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LITIGATION AND SPECIAL EDUCATION: THE RIGHT OF HANDICAPPED CHILDREN TO AN EDUCATION AND EQUAL PROTECTION UNDER THE LAW

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LITIGATION AND SPECIAL EDUCATION: THE RIGHT OF HANDICAPPED CHILDREN TO AN EDUCATION AND EQUAL PROTECTION UNDER THE LAW

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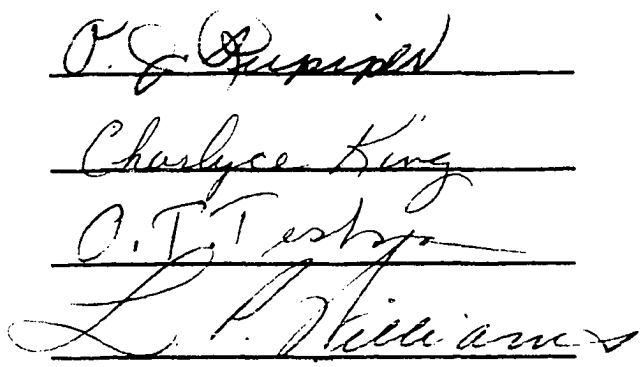

DISSERTATION COMMITTEE

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CHAPTER I

INTRODUCTION AND DEFINITION OF TERMS

The legal rights of the mentally retarded and other exceptional children have long been ignored. Suddenly the atmosphere changed as a result of cases being brought to court on behalf of the mentally retarded, asserting the right to education, the right to treatment, and the right to proper placement procedures.

Statement of the Problem

Studies have referred to the growing number of court cases which involved handicapped children's rights, but the literature revealed no studies which analyzed systematically the cases according to their content. The present study attempted to answer the question, "What is the relationship between the educational systems' alleged abridgement of handicapped children's rights and litigation as an avenue for change?" In order to provide adequate educational and rehabilitation programs for handicapped children, it was necessary to understand the evidence presented in the lawsuits concerning the handicapped.

Statement of Purposes

The need for this study arose from the increasing importance for educators to understand the relationship of the court decisions regarding handicapped children and the traditional means of providing treatment and education. The purpose of this study was to clarify the nature of this relationship by an investigation of the legal rights of exceptional children.

It was necessary to delineate the areas of focus in the lawsuits relating to the rights of the handicapped into three major categories. The recognition by the courts that all children should be provided free access to an education had been one of the central issues in the court cases. Another major focus was on the right to treatment for the institutionalized handicapped. The mass media in the form of television coverage, and magazine and newspaper articles exposed inhumane treatment in institutions for the mentally retarded and provided an impetus for action in this area. The third major area of emphasis dealt with the placement practices including the use of improper classification of handicapped children. This type of litigation was supported by various studies dealing with the stigmatization associated with labeling and the justification for segregated classes for exceptional children.

The identification of aspects of the court rulings which presented problems to the field of special education was another major purpose of this study. Decisions by courts and the passage of laws alone were not enough for a successful solution to the

problem. Through a thorough inquiry of all phases of the litigation which dealt with handicapped children, educators, psychologists, and all those who were involved in the area of special education may benefit from such a study.

The importance of conveying legal information to educators and uninformed laymen was an essential part of this investigation. Laws relating to education had customarily been accepted without question. The legal basis for the lawsuits which involved the civil rights of handicapped children needed to be established. According to the Fourteenth Amendment to the Constitution of the United States, all people were accorded the right to "equal protection under the law and full rights of due notice and due process" regarding selection, placement, treatment, and retention in educational programs. Without laws there would be no financial support for schools or no basis for governing education. Educators in recent years were forced to become aware of the laws that govern them due to recent court decisions and their involvement in the management and control of education. Increasingly a need for legal research in education was noted.

The implications for the field of special education were numerous and complex. The court cases and their decisions questioned the historic tradition of education for the handicapped as a charitable endeavor. Education as a right required a new direction in the thinking of most people toward special education. Curriculum matters, resource labs, segregated classes, testing procedures, and labeling children were all areas where

improvement was needed to provide an equal education for exceptional children. This study attempted to provide trends and implications which educators, legislators, and other administrators would implement in theory and practice in dealing with exceptional children's rights.

Questions to be Answered

This study was concerned with an attempt to answer the following questions:

1. What was the relationship between handicapped children's rights and the current litigation?
2. What was the relationship of the court decisions regarding handicapped children and the traditional means of providing treatment and education?
3. What were the general categories and patterns of the existing litigation?
4. What were aspects of the court rulings which presented problems to the field of special education?
5. What was the legal basis and precedent established in the lawsuits regarding the handicapped?
6. What were the arguments presented in the complaints that were filed?
7. What were the functions of litigation?
8. What role did state and Federal legislation play in the litigation procedure?
9. What were the implications for the leadership in the field of special education?

Definition of Terms

For purposes of this investigation important terms were defined in the following manner:

Exceptional Children: includes both the handicapped and the gifted; Kirk (1972) defined exceptional children as those who:

> deviate from the normal child (1) in mental characteristics, (2) in sensory abilities, (3) in neuromuscular or physical characteristics, (4) in social or emotional behavior, (5) in communication abilities, or (6) in multiple handicaps to such an extent that requires a modification of school practices, or special educational services, in order to develop to his maximum capacity (p. 4).

Mental Retardation: according to the American Association on Mental Deficiency, it is defined as:

> subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior (Heber, 1961, p. 499).

Handicapped Children: defined as those children

> . . . who deviate from the average or normal child in mental, physical, or social characteristics to such an extent that he requires a modification of school practices or special educational services in order to develop his maximum capacity (Kirk, 1964, p. 541.

Special Education: Any form of equal educational opportunity provided for all exceptional children.

Civil Rights: According to Justice Warren (1972) it is the

> rights protected by the Bill of Rights . . . Freedom of religion, of expression, of association, participation in government, the privacy of the home, freedom from self-incrimination, and the right to civilized procedures before, during and after civil

> rights or civil liberties. It also includes those arising under the equal protection clause of the Fourteenth Amendment which requires states to treat their citizens equally (p. 14).

Learning Disability: The National Advisory Committee on Handicapped Children of the United States Office of Education (1968) states:

> Children with specific learning disabilities exhibit a disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language. They may be manifested in disorders of listening, thinking, talking, reading, writing, spelling, or arithmetic. They include conditions which have been referred to as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia (p. 14).

Litigation: A lawsuit filed when the "constitutional or statutory rights" of exceptional children are abridged. According to Black (1968) it is defined as a "contest in a court of justice for the purpose of enforcing a right (p. 1082)."

Legal Research: According to Mouly (1970) it is subject to the same requirements as other forms of research. He stated:

> the task is to summarize statutes, to trace further legal developments through related court decisions, and to analyze the decision in the light of the problem being investigated (p. 229).

Fourteenth Amendment: According to Black (1968),

> It recognizes for the first time a citizenship of the United States, as distinct from that of the States; and secures all 'persons' against any state action which is either deprivation of life, liberty, or property without due process of law or denial of the equal protection of the laws (p. 785).

Equal Protection of the Laws: Black (1968) defined it as "extended to persons within its jurisdiction, when its courts are open to them on the same conditions as to others (p. 631)."

Due Process of Law: "Law in its regular course of administration through courts of justice (p. 590)," as defined by Black (1968).

Limitations

This study was an investigation of the recent court rulings from 1967 to 1972 regarding handicapped children. The framework for such litigation and prior cases was presented when applicable to the legal and civil rights of exceptional children. The litigation process occurred in either Federal court, in which there was a question arising under the United States Constitution or involving parties who are citizens of different states, or in state courts which involved the issue of state law or practices. Therefore, this study included cases at the state and national levels.

Since existing legislation provided much of the basis for the litigation, this was examined at both the state and Federal levels. In order to show trends in this area, a brief summary of pertinent statutes concerning handicapped children was included. Education, historically and legally, had been a state function with much delegation of responsibility given to the local school districts. Such issues regarding mandatory attendance and exclusionary clauses that were so important in the lawsuits were provided for in selected

state laws. It was not the intent of this study to provide a comprehensive report of all legislation regarding exceptional children.

Procedure

The procedure associated with the collection of the data were those involving the location, examination, and analysis of available and accessible published materials located in libraries and the selected governmental agencies. The first source of reference was the United States Constitution, as any reference to the laws of the United States was bound together by this document. The original case materials, legal periodicals, and Federal and state statutes regarding law and the handicapped were analyzed for content and importance.

CHAPTER II

REVIEW OF RELATED LITERATURE

Special education had progressed tremendously since the concept of equal access to educational opportunity had its beginnings in the mid-nineteenth century. The early state institutions for the "feeble-minded" in the United States drew on the experimental work of Seguin (1907) and were intended as educational and rehabilitative provisions. Blind and deaf children were offered specialized training in residential facilities also during this period (Goldberg, 1971; Wallin, 1924). However, special educational services within the public school system appeared early in the twentieth century with teachers assigned to classes as early as 1895 in Providence, Rhode Island, for the mentally retarded (Lippman and Goldberg, 1973). According to Wallen (1924) the first classes for the physically handicapped (1899) and blind (1900) were established in the Chicago public schools.

In 1893 in Massachusetts, a court ruled that a student could be expelled if he displayed continuous disorderly conduct either voluntarily or by reason of embicility (Watson v. City of Cambridge, 1893). School officials decided upon what constituted disorderly conduct. Another decision was handed down in the Wisconsin Supreme Court in Beattie v. State Board of Education, 1919, which held that a school could exclude a child if his presence had "a deleterious effect on the other

children or teachers." Students were expelled if they

> displayed continuous disorderly conduct or had a depressing and nauseating effect on the teachers and school children. The rights of a child of school age to attend the schools of the state could not be insisted upon, when its presence therein is harmful to the best interest of the school (Beattie v. State Board of Education, 1919, p. 231).

These court rulings laid the basis for the schools to make decisions which have kept many disabled or deviant children out of the public schools (Mann and Sabatino, 1973).

The 1960's began years of executive leadership at the national level when President John F. Kennedy gathered more public concern with the organization of the President's Panel on Mental Retardation in 1961. According to Jones (1968), President Kennedy stated, "For the nation, increasing the quality and availability of education is vital to both our national security and our domestic well being (p. 15)." Kennedy then outlined the role of the Federal government in regard to education:

> All this has not been enough. And the Federal government has clearly not met its responsibilities in education. It has not offered sufficient help to our present educational system to meet its inadequacies and overcome its obstacles (Jones, p. 15).

United States Commissioner of Education Sidney P. Marland summarized the mood of this era of special education in a speech in the opening session of the 49th Convention of the Council for Exceptional Children:

> The right of a handicapped child to the special education he needs is as basic to him as the right of any other young citizen to an appropriate education in the public schools. It is unjust for our society to provide handicapped children with anything less than a full and equal educational opportunity they need to reach their maximum potential and attain rewarding, satisfying lives (p. 87).

Tracing the labels placed on the handicapped revealed the public attitude toward them as Doll (1955), a major contributor to the education of the mentally retarded, said:

> Changes are reflected in new modes of expression which indicate the alteration in thinking and values. As the term 'feeble-minded' gave place to 'mentally deficient,' so this in turn has changed to 'mental retardation' (p. 45).

Martin (1970), Associate Commissioner of the Bureau of Education for the Handicapped, expressed his philosophy of education for the handicapped in the 1970's when he stated that "education is an inalienable right and not a gift to be bestowed upon the handicapped by those of us who are not handicapped (p. 10)." The Associate Commissioner expressed the opinion that too many people see it as charitable enterprise instead of a right of the handicapped.

A Declaration of General and Special Rights of the Mentally Retarded was adopted in 1968 by the International League of Societies for the Mentally Handicapped. Article I of this resolution stated, "The mentally retarded person has the same basic rights as other citizens of the same country and same age (p. 10)." This document gave support and recognition to the concept of rights for the handicapped and it was later included in a resolution adopted by the United Nations General Assembly (see Appendix A).

Smith (1973), President of the American Bar Association, stated that "the plight of the mentally disabled is among the saddest and most alarming problems facing our society" and that the ABA had begun an "action program to correct the

'widespread deprivation of civil rights of those in institutions' (p. 3639)." Among the "action oriented" activities considered by the American Bar was the investigation of the rights of retarded children to have a specialized, public-supported education, as mandated by the recent court decisions (Smith, 1973). The interest in the rights of handicapped spread throughout the legal profession and became a cause for many public interest attorneys.

The concept of special education has been modified drastically since the 1900's, and the present state was best presented in a policy statement adopted by the Council for Exceptional Children in 1971 which stated:

> Education is the right of all children. The principle of education for all is based on the philosophical premises of democracy that every person is valuable in his own right and should be afforded equal opportunities to develop his full potential. . . Because of their exceptionality, many of the children need to begin their school experiences at earlier ages than are customary for children in our society, many need formal educational services well into adulthood, and many require health and social services that are closely coordinated with school programs (p. 104).

The early 1970's was the period when exceptional children demanded their rights along with other minority groups who had been denied their civil rights. As evidenced by the material cited, the public gave its support and interest to the handicapped in the securing of their rights. This decade appears to be the era of litigation and decisions by the judiciary as to the legal rights of the handicapped regarding education.

Although progress had been made regarding the provision

of educational services for the handicapped, the majority of such persons were denied an appropriate educational program within the mainstream of public education. According to Trudeau, Nye, and Bolick (1973), initial identification of handicapped children was accomplished through three procedures -- census, screening, and referral. The United States Office of Education -- Bureau of Education for the Handicapped indicated that as of July 1, 1968, there were approximately 75 million children in the United States between the ages of 0-19 years of age. Of these children approximately 7,083,500 were handicapped. The seven million children were categorized and reported in Table 1.

Studies by the United States Office of Education (USOE) reported that 12 percent of all handicapped children received special educational services in 1948. By 1963, the population increased to 21 percent; by 1967 to 33 percent, and by 1971 to 40 percent (Weintraub, Abeson, and Braddock, 1971). Stated in other terms, 60 percent of the handicapped were not receiving the special education services they needed. Categories of children served and unserved as identified by the United States Office of Education -- Bureau of Education for the Handicapped in the 1971-72 school year were reported in Table 2. The percentage of children receiving services in the various states ranged from 80 percent in Washington to 10 percent in Arkansas as reported by the USOE (1971-72).

Many handicapped children could remain an economic liability to the state without appropriate educational opportunity. If

they became productive citizens they could contribute economically and socially to the country. It was estimated that one million handicapped had not received educational opportunities due to provisions in compulsory school attendance laws which exclude them from public education (Weintraub et al., 1971). Judicial interpretations in the future may prove or disprove the constitutionality of these compulsory attendance laws (Handicapped Children's Education Project, 1973).

Three pertinent issues were involved in the lawsuits that were filed on behalf of handicapped children's rights according to Cruickshank (1972): included were educational placement and labeling, psychodiagnosis, and parental involvement in the educational process. Cruickshank (1972) noted that the plaintiffs were dissatisfied with the school system and charged psychologists and educators with violation of the due process clause of the Fourteenth Amendment to the United States Constitution. Parents stated in these lawsuits that the concept of special education was unfavorable to equality. The courts agreed with Ross, DeYoung, and Cohen (1971) when they stated,

> Once a child is improperly placed in a class, there is little chance that the student will leave it. Insufficient attention is given to the development of basic educational skills and retesting occurs infrequently if ever. Contributing further to the lack of . . . mobility is the student's self-image which is formed by improper placement and creates a self-fulfilling prophecy of low achievement (p. 10).

Educational officials in many instances ignored the parents or concerned citizens and their own colleagues regarding inadequacies in practices concerning special education. Since the regular channels were not successful, there was the unusual

occurence in the United States of the judicial system being asked to determine for educators the proper direction in the education of exceptional children.

It was obvious that there was a real need for educators, especially those involved in the education of the handicapped, to implement and understand the law in regard to the legal rights of the children and their parents. Vergason (1973) suggested that the legal actions be viewed as one form of accountability against the system. He warned that the next step may be against the individual teachers. Many educators ignored the requests of their students and fellow colleagues in regard to the issues involved in the courts. Therefore, the courts were forced to assume the responsibility of intervention into the educational needs of exceptional children. The profession itself must assume the responsibility of improvement of programs and practices to meet the needs of the individual child if there is to be successful implementation of court orders.

According to Murdock (1972), there was no question that the equal protection clause applied to eligibility for public educational programs. In Brown v. Board of Education (1954), it stated that "Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms (p. 483)." The real groundwork for the litigation that followed was laid in this famous landmark case, Brown v. Board of Education (1954), when the Supreme Court of the United States overturned earlier decisions that upheld "separate but equal" educational facilities for children

of different races. This 1954 decision asserted:

> Education is required in the performance of our most basic responsibilities. . . It is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education (p. 483).

This premises, as applied to handicapped children, was not tested in the courts for another sixteen years.

The use of the courts did not assure that exceptional children would be provided their constitutional rights. Gilhool (1973a) suggested that lawyers and non-lawyers mistakenly viewed the courts as creating and maintaining rights, and he delineated the functions of litigation into four major areas.

The first area involved the securing of access to education in which "zero-reject education" was the goal. Essential to this was the argument that every exceptional child was capable of benefiting from an education, and as Gilhool (1973) noted, "There is no such thing as an uneducable and untrainable child (p. 603)."

The second function was the creation of a new forum where advocates of children with handicaps had the right to be heard. This took the form of the due process hearing before an educational assignment of any exceptional child was made or changed. If the parent requested, the child and parent were entitled to notice and the opportunity to be heard. This provided a hearing for the teacher, psychologist, and administrator to request the delivery of services to meet the individual child's educational need. The parents

were thus enabled to hold the schools accountable in a formal way for the proper education of their children and to be directly involved in the placement.

The next use of litigation was the delivery of information to the public. The idea that retarded citizens had rights was entirely new to some people, and the news coverage of the landmark cases perpetuated their use as an attention-gathering supportive device.

The final function of litigation was in the expression of one's self and the improvement of the self concept. A new language developed in regard to handicapped children in which parents and children no longer accepted the relegation to second-class citizenship. They viewed themselves as entitled to the same rights afforded other children. Gilhool (1973) stated it as:

> . . . a conception that suggests that handicapped citizens no longer have by the grace or by the good will of any other person but that they have what they must have by right. It is now a question of justice (p. 609).

The investigations revealed a change in public attitude since the question of education of the exceptional individual arose in the mid-nineteenth century. Before this time, mentally retarded persons were viewed much like prisoners and were isolated from the public. As special educational services developed in the public schools and in institutions, some early rulings favored expulsion of those students who were disabled or deviant. As the studies indicated, there was a shift in attitudes toward exceptional children beginning

in the 1960's with executive leadership and continuing in the 1970's with judicial interpretation of handicapped children's rights. Throughout the literature, it was reiterated that over half of the handicapped children were not receiving the benefit of the special education services that they needed. At the center of the discussion in these studies was the principle which asserted the right to an education as an inalienable right of all children, including those who were handicapped. Most of the investigations demonstrated that if traditional modes of providing access to these rights were not successful, the handicapped children and their parents must turn to the courts for a solution to their problems. However, this was considered to be the last alternative in seeking the rights of the handicapped, and legislation was viewed as an avenue to be pursued before litigation. The functions of litigation were reviewed in order to place the outcome of the court decisions in their proper perspective.

State and Federal Legislation

The passage of new state and Federal legislation was a major portion of the growing trend to provide equal rights to the education of the handicapped.

> What happens to handicapped children in this decade will depend a great deal on the roles that the special educator is willing to play outside the school as well as his behaviors within the school. Our past suggests we have needed to work as citizens, joining with the parents of handicapped children and with other concerned citizens to influence public priorities, urge school boards to support programs, and influence legislators to pass state and Federal laws (p. 517).

These comments by Martin (1972), Associate Commissioner of the Bureau of Education for the Handicapped, reaffirmed the conviction that the accomplishment of educational opportunities for all handicapped children had its roots in the establishment of a strong legal basis.

In the past few years the groundwork had been developing to such a point that Abeson (1972) described the positive change occurring at all levels of government as a "movement." In addition to the passage of state and Federal legislation, there were attorney generals' opinions and court rulings establishing the right to an education and treatment for the handicapped child. Abeson (1972) indicated that although some progress had been taking place for years, it had only been recently that the volume of activity had increased to the amount which can be described as a movement.

Traditionally, America's schools were controlled by the local school district under the jurisdiction of state laws. Since the United States Constitution made no immediate reference to education, the fifty states included constitutional provisions for it. The local districts became more dependent on the state partially as a result of the growing reliance on the state financially. However, although state constitutions provided for education to the children of their states, many states enacted statutory provisions enabling school authorities to exclude certain children from a free public education (Weintraub et al., 1971). A clear picture of this was reported by Abeson and Weintraub (1971):

> Mark Miner, William Topez and Martha Lynd are all legal residents of a state and are school aged handicapped children. Mark is mentally retarded; William is severly physically handicapped; and Martha is emotionally disturbed. Through the actions of the state and local education officials, these children have been excluded from school attendance on the basis of being 'unable to profit' from such experiences. As a result of the state laws which eliminates these children from public school, Mark and Martha are receiving no education at all and William is enrolled in a private school with tuition paid solely by his parents (p. 59).

The services that were available to the nation's handicapped ranged from total exclusion to the appropriate placement based on the child's individual needs. Scattered throughout this range were full time special class placement, resource labs, itenerant teachers, speech therapists, work-study, and the residential setting. All of these services were left up to the various states' discretion, and this had created a state of confusion within the states as to what provisions needed to be provided.

The litigation issue touched on all aspects of programming, curriculum, and administration. The idea that a "classification system based on specific learning needs of children and more flexible programs in the form of contracts received support (Gallagher, 1972; Blatt, 1972). The opinion that some handicapped children were better educated in the regular class setting received support in the lawsuits. The term "mainstreaming" was used in reference to this practice and seemed to be indicative of the future trends in special education. As was evidenced by the President's Committee on Mental Retardation in The Six Hour Retarded Child (1970),

many of the children in special education came from low-income and minority group families and were possibly improperly classified. Compensatory education received much support in that such efforts were proved effective in some instances (Meier, 1971).

In 1963, the United States Office of Education began to systematically estimate nursery school and kingergarten enrollments of all exceptional children (Weintraub et al., 1971). The Head Start programs were useful in the identification of young children with handicaps. The whole idea of pre-school programming was opened in the litigation of right to education lawsuits. Legislation changed the minimum age levels required to as early as birth for special education services in some states. As Cruickshank and Johnson (1958) reported:

> Early discovery, implemented by legal provisions which make early treatment and related services possible, will mean less children in special education in the public schools and at the least will mean that special education will be in a better position to serve exceptional children when they do come into the elementary schools (p. 256).

Within state laws, the most statutes listed categories of children who were eligible and generally stated maximum and minimum age ranges. According to Abeson and Trudeau (1973), if a specific category of handicapped children were absent from the state definition, it did not mean that services were not provided to those children. The rules and regulations of the state refined and interpreted the definitions to be more general and inclusive. Presented

in Appendix B was an overview of the definitions of the handicapped and the age requirements in the fifty states as reported by Abeson and Trudeau (1973).

Weintraub et al., (1971) indicated that the institutional provisions establishing public education focused on three areas of emphasis: (a) establishing the educational enterprise, (b) educating children, or (c) disclaiming responsibility for the education of certain handicapped persons. As a result of the exclusionary clauses, according to the prevalance statistics, approximately one million handicapped children were denied any form of education.

To help alleviate this problem, most of the states passed mandatory legislation (Abeson, 1972). The first states with mandatory laws establishing education programs for handicapped children were New Jersey (1911), New York (1917), and Massachusettes (1920) according to Trudeau (1972). Currently forty-eight states had mandatory provisions while only North Carolina and Vermont retained permissive legislation. It was not suggested that passage of mandatory legislation was a general panacea. Legislation without enforcement had little value and therefore generally the states which had mandatory legislation did not have greater percentages of handicapped receiving an education than those with permissive legislation. In the cases where advocates of children's rights sought to secure these rights and found no enforcement of these mandatory laws, the only source of relief was to seek action on the part of the courts.

Many states enacted comprehensive special education legislation which required the state to assume greater responsibility for educating all handicapped children. More emphasis was placed on diagnostic and evaluative services which were intended to meet the individual needs of each child. These states according to Weintraub (1972) were Arkansas, Tennessee, Wisconsin, Maryland, Massachusetts, Michigan, and North Dakota. These states progressed beyond the issue of whether or not to require programs for the handicapped and were considering research findings regarding appropriate education for these children. Some states were moving toward lowering the minimum school age entrance to birth (State-Federal Information Clearinghouse for Exceptional Children, 1972). At the other end it was recognized by some states that handicapped youth needed extended services, and they have raised the maximum school age eligibility to 21 years or no maximum age level at all. Whether or not the state took such age initiatives was largely left in the hands of special educators, parents, and most importantly, legislators.

It was clearly indicated that state legislation was an essential ingredient in securing the rights of handicapped children. The change of attitude in public opinion and governmental action was epitomized by the decision in 1968 of the Fourth Congress of the International Congress of the International League of Societies for the Mentally Handicapped to adopt as its theme, "From Charity To Rights." Public

education as a charitable endeavor did not include any responsibility. According to Weintraub et al., (1971), the issue facing government was not whether handicapped children were entitled to an education, but how government can make such an education a reality.

Although state legislation had been a driving force in the struggle for the rights of the handicapped, the Federal government provided needed financial support and an impetus to state programs that were falling behind. Theoretically, all of the governmental agencies on all levels cooperated to improve the needed resources and services.

The Federal role in educational services for the handicapped started with Galludet College in 1864 and the American Printing House for the Blind in 1879. Over the next two decades, the number of Federal programs grew at an amazing pace. Due to the number and complexity of these Federal programs, only the most significant were included in this study.

Since 1956, the United States Office of Education had become a strong influence in special education. The field of special education served as an example to other areas in education in demonstrating how Federal, state and local governments worked together. According to Reynolds (1969), the United States Office of Education started its Cooperative Research Program in 1957 with an appropriation of one million dollars, and was expanded through Title IV of Public Law 89-10. In 1969 the United States Office of Education created a new

Bureau of Education for the Handicapped which coordinated the activities of the Federal government in the field. It was divided into three major divisions: Division of Educational Services, Division of Training Programs, and Division of Research.

The passage of programs under President John F. Kennedy for personnel working with the mentally retarded and the deaf established a framework for the enactment of additional programs to help other types of handicapped children requiring special education (Carey, 1971). President Kennedy's Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, P. L. 88-164, also provided an impetus for further programs.

Title III, which was part of P. L. 88-164, provided for the training of teachers of all handicapped children in addition to personnel in the areas of mental retardation and deafness. Grants for research and demonstration projects relating to education of handicapped children were included in Title III.

The Elementary and Secondary Education Act of 1965 (P. L. 89-10), Title I, provided direct assistance for education of handicapped children. Title I was a program of Federal grants to the states for allocation to school districts with children in low-income families. Funds were made available to projects within the local educational program for "educationally disadvantaged children" which Congress expanded to include handicapped children. As Carey (1971) noted, most of the assistance was going to the general education community, and it would

be necessary to provide a more direct source for the handicapped.

Title VI, Education for Handicapped Children, was created by P. L. 89-750 in 1966 as amendments to the Elementary and Secondary Education Act. This provided grants for aiding states in the initiation, expansion and improvement of programs for the education of handicapped children at preschool, elementary, and secondary levels. This ESEA Amendment established a National Advisory Committee on the Handicapped. The 1969 ESEA Amendments, P. L. 91-230, extended the main aid programs and created a program of special grants for research, training and the establishment of model centers for the education of children with specific learning disabilities. It provided for early education for handicapped children and as such repealed P. L. 90-538, The Handicapped Children's Early Education Assistance Act of 1968. This piece of legislation was a landmark because it was the first time in history that Congress approved an action exclusively for education of all handicapped without attaching to it any other legislation (LaVor, 1969). Definitions of handicapped children and children with specific learning disabilities were included. Martin, La Vor, Bryan, and Scheflin (1970) reported that a special feature of the Title VI package was the fact that it cemented newly created and existing legislation into a single statute and thus recognized the distinctiveness of the handicapped as a major target population.

Five years following the passage of P. L. 88-210, the

Vocational Education Act of 1963, it became apparent that only minimal vocation education resources were made available to the handicapped (Forsythe and Weintraub, 1969). Therefore, on October 16, 1968, President Lyndon B. Johnson signed into law Public Law 90-576, the Vocational Education Amendments of 1968. This required that at least 10 percent of each state's allotment of funds appropriated was to be used only for vocational education for the handicapped. A National Advisory Council on Vocational Education was created and had one member of the Council experienced in the education and training of handicapped persons (Trudeau, 1972). State advisory councils were set up and were to be appointed by the elected state board of education or by the governor.

The Economic Opportunities Amendments of 1972, P. L. 92-424, stated that the Secretary of Health, Education and Welfare must establish policies and procedures to assure that at least 10 percent of the enrollments in the Head Start program were available for handicapped children. According to La Vor (1972), this act made eligible almost 38,000 handicapped children, 3, 4 and 5 years old, and allowed them to participate in Head Start programs whereas for seven years handicapped children had been excluded from participating.

The cutback in funds for Federal programs had an impact on the direction of special education in 1972. However, the recent passage of the Vocational Rehabilitation Act, P. L. 93-112, at the end of 1973 was a step forward in providing equal rights to the handicapped. This legislation provided

for no discrimination in employment because of a handicapping condition. According to this law, there can be no discrimination in Federal programs or Federal grants, and employees must take affirmative action in recourse for any past discrimination.

Behind the Federal legislation passed for the benefit of the handicapped was the question of funding. As the programs grew, they reached the 200 million dollar level, which was approximately thirty dollars per child. This was still not adequate and it was suggested by Carey (1971) that the future Federal role should include basic support on a shared basis with the state and local governments.

If adequate state and national legislation existed, a judicial interpretation would not have been required. However, much reform had been occurring at the state and national level, and the passage of laws did not guarantee enforcement or acceptance on the part of the public. In many of the lawsuits filed, state laws existed guaranteeing the rights of handicapped, but had not been enforced. It was beyond the scope of this study to report all of the legislation regarding education of the handicapped, but legislative trends and important statutes were provided.

CHAPTER III

LEGAL RIGHTS OF THE EXCEPTIONAL CHILD

When the constitutional or statutory rights of exceptional children were violated, litigation was implemented as one means to obtain those rights. Litigation was regarded as the last avenue of legal intervention due to the tremendous expense and the length of the procedure. Such actions as legislation and administrative redress were exhausted before the issue was brought to the courts.

Going to the courts was not a new or unique occurrence. Gilhool (1973) suggested that the use of the courts to secure one's rights was not really different from the things that had been done for decades. He stated it was essentially that ". . . we are after our rights (p. 599)." The courts pointed out that the government cannot grant services to some and withhold them from others. For many years professionals and parents' movements recognized that no child is truly uneducable, and the legal profession took this issue to the courts for action. The atmosphere and attitudes on the part of concerned parties and the general public permitted the successful use of the courts in obtaining the full rights of handicapped citizens. Abeson (1973a) suggested that the combination of litigation, legislation, and public awareness created a climate throughout the country that led school districts to independently halt discriminatory practices.

According to Martin (1972), former United States Commissioner of Education Sidney P. Marland set in 1971 the goal of full educational opportunity for all handicapped children by 1980. This implied that these children had only quasi-rights, but, as a result of recent court decisions, the right to an education was not to be postponed. Education of the handicapped had always been considered by the educational system to be a frill to be taken care of after every other school need had been met (Weintraub and Abeson, 1972). The Task Force on Law of the President's Panel on Mental Retardation (1963) set forth the principle that "our basic position is that all rights normally held by anyone are also held by the retarded (p. 12)." This principle was extended to all exceptional or handicapped persons with the recent litigation procedures.

A study by Allen (1968) gave support to the idea that many inequities existed in the judicial system in regard to mentally handicapped persons when he noted:

> It is as true today as it was 250 years ago, that that cornerstone of our legal system, equal justice under law, will remain a half truth unless it embraces as well that concept of equity, equal justice for the inherently unequal (p. 642).

Right to Education

On January 7, 1971, fourteen retarded children with the Pennsylvania Association for Retarded Children (P.A.R.C.) sued for themselves and for all the retarded children in Pennsylvania or in legal terms "all others similarly situated," who had been denied equal access to education. Pennsylvania

Association for Retarded Children v. Commonwealth of Pennsylvania (1971) was the landmark case in the right to education lawsuits that followed. The defendants were the state secretaries of education and public welfare, the state board of education, and thirteen school districts.

The Pennsylvania School Code provided an education to all children and even included the exceptional, but despite this, large numbers of retarded children had been denied access to schooling (Gilhool, 1973). The plaintiffs charged that they represented as many as 53,000 people (Cohen and DeYoung, 1973).

The suit, heard by a three-judge panel, questioned public policy as expressed in law regarding the denial of free access to educational opportunities to the mentally retarded of school age. The case was scheduled for a hearing on a preliminary injunction on August 12, 1971. Expert witnesses testified and provided the essence of the case: the truth of the assertion that all retarded children regardless of the label can benefit from education and training. Another important segment of the expert testimony was the process of education defined as a continuous process by which individuals learn to cope and function with their environment. Thus, education was not defined exclusively as the provision of academic experiences. After the testimony from four of the expert witnesses, the defendants called a halt and announced they wished to settle the case.

The October, 1971, injunction required that:

1. To provide as soon as possible but in no event later than September 1, 1972, to every retarded person between the ages of six and twenty-one, access to a free public program of education and training appropriate to his learning capacities.

2. To provide as soon as possible but in no event later than September 1, 1972, wherever defendants provide a pre-school program of education and training for children aged less than six years of age, access to a free, public program of education and training appropriate to his learning capacities to every mentally retarded child of the same age.

3. The Secretary of Education shall be responsible for assuring that every mentally retarded child is placed in a program of education and training appropriate to his learning capacities, and to that end . . . he shall be informed as to the identity, condition, and educational status of every mentally retarded child within the various school districts (p. 1253).

In order to assure prompt and expedient implementation, the consent agreement required the state to develop a plan for finding retarded children and a plan for providing educational opportunities and services. It required a notice to parents of retarded children of the court action. To facilitate quick action, the court appointed two Masters from the field of education and law, who represented the court in carrying out orders and injunctions. These orders were to be completed by September, 1972, when all retarded children between the ages of six and twenty-one were to be provided a publicly-supported education. On May 5, 1972, the June and October decrees were approved and adopted and were put into full effect.

Thus, judicial recognition had been made that all children were educable, and that all retarded children should have

access to the benefits of public school. The underlying principle in the right to education cases, stated as "zero reject" by Lilly (1970), meant that every child was entitled to proper placement in the educational system. Those who disputed this principle took the position that such an implementation would cost more than was beneficial. Murdock (1972) concluded that:

> Such a position cannot be justified legally, economically, or morally. From a legal standpoint, constitutional rights may not be abridged because implementation requires expenditure of public funds (p. 170).

As reported earlier in this study, it was estimated that one million children were excluded from public school instruction. The P.A.R.C. case established handicapped children's right to education. Goldberg and Lippman (1974) extended this principle and referred to right to education as

> . . . an integral part of universal human beings as members of the human race. Right to education is really the keystone of the dignity of man (p. 326).

The National Association for Retarded Children (N.A.R.C.) reaffirmed this belief in their 1971 policy statement:

> Many mentally retarded children are frequently denied education in public schools because of their projected inability to contribute tangibly to society, while others are excluded because they do not possess sufficient behavioral controls and/or self-care and verbal skills to make them readily amenable to traditional school curricula, physical facilities, and competencies of teaching personnel.
>
> Public school education must be provided for all mentally retarded persons, including the severally and profoundly retarded. There should be no dividing line which excludes children from public education services. If current educative technologies and facilities are inappropriate for the education of some retarded persons, then these existing educational regimes should be modified (p. 2).

Another landmark decision was reached involving the right to education cases in Mills v. Board of Education (1972). The parents and guardians of seven District of Columbia children brought this class action suit against the District for failure to provide a free public school education. The defendants answered that the reason they failed to provide such an education was the lack of necessary fiscal resources.

On August 1, 1972, Judge Joseph C. Waddy issued a final order and opinion in which he supported all the arguments brought by the plaintiffs. This decision applied to all handicapped children and not just a single category. The Mills case thus expanded the principles of the Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania (1971) to all handicapping conditions and while P.A.R.C. was decided upon by a consent agreement, the Mills case provided a constitutional holding reached by a Federal judge in a contested case and set even a stronger precedent (Mental Health Law Project, 1973).

Judge Waddy held that the defendants could not be excused by a claim of insufficient funds in his statement:

> If sufficient funds are not available to finance all of the services and programs that are needed in the system then the available funds must be expended equitably in such a manner that no child is entirely excluded from a publicly supported education consistent with his needs and ability to benefit therefrom.
>
> The inadequacies of the District of Columbia Public School System, whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the 'exceptional' or handicapped child than on the normal child (p. 47).

The Court ordered the District to offer educational facilities within 30 days and required the School Board to develop a written plan for special education services and to identify those children within 45 days.

The following right to education lawsuits concerned the most important legal activities regarding not only mentally retarded persons, but all handicapped children in their pursuit of an appropriate education. This right was extremely inclusive and it pertained to the educational and civil rights of a diverse group of handicapped children. Only 2.8 million or 40 percent of today's seven million exceptional children received special education services (Weintraub and Abeson, 1972). These figures revealed inadequate and unconstitutional treatment towards millions of handicapped children. The right to education lawsuits shifted the emphasis to the responsibility of the state to allocate funds equitably and provide special educational services to all handicapped children. The plaintiffs were usually the more severly handicapped or the ghetto school children who had been excluded or misplaced in special education. The effects of legislation that was not enforced or lack of appropriate types of legislation were evidenced by the exclusion of many children. The legal basis for exclusion had been based on compulsory attendance laws, and as discussed early in this study and supported by Weintraub and Abeson (1972), these laws became "compulsory non-attendance laws (p. 1045)."

In 1969 a decision by Judge D. Frank Wilkens, Third

Judicial District Court of Utah, handed down a decision which required two trainable mentally retarded children who had been excluded from education to be provided an education within the public education system (Wolf v. Legislature of State of Utah, 1969). These children, who were the responsibility of the State Department of Welfare, guaranteed the right to education at public expense to all children in the state. Judge Wilkens noted:

> Today it is doubtful that any child may reasonably be expected to succeed in life if he is denied the right and opportunity of an education. In the instant case the segregation of the plaintiff children from the public school system has a detrimental effect upon the children as well as their parents. The impact is greater when it has the apparent sanction of the law. The policy of placing these children under the Department of Welfare and segregating them from the educational system can be and probably is usually interpreted as denoting their inferiority, unusualness, and incompetency. A sense of inferiority and not belonging affects the motivation of a child to learn. Segregation, even though perhaps well intentioned, under the apparent sanction of law and state authority has a tendency to retard the educational, emotional, and mental development of the children (Wolf v. Legislature of the State of Utah, 1969).

Doe v. Board of School Directors of the City of Milwaukee (1970) was one of two suits filed in Wisconsin in 1970. In this class action suit the plaintiffs were represented by John Doe, a 14 year old trainable mentally retarded student. John Doe had been tested by a school board psychologist who determined him as eligible for placement in a class for the trainable mentally retarded. He was placed on a waiting list and the plaintiffs alleged that this was a violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution. A temporary injunction was ordered and

the public schools were prohibited from placing trainable mentally retarded children on a waiting list for special education. It also required the public schools to admit the plaintiffs into the program for trainable mentally retarded children with reasonable speed which was 15 days.

Marlega v. Milwaukee Board of School Directors (1970) was a class action suit with Douglas Marlega as the plaintiff. He was excluded from public school attendance because of medical reasons involving hyperactivity without affording the parents or guardians an opportunity to contest the validity of the exclusion determination. A temporary restraining order was awarded on January 14, 1970, and on March 16, 1970, the Court ordered that no child could be excluded from a free public education on a full time basis without a due process hearing. This due process hearing included (a) specification of the reasons for exclusion; (b) a prior hearing; (c) the rights to be represented by counsel, to confront and cross-examine witnesses, and to present evidence and witnesses on the child's behalf; (d) a stenographic record of the hearing; (e) a final decision in writing stating in detail the reasons for any exclusion; and (f) a specification of available public education alternatives (Cohen and DeYoung, 1973).

One right to education case, Reid v. New York Board of Education (1971), was decided in favor of the defendants due to the decision that a state court could provide an adequate remedy, and a decision by the Federal courts was unnecessary. A subsequent decision had not been made in this case brought

before the state of New York in Reid v. Board of Education. This class action suit was brought in Federal court to prevent the New York Board of Education from denying brain-injured children an appropriate education. It was alleged that over 400 children in New York City, identified as brain damaged, had not received placement because of a final screening procedure and an additional 200 children were placed on a waiting list. In the new complaint the petitioner represented nine school age children with learning disabilities attributed to brain injury and/or emotional disturbance and they represented a class estimated to be 20,000 children. The children ranged in ages seven to twelve and had varied school histories which included misplacement, medical suspensions, home instruction, and assignments to waiting lists. The petition sought diagnosis and evaluation of all handicapped children and provision of complete educational services to this class of children. The decision was still pending before the New York Commissioner of Education.

The plaintiffs in McMillan v. Board of Education of State of New York (1970) were brain-injured children. They sought an injunction prohibiting a $2,000 ceiling on state payments for children in private schools and in addition included request for provision of special classes in the public schools. Cohen and DeYoung (1973) reported that the technique of waiting lists "insures non-attendance of the children, cools off the parent with the hope of eventual placement, and leaves the impression that the schools are doing something (p. 274)."

A similar petition was charged in Massachusetts, in Barnett v. Greenblatt (1971), where 1,371 emotionally distrubed children were placed on a waiting list. This case challenged the manner in which emotionally disturbed are arbitrarily denied the right to an education and was still pending.

In Maryland, a class action suit was brought by the Maryland Association for Retarded Children and 14 mentally retarded children against the state of Maryland for failure to provide retarded or other handicapped children with an equal and free public education. It argued that:

> the opportunity of an education, where the state has undertaken to provide it, is a right that must be made available to all on equal terms (Maryland Association for Retarded Children v. State of Maryland, 1972).

Another class action suit was introduced on May 18, 1972, on behalf of 13 severely and moderately mentally retarded children in North Carolina for failure to provide public education for all of the state's estimated 75,000 mentally retarded children. The defendants were the state, the state superintendent of public education, the state board of education, the department and the secretary of the department of human resources, and other officials of the state. The plaintiffs' attorneys used the North Carolina Constitution and a 1967 North Carolina attorney general's opinion as evidence that equal educational opportunities should be provided for all students. On July 31, 1972, the complaint was expanded to include in addition to the North Carolina Association for Retarded Children, 22 plaintiff children who

> . . . have by the defendants been denied the right to a free homebound instruction or been denied the right of tuition or costs reimbursement in private schools or institutions or been denied the right of free education, training or habilitation in institutions for mentally retarded (North Carolina Association for Retarded Children, Inc. v. The State of North Carolina, 1972).

Another case was filed in the state of North Carolina on May 5, 1972, on behalf of all school age mentally retarded children in North Carolina (Hamilton v. Riddle, 1972). Crystal Rene Hamilton, an eight year old mentally retarded child, was admitted to the Western Carolina Center, a state institution for the mentally retarded, in November, 1971, on a temporary basis. The center notified her parents after six months that they would no longer provide education and treatment for the child. The statutes of North Carolina were said to guarantee equal free educational opportunities for all children of the state between the ages of six and twenty-one years of age. The case was joined with North Carolina Association for Retarded Children, Inc. v. The State of North Carolina (1972), and a decision had not been reached.

The coalition for the Civil Rights of Handicapped Persons and twelve handicapped children filed suit against the State of Michigan for their failure to provide a publicly supported education (Harrison v. State of Michigan, 1972). The plaintiffs included many handicapping conditions -- brain damage, mild to severe mental retardation, autism, emotional disturbance, cerebral palsy, and hearing disorders said to represent 30,000 to 40,000 handicapped children. The important difference in

this suit was the reference in the complaint to a mandatory special education law effective July 1, 1972. The law was not fully implemented until the 1973-74 school years, and the plaintiffs were denied their rights at that time. It was indicated that the mandatory act did not provide mandatory education or the right to hearing and review as to the educational status of the child. On October 30, 1972, United States District Judge Charles W. Joiner issued an order that dismissed the plaintiff's complaint. This was done on the basis that the new state of Michigan mandatory legislation rendered the complaint moot. He rendered an opinion that provision of education for some children while not providing it for others was a denial for equal protection, but that a comprehensive plan for the education of handicapped children could not be resolved by a judicial order.

A case which was still pending in Wisconsin was brought against the state by Mindy Linda Panitch and represented a class of children who were multi-handicapped, educable children between the ages of four and twenty years (Panitch v. State of Wisconsin, 1972). The issue was a Wisconsin statute that enabled handicapped children to attend a special school, class or center, outside the state and required the county or school district to pay tuition and transportation to a public institution.

As a result of the exclusion clauses in the state statutes, a number of handicapped children were denied an education. The course of action taken by the plaintiffs' attorneys was

to prove these statutes illegal. Lori Case v. State of California (1972) was an example of this particular strategy. Lori Case was a school age child diagnosed as autistic, deaf, and possibly mentally retarded who was enrolled in the multi-handicapped unit at the California School for the Deaf at Riverside, California, in May, 1970. After termination of her placement on grounds that she was severely mentally retarded and required custodial care beyond the provisions available at the school, the plaintiffs filed and were granted a permanent injunction prohibiting defendants from interfering with Lori's placement. The question as in other right to education cases was centered around Lori's educability and the court's definition of the term. The plaintiff's attorney argued:

> There is absolutely no distinction in law, or in logic between a handicapped child and a physically normal child. Each is fully entitled to the equal protection and benefits of the laws of this State. Thus, to deprive Lori of her right to an education . . . would violate her fundamental rights (Lori Case v. State of California, 1972).

A similar case brought in California was Burnstein v. The Board of Education (1970) in which the plaintiffs were described as autistic and were not receiving a public education. It was argued that education for children between the ages of six and sixteen was not a privilege but was a legal right under the state laws of California and the United States.

Another class of autistic children filed suit in August,

1972, against the State of Virginia for their legal right to be provided with equal access to an education. In addition to the use of the "fundamental rights" violation, the plaintiffs in Tidewater Association for Autistic Children v. Commonwealth of Virginia (1972) charged that discrimination was being practiced against autistic children since they were educable and no suitable program of training or education was available for them. In December, 1972, the court dismissed the plaintiff's complaint on the grounds that the United States Constitution did not explicity or implicitly guarantee the right to a free public education. The court also explained that this right was guaranteed through the state laws of Virginia which called for the education of the handicapped. This was in some respect a defeat since no actual redress was accomplished. However, the fact that this group of handicapped children brought attention to the state legislation, school administrators, officials, parents, and the general public accomplished a great deal.

The threat of money damages, as in other professional malpractice suits, might have been the forerunner of successful action in these suits. In Kivell v. Nemoitin (1972), in Fairfield County, Connecticut, the Superior Court ordered the board of education to pay $13,000 in back tuition costs to the mother of Seith Kivell, "a perceptually handicapped child with learning disabilities" to pay for two years of private education. In the ruling the judge, in anticipation of similar suits being brought, noted:

> This court will frown upon any unilateral action by parents in sending their children to other facilities, if a program is filed by a local board of education and is accepted and approved by the state board of education. Then it is the duty of the parents to accept the program . . . a refusal by parents in such a situation will not entitled their child to any benefits from this court (Kivell v. Nemoitin, 1972).

A case held in New York Family Court awarded the cost of private school education to be paid by the state. Peter Held had been enrolled in public schools for five years, three of which were in special education classes where his reading level never exceeded first grade level. After one year in private school, his reading level increased two grade levels. The mother had previously applied for funds under the same statutory provision but was denied. The court ruling in November, 1971, stated:

> It seems that now, for the first time in his young life, he has a future. This Court has the statutory duty to afford him an opportunity to achieve an education (IN RE HELD, 1971, p. 71).

A class action suit was filed in late 1972 in North Dakota on behalf of 13 retarded and handicapped children ages 6 to 19. Some of these children attended private schools, paid for by their parents, or lived in foster homes in a county where special education was available. Others received no education, attended private day care programs, or resided in state schools where no educational program was provided. The complaint alleged that only about 27 percent of the 25,000 exceptional children in North Dakota were receiving special services (North Dakota Association for Retarded Children v. Peterson, 1972). Another suit filed in December,

1972, named 19 physically and mentally handicapped children as plaintiffs in a class action suit against the state of Colorado for failure to provide equal educational opportunities to 20,000 handicapped children (Colorado Association for Retarded Children v. State of Colorado, 1972).

Right to Placement

There was an increasing amount of litigation questioning the placement of children in special education on the basis of evaluative instruments that were prejudicial to the children on the basis of native language, cultural background, and normative standardization (Weintraub and Abeson, 1972). Much of the defense in these cases was based on the Hobson v. Hansen (1967) decision. This was the first time the use of testing to place and label children was questioned in court. The Washington, D. C. school system tracked children into four groups on the basis of tests which was called tracking. Judge Skelly Wright ruled that the tracking system was illegal and in considering the evaluative measures used in the District he noted in Hobson:

> Evidence shows that the method by which track assignments are made depends essentially on standardized aptitude tests which, although given on a system-wide basis, are completely inappropriate for use with a large segment of the student body. Because these tests are standardized primarily on and are relevant to a white middle class group of students, they produce inaccurate and misleading test scores when given to lower class and Negro students. As a result rather than being classified according to ability to learn, these students are in reality being classified according to their socio-economic or racial status, or -- more precisely -- according to environmental and psychological factors which have nothing to do with innate ability (p. 720).

He ordered the abolishment of the tracking system on the contention that it discriminated against the racially or economically disadvantaged and stated it was in violation of the United States Constitution. Ross et al. (1971) suggested that once a child was placed in a certain track the student was locked in because of infrequent retesting, the student's poor self-image, and the teacher's preconceived ideas of the student's academic abilities. Cruickshank (1972) suggested that the comments by Judge Wright were relevant to children with specific learning disabilities.

Another case where tracking or ability grouping was challenged was filed in the District Court of Southern California (Sprangler v. Board of Education, (1970). A group of black students charged that a racial imbalance existed because of the use of intelligence tests. The practice was halted due to the questionable validity of the tests and the decision was made without contest.

In January, 1970, a suit was filed on behalf of nine Mexican-American public school students, aged 8 through 13, who claimed they had been improperly placed in special education classes for the mentally retarded on the basis of inaccurate test scores (Diana v. Board of Education, 1970). The children were from Spanish-speaking homes and when retested in Spanish, seven of the nine scored higher than the I.Q. qualification score for mental retardation. The case was settled out of court in favor of the plaintiffs. The final order required that:

1. Children are to be tested in their primary language. Interpreters may be used when a bilingual examiner is not available.

2. Mexican-American and Chinese children in classes for the educable mentally retarded are to be retested and evaluated.

3. The state will undertake immediate efforts to develop and standardize an appropriate I.Q. test.

4. Special efforts are to be extended to aid misplaced children readjust to regular classrooms (p. 37).

As a result of Diana, the United States Department of Health, Education and Welfare's office for Civil Rights issued a memorandum that informed the districts that they would be in violation of Title VI of the Civil Rights Act if students whose predominant language was other than English were assigned to classes for the mentally retarded on the basis of tests which evaluated the use of English language skills (Weintraub and Abeson, 1972).

The extent of the minority group language problem was shown by the evaluation of the percentages of culturally or linguistically different school age children. Approximately 10 percent of the school age population of the United States spoke a native language other than English (Sabatino, Kelling and Hayden, 1973). Spanish named students constituted a significant portion of the student population, as in California where it was 14.4 percent and in New Mexico where they comprised 38 percent of the students. The American Indian, not including those in Bureau of Indian Affairs schools, in New Mexico comprised 7.3 percent of the student population.

It was suggested that these children comprised a disproportionate number of those enrolled in special education programs. Another related case, Arreola v. Board of Education (1968), questioned the placement of Mexican-American in special education classes and had not been settled.

In February, 1971, Covarrubias v. San Diego Unified School District was filed on behalf of twelve black and five Mexican-American pupils in classes for the mentally retarded. The plaintiffs relied on the attack used in Diana on the measuring instruments used for placement i.e., the Stanford-Binet and Wechsler intelligence tests. The suit stated that many minority students were subjected to "taunts and derisions" because of a "biased testing procedure that does not recognize unfamiliarity with white, middle-class cultural background and a lack of facility was English (p. 390)." Covarrubias, although similar to Diana, requested that revised tests be used that recognized the influences of the black ghetto. Money damages were asked to alleviate the wrong done to the children.

The Stewart v. Phillips (1970) case in Boston argued that the improper placement of poor or black students abridged the rights to equal protection and due process. The three classes of plaintiffs named were all poor or black Boston public school students, improperly placed, denied placement, and all parents of students placed in special classes but denied participation in the placement. The plaintiffs sought $20,000 in compensatory and punitive damages. Stewart went further than Covarrubias when it asked that I.Q. tests recognize

the black culture and the influence that poverty has had on educational potential. A final decision had not been made, but subsequently Massachusetts school officials developed new state regulations for special class placement.

Another placement issue was tested in Arizona which involved the disproportionate number of bilingual children enrolled in classes for the mentally handicapped. This suit, Guadalupe Organization, Inc. v. Tempe Elementary School District (1972), was filed by Mexican-American and Yaqui Indian school children. The complaint asked that children in classes for the retarded be reassessed, and that the "defendants be enjoined from administering tests to students who may do poorly on them because of their cultural background (Guadalupe Organization, Inc. v. Tempe Elementary School District, 1972)," and that no child be placed before the age of ten. A stipulated agreement provided for the consideration of cultural background, intelligence tests administered in the child's primary language, the parents' involvement in the placement, and the school's justification for any proportion of an ethnic group which is significantly greater than that group in the total school population.

In Larry P. v. Riles (1971), the plaintiffs were six black elementary school students from San Francisco Unified School District who represented a class of black children who alleged that they were inappropriately classified and placed in classes for the mentally retarded. The complaint held that this misplacement carried a stigma and "a life sentence of illiteracy and public dependency (p. 2003)." Statistical

information indicated that a disproportionate number were enrolled in classes for the retarded, and the plaintiffs were retested by black psychologists who obtained I.Q. scores which ranged from 79 to 104 which was above the retarded level (Cohen and DeYoung, 1973). On June 20, 1972, the court ruled:

> . . . no black student may (in the future) be placed in an EMR class on the basis of criteria which rely primarily on the results of I.Q. tests as they are currently administered if the consequence of use of such criteria is racial inbalance in the composition of EMR classes (p. 2033).

The Larry P. case reflected the doubt that even though the California school code had been modified, black students were still misplaced and labeled mentally retarded. The state held that the lawsuit was filed too quickly after the new regulations went into effect.

Eight black children classified as mentally retarded brought suit against New Orleans Parish School Board on the basis that the classification was done arbitrarily and without standards or valid reasons (Lebanks v. Spears, 1971). It was also charged that the defendants failed to provide educational opportunities to some retarded children. The plaintiffs' attorneys stated:

> Continued deprivation (of education) will render each plaintiff and member of the class functionally useless in our society; each day leaves them further behind their more fortunate peers (Lebanks v. Spears, 1971).

In addition to appropriate classification procedures, they sought a $20,000 damage award for each plaintiff. A decision had not been reached.

In Ruiz v. State Board of Education (1971) three Mexican-American children filed a class action suit against the state of California opposing the use of I.Q. scores in their educational evaluation. The action sought relief in the form of prevention of the placement of group I.Q. scores in school records. An injunction was sought to prevent the use of group intelligence tests in the determination of allocation of funds.

Walton v. City School District of Glen Cove (1972) concerned Lynn Walton, a 15 year old, who was suspended from regular school attendance for verbally abusing a teacher and refusing to follow her directions. It was alleged that the label "handicapped" or "emotionally disturbed" was arbitrarily assigned, and that it resulted in Lynn Walton being stigmatized as inferior and unfit. On February 4, 1972, the court granted the relief sought by the petitioner recognizing the school district's violation of procedural due process (Abeson, 1973).

A suit was filed in January, 1972, that charged that the district was not following the agreement set forth in Diana (Arnold v. Tamalpais Union High School District, 1972). They sought $600,000 in damages and asked compliance with the state education code. As reported by Cohen and DeYoung (1973), once rights were defined in courts perhaps additional litigation was required to insure the provision of those rights.

The task of assessment became a major issue in the right to proper placement cases. This was recognized as a complex endeavor in the field of education, and it caused much discussion on both sides of the issue (Kirk, 1972; Jones, 1968;

and Segal, 1967). Involved in this issue of testing was the problem of free access to an educational program which was appropriate to the individual's needs. Lilly (1970) noted that although the limitations and biases were acknowledged by authorities, mental ability tests were continually employed to make unwarranted judgments. Since a disproportionate number of minority group children appeared in the special class placements, Ross et al. (1971) suggested that special education served to highlight institutional racism in many institutions.

The labeling issue was a question in the placement lawsuits. The great hazard of misidentification and stigma was presented in many cases with much educational support cited. A study by Mercer (1973) concluded that a disproportionate number of black and Chicano children were labeled as mentally retarded at the mild or borderline end; and, yet when socio-cultural influences were considered, differences in measured intelligence were minimal between black and white children, or between children of Spanish-speaking or English-speaking background. The advantages and disadvantages of labeling were discussed by Gallagher (1972), and this issue provided an area that influenced the direction of decisions made in special education.

Parental involvement played an important role in the right to placement issue in that parents were not given adequate oportunity to participate in the placement decision.

The right to a hearing included parents' rights to attend decision making conferences and to be directly involved in the placement. Kronick (1972) and Cruickshank and Johnson (1972) advised parents not to dump the total responsibility in the educator's lap. The N.A.R.C. (1971) policy statements reported:

> It is not uncommon for educational plans to be formulated without the benefit of input or goal setting by parents of the school children who are the consumers of educational service (p. 9).

It was recognized that much time and planning on the part of the educational system was required to actually involve the parents, but, as indicated by the decisions in the courts, it will be necessary in the future.

Right to Treatment

The right to treatment was first expressed by Birnbaum (1960):

> . . . the courts under their traditional powers to protect the constitutional rights of our citizens begin to consider the problem of whether or not a person who has been institutionalized solely because he is sufficiently mentally ill to require institutionalization for care and treatment actually does receive adequate medical treatment so that he may regain his health, and therefore his liberty, as soon as possible; that the courts do this by means of recognizing and enforcing the right to treatment; and, that the courts do this, independent of any action by any legislature, as a necessary and overdue process of law (p. 499).

Dr. Birnbaum's idea was that right to treatment litigation would result in public attention and legislative reform in this area. This concept was applied to the mentally retarded as well as the mentally ill.

The present abuses in institutions for the retarded and other handicapping conditions have been exposed by the mass media and were supported by professional investigations (Blatt and Kaplan, 1966; Ricci v. Greenblatt, 1972; Wyatt v. Stickney, 1972). Evidently the legislation was not effective, as the court stated in Wyatt v. Stickney (1972): "The result of almost fifty years of legislative neglect has been catastrophic; atrocities occur daily (p. 781)." It was left up to the courts to establish the principle of the right to treatment. Since the majority of laymen viewed mentally retarded persons as falling at the lower end of the scale, it was difficult to convince people that the proper solution was in adequate treatment and possibly prevention of institutionalization. Kugel and Wolfensberger (1969), supported this when they said, "Few retardates need hospital treatment; all need education, employment, and a satisfying social and cultural environment (p. 25)."

One of the most significant cases in the rights of retarded persons in institutions was the successful result of Wyatt v. Stickney (1972). The action was filed originally on behalf of the residents at Bryce Hospital for the mentally ill, but was later extended to the patients at Searcy Hospital and Partlow State School for the mentally retarded. At a hearing in February, 1972, evidence presented prompted the court to issue an emergency order that required the state to hire 300 aides within 30 days. The court found:

> . . . the evidence . . . has vividly and undisputably portrayed Partlow State School and Hospital as a ware-

> housing institution which because of its atmosphere of psychological and physical deprivation, is wholly incapable of furnishing habilitation to the mentally retarded and is conducive only to the residents (p. 781).

The court granted permission for several organizations -- the American Orthopsychiatric Association, the American Psychological Association, the American Civil Liberties Union. and the American Association on Mental Deficiency -- to provide expert witnesses and to serve as amici curiae, which meant friends of the court or interested parties but not direct litigants.

It was noted that the residents of Alabama's institutions were not only deprived of treatment, but even the most minimal stimulation which resulted in a deterioration of their condition (Mental Health Law Project, 1972). Although the conditions were substandard, the experts testified that they were "no worse than those in many of our largest and richest states (p. 781)."

On April 13, 1972, Judge Johnson handed down a final order and opinion which set minimum standards for constitutionally and medically required adequate treatment and established a detailed procedure for implementation. To implement this order, the court established a seven member "human rights committee" which included a resident of the institution. This was set up to review research proposals and rehabilitation programs and to advise and assist patients as to their legal rights.

An important element in the Wyatt case and in other right to treatment lawsuits was the right to be treated in the

"least restrictive setting." This meant if hospitalization was not absolutely necessary, a person should be treated at an out-patient or community health center. Due to evidence that long-term institutionalization was many times debilitating, the least restrictive alternative approach was applied. This allowed for the release of inappropriately confined patients and better treatment for those who remained. Ogg (1973) suggested that retarded persons in the community were met with opposition, and obstacles to deinstitutionalizing retardates must be removed through community education.

A conflicting case held that there was no right to treatment in Burnham v. State of Georgia, 1972. This was a class action suit filed on behalf of all patients committed to any of the six institutions for the mentally retarded and mentally ill. Judge Smith held that there was no constitutional right to treatment and that the treatment of involuntary patients was not a "justiciable issue" which meant an issue capable of definition and resolution by a court. He commented on the Wyatt decision, "this Court respectfully disagrees with the conclusion reached by that Court in finding an affirmative Federal right to treatment absent a statute so requiring (p. 1335)." This case was on appeal.

In Ricci v. Greenblatt (1972) the plaintiffs were children in the Belchertown State School in Massachusetts and the Massachusetts Association for Retarded Children. A temporary restraining order was granted in February, 1972, which required "the defendants to develop comprehensive treatment plans for the residents which includes adequate and proper educational

services (p. 1341)."

Two actions were filed in New York against the conditions at the Willowbrook State School for the Mentally Retarded (New York State Association for Retarded Children v. Rockefeller (1972) and Parisi v. Rockefeller (1972). The suits charged widespread physical abuse, overcrowding, involuntary servitude, insufficient staffing, and absence of therapeutic care. The court was asked to set constitutionally minimal standards of care. The plaintiffs cited that 82.7 percent received no school classes, 98.3 percent were not receiving pre-vocational training, and 97.1 percent received no vocational training at Willowbrook. The court issued a restraining order which prohibited transfer of residents to other state institutions.

Another case was still pending which involved six plaintiffs in Minnesota's state hospitals for the mentally retarded (Welsch v. Likins, 1972). It was charged that the plaintiffs and others similarly situated were not provided with a humane psychological and physical environment. The buildings were described as "old, poorly designed and hazardous" and did not meet health and safety standards. A comprehensive treatment plan was recommended and a requirement that defendants "pay plaintiffs and the class they represent working in the named institutions the minimum wage established pursuant to the Fair Labor Standards Act" was requested. A similar suit was filed in Nebraska by five mentally retarded residents in Beatrice State Home for the Mentally Retarded (Horacek v. Exon, 1972). The allegations and relief sought resembled

the previous cases cited, and a motion to dismiss the charges was filed by the defendants. This motion was similar to the court's decision in Burnham v. Department of Public Health.

Arguments Presented in Litigation

The legal rights of handicapped children were tested through litigation and basic arguments presented in these cases evolved. Testing, labeling, and placement were asserted as being injurious and placing a stigma on handicapped children which resulted in their separation from the mainstream of regular education. This entire process, including the measurement instruments used for diagnosis, were attacked and the arguments used were outlined by Ross, DeYoung, and Cohen (1971).

The first argument asserted that standardized intelligence tests that had white middle-class students as the population sample did not accurately measure the learning ability of the plaintiffs. The tests' heavy reliance on verbal ability and standard English were stated to be non-representative of many classes of children. As Ross et al. (1973) stated:

> . . . the test scores often are used as the primary, if not sole, criterion for establishing a diagnosis of mentaly retardation -- with all the consequences of such a diagnosis (p. 5).

Thus, the argument presented made a case for the tests as discriminatory against children of racial and cultural minorities and in violation of the equal protection clause of the Fourteenth Amendment. Based on the Jensen report (1969), Hall (1970) asserted that there were possibly 15 times as many black children as white children in classes

for the mentally retarded. Dunn (1968) agreed when he hypothesized that minority children constituted over half of those placed in special education.

A related argument contended that the administration of tests was frequently performed incompetently. The basis for this objection was that many public school personnel were not prepared to administer or interpret the tests due to a lack of knowledge of the cultural background and language unfamiliarity. Even the most skilled examiner was said to be incompetent in this regard.

The third agrument dealt with the lack of parental involvement in the placement procedure. Typically, the parents were informed by school officials after a decison was reached. Cohen and DeYoung (1973) cited:

> Professional educators should not be permitted to 'con' parents into agreeing with the change of status of the student after a decision has been made to place him in a special class (p. 267).

The parents were not informed that the child, once labeled and placed in a special education class, would in most instances remain there throughout his school career.

Another argument offered was related to the programs available in special education. This argument directly questioned the entire field of special educational practices and its administration. The vocational and educational skills provided were found inadequate and unsuccessful. The special class was described by Cohen and DeYoung (1973) as an "educational burial ground insuring lower socioeconomic status for its students (p. 267)."

The final argument defended the position that improper placement in special classes caused personal harm to the exceptional child's self-concept. The psychological damage created by improper placement was impossible to measure with tests or instruments, but it undoubtedly had a far reaching effect. This stigmatization did not end with school experiences, but was a lasting effect throughout the life of the handicapped citizen.

The five basic arguments presented by Ross et al. (1971), were tested in the various lawsuits regarding the rights of handicapped children, and in recent years public opinion had had "tremendous influence in the outcome of the litigation precedures (p. 12)." According to the Mental Health Law Project (1973), the mentaly health advocates, lawyers, educators, and civil libertarians began to recognize that alleged exceptional children were one of the most profoundly victimized minorities in this country. The recent lawsuits have provided a "window on the plight of an otherwise forgotton group (p. 2)."

Throughout this portion of the investigation, it was shown that litigation was generally effective in providing exceptional children access to their constitutional or statutory rights. This procedure was first initiated in 1967, and several landmark cases since then have provided prototypes for the following cases which concerned the rights of handicapped children. The lawsuits were divided into general categories with the separate areas of focus providing the basis for this delineation. The first area considered

was the recognition by the courts that all children were to be provided free access to an education, i.e. the right to education cases. Another category dealt with the placement practices which included the improper classification of handicapped children -- the right to placement. The third area reported was the right to treatment in institutions for the mentally retarded. The outcome of many of these lawsuits was still pending, but it appeared clear that litigation of the rights of exceptional children was in many instances a successful means of obtaining redress for grievances.

CHAPTER IV

SUMMARY, DISCUSSION, AND IMPLICATIONS

The problem of this study was to investigate the relationship between the alleged abridgement of handicapped children's rights and litigation as an avenue for change. An attempt was made to clarify the nature of this relationship through a systematic analysis of the cases according to their content. The procedure associated with the collection of the data were those involving the location, examination, and analysis of available and accessible published materials located in libraries and selected governmental agencies.

The analysis provided information for answering the questions proposed at the outset of this study.

1. What was the relationship between handicapped children's rights and the current litigation?

The litigation regarding the rights of handicapped children resulted in the much needed change in attitude toward all areas of special education. The successful outcome of the court cases indicated that exceptional children were to be accorded their full statutory rights.

2. What was the relationship between court decisions regarding handicapped children and the traditional means of providing treatment and education?

The inadequate provision of programs and treatment in some instances and the denial of education were no longer permitted as an outcome of these lawsuits. The basic premise

that all children, which included all exceptional children regardless of their handicapping condition were truly educable, was usually established in the successful litigation.

3. What were the general categories and patterns of the existing litigation?

The existing patterns in the lawsuits regarding handicapped children were delineated into three major categories: a) right to education, b) right to proper placement, and c) right to treatment. The recognition by the courts that all children should be provided free access to an education was one of the central issues in the court cases. Another major category dealt with the placement practices which included the improper classification of handicapped children in special education programs. The mass media exposed inhumane treatment in institutions for the mentally retarded and provided an impetus for action in the third area of emphasis which was the right to treatment for the institutionalized handicapped.

4. What were the aspects of the court rulings that presented probelms to the field of special education?

When the court handed down a decision regarding the right to education, educators had to act quickly to locate and provide an education for all exceptional children in their respective state. Generally, a deadline was set requiring placement and evaluation of all exceptional children. This was a mammoth

task which required additional psychometrists, psychologists, special class teachers, and other resource personnel.

It was suggested previously that the legal actions in regard to handicapped children be viewed as one form of accountability. This term became a reality for special educators and those in special services when the courts were forced to speak on the issue of adequate educational provisions for exceptional children.. The pressure which had been placed on all educators in recent years to be held accountable was applied also to personnel in special education as a result of the litigation.

Litigation provided stimulation toward pre-school programming for exceptional children where none had been previously offered. Due to many of the state statutes which did not require or excluded the pre-school age child, it was difficult to locate handicapped children at this age level.

The entire issue of labeling and proper classification of exceptional children posed problems in the field of special education. For many years, classification and placement in a self-contained class had been generally accepted. The courts in some cases banned the use of culturally biased testing procedures and held that programs based on the individual child's learning needs must be provided. Consequently, mainstreaming became the trend in providing an appropriate education for all exceptional children, i.e. to keep the exceptional children in the mainstream of education rather than to isolate them in special classes.

The right to treatment created a need to alter the practices in institutions with respect to the concept of the right to treatment in the least restrictive setting. The evidence presented indicated that institutionalization itself could lead to deterioration of exceptional children. It was found necessary to provide treatment within the community, i.e. in sheltered workshops and community health centers where appropriate treatment and education for all exceptional individuals were available.

5. What was the legal basis and precedent established in the lawsuits regarding the handicapped?

The answer to this question, as applied to all categories of lawsuits, was established by the Fourteenth Amendment to the Constitution of the United States. The Constitutional provisions which supplied the legal support for the arguments were due process and equal protection of the law. Due process entitled all citizens, as well as handicapped citizens, the right to be treated in a fair manner; and the equal protection provision prohibited the government from unfair discrimination against an individual or class of individuals.

6. What were the arguments presented in the complaints that were filed?

One argument asserted that intelligence tests standardized on white middle-class students were not applicable to minority group students. A related argument contended that the administration of the tests were performed inadequately by examiners who were not familiar with various cultural backgrounds. The

next argument dealt with the need for more parental involvement in placement decisions. Many rulings required that parents be asked to attend a due process hearing or a decision-making meeting where they could become involved in the decision process prior to educational placement. Another argument questioned the availability of special education programs. Many children were placed on waiting lists and denied indefinitely equal access to an education. The final argument maintained that improper placement not only led to stigmatization but a poor self-concept that affected the entire life of the exceptional child.

7. What were the functions of litigation?

The first function of litigation involved securing equal access to education for all exceptional children. The creation of a new forum where advocates of handicapped children's rights could express their opinions was provided. Another use of the litigation was found in gathering public attention and support. The improvement of the exceptional child's self-concept to the extent that they viewed themselves as worthy individuals with all the rights that normal children were afforded proved to be an important use of litigation.

8. What role did state and Federal legislation play in the litigation procedure?

The enactment of legislation and its significance upon the legal rights of exceptional children were not underestimated. It must be noted that a law was generally not enforced if it did not have public support. Legislation at the national and

state level provided a basis for the growing trend to provide equal rights to the handicapped. Where legislation failed to provide these rights, the judicial system was called upon to make these decisions. The source of funding was found in legislation, and it was held in several cases that lack of funds or resources could not be used as an excuse when normal children were provided with an education and exceptional children were excluded.

9. What were the implications for the leadership in the field of special education?

At the University level programs needed to be implemented in the preparation of educators and psychologists in the field of special education that emphasized educational alternatives other than the self-contained classroom and the I.Q. score placement procedure. Ross et al. (1973) focused the need to show the interactive nature of behavior in relation to the child's family and community. The special educator in the future may act as a consultant to the exceptional child and regular classroom teacher rather than as a special class teacher. Awareness of the issue and evidence used in the lawsuits needed to be conveyed at the level of higher education in order to prepare for these changes which were occurring in the field. If educators objected to the judicial system that assumed the responsibility of providing equal access to education and treatment of exceptional children, they needed to take an active role in providing it from within the system.

As a result of the gross injustice that existed in the education and treatment of handicapped children, there were over thirty lawsuits filed in their behalf. These lawsuits expressed the growing concern on the part of many people that handicapped ditizens' rights had been abridged, and the time had come to provide an avenue for change. Presently, the field of special education is in the midst of transition, and it is important that leadership in the area provide direction in the form of information and research on the problems encountered.

The legal rights of the mentally retarded and other exceptional children had been denied for many years. As other minority groups had done in the past, they took their complaints to court when other avenues were unsuccessful. The courts decided favorably toward these issues in many cases, and the legal rights of exceptional individuals were recognized.

State and national legislation provided for specific rights of the handicapped, but many times these laws were not enforced. Where no other recourse was available, handicapped children with the help of parents and supportive organizations filed suit in a state or Federal court.

The public acceptance of handicapped children within the last few years made the passage of legislation and successful litigation possible. It is now time for educators to become aware of judicial decisions and their implications for the education and treatment of all handicapped children.

Implications for Further Research

Since court decisions are constantly being made, future research might include the current status of the litigation regarding handicapped citizens. The entire issue of labeling and the resultant stigma attached to it, needs further research. It became apparent in this study that alternate approaches in the evaluation of exceptional children was needed. The financial provisions available in this area provided an important factor which needed further study. As noted in the literature, there was a sparcity of specific research studies in the area of special education administration and special services. More appropriate training and the development of educational programs for special educators was warranted as well as continued study of the human and legal rights of all children.

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APPENDICES

APPENDIX A

United Nations Resolution

Twenty-sixth session
Agenda item 12

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY
(on the report of the Third Committee (A/8588))
2856 (XXVI). Declaration on the Rights of
Mentally Retarded Persons

The General Assembly,

Mindful of the pledge of the States Members of the United Nations under the Charter to take joint and separate action in co-operation with the Organization to promote higher standards of living, full employment and conditions of economic and social progress and development,

Reaffirming faith in human rights and fundamental freedoms and in the principles of peace, of the dignity and worth of the human person and of social justice proclaimed in the Charter,

Recalling the principles of the Universal Declaration of Human Rights, the International Covenants of Human Rights, the Declaration of the Rights of the Child and the standards already set for social progress in the constitutions, conventions, recommendations and resolutions of the International Labour Organization, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the United Nations Children's Fund and of other organizations concerned.

Emphasizing that the Declaration of Social Progress and Development has proclaimed the necessity of protecting the rights and assuring the welfare and rehabilitation of the physically and mentally disadvantaged,

Bearing in mind the necessity of assisting mentally retarded persons to develop their abilities in various fields of activity and of promoting their integration as far as possible in normal life,

Aware that certain countries, at their present stage of development, can devote only limited efforts to this end,

Proclaims this Declaration on the Rights of Mentally Retarded Persons and calls for national and international

action to ensure that it will be used as a common basis and frame of reference for the protection of these rights:

1. The mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings.

2. The mentally retarded person has a right to proper medical care and physical therapy and to such education, training, rehabilitation and guidance as will enable him to develop his ability and maximum potential.

3. The mentally retarded person has a right to economic security and to a decent standard of living. He has a right to perform productive work or to engage in any other meaningful occupation to the fullest possible extent of his capabilities.

4. Whenever possible, the mentally retarded person should live with his own family or with foster parents and participate in different forms of community life. The family with which he lives should receive assistance. If care in an institution becomes necessary, it should be provided in surroundings and other circumstances as close as possible to those of normal life.

5. The mentally retarded person has a right to a qualified guardian when this is required to protect his personal well-being and interests.

6. The mentally retarded person has a right to protection from exploitation, abuse and degrading treatment. If prosecuted for any offense, he shall have a right to due process of law with full recognition being given to his degree of mental responsibility.

7. Whenever mentally retarded persons are unable, because of the severity of their handicap, to exercise all their rights in a meaningful way or it should become necessary to restrict or deny some or all of these rights, the procedure used for that restriction or denial of rights must contain proper legal safeguards against every form of abuse. This procedure must be based on an evaluation of the social capability of the mentally retarded person by qualified experts and must be subject to periodic review and to the right of appeal to higher authorities.

2027th plenary meeting, 20 December 1971.

APPENDIX B

STATE PROGRAMS FOR THE HANDICAPPED
DEFINITIONS AND AGE REQUIREMENTS

DEFINITION	Minimum	Maximum
ALABAMA Includes but no limited to the mild and moderately to severely retarded but not profoundly retarded; deaf and hearing impaired; blind and vision impaired; the crippled and those having other handicaps not specifically mentioned; the emotionally conflicted; the socially maladjusted; those with specific learning disabilities, the multiple handicapped and the intellectually gifted	6	21
ALASKA Educable mentally retarded, trainable mentally retarded, physically handicapped emotionally handicapped, learning disabled, gifted, and multiple handicapped	legal school age	
ARIZONA Gifted; educable mentally handicapped, emotionally handicapped, homebound or hospitalized; multiple handicapped; physically handicapped; specific learning disabled, speech handicapped; trainable handicapped	5	21
ARKANSAS Retarded; hard of hearing; deaf; speech impaired; visually handicapped; emotionally disturbed; crippled; specific learning disabilities or other health impaired children requiring special education and related services--mental, physical, emotional or learning problems requires special education services. This term is to be specifically interpreted to mean but not wholly limited to the mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, emotionally disturbed, crippled, specific learning disabled, or other health impaired children who by reason thereof require special education and related services. *If the state activates a kindergarten program the age will be lowered to five	6*	21

CALIFORNIA	Minimum	Maximum
Deaf or hard of hearing; blind or partially seeing; orthopedically or health impaird; aphasic; speech handicapped; other minors with a physical illness or condition making attendance in regular classes impossible or inadvisable; minor with physical impairments so severe as to require instruction in remedial physical education; multiple handicapped; physically handicapped; educationally handicapped and mentally retarded	3	21 legal school age
COLORADO		
Physically handicapped	3	21
Educable mentally handicapped	5	21
Educationally handicapped (emotionally handicapped or perceptually handicapped or both)	5	21
Learning disabilities	no age requirements	
Trainable mentally retarded	5	18
CONNECTICUT		
Mentally retarded; physically handicapped; socially or emotionally maladjusted; neurologically impaired; learning disable or extraordinary learning ability or outstanding talent in the creative arts	5*	21**
*Handicapped children beginning at age 3 may receive special education services if their additional attainment would be irreparable damaged without it.		
**21 or high school graduation, whichever occurs first		
DELAWARE		
Physically handicapped, maladjusted, mentally handicapped, learning disabled gifted, and talented	4	21
FLORIDA		
Educable mentally retarded, trainable mentally retarded, speech impaired, deaf, hard of hearing, blind, partially sighted, crippled and other health impaired, gifted, emotionally disturbed, socially maladjusted, specific learning disabled	3	none
GEORGIA		
Mentally retarded, physically handicapped, speech handicapped, multiply handicapped, autistic, intellectually gifted, hearing impaired, visually impaired, and any other exceptionality that may later be identified	3	18

GEORGIA cont'd	Minimum	Maximum
Special program: A preschool program with no age limitations is authorized for the deaf, hearing impaired, and speech handicapped		
HAWAII		
Children who deviate in physical, mental, social or emotional characteristics to the extent that specialized training, techniques, and equipment are needed for maximum fulfillment	none	20
IDAHO		
Includes but not limited to physically handicapped mentally retarded, emotionally disturbed, chronically ill, perceptually impaired, visually or auditory handicapped, speech impaired, and academically talented	no lower limit (a law specifically abolished such limit	21
ILLINOIS		
Physically handicapped, children with learning disabilities, maladjusted children, educable mentally handicapped, trainable mentally handicapped, speech defective, and multiply handicapped	3	21
INDIANA		
Physical or mentally disability as defined by regulations and includes the multiply handicapped	3	21
IOWA		
Crippled, defective sight, hard of hearing, speech impairments, heart disease, tuberculosis, physical defects, emotionally maladjusted, and children intellectually incapable of regular instructional programs *Children not in state institutions under age 5 may receive services **Programs may be extended for three years for persons who, because of a congenital defect, accident, or prolonged illness, are unable to complete special education requirements by the age 21.	5*	21**
KANSAS		
Developmentally disabled, homebound, crippled, hard of hearing, socially and emotionally maladjusted, defective sight or speech, cerebral palsy, delicate (including heart conditions), tubercular, intellectually gifted, and those children who have been found by		

KANSAS cont'd	Minimum	Maximum
a competent authority to be best educated by special instruction from a special teacher on a full or part time basis *Programs may be extended for three years for persons who, because of a congenital defect, accident or prolonged illness, are unable to complete special education requirements by age 21.	birth	21*
KENTUCKY Neurologically impaired, intellectually gifted, emotionally disturbed, functionally retarded, children with learning disabilities or communication disorders, multiply handicapped, physically handicapped, speech defective and educable and trainable mentally retarded	birth	21
LOUISIANA Physically handicapped, mentally handicapped, and other exceptional children including slow learners, educable and trainable mentally retarded, deaf and hard of hearing, speech impaired, blind, and/or partially sighted, emotionally disturbed, cerebral palsied, gifted, children with learning disabilities, crippled, and other health impaired children	3	21
MAINE Children able to benefit from an instructional program but who cannot be provided for in regular programs because of physical or mental deviations	5	20
MARYLAND Physically and mentally handicapped Special program: Children under age 6 may receive special services if such services would help them to approach a degree of development similar to pupils in regular school programs	6	18
MASSACHUSETTS School age child who because of temporary or more permanent adjustment difficulties or attributes arising from intellectual, sensory, emotional or physical factors, cerebral dysfunctions, perceptual factors, or other learning disabilities or any combination of these who is unable to make effective progress in a regular school program	3	21

	Minimum	Maximum
MICHIGAN		
Handicapped including but are not limited to mental, physical, emotional, behavioral, sensory, and speech handicaps	none	25
MINNESOTA		
Deaf, hard of hearing, blind, partially seeing, crippled, speech defective or otherwise physically impaired in body or limb so that special education is needed;	4	21
trainable mentally retarded, educable mentally retarded;	5	21
emotionally disturbed	6	21
MISSISSIPPI		
Defective hearing, vision, speech, mental retardation, physical conditions	birth	21
MISSOURI		
Children who deviate from the average in physical, mental, or social developmental characteristics to the extent that they require special education services	6*	21
*Children may be enrolled in existing or approvable kingergarten programs		
MONTANA		
Physically handicapped, includes but not limited to cardiac, cerebral palsy, speech defective, and hearing and vision handicapped, educable mentally retarded	birth	
Trainable mentally handicapped	birth	
Custodial mentally handicapped	legal school age	
State school for the deaf and blind	no longer limit within state schools	legal school age
NEBRASKA		
Trainable mentally retarded, physically handicapped crippled, visually handicapped, hard of hearing, speech defective, cardiopathic, tubercular, cerebral palsied or otherwise physically handicapped, educable mentally retarded, multiply handicapped, emotionally disturbed	5	21
NEVADA		
Vision, hearing, speech, orthopedic, mental, and neurological disorders or defects, or any disabling condition caused by accident, injury, or disease	3	21
NEW HAMPSHIRE		
Deaf	4	21
Physically, emotionally, and intellectually handicapped	5	21

	Minimum	Maximum
NEW JERSEY Mentally retarded, visually handicapped, auditorily handicapped, communication handicapped, neurologically or perceptually impaired, orthopedically handicapped, chronically ill, emotionally disturbed, socially maladjusted, and multiply handicapped Program may be conducted on a permissive basis to children under 5 and over 20 if they have no high school diploma or equivalent	5	20
NEW MEXICO Exceptional children are children whose abilities render regular services in the public school inconsistent with their educational needs	legal school age	21
NEW YORK Children who because of mental, physical, or emotional reasons cannot be educated in regular classes	legal school age	
NORTH CAROLINA For handicapped, crippled, other classes of individuals requiring special types of instruction	birth	adulthood
NORTH DAKOTA Children with physical, mental, emotional, or social conditions with an educable mind	6	21
OHIO Defective hearing and vision, crippled, trainable mentally retarded, educable mentally retarded, emotionally handicapped	5	21
OKLAHOMA Gifted, educable mentally retarded, trainable mentally retarded, speech defective, emotionally disturbed, perceptually handicapped, children with special health problems, children requiring services of a visiting counselor, specifically learning disabled as a result of neurological impairment, multiply handicapped	4	21*
Deaf blind, blind and partially blind, hard of hearing and deaf	2	21*
*If the physical condition prevents a child from completing his program by age 21, services may be extended to age 25		

	Minimum	Maximum
OREGON		
Blind, deaf, partially sighted, hard of hearing, speech defective, crippled or physically handicapped, extreme learning problems, unwed pregnant or unwed mother with a child in her care, neurologically handicapped, emotionally handicapped, trainable mentally retarded	birth	21
Educable mentally retarded	6	21
PENNSYLVANIA		
Children who deviate from the average in physical, mental, emotional, or social characteristics should extend that they need education facilities or services. All children in detention homes are included	legal school age	
RHODE ISLAND		
Mentally retarded, physically handicapped, and emotionally handicapped	3	21
SOUTH CAROLINA		
Educable mentally retarded, trainable mentally retarded, emotionally handicapped, orthopedically handicapped, physically handicapped, visually handicapped, learning disabled	legal school age	
Hearing handicapped	4	21
SOUTH DAKOTA		
Physical or mental conditions that cannot be adequately provided for through the regular public schools	birth	21
TENNESSEE		
Educable, trainable, and profoundly retarded, the speech and/or language impaired, the deaf and hearing impaired, the blind and visually limited, the physically handicapped and/or other health impairments including homebound, hospitalized, pregnant. The learning disabled includes the perceptually handicapped, the emotionally conflicted, functionally retarded, socially maladjusted, emotionally handicapped, intellectually gifted, and any other child whose needs cannot be met in the regular classroom setting	4	21
TEXAS		
Hard of hearing, orthopedically handicapped, physically handicapped, mentally retarded, emotionally disturbed, language or learning disabled	3	21

	Minimum	Maximum
UTAH Exceptionally physical or mental condition	5	21
VERMONT Physical or mental deviations	birth	21
VIRGINIA Mentally retarded, physically handicapped, emotionally disturbed, learning disabled, speech impairment, hearing impaired, mentally handicapped or otherwise handicapped	2	21
WASHINGTON Temporary or permanent in normal educational processed because of a physical or mental handicap or emotional maladjustment or any other handicap or children with specific language or learning disabilities resulting from perceptual motor problems and visual and auditory perception and integration *Programs may be provided to children on preschool level	legal school age*	
WEST VIRGINIA Visually impaired, physically handicapped, orthopedically handicapped, epileptic, mentally retarded, speech handicapped, multiply handicapped, autistic, intellectually gifted, socially or emotionally maladjusted (including the delinquent), learning disabled both physically and psychologically, and others which may be identified by the state superintendent of free schools *Programs may be conducted on a permissive basis for children aged 3-6	6*	21
WISCONSIN Crippled, cardiac, visually handicapped, auditorily handicapped, speech handicapped, mentally retarded, and otherwise physically handicapped	birth	21
WYOMING Mental, physical, psychological, or social maladjustment	legal school age	

Abeson, A. and Trudeau, E. Handicapped children redefined legal eligibility for services expanded. Arlington, Va.: State-Federal Information Clearinghouse, 1973.

TABLE 1

Handicapped Children According to Categories

IMPAIRED

SPEECH	VISUALLY	CRIPPLED AND OTHER HEALTH	DEAF	HARD OF HEARING	MULTIPLE HANDI-CAPPED	LEARNING DISABLED	MENTALLY RETARDED	EMOTIONALLY DISTURBED	TOTAL
2,440,500	69,800	348,600	52,300	348,600	40,900	697,300	1,697,500	1,388,000	7,083,500

Note. -- Estimates on the number of children served and unserved 1971-1972, Fiscal Year Projected Activities, Bureau of Education for the Handicapped -- United States Office of Education (Washington, D. C., 1971).

TABLE 2

Handicapped Children Served and Unserved

IMPAIRED

	SPEECH	VISUALLY	CRIPPLED AND OTHER HEALTH	DEAF	HARD OF HEARING	MULTIPLE HANDI-CAPPED	LEARNING DISABLED	MENTALLY RETARDED	EMOTIONALLY DISTURBED	TOTAL
*	1,360,203	30,630	182,636	55,624	43,915	9,310	166,534	872,213	156,486	2,857,551
**	1,080,297	39,170	165,964	16,676	304,685	31,590	530,766	825,287	1,231,514	4,225,949

*Served
**Unserved

Note. -- Estimates on the number of children served and unserved 1971-1972, Fiscal Year Projected Activities, Bureau of Education for the Handicapped -- United States Office of Education (Washington, D. C., 1971).