SPED 400: Legal and Current Issues in Special Education

Topic 3#: The History of Law and Children with Disabilities

Kathy Kelker, Ed.D.

Topic Questions

• In what sense is public education a “right”?
• What role did the civil rights movement play in laying the groundwork for the right-to-education movement?
• What principles did the Brown case establish that formed the basis for special education law?
• Why is separate education considered to be stigmatizing?
• Why was there a long delay before the principles established in Brown were legally applied to the situation of the education of children with disabilities?
• What does extension to a class mean?
• Why did the federal government become involved in public education, a matter normally left to the states?

Terms to Know

• compulsory attendance
• Civil Rights Movement
• Brown v. Topeka
• PARC v. Pennsylvania
• Mills v. Board of Education
• unalterable characteristics
• Rehabilitation Act of 1973
• separate but not equal
• property interest
• educated
• P.L. 94-142
• plaintiffs
• civil action

Public Education: Is It a “Right”?

The U.S. Supreme Court has consistently held that there is no federally protected right to education; nonetheless if the states undertake to provide public education (which all states do), a property interest is thereby created by the state. So an individual cannot be denied his or her property right to an education because of unalterable factors like gender or race.

Education Is a State Responsibility

In the United States, public education is viewed as a birthright that leads to an educated electorate without which there would be no viable democracy. But the provision of public education is a responsibility left to the states as implied by the Tenth Amendment to the Constitution.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Compulsory Attendance

By 1918, every state had a public school system with compulsory attendance. But some court rulings allowed some children to be excluded from school despite the compulsory attendance rules.

• 1883 Watson v. City of Cambridge—“weak of mind” didn’t have to be educated
• 1919 Beattie v. Board of Education—school officials could exclude children with disabilities
• 1934 Cuyahoga County Court of Appeals—recognized the conflict between compulsory education and the exclusionary provisions of Ohio law
• 1969 State of North Carolina made it a crime for parents to persist in forcing the attendance of a child with disabilities after the child's exclusion from public school.
Civil Rights Movement

In the 1950s and 1960s, the civil rights movement, which sought changes in society that would allow minorities, particularly African Americans, equality of opportunity led to litigation and changes in legislation. This legislation led to greater constitutional protection for minorities and eventually for people with disabilities.

Brown v. Board of Education

The *Brown* case (1954) was a landmark court case that proved to be a major victory for the civil rights movement. The rulings in this case came to be the underpinnings for further civil rights actions in a variety of arenas, including voter rights, gender equity, housing and education law. The *Brown* decision not only had impact on rights for minorities, but also affected many aspects of educational law and procedure. Although it took time, the precedents set in *Brown* resulted in sweeping changes in public school policies and approaches to students with disabilities.

Fourteenth Amendment Rights

The *Brown* case was built upon the constitutional guarantee of equal protection under law, found in the Fourteenth Amendment. This amendment stipulates that states may not deny any person within their jurisdiction equal protection under the law. If states have undertaken to provide free, public education, then they must do so for all children.

Federal Courts Step into State Jurisdiction

In the *Brown* case, the federal court took action in an arena that had been delegated by the Constitution to the states. But the court became involved, not because the federal government had any legal power to operate public schools, but because the federal government had an over-arching responsibility to protect the civil rights of individuals who may have been discriminated against.

Is Racial Segregation in Public Schools Permitted under the Constitution?

*Brown* was actually not one case, but four (Kansas, South Carolina, Virginia, and Delaware) that were consolidated and heard as one by the U.S. Supreme Court. Three of the cases were on appeal from federal district courts, and one was on appeal from a state appellate court having been heard first in a state trial court. In each of the cases African American children sought admission to the public schools in their community on a non-segregated basis.

Separate Is Not Equal

The plaintiffs in the case alleged that state-mandated segregation of the races in the schools denied black students admission to schools attended by white students. The plaintiffs maintained that the practice of segregation in schools was inherently damaging to the educational opportunities of minorities, that segregated public schools were not—and could not be made equal. In other words, segregated schools violated black students’ constitutional rights under the Fourteenth Amendment.
Segregation Is Stigmatizing

The *Brown* decision recognized that educating black children separately, even if done so in comparable facilities, was inherently unequal because of the stigma attached to being educated separately and because of the deprivation of interaction with children of other backgrounds.

Principles Established by *Brown*

The Brown decision established a number of principles that became central to subsequent civil rights cases, including those involving the education of children with disabilities.

1. Constitution Is Supreme

The *Brown* case established that the federal constitution is the supreme law of the land, binding on federal, state, and local governments.

2. Precedents Set in Civil Rights

Judicial resolution of educational issues on constitutional grounds became a precedent for judicial resolution of related civil rights issues on similar constitutional grounds (e.g., right to vote, fair housing).

3. Sanctioned Involvement of Federal Government in Public Education

The *Brown* decision asserted that the federal government, though not responsible for the operation of public education systems, did have the responsibility to ensure that the civil rights of students are protected and that they do not suffer discrimination in terms of their ability to attend public schools. Thus, the federal government made inroads into an area that previously had been left entirely to state and local government.

4. Citizens Can Sue Government

*Brown* is an example of civil action in which a citizen sues his/her government because an action of the government (e.g., school segregation) has been unfairly denied the citizen his/her rights.
5. Extension to a Class

The ruling in the Brown case against racial segregation in public schools was extended beyond the plaintiffs in the four cases to include all children who had been (or might be) discriminated against in public schools because of their racial background.


The notion that segregated public schools denied students equal educational opportunities soon was considered by many to be equally applicable to those denied equal opportunity to an education, not because of race, but because of disability. If the word “disabled” were substituted for “Negro” and “non-disabled” for “white” in the Brown decision, the same constitutional arguments could be made on behalf of children with disabilities.

Long Delay

Despite the doors being opened by the Brown case, it took another 18 years from 1954 to 1972 before the equal protection precedent was successfully argued in court on behalf of children with disabilities who had been poorly educated or excluded from public schools.