1977 and 1990, placements of students with disabilities changed little. By 1990, for example, only 1.2 percent more students with disabilities were in general education classes and resource room environments: 69.2 percent in 1990 compared with 68 percent in 1977. Placements of students with disabilities in separate classes declined by only 0.5 percent: 24.8 percent in 1990 compared with 25.3 percent in 1977. And, students with disabilities educated in separate public schools or other separate facilities declined by only 1.3 percent: 5.4 percent of students with disabilities in 1990 compared with 6.7 percent of students with disabilities in 1977 (Karagiannis, Stainback, & Stainback, 1996).

More recently, the National Council on Disability (2000) released similar findings. Investigators discovered that every state was out of compliance with the requirements of the Individuals with Disabilities Education Act and that U.S. officials are not enforcing compliance. Even today, schools sometimes place a student in a self-contained classroom as soon as they see that the student is labeled as having a disability. Some students enter self-contained classrooms as soon as they begin kindergarten and never have an opportunity to experience regular education. When families of students with disabilities move to a different district, the new school sometimes moves the student out of general education environments and into segregated classrooms.

In some cases, districts may be moving slowly toward inclusive education, trying to make a smooth transition by gradually introducing teachers and students to change—but moving slowly cannot be an excuse for stalling when a learner with a disability comes to school requiring an inclusive placement.

Clearly, more than 25 years after the law came into effect, many educators and administrators still do not understand the law or how to implement it. Three common misunderstandings still determine decisions about students with disabilities in U.S. schools.

### **"Our School Doesn't Offer Inclusion"**

We often hear teachers and families talking about inclusion as if it were a policy that schools can choose to adopt or reject. For example, we recently met a teacher who told us that her school "did inclusion, but it didn't work," so the school "went back to the old way." Similarly, a parent explained that she wanted her child to have an inclusive education, but her neighborhood school doesn't "have inclusion."

Special education is not a program or a place, and inclusive schooling is not a policy that schools can dismiss outright. Since 1975, federal courts have clarified the intent of the law in favor of the inclusion of students with disabilities in general education (Osborne, 1996; Villa & Thousand, 2000a, 2000b). A student with a disability should be educated in the school he or she would attend if not identified as having a disability. The school must devise an individualized education program that provides the learner with the supports and services that the student needs to receive an education in the least restrictive environment possible.

The standard for denying a student access to inclusion is high. The law clearly states that students with disabilities may be removed from the regular education environment only

when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (Individuals with Disabilities Education Act, 20 U.S.C. § 1412 [a][5])

If schools can successfully educate a student with disabilities in general education settings with peers who do not have disabilities, then the student's school must provide that experience.

## **"She Is Too Disabled to Be Educated in a Regular Classroom"**

A special education teacher recently told us that she was interested in inclusive schooling and that she decided to "try" it with one of her students. Patricia, a young student with Down's syndrome, began 1st grade in Sept-ember, but the school moved her back to a special education classroom by November. The teacher told us how difficult the decision had been and explained why educators had changed Patricia's placement: "The kids really liked her and she loved 1st grade, but she just wasn't catching on with the reading. She couldn't keep up with the other kids."

Many families and teachers have the common misperception that students with disabilities cannot receive an inclusive education because their skills are not "close" enough to those of students without disabilities. Students with disabilities, however, do not need to keep up with students without disabilities to be educated in inclusive classrooms; they do not need to engage in the curriculum in the same way that students without disabilities do; and they do not need to practice the same skills that students without disabilities practice. Learners need not fulfill any prerequisites to participate in inclusive education.

For instance, a middle-school social studies class is involved in a lesson on the U.S. Constitution. During the unit, the class writes its own constitution and bill of rights and reenacts the Constitutional Convention. Malcolm, a student with significant disabilities, participates in all these activities even though he cannot speak and is just beginning to read. During the lesson, Malcolm works with a peer and a speech and language therapist to contribute one line to the class bill of rights; the pair uses Malcolm's augmentative communication device to write the sentence. Malcolm also participates in the dramatic interpretation of the Constitutional Convention. At the Convention, students acting as different Convention participants drift around the classroom introducing themselves to others. Because he cannot speak, Malcolm—acting as George Mason—shares a little bit about himself by handing out his "business card" to other members of the delegation. Other students are expected to submit three-page reports at the end of the unit, but Malcolm will submit a shorter report, a few sentences, which he will write using his communication device. His teacher will assess Malcolm's grade on the basis of his report and participation in the class activities, his demonstration of new skills related to programming his communication device, and his social interactions with others during the Constitutional Convention exercise.

The Constitutional Convention example illustrates how students with disabilities can participate in general education without engaging in the same ways or having the same skills and abilities that others in the class may have. In addition, this example highlights ways in which students with disabilities can work on individual skills and goals within the context of general education lessons. Most important, his teachers designed and put in place the supports and adaptations that Malcolm needed for success. Malcolm did not have to display all the skills and abilities of other students to participate. Instead, Malcolm's teachers created a context in which Malcolm could demonstrate competence.

For Malcolm to be successful in his classroom, his teachers need to provide him with a range of "supplemental supports, aids, and services," one of the law's requirements (Individuals with

Disabilities Education Act, 20 U.S.C. § 1412 [a][5]). Supports, aids, and services might include a piece of assistive technology, use of an education consultant, instruction from a therapist, support from a paraprofessional, peer tutors, different seating or environmental supports, modified assignments, adapted materials (such as large-print books, graphic organizers, or color-coded assignment books), curriculum that is differentiated to meet the needs of the learner, time for teachers' collaborative planning, coteaching, training for school personnel, or any number of other strategies, methods, and approaches. Schools do not need to provide every support available, but they must provide those required by the student with disabilities.

Families do not have to prove to the school that a student with disabilities can function in the general classroom. In *Oberti v. Board of Education of the Borough of Clementon School District* (1993), for example, a U.S. circuit court determined that the neighborhood school of Raphael Oberti, a student with Down's syndrome, had not supplied him with the supports and resources he needed to be successful in an inclusive classroom. The judge also ruled that the school had failed to provide appropriate training for his educators and support staff. The court placed the burden of proof for compliance with the law's inclusion requirements squarely on the school district and the state instead of on the family. In other words, the school had to show why this student could not be educated in general education with aids and services, and his family did not have to prove why he could. The federal judge who decided the case stated, "Inclusion is a right, not a special privilege for a select few."

### **"We Offer Special Programs Instead of Inclusion"**

A few years ago, one of us went to a neighborhood school to vote. To get to the ballot machines, voters had to walk down a long hallway to a classroom marked Autistic Center. Knowing that the district had been providing inclusive education to many students with disabilities, we were surprised to learn that although students with mild disabilities were in general education classrooms, others were still in "special programs." The teacher in the Autistic Center was responsible for educating all the district's students who were diagnosed with autism—eight learners, ages 6 to 14.

Across the United States, many school districts still operate programs for discrete groups of students. Separate programs and classrooms exist for students identified with certain labels—emotional disabilities, for example—and for students with perceived levels of need, such as severe or profound disabilities. In many cases, students enter these self-contained settings without an opportunity to receive an education in a general classroom with the appropriate aids and services.

In 1983, the *Roncker v. Walter* case challenged the assignment of students to disability-specific programs and schools. The ruling favored inclusive, not segregated, placement and established a principle of portability. The judge in the case stated,

It is not enough for a district to simply claim that a segregated program is superior. In a case where the segregated facility is considered superior, the court should determine whether the services which make the placement superior could be feasibly provided in a nonsegregated

setting (i.e., regular class). If they can, the placement in the segregated school would be inappropriate under the act (IDEA). (Roncker v. Walter, 1983, at 1063)

The Roncker court found that placement decisions must be determined on an individual basis. School districts that automatically place students in a pre-determined type of school solely on the basis of their disability or perceived level of functioning rather than on the basis of their education needs clearly violate federal laws.

## Benefits of Understanding the Law

Implementation of the law is still in its infancy, and educators are still learning about how the law affects students in their classrooms. Reviewing the intent and language of the Individuals with Disabilities Education Act will help administrators shape districtwide or school-based policies and procedures; evaluate the ways in which programs are labeled and implemented; and make more informed decisions about student assessment, placement, and service delivery. Administrators should also consider the following questions:

- Are all students in the least restrictive environment?
- Are we providing students with disabilities with the necessary supplemental supports, aids, and services?
- Do teachers and administrators understand their responsibilities under the Individuals with Disabilities Education Act?
- Do teachers and administrators talk about inclusive education as if it were a choice that can be made by a school or by a teacher?
- Do school personnel require additional training?

School district leaders and school principals who understand the federal law can avoid lawsuits, enhance education experiences for students with and without disabilities, and move toward the development of school communities that are egalitarian, just, and democratic for all.

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