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LEGAL ASPECTS RELATING TO HANDICAPPED STUDENTS IN PHYSICAL EDUCATION AND ATHLETICS

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LEGAL ASPECTS RELATING TO HANDICAPPED STUDENTS IN PHYSICAL EDUCATION AND ATHLETICS

by

Terrell R. West

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Gail M. Hennis
Dissertation Advisor

APPROVAL PAGE

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ABSTRACT

West, Terrell Randall. Legal Aspects Relating To Handicapped Students In Physical Education and Athletics (1979)
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This investigative study deals with the legal aspects of handicapped children in physical education and athletics. Congressional legislation is given showing those public laws that were used as stepping stones leading to the finalizing of The Education For All Handicapped Children Act of 1975, Public Law 94-142. A summary of the federal mandates that give specific references to students' rights, parents' rights, and procedural due process is highlighted.

Court cases are cited showing the major causes of dispute within the educational system dealing with handicapped children. Decisions have been reached in the following areas: procedural due process, free appropriate public education, placement in the least restrictive environment, educational cost to parents, and the discrimination against athletes based solely on their handicapped conditions.

General summary and conclusions were based on existing court decisions that should be of value of all educational decision-makers.

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CHAPTER I

INTRODUCTION

There is a revolution taking place in today's education which is unparalleled in the history of American education. It is the revolution of rehabilitating the handicapped student.[1]

In 1950, Howard Rusk reported that there were over two million disabled children in America. Two hundred fifty thousand of these children were receiving no educational program.[2] When Eunice Shriver made the keynote address at the National Convention of the American Association for Health, Physical Education and Recreation in Dallas, Texas, in 1965, she reported that the estimated number of handicapped pupils had risen to over six million.[3] On November 29, 1975, Congress passed the Education For All Handicapped Children Act which placed certain mandates before educators across the nation and provided monies to support these mandates for the reported eight million handicappped youngsters.[4]

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[1]David Savage, Educating All The Handicapped: What the Law Says and What Schools are Doing (Washington, D.C.: National School Publications Association, 1977), p. 6.

[2]"Boy's Success, Others' Plight Need of Handicap Aid," New York Times, 21 May 1950, p. 89.

[3]Eunice Kennedy Shriver, "Recreation for the Mentally Retarded," Journal of Health, Physical Education and Recreation 36 (May 1965): 16.

[4]Public Law 94-142, 89 Stat. 773 (1975).

As the number of handicapped individuals increased, so did concern for their help. In 1971, only fifteen states had passed laws to provide handicapped persons with an education.[5] In 1974, forty-six states had passed such educational provisions for their handicapped. North Carolina pioneered a further step by providing special education for handicapped children starting at birth.[6]

Public Law 94-142 requires that appropriate educational experiences be provided for all children regardless of their handicap. The curriculum area of physical education was specifically pointed out as an area of need.[7] Indirectly, the extracurricular activities of athletics and recreationally related services were also mentioned.[8] These areas must also provide handicapped students with an equal opportunity to use programs, personnel, and equipment.

This study will review court cases dealing with handicapped students in general and will review the major cases that have already been decided in the area of physical education and athletics.

A Datrix study and an ERIC scan were made. The results showed a scarcity of published material concerning the handicapped students in physical education and athletics and the legal ramifications of denying admission

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[5]"Aid for Education of the Handicapped, " American Education 10 (July 1974): 13.

[6]Joan Alschuler, "Education for the Handicapped," Journal of Law & Education 7 (October 1978): 523-537.

[7]Federal Register, XLII, No. 163 (August 23, 1977): 42479.

[8]Ibid., p. 42480.

or participation of these students in such programs.

The major purpose of this study was to provide educational decision-makers with appropriate information regarding the educational and legal aspects of the handicapped students in physical education and athletics and to facilitate decisions regarding these issues that are both educationally and legally sound.

Statement Of The Problem

Physical education has received a high priority in the Education For All Handicapped Children Act of 1975. In fact, other than special education and vocational education, physical education was the only discipline in the school curriculum to be specifically mentioned in the rules and regulations.[9]

The report of the House of Representatives on Public Law 94-142, included the following remarks regarding physical education:

> Special education as set forth in the Committee bill includes instruction in physical education, which is provided as a matter of course to all non-handicapped children enrolled in public elementary and secondary schools. The Committee is concerned that although these services are available to and required of all children in our school systems, they are often viewed as a luxury for handicapped children.[10]

The Report further stated that the Commissioner of Education was to take whatever measures necessary to guarantee to all handicapped students the services of physical education. The Committee bill specifically included physical education in the framework of special education to emphasize the intent of the Committee. That intent was to provide physical education

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[9]Ibid., p. 42480.

[10]Ibid., p. 42489.

as an integral part of the education of all handicapped students. This would include, if necessary, specially designed programs.[11]

There is a need to examine the educational and legal issues associated with the handicapped student within the public school. The implications of these findings need to be identified for administrators who make decisions regarding participation of the handicapped student in physical education and athletics.

One of the stated purposes of this study was the summarizing of appropriate information regarding the new federal law, Public Law 94-142, for educational decision-makers to have at their disposal when needed for decision making concerning the handicapped student in physical education and athletics. Listed below are the key questions used in identifying the legal implications for physical education and athletic programs.

1. What is meant by "handicapped student"?
2. What are the rights of handicapped students?
3. What rights have the parents of handicapped students?
4. What are the responsibilities of school officials (coaches, teachers, or adminstrators)?
5. What are the legal issues in court at the present time?
6. What are the educational and legal circumstances under which handicapped children cannot participate in regular physical education classes and/or school athletic teams?
7. Who is responsible for carrying out the law within the local school systems?

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[11]Ibid., p. 42489.

8. Who is legally responsible for liability if negligence occurs?
9. Can a parent sign the release of a minor child against a third party?

Scope Of The Study

This study was limited to the legal aspect of handicapped students in physical education and athletic teams in an educational setting. New judicial decisions are handed down daily. However, due to the recent development of the topic, judicial decisions in physical education and athletics are limited. Therefore, peripheral decisions applicable to the topic were used. Sound legal and educational analogies can be drawn and meaningful educational tactics developed.

This study did not attempt to deal with "adapted physical education programs" and curriculum development for the handicapped students except where judicial decisions have mandated such programs to fulfill equal educational opportunities. Many publications including government publications are available to readers with the multi-atypical classroom setups for various handicapped students. Moreover, much has been written regarding "special athletic" programs, such as the "Special Olympics."

Significance Of The Study

In recent years considerable legislation has occurred on behalf of all handicapped people. Such laws as the Rehabilitation Act of 1973 and The Education For All Handicapped Children Act of 1975 have placed additional pressures on our school systems for the financing of these programs. The problem is so large that one authority was quoted as saying "...aid for special education is now the largest and most rapidly growing element

of state financial assistance to local schools."[12] The financial burden on parents is evidenced by such court cases as In The Matter of L. v. New York State Department of Education[13] and In The Matter of Scott K.[14] Additional pressure comes from placing the students in their least restrictive environment. Such cases as Haldeman v. Pennhurst[15] and Brown v. District of Columbia Board of Education[16] demonstrate the courts' position. A third major area of concern for administrators deals with the updating of facilities and equipment. (Section 504 of the Rehabilitation Act deals directly with facilities and their accessibility as well as the problem of parking[17]).

The facts are: (1) the laws and regulations governing these acts are new; (2) no studies have been made in the specific areas of physical education and athletics; (3) no guidelines or implications have been developed to assist educators in making educational and legal decisions.

The significance of this study is that it will provide physical education personnel with suggestions to assist in the development of the best possible environment for handicapped children within the guidelines

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[12]William Wilken, "State Aid for Special Education: Who Benefits? " Paper presented at the National Conference of State Legislatures in Washington, D.C. 1976. p. 33.

[13]In The Matter of L. v. New York State Department of Education, 384 NYS 2nd 392 (1976).

[14]In The Matter of Scott K., 400 NYS 2nd 289 (1977).

[15]Haldeman v. Pennhurst, 446 F Supp 1295 (1977).

[16]Brown v. District of Columbia Board of Education, C.A. No. 78-1646 (1978).

[17]Federal Register 41, no. 96, 17 May 1976, 20308

of the new laws. Secondly, this study will record for school officials the issues placed before the courts and the positions of the courts toward these issues.

Definition Of Terms

Due Process

This refers to the governmental powers that protect individual rights. Examples include (1) the right to be represented by counsel, (2) the opportunity to confront and cross-examine adverse witnesses, and (3) adequate notice detailing the charges facing the individual.[18] However, for purposes of the Education of All Handicapped Children Act of 1975, due process means the following:

A. Written notice must be given whenever the schools act or fail to act on a child's placement.

B. Notice must be given in the native language of parents.

C. Opportunity for parental complaint in a hearing must be provided.

D. An impartial hearing officer must be made available for parental appeal procedures.

E. Parents have the right to see counsel.

F. Parents have the right to call witnesses in an appeal procedure.

G. Parents have the right to subpoena documents.

H. Parents have the right to appeal to the State Board of Education if the appeal at the local level does not meet with parental approval.

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[18]Richard D. Gatti and Daniel J. Gatti, Encyclopedia Dictionary of School Law (West Nyack, New Jersey: Parker Publishing Company, 1975), pp. 107-116.

I. Parents have the right to bring civil action against the school system.

J. Parents have the right to receive a written transcript of the hearing and the judgment of the hearing officer.[19]

Fourteenth Amendment

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor delay to any person within its jurisdiction the equal protection of the laws."[20]

Handicapped Students

Those children who after adequate evaluation are shown to be mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multihandicapped, or as having specific learning disabilities, and in need of special educational services."[21]

Deaf

"A hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance."[22]

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[19] Federal Register 42, no. 163, 23 August 1977, 42494.

[20] United States, Constitution, amend. XIV, sec. 1.

[21] Federal Register 42, no. 163, 23 August 1977.

[22] Ibid.

Deaf-Blind

"Concomitant hearing and visual impairments, the combination of which causes such severe communications and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children."[23]

Hard of Hearing

"A hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of 'deaf' in this section."[24]

Mentally Retarded

"Subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance."[25]

Multihandicapped

More than one impairment which in combination causes such severe educational problems that they cannot be accepted in special education programs because of one of the impairments."[26]

Orthopedically Impaired

"A severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congential anomaly, disease, and other causes."[27]

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[23]Ibid. [24]Ibid. [25]Ibid.

[26]Ibid. [27]Ibid.

Other Health Impairments

"Limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affect a child's educational performance."[28]

Seriously Emotionally Disturbed

The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

A. An inability to learn which cannot be explained by intellectual, sensory, or health factors;

B. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

C. Inappropriate types of behavior or feelings under normal circumstances;

D. A general pervasive mood of unhappiness or depression; or

E. A tendency to develop physical symptoms or fears associated with personal or school problems.[29]

Specific Learning Disability

This means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain disfunction, dyslexia, and developmental aphasia.[30]

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[28]Ibid.

[29]Ibid.

[30]Federal Register 42, no. 250, 29 December 1977, 65083.

Speech Impairment

"A communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance."[31]

Visually Handicapped

"A visual impairment which, even with correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children."[32]

Individual Education Program

The Individual Education Program (IEP) is a written statement describing the educational objectives and the services provided to each identified handicapped or gifted child. Educational objectives and services include both instruction and related services required to meet the unique needs of these children and are derived from a careful evaluation of the child and his environment.[33]

Mainstreaming

Mainstreaming is educating exceptional children in regular classes.[34]

Negligent Conduct

Negligent conduct may be either: (1) an act which the actor as a reasonable man should recognize as involving an unreasonable risk or causing an invasion of an interest to another; or (2) a failure to do

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[31]Federal Register 42, no. 163, 23 August 1977, 42478

[32]Ibid. [33]Ibid.

[34]Jenny R. Armstrong,"Individually Guided Education (I.G.E.): One Model for Mainstreaming"8 no. 7, December 1978, p. 1.

an act which is necessary for the protection or assistance of another and which the actor is under duty to do.[35]

Interscholastic Athletics

> Interscholastic athletics is an organized program of athletics competition between teams of different schools. There is a pre-arranged schedule including tournament play, pre-season practice periods, and formal coaching. This differs from intramural programs which are restricted to athletic activity among students of the same school.[36]

Least Restrictive Environment

When the least restrictive environment is selected, consideration must be given to any effects possibly harmful to handicap students and unless there is such severity, placement must be with their peers in a regular classroom. [37]

Stare Decisis

A legal doctrine which other courts tend to follow. Under this concept, when a court hands down a principle of law as applicable to a certain set of facts, other courts will do likewise and apply it to situations where the facts are very much the same. The higher the court, the more influence the decision will have.[38]

Method, Procedures, and Sources of Information

The basic research technique of this investigation was documentary

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[35]The American Law Institute, Restatement of the Law (Second): Torts 2nd, sec. 284, p. 19.

[36]Syracuse Law Review, "Comment: Female Athletes,", 25, 1974: 536.

[37]Federal Register 42, no. 163, 23 August 1977, 42497.

[38]Gatti and Gatti, p. 251.

analysis. The available references concerning the legal aspects of handicapped students in physical education and athletics were examined and analyzed.

In order to determine if a need existed for such research, a search was made of Dissertation Abstracts for related topics. Journal articles related to the topic were located through use of such sources as Reader's Guide to Periodical Literature, Education Index, and the Index to Legal Periodicals.

General research summaries were found in the Encyclopedia of Educational Research, various books on school law, and in a review of related literature obtained through a computer search from the Educational Resources Information Center (ERIC).

Federal and state court cases related to the topic were located through use of the Corpus Juris Secundum, American Jurisprudence, the National Reporter System, and the American Digest System. Recent court cases were found by examining case summaries contained in the 1976, 1977, and 1978 issues of the NOLPE School Law Reporter.

Chapter two is divided into two parts. Part I describes public and private interest in the growing concern for handicapped children. Some of the emerging leaders are recognized for their work in aiding the cause for rehabilitating these impaired students. Part II shows the efforts Congress has made to support handicapped children. Laws passed are given in chronological sequence and summarized. Other summaries of handicapped legislation are shown in Appendix A.

Chapter three provides the answers to major questions sought in this study. This chapter is also divided into two parts. The first part

includes those court decisions relating to physical education and other instructional programs involving the regular school hours. The second part of the chapter presents court actions involving athletics, intramurals and extracurricular activities, after regular school hours. Both sections have question and answer areas where interpretations of the federal laws are made.

Chapter four deals with new material. No court has yet heard a case involving a handicapped student, as defined by Public Law 94-142,[39] who has been properly placed yet receives an injury while participating in a mainstream classroom. In this phase of the study, the researcher has found those cases where tort negligence has been proven or disproven when a student has a known physical disability while participating in physical education or actively involved in athletics.

Chapter five provides a review and summary of the information obtained from an historical perspective of previous laws and from an analysis of the selected court cases. The questions asked in the introductory part of the study are reviewed and answered in this chapter. Finally, some suggestions are made that are legally acceptable to the handicapped student who wants to become involved in all facets of the educational programs.

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[39] 89 Stat. 773 (1975).

CHAPTER II

BACKGROUND DATA

Historical Perspective

Part one establishes the philosophies and concerns of educators, journalists, and special interest groups in Congressional legislation for the education of handicapped children; part two will discuss Congressional legislation related to The Education For All Handicapped Children Act of 1975, Public Law 94-142.[1] A more complete list of public laws oncerning the handicapped are listed and summarized in Appendix A.

A major stated purpose of the New York Times is to show public interest on current issues that face the nation.[2] However, it is difficult to find material that indicates public interest, whether personal or as a group on handicap issues concerning society, especially prior to this century. Beginning with the Times first publication in 1851 until 1899, forty-eight years, only nineteen articles appeared on behalf of disabled Americans. None merited an editorial. All articles made reference to the "deaf" and "deaf-mute." During the Civil

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[1]Public Law 94-142, 89 Stat. 773 (1975).

[2]"Foreword," New York Times Index, (New York: Bowker Company, 1966, I: iii.

War years, some articles can be noted on behalf of the rehabilitation of wounded soldiers.[3] There was nothing about the education of disabled or handicapped children.

The word "handicapped" is a relatively new word first appearing in the New York Times in 1905.[4] In the newspaper story, reference was made to a football game that was scheduled to be played between two Kentucky teams.[5] The teams were Crescent Hill and Kentucky Institutes.[6] Both were schools established for the blind.[7] Also in 1905, the Times published its first editorial pertaining to the handicapped.[8]

In the next forty-five years, little was done by Congress to support a growing interest in handicapped people. This interest grew to the extent that in May, 1950, a Mid-Century White House Conference on Children and Youth was conducted. The attendance was expressive of the growth of interest--some three hundred organizations were represented.[9] Darrell Mase, speaking for the American Speech and Hearing Society said, "(A) better attitude toward the handicapped is needed to help him be part of the community."[10] Sol Markoff, representing the National Child Labor Committee, made a plea to the conference to, "... help now on a child crop which grows but doesn't thrive."[11]

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[3]New York Times Index, (New York: Bowker Company, 1966), 2: 121.

[4]New York Times Index, (New York: Bowker Company, 1966), 9: 46.

[5]"Football For The Blind," New York Times, 12 October 1905, p. 1:6.

[6]Ibid.

[7]"Blind Boys Play Football," New York Times, 15 October 1905, p. 9:4.

[8]New York Times Index, (New York: Bowker Company, 1966), 9: 46.

[9]"Biased Study To Youth Parley," New York Times, 27 May 1950, p. 19.

[10]Ibid.

[11]Ibid.

One of the nation's leading authorities, Howard A. Rusk, wrote in May, 1950, that money was available to handicapped persons through the Social Security Act of 1935 but only after the individual had reached the age of seventeen. Rusk was urging Congress, who had subcomittee hearings under way, to favor some type of passage to benefit children under seventeen years of age.[12]

In his State of the Union address in 1952, President Eisenhower brought to focus one of the issues facing the nation. "The program for rehabilitation of the disabled," he insisted, "especially needs strengthening."[13] The Times reported also in January, that one of the biggest problems for handicapped children in New York was the lack of facilities.[14] A few weeks later, an editorial appeared in the Times, which summarized President Eisenhower's proposed budget for the coming year. The article gave special notice to the efforts the government was making to better some six hundred and fifty thousand Americans who become disabled each year. The editorial asked both the House and the Senate to support the proposed budget by saying the budget deserved bipartisan unity.[15]

As 1952 came to an end, Congress had responded to the group conference and messages from the press and the President by passage of the Cooperative

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[12]"Boy's Success, Others' Plight Show Need of Handicap Aid," New York Times, 21 May 1950, p. 89.

[13]"President's Bid for a Rise in Aid to Disabled is Hailed," New York Times, 10 January 1954, p. 73.

[14]"Facilities Needed for Handicapped," New York Times, 2 January 1954, p. 7.

[15]"To Aid the Handicapped," New York Times, 1 February 1954, p. 22.

Research Act, Public Law 83-531 .[16] Moreover, private citizens and other interest groups were still working to help the handicapped. In December, 1954, an article appeared in the Times announcing the grand opening of the nation's first complete rehabilitation program for crippled children established at Bellevue Medical Center.[17] The Center was co-sponsored through the private agencies of the Joseph P. Kennedy, Jr. Foundation and the Bellevue Medical Center.[18] Howard Rusk, the director of the Institute of Physical Medicine and Rehabilitation, said the new facility would accomodate more than just the physically disabled children. The new institute would work with all children's problems, mental and emotional as well as physical.[19]

In 1960, a study was reported by J.A. Fischer relating physical education and the social and psychological problems of handicapped students. Fischer's study established that physical education was an excellent resource for helping handicapped children who possessed these disabilities.[20] When given the proper exposure to physical education, most handicapped students were relieved of their fears, anxieties and rejections while perceiving themselves in a better image.[21]

In 1962, Julian U. Stein emerged as an effective leader in physical

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[16]Angela Giordano-Evans, Education of the Handicapped (Washington, D.C., Government Printing Office 1976), p. 1.

[17]"Crippled Children To Get Medical Aid," New York Times, 28 December 1954, p. 15.

[18]Ibid.

[19]Ibid.

[20]J.A. Fischer, "Helping To Solve The Social and Psychological Problems of the Handicapped," Journal of Health, Physical Education and Recreation 31 (February 1960): 75.

[21]Ibid.

education for the handicapped. While employed as an instructor at Wakefield High School, in Arlington, Virginia, Stein worked with the mentally retarded. One of his first articles, appearing in the Journal of Health, Physical Education and Recreation, presented to the nation some workable suggestions to better help handicapped students through what was then "adaptive" physical education.[22] Stein explained the great need for research in the area of handicapped students to help the teaching profession make a worthwhile contribution to these less fortunate.[23]

Another physical educator, F. Neil Williams, in March of 1964 published an article relating to his work with the visually impaired. "Planned physical activity," said Williams, "can make a particularly important contribution to the development of the visually handicapped student if he is given the opportunity to participate."[24]

So a national effort was begun. Planning ways of helping the handicapped in the physical education program emerged. Robert Wyatt, President of the National Education Association in 1964, was guest speaker at the national convention for American Association of Health, Physical Education and Recreation. Wyatt pointed to an imbalance in the general field of education. While academic interests of students were being given emphasis

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[22]Julian U. Stein, "Adapted Physical Education For The Educable Mentally Handicapped," Journal of Health, Physical Education and Recreation 33 (December 1962): 30.

[23]Ibid.

[24]F. Neil Williams, "Physical Education Adapts to the Visually Handicapped," Journal of Health, Physical Education and Recreation 35 (March 1964): 25.

as a result of the successful launching, little or no program was being developed to aid the disadvantaged.[25]

Eunice Kennedy Shriver, executive vice-president of the Joseph P. Kennedy, Jr. Foundation was the keynote speaker at a divisional meeting at the national AAHPER convention in Dallas, in 1965. Mrs. Shriver told the representatives that mental retardation was a national problem; in fact, it was considered to be the number one health problem among children.[26] She spoke of three revolutions taking place in America. The first served was a new interest, new responsibility and hope for the mentally retarded. She related to those present the campaign strategies being used in Arizona and Texas to fight mental retardation. Those strategies are what prompted Nicholas Hobbs of George Peabody College to say, "we may be witnessing here the beginning of a new Bill of Rights for children which will claim as the simple but precious right of every child the opportunity to learn from his earliest days and to his fullest capacity."

The second and third revolutions transpired in the field of medicine. The second was research. Diseases such as Phenylketonuria were being found at birth and treated. The third revolution dealt with prenatal and postnatal care. She noted that as many as thirty per cent of all mothers have no prenatal care and many of those have no postnatal care at all.[27]

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[25]Robert H. Wyatt, "Critical Issues and Problems in Education," Journal of Health, Physical Education and Recreation 35 (June 1964): 15.

[26]Eunice Kennedy Shriver, "Recreation for the Mentally Retarded," Journal of Health, Physical Education and Recreation 36 (May 1965): 16.

[27]Ibid.

Mrs. Shriver said there was a fourth revolution yet to occur. That revolution was in physical education and recreation for the mentally retarded. She cited two separate studies providing positive evidence that test scores improve as much as ten per cent when mentally retarded children are given additional play time. "The nation," she said, "is looking to you for leadership...." "I can think of no worthier cause for you to spend yourselves in than the cause of the mentally retarded, the by-passed millions in this nation."[28]

In September, 1965, a White House Conference on Education was called and attended by some seven hundred education leaders.[29] The conference was asked by the Congressional Legislators to make recommendations that would help them provide a better education service for America's students. One of the key themes that emerged was "... to educate all citizens to their fullest capacity."[30] However, from the conference emerged a thought that had been around for awhile and was to be heard again some ten years later. Thought was that every effort should be made to integrate the handicapped with the non-handicapped.

In 1965, a landmark piece of educational legislative was passed called the Elementary and Secondary Education, Public Law 89-313.[31] The act incorporated many of the ideas expressed by the 1965 White House Conference and by Mrs. Shriver. But the passage alone was not enough. John Throne,

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[28] Ibid.

[29] "White House Conference," Journal of Health, Physical Education and Recreation 36 (September 1965): 15.

[30] Ibid.

[31] Edwin W. Martin, "A National Commitment to the Rights of the Individual--1776-1976," Exceptional Children 43 (November 1976): 132.

in April, 1966, said Congress must do more for the handicapped. Throne stated that 2200 community recreational departments were questioned about their program for the handicapped. Only 363 of those questioned had a program for the handicapped. The problem of being retarded was not a small one, but a large one, and the solution was everybody's problem.[32]

As stated previously, the word "handicapped" is relatively new. In 1968, JOHPER, the national magazine for health, physical education and recreation educators, introduced a new column called "Programs for Handicapped." Funding for the new feature was covered from AAHPER's own bodget and from the Joseph P. Kennedy, Jr. Foundation.[33]

As the 1960's drew to a close, two themes began to gain monentum. The first related to the integration of handicapped students with their peers in the regular classroom. The rationale was simply that both groups of students, handicapped as well as the non-handicapped, need to grow to understand each other.[34] The second theme had to do

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[32]John Throne, "Everybody's Problem," Journal of Health, Physical Education and Recreation 37 (April, 1966): 132.

[33]"Programs for Handicapped," Journal of Health, Physical Education and Recreation 39 (July, 1968): 83.

[34]Anne G. Ingram, "Children With Impaired Vision are 'Seeing' Through Touch," Journal of Health, Physical Education and Recreation 40 (February, 1969): 95

with instruction to make the curriculum more personal to students.[35,36,37] The coined phrase, used to show a more personal interest in each student, was Individualized Prescribed Instruction (IPI).[38]

To support the concept of the Individualized Prescribed Instruction, Degney Christensen said, "Too often physically handicapped youngsters have been excused from physical education or relegated to 'adapted physical education programs' which have not been adapted or physical or education or programs."[39] The concept of considering each child, as a total individual, was taking shape. This concept of individuality concerning a personal instructional program matured five years later with the passage of The Education For All Handicapped Children Act.

Throughout the research for this study, the issue of financing often

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[35] Wally Gart, "An Adapted Physical Education Program In A New Senior High School," Journal of Health, Physical Education and Recreation 40 (May, 1969): 45-50.

[36] Alfred N. Daniels, "An Example of Individual Instruction in Developmental Physical Education," Journal of Health, Physical Education and Recreation 40 (May, 1969): 56.

[37] Ernest W. DeGutis, and Harold K. Jack, "Physical Education--Recreation Methodology," Journal of Health, Physical Education and Recreation 41 (May, 1970): 69.

[38] David Auxten, "Integration of the Emotionally Retarded With Normals in Physical and Motor Fitness Training Programs," Journal of Health, Physical Education and Recreation 41 (September, 1970): 61.

[39] Dagney Christensen, "Creativity in Teaching Physical Education to the Physically Handicapped Child," Journal of Health, Physical Education and Recreation 41 (March, 1970): 73.

appears. What will the new aid to the handicapped cost? Where will the money come from to finance such a program? B. Robert Carlson, in 1972, wrote that more funds were needed at both the federal and local levels. He did not mention state funds. Carlson suggested that more Congressional enactment might be in order. For those physical educators filing for federally funded grants and failing to receive them, Carlson urged that a second effort be made. The need of helping the handicapped was worth every effort.[40]

Darlene Conover also stressed the necessity of such effort when she stated that "It is essential that both special and physical educators become knowledgeable and qualified in the selection and modification of programs and activities..." to help the handicapped.[41]

In 1972, the movement for developing full educational opportunity for handicapped children had reached a point where it might rightfully be so described. Alan Abeson, from the Council of Exceptional Children in Washington, D.C., indicated that states throughout the nation were upgrading their laws for handicapped children.[42] The message to the American people

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[40]B. Robert Carlson, "A Diagnosis and Remediation for Physical Education For The Handicapped," Journal of Health, Physical Education and Recreation 43 (March, 1972): 73.

[41]Darlene Conover, "Physical Education for the Mentally Retarded," Focus On Exceptional Children 3 (January, 1972): 4.

[42]Alan Abeson, "Movement and Momentum: Government and the Education of Handicapped Children," Exceptional Children 39 (September, 1972): 63.

via major rulings of the Attorney General and decisions of the federal courts was making an impact on behalf of all handicapped students. A change in attitude was also witnessed. Abeson explained:

> It was not long ago that many of those interested in the education of the handicapped appeared before public policy making bodies to obtain their assistance in making educational programs available because its 'nice' for governmental bodies to do so. Today the demand for assistance is as great but is sought not on the basis of charity but on the basis of rights.[43]

Two years after Abeson's first article on the growth and interests of handicapped students, he stated that the most significant provision for the child's education comes by providing due process protection.[44] While no conformity is seen throughout the states, the Missouri statute was used as a model by Abeson to indicate a representative status of the nations' views toward some type of procedural safe guard Some of its stipulations were as follows:

1. Parents must be involved.
2. Written notices must be sent to parents of the child by way of certified mail.
3. The notice to the parents must inform them of their rights.
4. The local education agencies must follow their own procedures regarding appeals.[45]

In October, 1974, Governor Robert D. Ray spoke to his Iowa state

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[43]Ibid.

[44]Alan Abeson, "Movement and Momentum: Government and the Education of Handicapped--II," Exceptional Children 41 (October, 1974): 109.

[45]Ibid.

legislative assembly concerning handicap education:

> Isn't it enough that a youngster be handicapped--mentally, physically or both--let alone never have a chance for education, or training or to learn and to live? Let us not be a party to further penalizing these human beings. You will have before you a proposal to modernize our delivery system for special education. It will make available to those young people, whoever they might be and wherever they might live, an opportunity to learn and be recognized as someone who belongs. Debate it, however long it takes, but pass it.[46]

With public opinion high and Congress being bombarded with pressure, the Ninety-fourth Congress of the United States passed The Education For All Handicapped Children Act. Some comments regarding its passage follow:

> The Education For All Handicapped Children Act is a true landmark measure and the most significant development in our national elementary and secondary program since Title I was enacted 10 years ago. To me, it is a key to a rebirth of education.
>
> (Sen. Harrison Williams, D-N.D., sponsor of the bill)[47]

> This a bipartisan bill... which represents a responsible and constructive effort to provide for the needs of our handicapped children. For the first time, the Congress and not just the courts, has made sure that these children have an absolute right to an education, and we have written, I think, adequate provisions which will protect these rights.
>
> (Rep. Albert Quie, R-Minn., ranking Minority Member House Education and Labor Committee)[48]

> We must attempt to enable all our people to reach their full potential. I will implement the Education For All Handicapped Children Act as swiftly as possible to ensure that all children in this nation can receive a high quality public education. I believe that this is an important and worthwhile use of our limited funds.
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> (President Jimmy Carter)[49]

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[46]Ibid., p. 114.

[47]David G. Savage, Educating All The Handicapped: What The Law Says and What Schools Are Doing, (Arlington, Virginia: National School Public Relations Association, 1977): 16.

[48]Ibid.

[49]Ibid.

Private and public concern for the handicapped student continues to grow. A short time ago, a federal court judge stepped from his bench to address the federal and state government on this growing concern for the handicapped. Judge Bason said that we spend a large amount of money to vaccinate horses and dogs for various diseases but our handicapped children who need help have to wait.[50] The nation may need to read again Darrell Moses' address to the Mid-Century White House Conference on Children and Youth when he said the nation needs to change its attitude toward the handicapped.[51] Even though our laws are changing to help financially aid the disabled children, ultimately the major change must come from within each American to see the good in handicapped children and to arrive to help wherever possible.

Congressional Legislation

The United States Congress has had a long and distinguished history involving concern for disabled and handicapped Americans. In 1827, Congress passed a bill providing land for a seminary for learning for the deaf and dumb asylum in Kentucky.[52] Thirty years later, February 1, 1857, Congress passed an act which established the Columbia Institution for the Deaf.[53]

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[50] "Judge Blasts Lack of Aid for Children," The News and Observer (Raleigh) 24 April 1979, p. 6.

[51] New York Times, 27 May 1950.

[52] David P. Riley et al., National Incentives In Special Education (Washington, D.C.: National Association of State Directors of Special Education, 1978)

[53] Angela Evans and David Osman, Education of Handicapped, (Washington, D.C.: Government Printing Office, 1976), p. 17.

On March 3, 1879, the Forty-fifth Congress handled two pieces of legislation for disabled persons. The first was enactment of legislation for salaries and incidental expenses and five hundred dollars for books and illustrative apparatus to Columbia Institution for the deaf and dumb.[54] Secondly, passage was enacted to aid the blind.[55]

With regard to the blind, the Forty-fifth Congress was following the lead set by Kentucky. In 1858, Kentucky chartered the Trustees of the American Printing House for the Blind with the main purpose of printing books and instructional materials for the blind in the United States. The books and materials were furnished to all blind persons attending public institutions.

Congress placed a few restrictions on the federal monies. First, none of the appropriated funds could be used for construction or leasing of buildings. Second, no instructors' salaries were to be taken from these funds. Finally, Congress added two lasting restrictions to the legislation. The Trustees of the American Printing House would be required to make an annual report to Congress clarifying all expenditures. Secondly, if a report should come to Congress indicating that funds were not being spent for publication and distributions of material to public institutions, then all additional monies would be withheld.[56]

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[54]Ch. 182, 20 Stat. (1877-1887).

[55]Ch. 186, 20 Stat. (1977-1887).

[56]Ibid.

Public Law 815

On September 23, 1950, the Eighty-first Congress passed House Bill 2317 which became Public Law 815.[57] This law was primarily directed to the construction of school facilities in areas being affected by federal activity. These areas were military installations, Indian Reservations and any other federally owned and operated property. The law itself had nothing to do with the education of handicapped students. However, Public Law 815 did become a stepping stone for later legislation. Some of the ground work laid in Public Law 815 was later carried out through other amendment passages which:

1. Set age limits for any child who by any specific state would normally be entitled to a free public education.
2. Defined "school facilities" as classrooms and other related facilities. Athletic facilities did not include "...athletic stadia, or structures or facilities intended primarily for athletic exhibitions, contests, or games or other events for which admission is to be charged to the general public.58

It was obvious that Congress did not want to mandate specific practices to states, but to permit a state to establish age divisions which were best for that state. The consideration toward athletics was one of caution. Individual school agencies could not use the law to build athletic structures for the sole purpose of exploiting athletics or to build larger facilities on school campuses to further enhance athletics programs at federal expense.

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[57] Public Law 815, 64 Stat. 967 (1952).

[58] Ibid.

Public Law 874

On September 30, 1950, only seven days after the passage of Public Law 815, the same Eighty-first Congress passed Public Law 874. Research indicates that this law has been one of the most amended laws ever passed. In the original passage mention was made of educational improvements for handicapped students. The main trust of the legislation was on financial aid to the education of children of employees on Federal properties, excluding Indian children. The bill prohibits the spending of monies for construction of facilities and/or the purchase of land for later construction.[59]

Public Law 89-10

On April 11, 1965, the Eighty-ninth Congress passed House Bill 2362. This act is known as the Elementary and Secondary Education Act of 1965 or Public Law 89-10. Public Law 89-10, which amended Public Law 874, was directed to the improvement of education for low income families and to meet the special education needs of such deprived children. Congress for the first time set age limits for the states and for those children involved. It established the age range of five years to seventeen years.[60]

For the first time since passage of Public Law 815, monies were available for the purchase of land, construction of facilities, and for the remodeling, inspecting and supervision of construction of educational facilities. Congress, however, put the same restriction on athletics as

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[59]Public Law 874, 64 Stat. 110 (1952).

[60]Public Law 89-10, 79 Stat. 27 (1966).

it had in 1950. Regarding school facilities, the Eighty-ninth Congress said, "...gymnasiums and similar facilities intended primarily for exhibitions for which admission is to be charged to the general public" were not to be included.[61]

The real strength of Public Law 89-10 comes in Sections 303 and 503. Section 303 states that grants are available and may be used for the establishment and operation by local primary and secondary schools of diverse educational experiences for students of various talents. The activities or experiences suggested school health, physical education, and recreation.

The first time Congress used the word "handicapped" was in Public Law 89-10. Section 303 suggests that specialized instruction and equipment be made available "...for students interested in studying advanced subjects which are not taught in the schools or which can be provided more effectively on a centralized basis, or for persons who are handicapped or of preschool age."[62]

Section 503 of this law establishes the recording, collecting, processing and interpreting process of local systems to the various state offices to help students find their present level for future development. This section also makes mention of the handicapped student in relation to physical education by stating the monies were made available to those

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[61]Ibid.

[62]Ibid.

> ...local education agencies and the schools of those agencies with consultative and technical assistance and services relating to academic subjects and to particular aspects of education such as the education of the handicapped, school building design and utilization, school social work, the utilization of modern instructional material and equipment, transportation, educational administrative procedures, and school health, physical education, and recreation.[63]

With the passage of this act, Congress was on its way to recognize the handicapped as students with special needs and to provide some funds for the development of those needs. This law also recognized a need of the handicapped in the area of school health, physical education, and recreation.

Public Law 89-313

With the passage of Public Law 89-10, Congress had shown its interest in helping the minority group of handicapped students. On November 1, 1965, Congress passed Public Law 89-313. This law amends Public Law 874 by adding a new paragraph regarding the handicapped. Although this new paragraph did not define handicap in detail, it did give a listing of various types of handicapped children. The types listed were "mentally retarded students, those hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally distrubed, crippled, or other health impaired children who by reason thereof required special education."[64] This list holds true today as the handicaps covered by law. They are now, however, more clearly defined.

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[63]Ibid.

[64]Public Law 89-313, 79 Stat.1158 (1966).

Public Law 89-750

The Eighty-ninth Congress, more than any other, was now moving to help the handicapped students. With passage of House Bill 13161 on November 3, 1966, it had passed three laws to aid the handicapped. This new piece of legislature is known as the Elementary and Secondary Amendments of 1966, or Public Law 89-750.[65]

This law further amended Public Law 874 by making money available to meet special needs of the educationally deprived students/pupils on Indian reservations.[66] This enacted amendment reinforced the responsibility of the local educational agency to provide free public education for handicapped students but also to neglected or delinquent children who are in institutions. The types of handicaps listed remain identical to those in Public Law 89-313.[67]

The forte of Public Law 89-750 stands in "Title VI: Education of Handicapped Children," the first evidence of a total effort to aid the handicapped students.[68] Federal funds of fifty million dollars were made available for the fiscal year 1966-1967, and an additional one hundred-fifty million dollars for 1967-1968 for the initiation, expansion and improvement of programs for the handicapped. The term "handicapped children" remained

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[65]Public Law 89-750, 80 Stat. 1191 (1967).

[66]Ibid.

[67]Public Law 89-313, 79 Stat. 1158 (1966).

[68]Public Law 89-750, 80 Stat. 1191 (1967).

unchanged from previous legislation. Still, no specific definition was made to clarify exactly what constitutes each named handicap.

For the second time, Congress had given the states a required age limit. Public Law 89-10 suggested five years to seventeen years;[69] however, Public Law 89-750 extended the age range from three years to twenty-one years.[70]

To receive a federal grant under Public Law 89-750, specified procedures must be adopted by a state. First, the state must design a plan to meet the special needs of the handicapped students. Such a plan must be approved by the state's Commissioner of Education. Within the plan certain criteria must be included, such as the procedure to locate all students in need of special help. Secondly, some record must be kept of these students. Lastly, the procedure for acquiring, distributing and up-dating pertinent information on handicapped students for teachers and administrative personnel must be developed.[71]

The latter part of Title I established a National Advisory Committee on Handicapped Children. Title II, section 231, "Federally Affected Areas" states, "that any Federal funds for the construction of school facilities will be made accessible to and usable by handicapped students."[72] This was a Congressional first for stipulating that if federal money was

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[69]Public Law 89-10, 79 Stat. 27 (1966).

[70]Public Law 89-750, 80 Stat. 1191 (1967).

[71]Ibid.

[72]Ibid.

for construction, that structure must be accessible to and useable by the handicapped.

Public Law 90-247

House Bill 7819 became Public Law 90-247, when passed by the Ninetieth Congress January 2, 1968. This law amended Public Law 89-313 by extending the dates of the original law and also Public Law 874 with funding of additional monies.[73]

The major emphases of the law other than the establishment of regional centers for deaf-blind students were placed on the recruitment of new teachers and other aids for the handicapped, and the establishment of instructional media programs that were to include all handicapped students. Provisions were also made for parents to take an active role in the planning of their children's education.

The sum of one million dollars was appropriated to public and private educational agencies to encourage students to prepare for work with the mentally retarded and visually impaired handicapped children.[74] Jobs might be as aides in schools, or as more qualified technicians such as physical therapists. For the first time Congress was strongly suggesting that all libraries improve their situations to better accommodate the handicapped students.

Public Law 91-230

Public Law 91-230 was enacted on April 12, 1970, from House Bill

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[73]Public Law 90-247, 81 Stat. 783 (1968).

[74]Ibid.

514. This document was passed as an amendment to extend the programs already passed by the Elementary and Secondary Education Act of 1965. The main feature of the law is included under Title VI and is called "Education of the Handicapped."[75]

Congress appropriated two hundred million dollars for the year ending in 1971. They increased that figure over the next two years to two hundred twenty million by the end of 1973. These funds were available to all public and private educational agencies who offer programs for handicapped children. The monies could be used to buy equipment or to construct facilities. Incentive grants were provided in the law to give additional monies to those teachers who took extra time to plan activities for and work with handicapped students. Individual states were eligible for additional monies where educational provisions were planned and approved. The educational plans for additional money had to be new provisions, thus denying agencies with an existing program the extra boost to income.

Public Law 91-230 was full of new ideas. For the first time a short paragraph clarifying a particular area for handicapped students was given. Previously, a list had been made with no definitions given. This law defines the term "children with specific learning disabilities" as

> ...those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations. Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.[76]

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[75]Public Law 91-230, 84 Stat. 121 (1971).

[76]Ibid.

In section 604, the Bureau of Education for Handicapped was established. This bureau was assigned the task of carrying out programs, testing, locating, and training not only the handicapped students but the personnel to teach and support the prospective students involved.

Guidelines were stated quite clearly that these federal monies were to be used as additional help and were not to constitute the sole income to operate state programs. The guidelines given the states were as follows:

1. Policy and prodedures to provide assurance that funds paid the state will be used as requisitioned.
2. The money will be used to initiate, expand or improve various programs including pre-school programs.
3. Programs will be designed to meet the special educational needs of handicapped students.
4. A program to locate and test the handicapped children in both public and private educational agencies will be developed.[77]

For physical educators, Public Law 91-230 gave two large boosts. The first made monies available to institutions of higher learning to encourage and provide educational training as physical education and recreation personnel. Second, Part E, Section 642 made available additional monies "...for research and related purposes relating to physical education or recreation for handicapped children, and to conduct research, surveys, or demonstrations relating to physical education or recreation for handicapped children."[78]

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[77] Ibid.

[78] Ibid.

Public Law 92-318

For those persons involved in physical education and/or athletics, Title IX has had an impact. Whether a program was revamped, closed or started, at least an effort was made to show that all federally assisted institutions were not harboring any biased or prejudiced programs in favor of or against either the female or male gender.

The law passed on June 23, 1972, by the Ninety-fourth Congress is known as the Education Amendments of 1972. Public Law 92-318 was passed to amend the Elementary and Secondary Education Act of 1965 and Public Law 874. This enactment was specifically designed to aid two groups. The first is youths with academic potential that were from low-income families and the second is for students with a physical handicap.[79]

Public Law 92-318 emphasized what previous laws had regarding an academic facility. The Ninety-second Congress stated in law that classrooms would not be any facility used primarily for activities where the public was going to be charged admission. Congress did, however, give the following statement:

> ...(That) any gymnasium or other facility specially designed for athletic or recreational activities, other than for an academic course in physical education or where the Commissioner finds that the physical integration of such facilities with other academic facilities included under this title is required to carry out the objective of this title" was cleared and permission granted to consider these areas as academic.[80]

Again, only the physical education area was within proper bounds for receiving grant monies.

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[79]Public Law 92-318, 86 Stat. 235 (1973).

[80]Ibid.

As stated previously, Title IX carries the banner for discrimination via sex. It is of interest that this same Title IX states clearly in Section 904 that "...no person can be denied the opportunity to take part in any federally assisted program based upon his or her blindness or severely impaired vision."[81] This section has gone almost unnoticed and as a result has had very little impact on physical education personnel and programs due to the requirements and in some instances drastic changes in physical education and athletic programs caused by the earlier sections of the title regarding discrimination of programs.

Public Law 93-380

The Education Amendments of 1974 (Public Law 93-380) was passed on August 21, 1974. The major goal for its passage was the extension of the Elementary and Secondary Education of 1965. It did, however, clarify some statements regarding the education of the handicapped. Under Part B, "Education of the Handicapped," the age range for children to benefit from this law was three to twenty-one years old. The amount of money per handicapped student was stipulated for the first time as--eight dollars and seventy-five cents. The law was to give total assurance that as a result of identification and evaluation, decisions would be made by parents regarding their children's placement. If the parents of a handicapped child were not satified with the testing, evaluation or placement of their child, then an impartial hearing was guaranteed by this law, and the results of

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[81] Ibid.

that hearing were binding on all involved subject only to proper authorities appeal.[82]

The procedural safeguards for parents and the impartial due process of a hearing are given more attention later in this chapter.

Public Law 93-112

On September 26, 1973, The Rehabilitation Act was passed. The passage of this act was not an easy one, as it was vetoed twice by President Richard Nixon. Once passed, it was indeed a foundation stone upon which the next and final law in this chapter was written. The passage of Public Law 93-112 was hailed as the first Federal civil rights law to protect the rights of handicapped people.[83]

The portion of this law of major interest to this research deals with Section 504 which reads as follows:

> No otherwise qualified handicapped individual in the United States, as defined in section 7(6), shall, solely by reason his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.[84]

Although passed in September, 1973, it was not until April 29, 1977, that the Rules and Regulations were completed and published. The full impact of this law has yet to be reached in regard to its effect in aiding the handicapped.

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[82]Public Law 93-380, 88 Stat. 484 (1976).

[83]The Rehabilitation Act: An Analysis of the Section 504 Regulation and Its Implications for State and Local Education Agencies, (Washington, D.C.: National Association of State Directors of Special Education and Pottinger and Company Consultants, 1977): p. vi.

[84]Public Law 93-112, 87 Stat. 355 (1974).

One question answered by this law is the definition of handicap.

Section 504 states it as follows:

1. Any person who has a physical or mental impairment which substantially limits one or more major life activities. The term includes such disease and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, muscular dystrophy, multiple sclerosis, cancer, diabetes, mental retardation, emotional illness, and drug and alcohol addiction.

2. Any person with a record of physical or mental impairments which substantially limits major life activities. Congress seems to be showing a need for persons who once had a listed handicap, drug or whatever, but no longer has an impairment but is still categorically listed as a handicap and must not be discriminated against due to this previous limitation.

3. Any person who is regarded as having a physical or mental impairment which substantially limits one or more major life activities.

The law gives some directives to the preschool, elementary and secondary school administrators.

1. Administrators should identify and locate all handicapped children within the recipient's home area who are not receiving a free appropriate public education

2. Local agencies should notify the parents of their child's opportunities under the new law.[85]

3. Schools should provide as normal as possible a regular educational environment of combining handicapped children with their non-handicapped peers.[86]

4. While mainstreaming is desirable, under certain circumstances separation is permissible. Each child must have an individual

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[85]Ibid.

[86]Practical Pointers: Individualized Education Programs, American Alliance of Health, Physical Education and Recreation: 1, no. 6 (October, 1977), pp. 1-3.

education program (I.E.P.) to meet his individual needs. The individualized educational program must be written and show some of the following:

A. A statement of the child's present level.

B. Annual goals along with short-term goals.

C. Any special related services to be provided and to what extent the student may take part in the regular class setting.

D. The dates for beginning the program and the duration of the program.[87]

5. A clause for procedural safeguard was put into effect. Should a student or his parent desire to see all records of tests, recommendations and placements for that individual, a due process procedure is hereby required that will permit the review of all materials before an impartial committee.

The specific areas of physical education and athletics are touched upon in Section 84.37 and 84.48 under "non-academic services." Some highlights of those sections are as follows:

> In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient which offers physical education courses or which operates or sponsors interscholastic, club, or intramural athletics shall provide to handicapped students equal opportunities for comparable participation in these activities.
>
> Physical education and athletics activities offered to handicapped students may be separate or different from those offered to non-handicapped students to the extent that separation or differentation is necessary to ensure the health and safety of the students or to take into account their interest.88

An example of the first paragraph above might show a wheelchair student

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[87] Ibid.

[88] Ibid.

having the identical opportunity to participate in an archery class or on an archery team as any non-handicapped student. An example for the second paragraph from the above quote might prohibit a wheelchair student from playing a regular game of full court basketball but could provide a modified version of basketball with other wheelchair players.

Section 504 speaks specifically to athletic scholarships. The regulations state clearly that it will not be unfair discrimination to deny a scholarship on the basis of the impairment to an athlete who cannot perform to a required grade. An example is made of a wheelchair student desiring to play varsity football. However, to deny a deaf student a scholarship from the diving team solely because of his deafness when the student merits such an award is indeed discrimination and is not in agreement with the law.[89]

Public Law 94-142

With the groundwork laid in Section 504 of the Rehabilitation Act of 1973, the Ninety-fourth Congress passed Senate Bill 6, known as The Education For All Handicapped Children Act, on November 29, 1975.[90] Congress overwhelmingly supported this piece of legislation by voting 404 to 7 in the House of Representatives and 87 to 7 in the Senate.[91] Section

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[89]Ibid.

[90]Public Law 94-142, 89 Stat. 773 (1975).

[91]Carol Ann Peterson, "Why We Can't Wait: Implications of Public Law 94-142 for Recreation and Park Personnel and Program," West Virginia Recreation and Parks Review 3 (May/June, 1977): 15.

504 of Public Law 93-112 provided no funds for financial aid for the handicapped. Funding was provided with Public Law 94-142. The Education For All Handicapped Children Act gave clarity and depth to Section 504. This latest law went beyond all previous laws by defining each type of handicap. Those handicaps listed and defined are as follows:

> Handicapped student: Those children who after adequate evaluation are shown to be mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, serious emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or as having specific learning disabilities and in need of special educational services.
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> Deaf: A hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.
>
> Deaf-Blind: Concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children.
>
> Mentally retarded: Subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.
>
> Multi-Handicapped: More than one impairment which in combination causes much severe educational problems that they cannot be accepted in special education programs because of one of the impairments.
>
> Orthopedically impaired: A severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congential anomaly, impairments caused by disease, and impairments from other causes.
>
> Other health impaired: Limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephrities, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely effects a child's educational performance.[92]

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[92]Federal Register 42, no. 163 23 August 1977, 42491-42494.

Seriously Emotionally Disturbed: The term means a conditional exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

1. An inability to learn which cannot be explained by intellectual sensory, or health factors;

2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

3. Inappropriate types of behavior or feelings under normal circumstances;

4. A general pervasive mood of unhappiness or depression; or

5. A tendency to develop symptoms or fears associated with personal or school problems.

Specific learning disability: This means a disorder or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Speech impaired: A communication disorder, such as stuttering impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.

Visually handicapped: A visual impairment which, even with corrrection, adversely affects a child's educational performance. The term includes both partially seeing and blind children.

Now that Congress had defined "handicapped" by more clearly explaining the broad heading previously used, Congress also clarified some vagus concepts prescribed by the Ninety-third Congress in Public Law 93-380. The items in question deal with procedural safeguards for both parent and student.

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[93]Federal Register 42, no. 250, 29 December 1977, 65083.

The rights of parents are now clear. Categorically their rights are as follows:

1. The parents have a right to be informed before any action is taken in behalf of their child's education regarding testing, evaluation, and placement.

2. The parents have a right to be fully informed of all information necessary regarding the activity of their child. This information is given in the language which the parents understand. This is both written and oral.

   A. This would also include the knowledge of voluntary parental consent for their child's testing and final placement.

   B. The parents have a right to have independent testing done if they believe this necessary.

   C. The parents have a right to keep confidental all records and evaluations of their child.

3. If the parents choose to disagree with the local education agencies, they have a right to an impartial hearing.[94]

In the area of the parent and child's impartial due process hearing, again the rights are clearly delineated. All persons involved in the hearing have the right to the following:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped students;

2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;

3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;

4. Obtain a written or electronic verbatim record of the hearing;

5. Obtain written findings of fact and decisions;

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[94] Ibid.

6. Have the child present if they (the parents) desire;

7. Have a public hearing;

8. If the parents and child are not pleased with the decision of the hearing committee, the right to appeal to a higher authority is available to them. In fact, the appeal if properly channeled, could go to the United States Supreme Court.

Last in this section of the law comes the student's rights. The majority of the student's rights deal with his or her individual educational program. Before the individualized educational programs are brought up to date, a brief word might be in order regarding the child's rights in court procedures.

First, should the child be orphaned, the state shall appoint a surrogate parent for the child.[95] Secondly, all information to the child shall be in the language of the child, if it is different from that of his or her parents.[96] Regarding the right of educational records, these records and the rights to them are transferred from the parents to the child when the child reaches age eighteen.[97]

Other rights of the child remain in the area of the individual education plan. These rights are as follows:

1. The student has the right to have his or her parents present when decisions are made regarding testing, evaluation, and placement;

2. The student has a right to be present at an impartial hearing;

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[95] Ibid.

[96] "Evaluation and Assessment Procedures Pertaining to Individualized Education and Placement," The Physical Activities Report, 433 (April 1978): 4.

[97] Family Education Rights and Privacy Act, 45 U.S. Code, sec. 99.4.

3. The student has a right to be present himself or herself in the planning of the individual educational program;

4. Within the individual education plan, certain criteria must be present:

   A. A statement of present levels of education performance of the child;

   B. A statement of annual goals;

   C. A statement of short-term instructional objectives;

   D. A statement of the specific educational services and instructional material, including physical education;

   E. The extent to which the child will be able to participate in regular education programs;

   F. The appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the instructional objectives are being achieved.[98]

Also of legislative concern was the placement of the student in his or her least restrictive environment. In the House of Representatives, House Bill 7217, and later adopted as Section 212a.550, dealing with the least restrictive environment, the following concepts were mandated:

> That all handicapped students in public or private schools would be to the maximum extent educated with their peers who are not handicapped;
>
> Any special classes or other separate schooling that would occur when the nature or severity of the handicap be such that the learning process in a regular classroom occur only when the nature or severity of the handicap be such that the learning process in a regular class, with the use of auxilary supplies and equipment, cannot be met satisfactorily.[99]

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[98]Sarah Smith, "A Comparison of Staff Development Methods for Training School Based Assessment Committees to Develop an Individual Education Plan in Guilford County," (Ed.D, dissertation, University of North Carolina-Greensboro, 1978).

[99]U.S. Congress, 94th Cong. 1st sess., 1975.

For the child's participation in physical education programs, the Congressional subcommittees intents were clear.

> ...A handicapped child attending a regular school would participate in the regular physical education program, unless the child's needs specifically designated physical education as prescribed in his or her individualized educational program. The parent-agency agreement is a necessary document in the development of the child's individualized educational plan.[100]

The money appropriated was tremendous. Since Section 504 did not carry any funding, Public Law 94-142 apparently was funded to carry its own weight plus that of the Rehabilitation Act as well. In the first year, some one hundred million dollars was made available. The following year, 1977, some two hundred million dollars was appropriated.[101] There are some estimates that put the appropriated funds to exceed more than three hundred and sixteen billion dollars by the year 1981.[102] In addition to these funds, for any states with inititative, there is more money available from the incentive grants built into the law.[103]

For physical educators, the new law has many implications. For some teachers, who may have felt that physical education was not receiving the national recognition commensurate with its worth, this law meant that finally credence was being shown. For other teachers, it means more preparation for classes. These teachers must provide for a wider range of abilities within their classes. Whatever it means to the instructors involved,

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[100]Federal Register 23 August 1977.

[101]Public Law 94-142.

[102]Leroy V. Goodman, "A Bill of Rights for the Handicapped," American Education 12 (July, 1976): 7.

[103]Federal Register 23 August 1977.

Congress is quite clear as to its intent: "physical education must be made available, even if specially designed, to all handicapped children."[104] Some interpreters believe that in adopting this act, Congress is saying to the nation, that its belief is so strong in the value of physical education for the handicapped that whether the non-handicapped children have a physical education program or not a program is necessary for the growth and development of handicapped student.[105]

But what does physical education mean? It means different things to different people. In order to create some type of common baseline, Congress with the aid of many experts and consultants has adopted the definition of physical education as the development of

1. Physical and motor fitness;
2. Fundamental and motor skills and patterns; and
3. Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).
4. The term includes special physical education, adapted physical education, movement education, and motor development.[106]

Since Congress defined physical education as it did, what part does athletics per se take in this law? William Chasey, who wrote the definitions for the physical education section, said it was his intent that athletics not be included in this law. The definition of physical education did not reflect either positive or negative feelings for athletics.[107]

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[104]Ibid.

[105]Ed Keller, "Principal Issues in Public Law 94-142," National Elementary Principal 56 (March/April, 1977): 80-81.

[106]Practical Pointers: Individual Education Programs, Assessment and Evaluation in Physical Education, AAHPER 1, no. 9 (February, 1978): 2.

[107]Interview with William Chasey, National Association of State Directors of Special Education, Washington, D.C., November 27, 1978.

By definition, athletics are not included; however, through the side door of "non-academic services," readers may see listed the word "athletics."[108] Therefore, in the athletic arena throughout the United States, no person can be denied the opportunity to participate solely on the basis of a limited physical, mental, or emotional impairment. A separate program, such as wheelchair basketball and bowling for the blind, for example, is permissible when in the best interest of all persons involved. Handicapped individuals must have comparable programs and an equal opportunity--whether in the physical education curriculum, intramurals or on the institution's athletic team.

Public Law 94-142 is indeed a landmark among Congressional legislation. Its mandates are a giant step for all handicapped students. With the support of Congress, in both moral intent of the law and federal monies made available, the next step will prove to be just as much a struggle. That step will be the implementation of these federal mandates. Children too often neglected will soon be shown, more than ever before, that they have both a right and the ability to attain goals never before realized.

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[108]Federal Register 23 August 1977.

CHAPTER III

THE LEGAL ASPECTS OF HANDICAPPED STUDENTS IN PHYSICAL EDUCATION AND ATHLETICS

General Concepts

This chapter concerns itself with those areas which have already been litigated. The areas involved and court cases presented should give some indication as to the direction the law will go should similar situations arise that are more personal to the reader. Another major inclusion in the chapter deals with this writer's interpretations of the new federal laws and how these laws relate to the specific area of physical education and athletics. A major portion of the questions are those posed by Julian Stein in columns written for Update, a monthly publication by the American Alliance of Health, Physical Education and Recreation.

The Declaration of Independence of this great nation says that "...we are borne with unalienable rights."[1] The First Amendment to the Constitution gives us the right to free speech.[2] The Fifth and Fourtheenth Amenments give us the right to due process and equal protection of the law.[3] Do we, handicapped or non-handicapped, have a right, by the Constitution, to an education?

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[1]"Declaration of Independence" in Familiar Quotations, 14th ed. John Bartlett (Boston: Little, Brown, 1968), p. 470.

[2]U.S. Constitution, amend. I, sec. 1.

[3]U.S. Constitution, amend. V and XIV, sec. 1.

The United States Constitution does not state that everyone has a right to be educated.[4] As late as 1973, in San Antonio Independent School District v. Rodriquez,[5] the court ruled that the right to an education is not a fundamental constitutional right but a right whereby each state must decide its own criteria for an education. What is the history of courts regarding the issue of a right to an education?

A case often quoted is Brown v. Board of Education.[6] The case itself did not relate to handicapped students but did provide some groundwork in reference to student right to be educated. The court said:

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

The issue in this decision is twofold, first the opportunity should be available to everyone on an equal basis and second, it is the responsibility of each state to provide for the education of its constituents but this is not a federal mandate. The ruling in lower courts regarding this issue is based on "due process" and "equal protection" elements of the Constitution.[7]

There are three landmark cases showing the denial of due process and subsequent equal protection. A third element in the proceedings stresses

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[4]Tom O'Donnell, "Sources of Law: Right To An Equal Educational Opportunity," Amicus 2 (April 1977): 22.

[5]San Antonio Independent School v. Rodriquez, 411 U.S. 1 (1973).

[6]Brown v. Board of Education, 347 U.S. 483 (1954).

[7]O'Donnell, 22.

the equal opportunity concept that which is available for the non-handicapped should also be available for the handicapped. The first such case is Diana v. Board of Education.[8] This case was brought to court on behalf of nine Mexican-American students. They had been given intelligence tests in English, and as a result of the scores, were placed in classes for the mentally retarded. The harm alleged to be suffered by the students included irreparable injury due to an inadequate education and the stigma of mental retardation. The case was settled out of court with the school systems agreeing to improve four things:

1. Through the use of interpreters, intelligence testing would be made in the student's native language.
2. Mexican-American and Chinese students in the educable mentally retarded classes would be retested.
3. A special effort was required to help students misplaced to be relocated.
4. An effort would be made to design an appropriate I.Q. test.[9]

The second landmark case to be discussed here actually had a beginning eight months earlier; however, this case is most often quoted with the former case, when the Pennsylvania Association for Retarded Children first challenged the Commonwealth of Penyslvania. In the first appearance in court, the Pennsylvania Association of Retarded Children sought an injunction against the Commonwealth of Pennsylvania, et al., to postpone or in

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[8]Diana v. State Board of Education, Civ. #C-70-37 RFN (N.D. Cal. 1970).

[9]Ibid.

any way deny to any mentally retarded child access to a free public education. This meant among other things that to deny mentally retarded children homebound instruction or not to offer a free public education to every retarded person between the ages of six and twenty-one was in violation of the equal protection clause of the Fourteenth Amendment.[10] Judgment was made in behalf of the Pennsylvania Association of Retarded Children.

In its second appearance in court the Pennsylvania Association of Retarded Children was seeking a permanent injunction against enforcement of statutes that would exclude retarded children from programs of education in public school. The Pennsylvania Association for Retarded Children contended during the trial that due process required a hearing before a retarded child could be denied a public education. The district court unanimously supported the claim and ordered the defendants to formulate and submit a plan to be used by September 1, 1972. The plan would provide the following:

1. Free public program of education for all mentally retarded persons;
2. Availability to those between the ages of four and twenty-one;
3. A range of programs;
4. Arrangement for financing;
5. Recruitment, hiring, and training of personnel to help the mentally retarded.[11]

The last landmark trial deals with Peter Mills v. The Board of

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[10]Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 334 F Supp 1257 (1971).

[11]Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 343 F Supp 279 (1972).

Education of the District of Columbia.[12] This case before the bar was brought on behalf of seven children. They, in turn, were representative of the some twenty-two thousand retarded, emotionally disturbed, blind, deaf, and speech-and learning-disabled children in the District of Columbia. Judge Waddy was told the children were being denied admission to public school and no alternative education program existed for them. These children were labeled, suspended, expelled, reassigned and transferred from regular classes without affording them due process of law.[13] Judgment favored the children. The guidelines set forth by Judge Waddy and the other mentioned cases were later used as a basis for several federal laws.

With two federal laws as a basis, Section 504 of the Rehabilitation Act[14] and the Education For All Handicapped Children Act[15] (Public Law 94-142), let us examine some cases that involve physical education and/or athletics. Emphasis is again made that due to the newness of the law, few cases naming physical education and athletics have been heard. In order to show the points of law, analogies are drawn to show relationships that are justifiable in any educational setting.

Free Appropriate Public Education

The spirit of the law is simple: all children should have an equal

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[12]Mills v. Board of Education of District of Columbia, 348 F Supp 866 (1972); also see Larry P. v. Riles, 343 F Supp 1306 (1972); also see Moses v. Washington Parish School Board, 330 F Supp 1340 (1971).

[13]Ibid.

[14]The Rehabilitation Act: An Analysis of the Section 504 Regulation and Its Implications for State and Local Education Agencies, (Washington, D.C.: National Association of State Directors of Special Education and Pottinger and Company Consultants, 1977).

[15]Public Law 94-142 89 Stat. 773 (1975).

opportunity to a free appropriate public education. Should these children or their parents choose some other means of achieving their education, it was at their discretion. The first case in point, however, is filed by the residents of four mental retardation centers in North Carolina. The centers charged the State Board of Education with violations of Public Law 94-142 and Section 504 of the Rehabilitation Act. The plaintiffs alleged that they were denied access to free public education due to their retardation.[16]

The court ruled in favor of the mentally retarded children. The defendants agreed to locate all mentally retarded children in need of free appropriate public education and to conduct a public information program to increase awareness of the right of the handicapped to an education.[17]

In Mississippi, Mattie T. filed suit against the Mississippi Department of Education. The plaintiff alleged a failure to adopt sufficient policies and procedures to ensure procedural safeguards, programs to locate and identify children in need of special education, racially and culturally nondiscriminatory tests and procedures, and education programs for the handicapped with the non-handicapped to the maximum extent appropriate. Additional charges were filed against the local educational agency for failure to provide necessary educational services to the plaintiffs.[18]

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[16]North Carolina Association for Retarded Citizens v. State of North Carolina Board of Public Education, C.A. No. 3050, (E.D.N.C. July, 1978).

[17]Ibid.

[18]Mattie T. v. Holladay, No. D.C. 75-31-2 (N.D. Miss., July, 1977).

The court favored the plaintiff and issued orders to the state defendants to develop a state plan in compliance with Public Law 94-142. That plan is still under discussion. The court further ordered that Mattie T. had a substantive right to an appropriate education and that the local educational agency must rectify the services available as needed by the plaintiff.[19]

The new federal laws have had many interpretations of the intent. For example, a Connecticut statute released the public schools from the obligation to provide education to mentally retarded children who a) cannot take care of their personal hygiene or b) are not responsive to directions or c) have no means of intelligible communication. On March 10, 1977, the Connecticut Association for Retarded Citizens challenged the State Board of Education alleging that this statute violated Public Law 94-142 because it denied them an opportunity for a program of public education and because the statute discriminated solely on the basis of the handicap.[20] Needless to say, the statute has been changed. Now all mentally retarded children are entitled to their appropriate education.

Shortly after the Connecticut trial, the state of Michigan had to evaluate its own view of the new laws. The plaintiffs in the case, the Michigan Association for Retarded Citizens, filed suit claiming the area school district failed to provide individualized special education for

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[19]Ibid.

[20]Connecticut Association for Retarded Citizens v. State Board of Education, H 77-122 (C. Conn., March 10, 1977).

preschool children up to age six. The plaintiffs said that the defendant's state mandated special education plan was directed toward chronological age groups rather than individualized needs of the students.[21]

This particular case is now in the Michigan Court of Appeals but, in the meantime, the defendant school district has revamped its preschool program and is now doing individual assessments. It is therefore, likely that the case will be withdrawn from the court.

The state of Indiana too has had its problems with interpreting the new law. In April, 1978, one hundred thirteen severely retarded children alleged that the state failed to provide appropriate educational services under Public Law 94-142 and Section 504 of the Rehabilitation Act. The plaintiffs alleged that the number of special education teachers provided and the level of resources for their use was not adequate to meet their needs. On this date, April 24, 1978, the court dismissed all claims on the basis that there could be no cause of action under Public Law 92-142 until September 1, 1978. On May 18, 1978, the plaintiff's motion for a preliminary injunction was denied.[22]

On July 7, 1978, the Indiana courts took another look at a different case involving the new handicapped laws and made a reverse decision. Stephen L. claimed that defendants had failed to establish an adequate identification process and had denied special education and placement

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[21]Michigan Association for Retarded Citizens v. Tranverse Bay Area Intermediate School District, CC No. 77-5812-C-Z (Mich., Grand Tranverse County Circuit Court, July 28, 1977).

[22]Doe v. Grile, Civ. No. F77-108 (N.D. Ind., 1978).

to himself and others similarly situated. No decision has been handed down in this case; however, the court has apparently changed its mind from Doe v. Grile, supra, and decided that some procedures under Public Law 94-142 are presently enforceable.[23]

In Ohio, Barbara C. sought to be certified as a class and is bringing action against Orient State Institute. The plaintiff sought an injunction ordering the defendants to provide full and appropriate educational services to school-age residents of Orient. The plaintiff alleged that the Department of Education receive Public Law 94-142 monies; however, none of these monies were used for the residents of Orient. A key issue to note here is the provision of compensatory education to adults who have never received any educational program due to their residency in an institution since childhood. The case has not come to trial.[24]

While some states are attempting to comply with the new federal laws, still others need to be prodded to comply. Maryland had two such cases. The first plaintiff was a hydrocephalic, non-ambulatory, blind and mentally retarded minor. At first Maryland Board of Education ruled that the local education agency need not provide the plaintiff with an education program due to the severity of her disabiliites. The plaintiff alleged that this decision violated her rights under Public Law 94-142. Within thirty days after this suit was filed, the plaintiff received appropriate educational placement and the action was dismissed.[25]

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[23]Stephen L. v. Indiana State Board of Special Education Appeals, No. F 78-6 (N.D. Ind., July, 1978).

[24]Barbara C. v. Moritz, CS 77-887 (E.D., So. Dist. Ohio, November, 1977).

[25]Saunders v. Prince Georges County Board of Education, No. 77-1882 (D. Md., November, 1977).

The other case, filed the same day, dealt with a mentally retarded student receiving three hours of instruction per week. When the Maryland Department of Education decided a daily program would be initiated, but at a non-public residential facility, the plaintiff sued. Within thirty days, all claims were dismissed because the plaintiff had received the proper appropriate educational opportunity.[26]

The other extreme of class action challenged the exclusion of handicapped children from school in St. Croix, Virgin Islands. The defendants had been ordered to " evise and prepare for immediate implementation a special education program designed to satisfy the requirement of the St. Croix population as a whole."[27] The plaintiffs were granted no immediate relief because the Court felt more harm would be done if inadequate educational programs were provided than no program at all.[28]

Interpretations

In regard to free appropriate public education, what do the new laws say about the specific area of physical education and athletics?

Question: Will the regular classroom teacher be responsible for the handicapped child's physical education if there is no physical education program in the school district?

Answer: While the classroom teacher can be the individual responsible for implementing this program, these services may be contracted from other resources such as parks and recreation departments. If non-handicapped

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[26]Pickett v. Prince George County Board of Education, No. 77-1883 (D. Md., November, 1977).

[27]Harris v. Keane, No. 76-323 (D. V.I., 1976).

[28]Ibid.

children have the benefit of a physical education specialist, Section 504 requires that handicapped children receive equal services and opportunities. Physical educators should encourage classroom teachers to use physical activities in attaining the basic physical and motor goals and objectives. Neither therapy nor recess and free play meet the intent of Public Law 94-142 or Section 504.[29]

Question: Is a special education student permitted to receive four years of physical education when the state requires less for non-handicapped students?

Answer: When proper tests and evaluation procedures show that a student has a need for special physical and motor skills, provisions must be made to meet those needs via short-and long-term goals and objectives. This procedure is necessary to comply with the new laws whether the program is required for non-handicapped students or not. If a student in special education shows no need for special education in the physical education area, and the same student has met all the state's requirements in this area, no placement or scheduling is required.[30]

Question: Will physical education be required for homebound students and who will service these students?

Answer: Homebound students must receive physical education as part of their studies and activities if these are provided for other school-going students. As the local education agency works to complete the individualized educational program for all handicapped students, the appropriate

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[29]American Alliance of Health, Physical Education and Recreation, "Questions and Answers About Public Law 94-142," Update, October 1978, p. 11.

[30]Ibid.

activities must be included. If the activities for homebound students might better be serviced by a specialist and if the specialists are not available, some subcontracting for services should be sought.[31]

Question: When would a regular physical education program not be made available to a student needing special attention in this area of study?

Answer: After the child's Individualized Educational Program is prepared, the decision to place the student in a special program setting might be made if a regular program will not meet his/her particular needs. "If a child can't learn the way one teaches then he/she had better teach the way the child can learn."[32]

Question: Can a state or local educational agencies refuse to take Public Law 94-142 funds?

Answer: Yes, they can refuse the funds; however, they are still responsible for making available a free and appropriate education to all handicapped children. They are bound because all states receive federal money and this money is governed by Section 504. It is, therefore, not in the best interest of the state or the local education agency to refuse the money when the money is needed to carry out a program with which they are mandated to comply.[33] The national monitor for Public Law 94-142 is the Bureau of of Education for the Handicapped and the national monitor for Section 504 of the Rehabilitation Act is the Office of Civil Rights.[34]

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[31]American Alliance of Health, Physical Education and Recreation, "Questions and Answers About Public Law 94-142," Update, November 1978, p. 6.

[32]Ibid.

[33]Ibid.

[34]American Alliance of Health, Physical Education and Recreation, "Questions and Answers: Public Law 94-142 and Section 504," Update October 1977, p. 5.

Question: Can physical therapy be substituted for a special physical education program?

Answer: The law is specific in its definition. Physical education is the development of skills in a) physical and motor fitness, b) fundamental motor skills and patterns, and c) skills in aquatics, dance, individual and group games as well as intramural and lifetime sports.[35] Physical therapy, and recreation as well, are specified as related services. Therefore, physical therapy cannot replace physical education.[36]

Question: If physical education is not included in a state plan, how might the local education agency deal with this area of study in the student's individualized educational program?

Answer: Congress was very clear in its intent on physical education. Ignorance of the law will not save the local educational agency. Should pertinent information not be asked for by some state forms, the state might be advised to change its forms to insure itself that this area is not overlooked. It is the responsibility of physical educators and special education personnel to see that this particular area is available to needy students.[37]

Question: After the completion of the individualized educational program with a particular set of parents, the mother requests that the program be instituted at another school. Can this be done?

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[35]American Alliance of Health, Physical Education and Recreation, "Individual Education Programs: Assessment and Evaluation in Physical Education, Practical Pointers 1, no. 9 (February 1978): 2.

[36]American Alliance of Health, Physical Education and Recreation, "Questions and Answers: Public Law 94-142 and Section 504," Update April 1978, p. 1.

[37]Ibid., p. 3.

Answer: This situation will rest upon the local educational agency. The laws show only that a student is entitled to a free appropriate education. Nothing is mentioned regarding the quality or credibility of the instructors. While high quality experience is desirable in your staff, the local educational agency should be hiring the best it can find.[38]

Placement In The Least Restrictive Environment

When placing a student in any environment, administrators must proceed carefully. "Liability," says George Peters, "is a present threat, but only to those who fail to recognize this new legal obligation and fail to take reasonable steps to safeguard the health and safety of those who rely on them."[39] The new laws provide some guidelines for those safeguards and these will be discussed later in the chapter.

All children should be placed in their least restrictive environment. It is, however, important to emphasize the removal of all barriers both structural and mental. Handicapped students, as well as their parents, are desiring more contact with non-handicapped children. The concept is evident in the new laws. The point was made when the New Jersey Association for Retarded Citizens filed suit against the New Jersey Department of Human Resources. The plaintiffs alleged that the education and training programs at Hunterdon State School were inadequate. They sought relief

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[38]American Alliance of Health, Physical Education and Recreation, "Questions and Answers: Public Law 94-142 and Section 504, Update February 1978, p. 3.

[39]George Peters, "Liability in Informal Sports and Recreational Programs," Proceedings of the Second National Conference on Sport Safety, Chicage: 1976, p. 27.

from the institutionalized alternative plan designed for them and sought more parental participation. The case has been postponed for three months in order to give the state an opportunity to alleviate some inadequacies.[40]

The parents in the case of Haldeman v. Pennhurst[41] filed a class action against the state school and hospital because their children were being isolated from the rest of society. The court agreed with the plaintiffs and ordered the defendants to provide the least restrictive community living arrangements to the retarded residents of Pennhurst together with those services necessary to provide them with minimally adequate habilitation. An appeal by the defendants to the Third Circuit Court of Appeals has yet to be handed down.[42]

Parent's assisting the child in the classroom does not relieve the local education agency of its responsibility. The plaintiff, in the case of Hairston v. Drosick,[43] had a noticeable limp and suffered from spina bifida which caused incontinence of the bowels. Her mental capabilities were excellent and she benefited from the regular school setting. The Court stated that the parent's placement in the class and, secondly, to exclude her because of her condition violated not only rights of procedural safeguard, but her due process as well.[44]

Parents played a major role in Connecticut when they objected to the

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[40]New Jersey Association for Retarded Citizens v. New Jersey Department of Human Resources, No. C 2473-76 (March, 1977).

[41]Haldman v. Pennhurst, 446 F Supp 1295 (1977).

[42]Ibid.

[43]Hairston v. Drosick, 423 F Supp 180 (1976).

[44]Ibid.

placement of their child and demanded a hearing. The local educational agency denied that hearing so the parents sought an injunction prohibiting the federal government from issuing funds in Public Law 94-142.[45]

The Court quickly ordered the State Board of Education to set up an impartial hearing panel to deal with the proper placement of the students. However, the parents were told that no individual could seek an injunction to stop federal funds.[46]

Contact between handicapped students and non-handicapped students is extremely important.[47] Is it more important than better facilities? The parents in Brown v. District of Columbia Board of Education[48] believed this to be so. The case deals with five children, all visually and hearing impaired, who have been taught as a class since 1974, while remaining intact with the same teacher and students, the class has been moved twice. From its origin at Jackson Elementary, the class moved to Tyler. While at Tyler, the self-contained specially designed program was integrated with non-handicapped children to some degree during recess, breakfast, lunch and assemblies. Some forty non-handicapped students formed a communication club and began to learn sign language as well as read braille. However, a monitoring report indicated a need for more related and supportive services. During the summer the decision was made to transfer the class to Sharpe Health School.[49]

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[45]Campochiaro v. Califano, No. H78-64 (D. Conn., May, 1978).

[46]Ibid.

[47]Egan v. School Administrative District 57, No. CV 77-283 SD (D. Me., February, 1978).

[48]Brown v. District of Columbia Board of Education, CA No. 78-1646 (September, 1978).

[49]Ibid.

The Sharpe Health School is a special school where all the children have some disability. The support services include: vocational and pre-vocational training, adaptive physical education, placement specialists, full-time services of a registered nurse and other health aides, a building in which obstacles are minimized, and a swimming pool. None of these were available at Tyler.[50]

The Court held for the defendant Board of Education. The rationale being that a change in placement had not occurred, only the location of the class. The teacher was the same; the teacher's aide, as well as the speech therapist, was the same along with the instructional program.[51]

Interpretations

Question: Can traditional adaptive physical education suffice for special education in a student's individualized education program?

Answer: A definite maybe. If the student is placed in the adaptive program based solely on his/her individual needs, the answer is yes. However, to label and categorically cast all handicapped children in a mass group under the title of adaptive physical education is not legal. The law requires a sequence of events to transpire, such as assessments of the child's needs and the proper placement of the child based on those needs.[52]

Question: What placement is necessary for children who are obese, malnourished, possess low levels of physical fitness? Structurally and mentally, they are not impaired but these are problems.

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[50] Ibid.

[51] Update October, 1977, p. 11.

[52] Ibid.

Answer: These children can find help in special education under the category of "other health impaired conditions." Conditions (there are others) must limit strength, vitality and alertness in such a way as to adversely affect a child's performance in the classroom. Since physical education is a defined part of special education, the child must be given ways to improve.[53]

Question: Is every child required to have physical education in his individualized educational program?

Answer: After proper testing and placement, the results may show a need for reading or math. However, the motor skills, fitness and other tests show the student can be mainstreamed in a regular physical education program. Some type of instructional physical education program is required in some fashion unless the student is not in need of such program. Further, if all other requirements for graduation have been met in this area of study, there is no need.[54,55]

Question: Do the laws apply only to formal educational environments such as private or public schools?

Answer: No, any organization, whether it be school, municipality, or industry reciving federal funds, either directly or indirectly via consultants of some type, must adhere to both The Rehabilitation Act of 1973 and The Education For All Handicapped Children's Act of 1975. Therefore, recreational departments have the same responsibilities as do schools.

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[53]Federal Register 42, no. 163, 23 August 1977, 42478.

[54]Update October 1977, p. 11.

[55]American Alliance of Health, Physical Education and Recreation, "Questions and Answers: Public Law 94-142 and Section 504," Update June 1978, p. 6.

No individual may be excluded from the opportunity to participate solely because of a physical or mental impairment. Secondly, recreational facilities must be made more accessible. Thirdly, programs must be conducted in a manner which is as normal as possible.[56]

Question: If a parent of a handicapped child wanted that child to attend a regular camp session offered by the local recreational department and not the camp for handicapped youngsters, does the child have such a right?

Answer: Assuming that the child meets all other criteria for entry into the regular camp, the local recreational department cannot exclude the child from the regular sessions. If the child is deaf, for example, the recreational department must provide an interpreter for the child. The child cannot be separate from the children or program unless the health or safety of all children involved is in some way impaired.[57]

Question: When a hearing impaired student is mainstreamed into a regular physical education class, must an interpreter be supplied to aid both the student and instructor?

Answer: If the teacher can communicate to the student to the point of understanding, no interpreter is needed. A lot of children can imitate their peers' action and this will suffice if all parties agree. It is possible that the interpreter's presence might show more focus on the hearing deficiency. All factors need to be considered in each individual situation.[58]

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[56]Ibid.

[57]Ibid.

[58]Update April 1978, p. 1. See also Journal of Physical Education and Recreation, May 1978.

Question: Once a student has been placed in a special physical education class, what procedure, if any, can be used to transfer the student back to a regular environment?

Answer: There are several options available. When the student meets all of the short-and long-term goals as prescribed in his/her individualized educational program, and no other special instruction is necessary, an automatic release is made and the student will begin attendance in a regular class. Another option available is a gradual incorporation of the student to the regular class. When all parties involved agree, the exchange is finalized. The same thorough assessment process is used to place a student into the regular classroom initially.[59]

Question: What procedure would a physical education instructor or coach use if he suspected a student to be impaired in some manner, if previously unknown?

Answer: Referral forms have been developed by the local education agencies to use for alerting other school personnel that a potentional problem exists. Once the physical educator or coach makes known a situation, the principal should quickly assign the experts to look into proper evaluation of the student or students and parents must be notified for permission. Samples of referral forms can be found in the Appendix.

Question: When a child appears to need special help in physical education, what tests are acceptable to be used?

Answer: To be acceptable a test must be administered by one qualified to test students with the particular evaluation instrument. The test

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[59]Ibid.

must be specifically designed to gain access to special areas. A general test used to cover quantitative amounts of information at the time time is not valid. No single criterion or test may be used for determining placement of a child. The evaluator must use a battery of tests to show valid proof that special help is needed.

A major source of test material is the American Alliance for Health, Physical Education and Recreation, whose headquarters is located in Washington, D.C. Helpful publications from the national offices would include the following:

1. Practical Pointer #9: Individualized Education Programs Assessment and Evaluation in Physical Education, 1976.
2. Special Fitness Test Manual for Mildly Mentally Retarded Persons, 1968, Revised 1976.
3. Testing for Impaired, Disabled and Handicapped Individuals, Third Printing, 1978.
4. Leon Johnson and Ben Louderee, Motor Fitness Testing Manual For The Moderately Mentally Retarded, 1976.

Placement At No Cost To The Parents

After a brief survey of the School Law Reporters from the National Organization of Legal Problems in Education, it was easy to recognize one of the reasons most often given when handicapped students and their parents are in court. This involves money. In 1879, Congress passed legislation for salaries and incidental expenses plus five hundred dollars for books and illustrative apparatus to Columbia Institution for the Deaf and Dumb.[60] It has been estimated that Congress will appropriate funds exceeding more

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[60]Chapter 182 20 Stat. (1877-1887).

than three hundred sixteen billion dollars by the year 1981.[61] With these figures, it does not take much thinking to realize the vast expense to parents, as well as government agencies. It is the intent of Congress with the passage of Public Law 94-142, that parents are no longer going to have the total burden for educating their children. Some parents are wondering if it will possible to have money refunded to them.

Such a case is cited as In The Matter of L. v. New York State Department of Education.[62] Since 1971, the father had paid tuition to a private school for his son, who was suffering from severe emotional problems and a speech defect. The school's tuition was five thousand two hundred dollars. At that time the state of New York would only pay two thousand per child per year. The father paid the balance. In the suit filed, the father sought reimbursement for the years 1971-1972, 1972-1973, and 1973-1974, a total of nine thousand nine hundred dollars. Judge Jansen granted the request for the 1973-1974 school year but denied reimbursement for the two previous years on the grounds that the plaintiff's application had not been made in time.[63]

In an adjoining case to The Matter of L,, the father of the defandant,[64] was refunded six thousand four hundred dollars that he had paid for his daughter's private schooling. The outcomes as well as the court location

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[61]Leroy V. Goodman, "A Bill of Rights for the Handicapped," American Education 12 (July 1976): 7.

[62]In The Matter of L. v. New York State Department of Education, 384 NYS 2nd 392; affirmed 365 NYS 2nd 782; also see Eberle v. Board of Public Education of School District of Pittsburgh, Pa., 444 F Supp 41 (D. Pa., 1977).

[63]Ibid.

[64]In The Matter of K. v. City of New York, 384 NYS 2nd 392; affirmed 365 NYS 2nd 782 (1978).

are of interest in these two cases. The Matter of L. was held in the Family Court of New York County while the Matter of K. was held in the Family Court of Kings County. Whereas in the Matter of L. the father did not get the entire reimbursement due to time lapse, the plaintiff in the latter case received his entire request because the court held that there was no specified time period in which relief needed to be sought.[65]

Some other actions by parents show their interest in pursuing the possibilities of a child being financially supported in a year-round program rather than a nine-or ten-month program. The first case has the parents, on behalf of their children, bringing suit alleging that the state Department of Education should assume the financing of their children's year-round program. The New York Supreme Court at Special Term, Albany County, held judgment for the Commissioner's decision. The parents appealed. Justice Main of the Appellate Division ruled in favor of the lowerer court's decision saying that under statutes of the state of New York, only the normal school year shall be paid by the state and not the months of July and August.[66]

Later in the same year, a petition was filed before the Family Court in behalf of three children. The Court had the right to decide the summer months for children over the age of five. The Court cited the state's Education Law when it said, "The maintenance expense for a handicapped child placed in a residential school under the provisions of this article

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[65] Ibid.

[66] Schneps v. Nyquist, 393 NYS 2nd 263; affirmed 393 NYS 2nd 275 (1977).

shall be a charge upon the municipality...."[67] The case further explained that half the money would be paid by the State and the other half paid by the county or city of New York. At no time is there a provision calling for parental contribution. Due to federal law, Public Law 94-142, the court held for the parents, and the city of New York was charged with the expense.[68]

Pennsylvania is having to make a decision regarding a twelve-month educational program. The case of Armstrong v. Kline[69] had marks identical to Schneps v. Nyquist. The plaintiff alleges that he has a right to a hearing to prove the need for a twelve-month program. The defense bases its position on the fact that public schools are not mandated to provide summer programs. However, for the summer of 1978, the defendants would provide a summer program. Pretrial conference was set for August, 1978, with the case itself to come in late September.[70]

Rhode Island is having problems with financing. At the moment it appears no organization wants the responsibility for the handicapped students because with responsibility comes financial support. The case in point shows the local education agency has decided that the Department of Mental Health, Retardation and Hospitals is responsible for the plaintiff's

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[67]In The Matter of Scott K., 400 NYS 2nd 289 (1977); also see LeClerc v. Thompson, (D. N.H., February, 1978); also see McMillian v. Board of Education, 430 F 2nd 1145 (2nd Cir., 1970).

[68]Ibid.

[69]Armstrong v. Kline, No. 78-172 (E.D. Pa., March, 1978).

[70]Ibid.

education. If this happens, the parents must contribute a considerable sum of money to these programs.[71] The plaintiff, a seriously emotionally disturbed child, alleges that the state plan which has been accepted by the Bureau of Education for Handicapped indicates that all handicapped children within the state are receiving a free appropriate education.[72]

In a case almost identical to Oster v. Boyer, the plaintiff in Oster v. Bevilacqua[73] is suing not the Department of Mental Health, Retardation and Hospitals, but the director of the department. The plaintiff is trying another approach to get the Rhode Island law in question ruled in violation of the new federal laws.

Whatever the level, local or state, administrators have the duty and obligation to financially support handicapped children's education and must perform that service. The courts have shown that financial backing will be given to those parents with or without the new laws. In Virginia, plaintiffs had filed charges against the Virginia Welfare Department. The Welfare Department required the parents to relinquish custody of their children before the Department would provide full funding for an appropriate private education. The parents were not suing to alter the law of relinquishing custody but desired instead to be reimbursed for the private education given their child up to that point.

The lower court noted that the new law, Public Law 94-142, was not

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[71]Oster v. Boyer, CA 77-9348 (D.R.I., June, 1977).

[72]Ibid.

[73]Oster v. Bevilacqua, CA 76-0206 (D.R.I., June, 1976).

to be fully implemented until September 1, 1978, but "(this) in no way impairs or diminshes the present right of the handicapped to an appropriate education under Section 504."[74] Despite the reference to the new laws, the Court based its decision on the concept that the plaintiff had been denied equal protection under the Constitution.

The Supreme Court of the United States remanded the case to the lower courts noting that cases should not be decided on a constitutional basis when an appropriate statute could be used. The District Court dismissed the case on the grounds that there was no right to an "education cause of action"[75] under the new federal laws until September 1, 1978. During the appeal to the Fourth Circuit, Virginia enacted a new law for the education of the handicapped that put them in compliance with Public Law 94-142. The plaintiffs have dropped the appeal.[76]

California decided a similar case but in so doing relied on its own state statutes dealing with equal protection clause.[77] The plaintiffs charged that they were not receiving an appropriate public education and that the funds available were not sufficient to cover the full cost of a private education. The lack of funding was in violation of Public Law

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[74]Kruse v. Campbell, 434 U.S. 808 (1977); 431 F Supp 180 (1977).

[75]Ibid.

[76]Ibid.

[77]Kipso v. Riles (formerly Crowder v. Riles), CA 000-384 (Sup. Ct. Los Angeles County, 1977); also see Pantich v. State of Wisconsin, 444 F Supp 320 (E.D. Wisc., 1977); also see Lora v. New York Board of Education, 456 F Supp 1211, 46 USLW 2683 (E.D. N.Y., June, 1978); also see Fialkowski v. Shapp, 405 F Supp 946 (1975).

94-142. When the Court decided a violation had been made in the funding scheme as based on their own equal protection clause, it ordered the state to provide payment for full tuition, transportation, and maintenance cost of private placement when there is no appropriate public education available.[78]

What happens if, for some reason, money is not available to cover expenses for either handicapped students or non-handicapped students? Such is the case on record in the Appellate Court of New York City. In a petition filed jointly by Angela DeNunzio and Millie Cordero against the Board of Education of the City School District of the City of New York, the plaintiffs brought action attacking budgetary cuts in educational services for handicapped children in the academic year 1976-1977. After the first dismissal of the petitions, appeals were taken. The Appellate Court held for the Board of Education. The Court felt that due to the fact the year was over by the time the case came before the bar, the trial itself was moot; however, upon viewing the evidence it was clear that the program for the handicapped children did not comply with the proper procedural safeguards that are provided by law. Regarding the budgetary cuts, the Court indicated that the more drastic cuts in the handicapped programs than those of the non-handicapped program did not itself show a denial of equal protection.[79]

Interpretations

Question: Where is the money coming from to finance the new laws?

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[78] Ibid.

[79] DeNunzio v. Board of Education of the City School District of the City of New York, 58 A.D. 2nd 758; affirmed 396 NYS 2nd 236 (1977).

Answer: Section 504 has no financial authorization of federal monies. Public Law 94-142 will appropriate three hundred eighty-seven million dollars in 1978. This sum will increase each year until 1982, when three hundred and sixteen billion dollars will be authorized.[80] Starting the fiscal year 1979, seventy-five percent of these funds will be make available to local educational agencies. The local educational agency must generate a minimum of seventy-five hundred dollars to be eligible to receive funds from the state.[81]

Question: If the county or city recreation department receives no federal funds directly, must it comply with Section 504?

Answer: Definitely, yes. Any arm or segment of a state organization must comply with at least Section 504.

Question: If a student is mentally or physically impaired, is the school required to furnish "behind the wheel" opportunities in driver's education classes?

Answer: According to Section 504, the answer is yes. To discriminate against an individual solely on the basis of a handicapped condition is illegal. Therefore, driver's education, if made available to non-handicapped students, must be made accessible to handicapped students.[82] It should be emphasized that an individual's handicap may eliminate that person from certain privileges. A blind person cannot be licensed to drive an automobile. The law states that should the handicap be so severe that it adversely affects his performance then the student may be removed from the activity.

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[80] Update, October 1977, p. 4.

[81] Ibid.

[82] Ibid.

Interpretations

Question: Who is responsible for getting the appropriate adaptive equipment for cars used in the driver's education program?

Answer: The local educational agency or the school conducting the program shall obtain the necessary equipment. If simulators are a necessary purchase for handicapped students, this same equipment must be made available to non-handicapped students as well.[83]

Question: If no physical education facility or staff exists, must the local educational agency furnish special education in this area of study?

Answer: Individualized education programs should be based on specific needs of the student and not on what facilities are available. Should no facility or staff be available, other options should be exercised, such as subcontracting the local public parks or recreation department, private schools in the area, or any special clinics in the vicinity. Regardless of the option taken, the local educational agency is responsible for monitoring the program to guarantee that the child's needs are met.

Question: Is it possible for institutions of higher learning to receive funds in Public Law 94-142?

Answer: In a direct manner of operation--no. The allotted funds are available only to state and local educational agencies. The funds must be used by those not now receiving services of any type or not receiving full service. The only indirect way in which colleges or universities might receive some of the funding would be as a contractor for services to handicapped children on behalf of the local educational agency.

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[83]Update January 1978, p. 5.

Other options open to colleges and universities for funds would be through Title D funds from the Bureau of Education for Handicapped for personnel preparation programs. Secondly, for research and demonstration projects funds may be available from the Division of Innovation and Development. Both of the latter programs are under the jurisdiction of the Bureau of Education for Handicapped.[84]

Due Process Procedures

The Constitution of the United States gives us the "due process" law in the Fifth and Fourteenth Amendments. However, the daily usage of the law distinguishes due process as substantive and procedural. Substantive due process protects all persons by requiring that local, state or federal authorities must have a valid reason before taking anyone's freedom, property or life. Procedural due process carries the following stipulations:

1. The individual must have proper notice regarding the deprivation of his/her freedom, property or life;
2. The individual must have a chance to be heard;
3. The individual must be given a just hearing or trial.[85]

Public Law 94-142 gives more detail as to the appropriate guidelines needed to implementing the law in this area of due process. A case in point, to show the value of the due process procedure, is Miller, who filed suit against the La Habra School District.[86] The plaintiff, a high level

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[84]Update, March 1978, p. 11.

[85]K. Alexander, R. Corns, and W. McCann, Public School Law (St. Paul, Minn: West Publishing Company, 1969).

[86]Miller v. La Habra School District, C233-358 (Sup. Ct. Los Angeles County, March, 1978).

quadraplegic who needed a respirator full time, was excluded from the regular classroom by the assistant superintendent without a hearing. Miller sought relief on two actions. First, to be given a proper hearing, and second, to be returned to the regular classroom while waiting on the hearing. The local educational agency granted the hearing but denied his return to the classroom. When his case came before the bar, an order was made permitting his return to class pending the court's decision. The second decision by the Court also held in his favor returning him to his appropriate placement in a regular classroom.[87]

Due process was not given when Howard S., without notice, was expelled because of prolonged and excessive absences. The absences, said the plaintiff, were a direct result of inappropriate placement. The plaintiff was a learning-disabled and emotionally handicapped student. After getting some help from a private physician, the plaintiff became a resident at a private institute at two thousand dollars per month. The plaintiff sought an impartial due process hearing under Public Law 94-142 and requested that the defendant be required to develop procedures along with comprehensive evaluations for appropriate educational placement.[88]

On June 21, 1978, the court ordered a preliminary injunction for Howard S. The defendants were also ordered to develop an individualized educational program for the plaintiff. In the meantime, the plaintiff was

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[87]Ibid.

[88]Howard S. v. Friendswood Independent School District, G 78-92 (S.D. Texas, May, 1978).

to remain at his private placement with the Friendswood Independent School District assuming the cost.[89]

In the above citation, the plaintiff had a single organization to turn to for filing suit. The plaintiff in Smith v. Cumberland School Committee[90] was not sure who was at fault. In December, 1975, the plaintiff was placed in a program appropriate to his needs and funding was made available. In the academic year 1976-1977, the defendants refused to fund the same program based on the concept that the plaintiff was an "emotionally disturbed" child and, therefore, a responsibility of the Department of Mental Health, Retardation and Hospitals.

In December, 1976, a preliminary injunction was issued which prevented the defendant from terminating the funds until the proper proceedings and appeals might be taken. In January, 1977, a hearing was held to decide exactly who was responsible to care for Smith. The committee decided it was the Department of Mental Health, Retardation and Hospitals. The plaintiff appealed the committee's decision. The Associate Commissioner heard the appeal and concurred with the committee's decision. At the present time, the case is pending in the United States District Court of Rhode Island. The plaintiff seeks a declaratory judgment that the state is not in compliance with Public Law 94-142 due process procedures and further wants a review and reversal of the final decision by the State Educational Agency and not the Mental Health, Retardation and Hospitals responsible for providing him with a free appropriate education.[91]

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[89]Ibid.

[90]Smith v. Cumberland School Committee (formerly Smith v. Curtain), Ca No. 76-0510 (D.R.I., 1976).

[91]Ibid.

It is often alleged that our courts are slow. The above case is evidence of the long process. In the last case in this section, the final decision was also long in coming. In 1974, the plaintiff's parents placed him in an appropriate educational facility. In May, 1975, they petitioned the defendants seeking reimbursement for the cost of their son's placement. Two years later, 1977, the defendant offered as a relief to structure a program meeting the plaintiff's needs and her parents disagreed and requested a hearing. The filed suit alleged that a due process hearing was not afforded them and they did appeal the original decision to both the Rhode Island Commissioner of Education and the Board of Regents. After three years of waiting, the plaintiff has lost yet another decision to the Board of Regents and has filed an appeal suit in the federal courts.[92]

The evidence is quite clear that whatever the process to evaluate and place students in their appropriate educational setting, school administrators are advised to guarantee that a due process procedural guideline is developed and used.

Interpretations

Question: If a child is in need of a special education program through physical education and the child brings a note from a physician asking that the student be excused from the program, what are the legal responsibilities of the local educational agency and specifically the individual teacher?

Answer: Section 504 prohibits discrimination of any type based solely on physical or mental impairments. Public Law 94-142 requires that all

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[92]Jaworski v. Pawtucket School Committee, CA 78-0202 (D.R.I., April, 1978).

children receiving special education shall have physical education made available to them. As the above question reads, it is technically against the law. Parents have placed many pressures on physicians; therefore, it is of utmost importance that physical educators alert family doctors of the instructional and innovative programs being made available in behalf of these children. Should the physician, after being informed of the programs being used demand the release of the child, the request should be so honored.[93] Local physical educators have the responsibility of informing their respective communities of the programs being used throughout the country. It is helpful to know that many nationally known organizations have strong beliefs that every child who is able to attend school should have an appropriate physical education program. Among such organizations are the following:

Committee on Medical Aspects of Sports
of the American Medical Association

American Academy of Pediatrics

American College of Sports Medicine

President's Council on Physical Fitness
and Sports.[94]

Question: What options are available should a stalemate arise between the physical education staff and support services and placement desired by the parents?

Answer: As indicated earlier in the study, procedural due process is guaranteed to the parents. An informal hearing is held. After that,

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[93] Update, January 1978, p. 5.

[94] Ibid. See also American Alliance of Health, Physical Education and Recreation, Adapted Physical Education Guidelines: Theory and Practices for the Seventies and Eighties.

options ascend to local, regional and state levels and ultimately to the United States Supreme Court, the highest court in the land.

Discipline/Expulsion

Experts claim that three or four children from a class of thirty-two will have some emotional problems. These children often will either fight or withdraw from the other classmates.[95] Should some type of disruptive behavior occur with a specially placed emotionally disturbed student, what options are available to both the student and the instructor?

Under Section 121a.513 of the Education For All Handicapped Children Act, the child involved will remain in his/her present educational environment until the placement status is decided.[96] However, should the student not be controllable, the new law has made a provision that "...while the placement may not be changed, this does not preclude the agency from using its normal procedures of dealing with children who are endangering themselves or others."[97]

Donnie R. was expelled without a written notice or hearing for starting a fight. Three weeks later, the school officials decided to make his expulsion permanent. During the hearing, expert testimony was given in his behalf saying that expulsion was not necessary. It took four months with no educational program of any type before the plaintiff was given three hours per week of home instruction. Almost a year later, the plaintiff

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[95]Harold Cornacchia, Wesley Staton, and Leslie Irwin, Health In Elementary Schools, 3rd ed. (St. Louis, Mo.: C.V. Mosby and Company, 1970): p. 316.

[96]Federal Register, 23 August 1977, p. 42491.

[97]Ibid.

was given an evaluation and placed in his appropriate educational services to the greatest extent possible.[98]

While Donnie R. had but a few months without an educational program, in Lopez v. Salida School District,[99] the plaintiff was without a program for three and a half years. In 1974, the plaintiff was expelled without notice or a hearing from his high school for his disruptive behavior. During the next three years, the plaintiff made many attempts to be readmitted. Once the case came before the bar, the defendant was ordered to provide compensatory education which the plaintiff is currently receiving at a community college. The school district was bound by the court order until the completion of the 1978-1979 academic year. The plaintiff became twenty-one years of age in 1978.[100]

When a child is expelled, can a change in placement occur in his absence? No. Such a case was filed in Connecticut. The plaintiff had severe learning and emotional disabilities. A written request was made by his parents asking for a review of his educational program before the defendants scheduled a disciplinary hearing. The plaintiff had been involved in a disruptive incident at school.

The Court granted a preliminary injunction to prevent the expulsion hearing from taking place. The Court indicated that a child's placement can only be changed through a review of the specially designed educational program. The Court also said that expulsion, per se, violates Public Law

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[98] Donnie R. v. Wood, No. 77-1360 (D.S.C., 1977).

[99] Lopez v. Salida School District, C.A. No. C-73078 (Dist. Ct., County of Denver, Colorado, January, 1978).

[100] Ibid.

94-142's mandate that all placement decisions shall be based on a student's right to a free appropriate education in his/her least restrictive setting.[101] If there is to be some form of disciplinary action taken against disruptive handicapped students, the new laws favor suspension over expulsion. Whatever action school officials take, they first must put their priorities in order and on paper. Failure to do this is one reason cited in a Connecticut case. The plaintiffs alleged that they have not been placed correctly and are in need of their appropriate education. They further claimed that the defendants failed to write individualized educattional programs and have not adapted appropriate language for discipline procedures for special education students. The case is presently pending due to a postponement after one day of trial proceedings.[102]

Interpretations

Question: Should a disruptive child be permitted to remain in the regular physical education setting or should he/she be removed during that particular class period?

Answer: When a handicapped student's behavior becomes so disruptive as to negatively affect either classmates' progress or the student's own, then this particular student's needs cannot and should not be attempted to be met in the regular classroom at this point in time.

Question: What rights has a teacher should he/she be attacked by an emotionally disturbed student?

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[101] Stuart v. Nappi, 433 F Supp 1235 (D. Conn., 1978); also see Kenneth J. v. Kline, No. 77-2257 (E. Pa., June, 1978): also see Davis v. Wynne, No. CV 176-44 (S.D. Ga., March, 1976).

[102] P-1 v. Shedd, No. 78-58 (D. Conn., February, 1978).

Answer: Should an instructor be attacked by a handicapped student, the teacher has the same rights of self-protection as if attacked by any student. Note should be taken that excessive force will not be tolerated. Such a case of excessive force was seen in Williams v. Cotten.[103] Charles James Cotton was an emotionally disturbed minor. His teacher, Joseph Williams, had requested the student to take a seat and remain quiet. After a number of reprimands, the two had a physical confrontation resulting in serious damage to the young student. The state of Florida has a statute requiring teachers to maintain good order in their classroom. The state, however, has strict guidelines for corporal punishment. Since these guidelines were not followed, the plaintiffs sued on grounds of intentional tort and negligence. Associate Judge Harris Drew held in favor of the young plaintiff.[104]

Exhaustion of Administrative Remedies

"Courts are not school boards and do not derogate to themselves the formulation of educational policies. But courts are the vigilant protectors of the constitutional rights of every American."[105] What District Judge Heebe was saying dealt with a desegregation case involving ability grouping. It is quite descriptive of this section. The courts want petitioners to exhaust all avenues within the guidelines of various policies and procedures before attempting to clutter the courts with problems that can be handled elsewhere. The trend of decisions shows strong evidence of this attitude.

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[103]Williams v. Cotton, 346 So. 2nd 1039 (1977).

[104]Ibid.

[105]Moses v. Washington Parish School Board, 330 F Supp 1340 (1971).

When the plaintiff filed suit against the local educational agency, the court found that this was the first step taken to seek relief. By their own state statutes, the courts could not hear this case because specific guidelines regarding age limited their jurisdiction. The case was dismissed and remanded to the Commissioner of Education and the local educational agency.[106]

In the similar case of Sherer v. Maier,[107] the plaintiff alleged her rights were violated under Section 504 because the defendants refused to provide catheterization. The case was likewise dismissed and the judge remanded the plaintiff to seek local administrative relief and due process procedures.[108]

Cases That Pose Future Issues

At the moment two issues are outstanding for future speculation. The first issue relates to the parent's procedural safeguard. When Kremens was voluntarily institutionalized, the lower court held that the child forfeited due process. After a set time for adjustments, the child should have an evaluation to determine the placement appropriateness. At the second hearing, the child was entitled to all procedural safeguards - namely. the benefit of counsel, written notice, confrontation and cross-examination of witnesses-along with a presentation of his own evidence. Before the hearing could take place, the year was over, thereby permitting the

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[106]In The Matter of Pavone, 389 NYS 2nd 249 (1976).

[107]Sherer v. Maier, CV. No. 77-0594-W-4 (W.D. Mo., 1977); also see Sussan v. East Brunswick Board of Education, No. C 4232-76 (N.J., 1977); also see Doe v. New York University, 442 F Supp 522 (S.D. M.Y., 1978).

[108]Ibid.

Supreme Court to remand the trial on mootness due to the fact the statute in question was no longer in affect.[109]

However, when the new plaintiff in Secretary of Public Welfare (formerly Kremens), who was under the current statutes with schools in session, filed suit, the case had to be reviewed by the Supreme Court. At this writing no decision had been handed down.[110] In the Parham case, which was identical to Kremens, the court held for the plaintiff.[111]

The second issue to watch closely will be litigations in California due to the passage of Proposition Thirteen. Two cases are already on record and a third, closely related. The cases deal with summer programs once offered by the state to their residents to help with a year-round educational program. In all cases, it was enough to simply bring the issue before the bar that each defending educational agency agreed to continue its programs for the 1978 summer sessions.[112]

Still another issue to watch concerns the first case of Section 504 of the Rehabilitation Act of 1973 to reach the United States Supreme Court. The case involves Francis Davis, a 1974 pre-nursing graduate of Southeastern Community College College in Chadbourne, North Carolina. After her graduation, she made application for the licensed associate degree program in nursing. She was rejected because an independent audiologist said her hearing loss "could preclude her being safe for practice."[113]

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[109]Kremens v. Bartley, 402 F Supp 1039 (1975).

[110]Secretary of Public Welfare v. Institution of Juveniles, No. 77-1715, (Supreme Court Jocket).

[111]Parham v. J.L. & J.R., 412 F Supp 112 (1976).

[112]Yarber v. Riles, C 126040 (Sup. Ct., Riverside County, 1978).

[113]"First Section 504 Case Reaches Supreme Court," School Law News, 6 (November 24, 1978): 4.

The plaintiff filed suit alleging that she had been discriminated against solely because of her disability.

The District Court ruled in favor of the college, noting that handicapped persons may be excluded from federal programs if the handicap involved makes the individual unable to fully participate in the activity. The plaintiff appealed to the Fourth Circuit Court of Appeals. The appellate Court held in her favor noting another section of the terse law that a person cannot be denied access to a program based "solely by reason of (her) handicap."[114] The college has appealed to the highest court in the land. The point the college argues

> ...(That) nothing in the terse language of Section 504 identifies precisely what is meant by the 'otherwise qualified' reference. The way the district court read it, Section 504 would make it impermissible to exclude a blind or deaf person from law school but"entirely permissible" to exclude a blind person as a truck driver.[115]

The ultimate question the college is asking is who decides what handicapped persons are qualified to do in any vocation?

Extracurricular Activities: Athletics-Intramurals

One of the nation's leading authorities on athletics and law is Herb Appenzeller. Appenzeller believes "the court does not hold colleges or high schools responsible for intramural or after-school activities if the activities are relatively safe and the facilities are not defective."[116]

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[114] Ibid.

[115] Ibid. Also see Davis v. Southeastern Community College, 574 F 2nd 1158 (4th Cir., 1978); also see Crawford v. University of North Carolina, 440 F Supp 1047 (19-7); also see Barnes v. Converse College 436 F Supp 635 (1977).

[116] Herb Appenzeller, Athletics and the Law (Charlottesville, Virginia: The Michie Company, 1975), pp. 212-213.

How safe are these activities and/or facilities? In the academic year 1975-1976, more than one million student athletes suffered an athletic injury.[117] Those in football were particularly high. For every one thousand participants in football, nine hundred twenty-nine were injured.[118] A government research report, as reported by the News and Observer, goes on to say that safer equipment, better trained coaches and trainers and players taught safety rules as well as rules of the game might reduce the number of injuries.[119]

With the high number of athletes getting injured, coaches are reluctant to assume the responsibility of a student with a "built in" mental or physical impairment. The new laws, both Section 504 of the Rehabilitation Act of 1973 and the Education For All Handicapped Children Act of 1975, prohibit discrimination solely on the basis of a handicap. Secondly, the programs provided for non-handicapped students must be also provided for handicapped students if desired.

What sports have been involved with court litigations regarding the new laws and what points of the laws were major issues?

Football

The first case on record as discrimination involves Joseph Spitaleri. On November 12, 1972, the Commissioner of Education denied an appeal to reverse the action taken by the local school board saying that Joseph was medically disqualified from participating in football.

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117 "Schools' Playing Fields Turn out too Many Injuries, Say Report," The News and Observer (Raleigh, North Carolina), 25 February 1979, p. 1.

118 Ibid.

119 Ibid., p. 18.

When Joseph was six years old, he received serious injury to his left eye, making him partially blind. He continued to play all sports through grade school, including football. His parents believed that the youngster's psychological well-being was at stake and that, as his parents, they were willing to assume all risks of injury. This, of course, indemnified the school board of any action should an injury occur while the boy was playing football.[120]

The Court used two arguments in denying the request for reversal. First, the New Jersey statute of education regarding the eligibility of its athletes said no student could participate without the approval of the school's medical officer.[121] Secondly, the American Medical Association has published a pamphlet entitled "A Guide For Medical Evaluation For Candidates For School Sports." (See Appendix) This guide recommended that students without one of two organs, such as a kidney or an eye, not be permitted to play contact sports because there is always danger present that should an injury occur, permanent and irreversible damage would result. In this case, the boy would be totally blind, thus, in the best interest of the plaintiff, the petition for reversal was denied.[122]

When Jack Kampmeier filed suit in behalf of his daughter, Margaret, and secondly for Stephen Genecco, the Spitaleri case was used as stare decisis. In Kampmeier v. Nyquist,[123] the issue was based on Section 504 and equal protection of the law under the Fourteenth Amendment. Both

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[120] Spitaleri v. Nyquist, 345 NYS 2nd 878 (1973).

[121] Ibid.

[122] Ibid.

[123] Kampmeier v. Nyquist, 553 F 2nd 296 (1977).

Margaret and Stephen had vision in only one eye. In this suit before the bar, they allegedly were denied the right to participate in contact sports based solely on their vision impairment.

Margaret suffered from congenital cataract in one eye, yet she was one of the best athletes in her class. Her parents provided her with all the safety devices at their disposal, such as safety lenses, wire mesh side shields and extended ear pieces. The Kampmeiers also indicated, as did Joseph Spitaler's parents, that they were willing to release the school and its employees from all liability should an injury occur to her other eye while participating in athletics.[124]

No evidence is made to show whether Stephen's parents were willing to issue the same type of release. Stephen had played both basketball and football the previous year without incident. The Court record does show that the Kampmeier's had attempted to obtain insurance for their daughter but were unable to do so.

With the evidence before him, Judge Lumbard handed down his decision favoring the school district. "As we read (Section) 504," said Judge Lumbard, "exclusion of handicapped children from a school activity is not improper if there exists a substantial justification for the school's policy. Section 504 prohibits only the exclusion of handicapped persons who are 'otherwise qualified'."[125] The Court further stated that the plaintiff had shown little evidence that further eye injury was not a high risk. The school system's interest is in protecting the well-being of all

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[124] Ibid.

[125] Ibid.

students and relied on medical opinion as the final weight in denying the request of the plaintiff.[126]

The Kampmeiers were not satisfied with the verdict. So on February 17, 1978, they filed suit again. However, the issued had changed. This issue was Public Law 94-142 and not Section 504. Since the trial in early March, 1977, the plaintiffs had been denied participation in both intramurals and regular physical education classes when there were contact sports. The school had developed other specially designed programs to replace the contact sports.[127]

The Court was quick to make note of the fact that federal and state laws had changed since that last trial. The petitioners had complied with the New York Education Law, called Spitaleri Statute, whereby affidavits were filed stating that the student(s) were physically capable of participating in the athletic program provided by the school. Justice Pine indicated two issues were at stake under the Spitaleri statute.

First, the activity was to be "reasonably safe." This point was confusing since she could not imagine a school system having any program that was not first "reasonably safe" for all; yet at the same time, to be in the "best interest" was of more major concern. The Court quoted from the state statute as follows:

> ...No school district shall be held liable for any injury sustained by a student participating pursuant to an order granted under this section in a program as defined in subdivision eight of this section nor for failing to ensure that any prescribed special preventive measures or devices needed to protect the student are employed.[128]

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[126] Ibid.

[127] Kampmeier v. Harris, No. 76-7383 (Sup. Ct. N.Y., February, 1978).

[128] Ibid.

To this issue, Judge Pine said that the school district was trying to dodge any liability suits resulting from the student's handicap and even for gross negligence.

It is this reasoning that is clear as to why the State Education Department had officially expressed no opposition to the passage of the Spitaleri bill.[129] However, the new law for all handicapped children is now in effect and the judge ordered the school system to stop excluding the petitioners from participating in contact sports or any other program in which they were eligible.[130] Indeed this decision might well become a landmark case for the benefit of all handicapped students.

As a result of the previous case, the following cases might do well to enter their own pleas of appeal. John Colombo had a routine physical examination to participate on the school's football team. The school medical officer found John to be totally deaf in his right ear and a fifty percent hearing loss in his left ear. With a hearing aid, John was able to understand normal conversation if the speaker were looking at him.

One of the tests the physician gave John was the clicking of his fingers to each side of John's ear. This test proved to be the supportive criterion that ultimately cost John his desire to play. The physician rationalized that the hearing loss left him a permanent "auditory blind" right side and diminished sound perception on his left side increased his inability to determine the direction of sound. This latter point made him more likely to increase bodily harm to himself and others.[131]

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[129] Ibid.

[130] Ibid.

[131] Colombo v. Sewanhaka Central High School, 383 NYS 2nd 518 (1976).

The Colombo petition presented a number of excellent witnesses in the student's behalf. Gerald Jordon, the Assistant Director of Admissions at Gallaudet College and President of the International Committee of Silent Sports, testified that between twelve hundred to eighteen hundred deaf athletes participate in the "Deaf Olympics."[132] He further testified that some seven hundred such athletes participate directly in contact sports. None of this participation had resulted in injuries due to any hearing impairments.[133]

Sister Loyola Marie of Saint Joseph's Convent in Brentwood, New Jersey, was called as a witness. As a superintendent at two state schools for the deaf and as an expert in this field, holding a Master's Degree in Deaf Education, she testified that children in deaf institutions had participated in contact sports and had never experienced injuries that were a direct result of this deafness.[134]

When the defendant used the American Medical Association's evaluation guide as supportive material to their position, the plaintiff called Donald Kaspizak as a witness. Kaspizak was a physical and medical officer for another upstate school district. Most importantly, he served as chairman of the committee on the Medical Aspects of Sports of the Medical Society of New York. Kaspizak testified that to deny John Colombo the opportunity to play football would injure the youngster emotionally and secondly, he felt that the American Medical Association uidelines were archaic and should be revised.[135]

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[132] Ibid.

[133] Ibid.

[134] Ibid.

[135] Ibid.

Though the witnesses had expertise and position, the Court held firm to three causes for denial. First, that further damage would be irreversible and total deafness would be the life-time result. Second, because of his inability to detect directional sound, John was placing himself in a position where other parts of his body were likely to be injured. Lastly, the deafness increased the risk of injury to other players.[136]

The last two football cases to be covered show evidence of what may happen when the courts are made aware of discrimination of handicapped athletes. Keith Evans and Kinney Redding were seniors at Missouri Western State College. As plaintiffs, they brought suit against the college for discrimination against them on the basis that each had only one eye. They alleged that irreparable injury would occur if the institution refused to let them play football. They further alleged the college had denied them equal protection of the law and liberty without due process of the law.

Both men agreed to sign release forms of liability releasing the college from any claims arising from injuries that they might sustain while participating in the football program. On September 2, 1977, the Court held in favor of the plaintiffs thereby ordering the college to permanently discontinue the practice of enforcing policies, rules and regulations discriminating against students because of blindness in one eye.[137]

In Doe v. Marshall[138] the plaintiff was much younger than in the case Evans v. Looney. A seventeen-year-old rising senior at Alvin High School

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[136]Ibid.; also see Matter of Richard Pendergast v. Sewanhaka Central High School, District # 2 (Sup. Ct., May, 1975).

[137]Evans v. Looney, Civ. No. 77-6052 (U.S. Dist. Ct., 1977).

[138]Doe v. Marshall, 459 F Supp 1190 (1978).

John Doe sought a preliminary injunction to prevent the University Interscholastic League, of which his high school was a member, from denying him the privilege of participating in school's football.

His suit was filed alleging discrimination based on the Rehabilitation Act of 1973 since he was within the definition of "handicapped" due to severe psychiatric difficulties. Doe's lawyer's plea was based on the compelling need of the youngster to participate in interscholastic football. To deny him "might mean the difference between growing up as a normal, productive adult or his being institutionalized for the rest of his life."[139]

District Court Judge Cowan ruled in favor of John Doe on the grounds stated by his lawyers. Judge Cowan further emphasized that this was not a class action and that his ruling was intended for John Doe and his parents only.[140]

Soccer

There were two cases of discrimination against athletes with physical impairments involving soccer. As of this research date, both cases have held for the defendant school systems. The first case was decided on November 25, 1975. This was one day earlier than the signing of the Education For All Handicapped Children Act. The plaintiff in this case was the father of P.N. The records show that P.N. , at four years of age, had one of his kidneys removed. The youngster had participated in football and wrestling, as well as other sports up to and through the tenth grade. When he entered the eleventh grade, P.N. wanted to play soccer. The

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[139] Ibid.

[140] Ibid.

medical officer for the school permitted him to pass the physical examination. However, in January of his junior year, his blood pressure rose. He was being examined by the school nurse because P.N. wanted to participate on the track and field team. He specifically wanted to pole vault.[141]

At the request of the school's medical officer, Michael Spirito, the physician who removed P.N.'s kidney, wrote a note advising that P.N. might participate. When P.N. tried out for soccer his senior year, he practiced from August twenty-seventh until September nineteenth with the team. On the day of the first scheduled contest, he was informed that he was not eligible. The father alleged that his son was discriminated against solely because he has a single kidney.[142]

The Commissioner used three issues as he held in favor of the school board. First, that should an injury occur to P.N.'s remaining kidney, the school board would be liable for his injury. Second, that the school's accident/injury insurance carrier would not cover any injury to P.N.'s remaining kidney in the existing policy. Last, the three different physicians who had examined P.N. were all in agreement that the youngster should not be permitted to participate in contact sports.[143]

The second case involves four athletes. C.P. and his parents were the main plaintiffs. C.P. has only one kidney and each of the other three students possesses only one of a pair of organs. The latter

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[141] P.N. v. Board of Education of the City of Elizabeth, Union County, Decision of Commissioner of Education, New Jersey, (1975).

[142] Ibid.

[143] Ibid.

athlete's impairments were not mentioned, thus only C.P.'s is used throughout the court records.

The medical officer for the school disqualified the four athletes because of their physical impairments. However, C.P.'s personal family physician submitted a note verifying that the youngster was physically fit to participate in soccer. As in some earlier cases, the father was willing to sign release of liability forms for the local Board of Education.[144]

The Commissioner cited P.N. as having established stare decisis. "The interest of the pupil, his parents and the community at large are best served by permitting the Board to exercise its legal discretion in adhering to the advice of its own medical inspector."[145]

Basketball

Mike Borden had been an excellent high school athlete. As a six-foot, eight-inch student entering the University of Ohio, he wanted to play basketball for the University. The University officials permitted him to try out for the team.

However, once he proved his ability and made the team, the University dropped him because of fears of injuring his good eye, thus rendering him blind for life. Borden filed suit alleging discrimination solely on the basis of his handicapped condition and a violation of his rights of equal protection.

Before the trial came to court, the University withdrew its position

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[144]C.P. v. Board of Education of the Borough of South Plainfield, Middlesex County. Decision of Commissioner of Education, New Jersey, 1978.

[145]Ibid.

and permitted him to continue with the team. The lawyers in his behalf had as an issue that Borden was old enough to make the decision, himself, in regard to his personal safety and future should an accident occur.[146]

Transportation

When the parents of Louis M. petitioned the local school board because their son was denied transportation services for sport activity programs, the hearing officer dismissed the petition because the committee's assignment for handicapped students had no jurisdiction involving extra-curricular activities.

The Commissioner of Education for the State Department of Education held a different view. When the appeal reached his desk, it was remanded to the committee for handicapped students with instruction that the committee review Section 504 of the Rehabilitation Act of 1973. "School districts," said the Commissioner, "must ensure that handicapped students participate with non-handicapped students in non-academic and extra-curricular activities to the maximum extent appropriate to the needs of the handicapped student. This equal opportunity for handicapped students includes appropriate transportation to the activity."[147]

Interpretations

Question: Can anyone with an artificial hand, arm or leg be discriminated against if they desire to play football or soccer?

Answer: The Executive Committee of the National Federation of State

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[146]Borden v. Rohr, CA 75-844, (S.D. Ohio, December, 1975)(Oral Decision).

[147]In Re Louis M., Decision of New York Commissioner of Education, No. 9478, (1977).

High School Association has proposed the following statement for ratification by the Rules Committee:

> Artificial limbs which, in the judgment of the rules administering officials are no more dangerous to players than the corresponding human limb and do not place an opponent at a disadvantage, may be permitted. Upper limb protheses and above-knee leg protheses are discouraged. Hinges shall be lateral and covered by leather. All permissible artificial limbs shall be covered by at least one-half inch foam rubber padding.[148]

The intent of the rules is for safety of all concerned and is in no way meant to discriminate. It has beem recommended to the rules committee that no one should be allowed to wear any covering harder than sole leather.[149] Should this recommendation pass, the rules of contact sports and federal laws would be in accord.

Question: Who is responsible for providing intramural or extramural activities for handicapped students?

Answer: The local educational agency is responsible. The local educational agency should seek out the Special Olympic Committee personnel in their community. In fulfilling all of the handicapped student's needs, the school personnel working with the student must review the programs being offered to the non-handicapped student within the school. Equal opportunities must be given to the handicapped.[150]

Question: Who is legally responsible for liability if negligence occurs?

Answer: Many parents, as seen in the above cases, are willing to sign

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[148]National Federation of State High School Associations, Soccer Rules, 1978-1979, (Elgin, Illinois: Brice B. Durbin Publisher), p. 13.

[149]Update, November, 1977, p. 6.

[150]Update, April, 1978, pp. 1-3.

disclaim forms to release the school from all liability in the event of an accident. In reality, "a parent cannot relieve a claim that his minor child may have, to sue for injury that the child suffers at the hands of a third party."[151] In other words, should a young football player who is blind in one eye get kicked in the other eye by an opposing player, the parent cannot sue but the child can. Appenzeller reiterates "that parents cannot release a right the minor child may have against third parties."[152]

Since parents cannot waiver the right of their minor child to sue, the school officials might continue to be held liable. "Common sense" might yet be the answer, and that is to say if the school officials are proven to be negligent, then the school officials will be found guilty.

Question: What provisions must be made for special education students who cannot participate in extra-curricular activities because of transportation?

Answer: As earlier cited, In Re Louis M., the point was solidly made that where the extra-curricular activities are an integral part of the students needs, transportation must be provided. Funds are available through Public Law 94-142.

Question: From what financial source must funds come to be used for intramural and interscholastic programs for special education?

Answer: The same source that is used for non-handicapped programs.

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[151]School Law Review, 12, no. 9 (September 1977):

[152]Herb Appenzeller, "Handicapped Athletes: A Legal Dilemma," The First Aider, 47, no. 5 (January 1978): 14.

If the local educational agency provides funding for non-handicapped activities, it must , likewise, provide funding for equal opportunity for the handicapped students.[153]

Question: What sports are most adaptable to encompass the handicapped and what changes must be made to accomodate them?

Answer: There are a number of sports that are easily adaptable. Track and field events could be readily adaptable. The difficulty in this sport, like others, remains in the rules, which would have to be modified. For example, at this time runners may not join hands, touch elbows or use ropes of any type to give assistance to peers. The question is two sided. The blind, in the instance cited, must have an opportunity to participate and cannot be discriminated against because of blindness. Second, and just as important, is the belief that an advantage is not gained in the modification in the behalf of the handicapped.[154]

Football is adaptable for the deaf. Gallaudet College used sideline drums to set up offensive plays. Short distance events in track are easily adaptable as are all swimming events. The deaf athletes in these sports need the starting gun held down instead of up. Larger caliber guns might also be used.

Wrestling for the visually impaired is available. Whereas the non-handicapped athletes start in an upright position and attempt to take each other down, the sightless wrestler may need to start with a touch of the

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[153]Ibid.

[154]Ibid.

hand or on a shoulder. Second and third periods are started on the knees where body contact is already made and sight has no real value in this position.[155]

Question: Are not all the athletic conferences throughout the nation that base their eligibility for participation on the "grade made" and the certain number of classes (units) taken guilty of discrimination against the mentally handicapped?

Answer: Yes, there is little doubt that the criteria used to establish playing eligibility are discriminatory. The only study made to research this eligibility practice was made in 1967. Julian Stein, under the auspices of the then American Association of Health, Physical Education and Recreation, surveyed all fifty states and the District of Columbia.[156] His study showed that forty-four percent of those states reporting permitted the mentally retarded to participate while an additional twenty percent would permit these handicapped students to take part only on broad interpretations of their particular state by-laws.[157] An example of this latter point would deal with eligibility being placed on grades, credits, attendance, or no requirements of any type. Since some special education students spend half a day with formal curriculum courses and the second half in a workshop, these students are viewed differently from those with grades and credits in regular classwork. Stein noted that some states are considering the dropping of grades used as a criterion for eligibility.[158]

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[155] Update, May 1978, p. 10

[156] Julian U. Stein, "Rules Affecting the Eligibility of the Mentally Retarded for Interscholastic Athletics: A Survey of State High School Athletics Association," Project for American Association of Health, Physical Education and Recreation, 1967. (Mimeographed).

[157] Ibid.

[158] Ibid.

Question: When students need wheelchairs to participate in special sports programs, who pays for these wheelchairs?

Answer: Lack of equipment is not acceptable as a rationale for denying handicapped students the equal opportunity for participation. In fact, if this equipment is special, it must be provided. Congress was cognizant that for some activities to be treated equally is not enough. For handicapped students, in some instances, to have the same opportunity, they must be given more than the normal students.[159]

Question: If there are a number of wheelchair students wanting an athletic program in a particular sport like basketball or bowling and there are not enough students from the school to make up the team, who is responsible for helping these students?

Answer: It is the responsibility of the local education agency to see that all handicapped children have the same opportunity to participate in all facets of extra-curricular activities, including intramurals, extramurals, and interscholastic sports, as do non-handicapped students. It is important to emphasize the responsibility is not so much on each individual school but is on the local education agency.[160]

Question: Of what value can athletic trainers be to handicapped students?

Answer: There is a nationwide movement to require certified athletic trainers at all levels of competition. These same athletic trainers can help to a) assist in the regular physical education classroom,

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[159] Update, March 1978, p. 11.

[160] Ibid.

b) aid in administrating evaluation test, c) join other teachers in a team-teaching concept, and d) give in-service aid to non-oriented teachers to physical education and athletic injuries that might occur to the handicapped students.[161]

Question: Is it not discriminatory for an athletic conference to deny a student the privilege of participating because of a handicap earlier in childhood that has delayed graduation? (Most athletic conferences have an age limit within which participants must fall.)

Answer: Herb Appenzeller states that "the courts have a history of deferring policy-making and management of athletics to those who conduct the program."[162] Such a case existed in April, 1974. The Missouri State High School Activities Association filed suit against the Circuit Court of Buchanan County. Records show that the Circuit Court held favor for nineteen-year-old Gary Dydell and Stephen Smith. The boys had filed suit against the Missouri State High School Activities because they were over the age allowed and had been denied the privilege of participating in athletics.[163]

Gary Dydell had suffered from bronchial asthma and bronchitis during his preliminary, middle and secondary school years. With so many absences during his illness, he had been held back. Stephen Smith had missed almost two years of school because he suffered from Perthes Disease and had had to be immobilized in a full body cast.[164]

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[161] Update, May 1978, p. 10.

[162] Appenzeller, Athletics and the Law, p. 28.

[163] State Ex Rel. Missouri State High School Activities Association v. Schoenlaue, 507 S.W. 2nd 354 (1974).

[164] Ibid.

The Supreme Court of Missouri, en banc, held in favor of the Missouri State High School Activities' appeal. Justice Holman said "that ordinarily court should not interfere in ineligibility determination made by voluntary high school activities associations, and that rules prohibiting nineteen-year-old students from competing were not arbitrary or unreasonable."[165]

Question: What can we as educators look for in the next few years regarding the law and the handicapped children?

Answer: In 1978, John Melcher wrote eight articles for Exceptional Children magazine. Melcher, at the time of publication, was consultant for the state of Wisconsin in the area of Early Childhood--Handicapped. His articles were funded by a grant for the National Institute of Education in Washington, D.C. In the final article, Melcher expresses his professional opinion on his expectations of law, litigation and handicapped children. Those expectations are as follows:

1. Statutes will be sharply modified to put emphasis on the right of the handicapped person to be a direct party and involved in all procedures.

2. Laws will be modified to allow third parties to intervene on the behalf of the child who may need service but whose parent, guardian, or surrogate has failed to seek or respond to suggested educational treatment programs.

3. Litigation against the school will increase in the area of program quality as opposed to program availability. Phrases such as "appropriate educational program" will be tested in the courts to determine the limits of parental veto of specific school programs. Standards of evaluation will be established which the courts can use to measure appropriateness of services for given children with exceptional needs.

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[165]Ibid.

4. Third party negotiators will be used by the courts to expedite service to children. These third party negotiators will be skilled in both the processes of special education and the dynamics of adversary related proceedings. A second step in this bargaining plan approach will be the partial assignment of court powers to arbiters whose powers will be binding on both parties to the dispute.

5. Public laws will be enacted that will require school districts to offer alternative programs that give the child or his legal representatives a choice of special educational methodologies and strategies.

6. The courts will avoid rendering irrevocable decisions as they have been prone to do over the course of legal history. It appears the courts are now trying to avoid premature resolution that might prove to answer only a legal technicality and not resolve the full problem inherent in the suit. The trend seems to point toward a higer case surveillance level by the courts than the old pontificating produced.

7. Litigation between and among school groups will be expanded as we try to carry out new mandates such as mainstreaming, normalization and due process oriented screening and evaluation proceedings. Teachers of regular classes will determine the limits of their responsibility and involvement in meeting the educational needs of the severely handicapped. School boards will seek legislation and be involved in litigation that will try to determine the role of residential facilities in providing for the needs of the low incidence handicapped populations.

8. Liability suits against school systems, teachers support personnel, and administrators will increase markedly as the quality and accountability issues gain momentum. These suits will produce legislation that will provide good Samaritan types of protective legislation against liability suits directed against individuals and groups. This litigation will change the mode of operation of many professional persons and policy making bodies.

9. Post hoc damage suits will be brought by adults who feel that the special education they received or failed to receive as children has harmed their development. These law suits will relate to the school staffs and their standards of competency, conduct, and commitment.

10. Laws relating to compulsory attendance, exclusion, and expulsion will change. Such matters as review of all exclusions and expulsions by nonschool authorities prior to nonemergency

> expulsion will be demanded. Civil suits will ask for monetary awards for damages suffered by the children affected by expulsion or exclusion.[166]

Question: If a handicapped student wanted to participate in a particular sport, what precautions should be taken in permitting this student to take part?

Answer: The school should request the parents or legal guardians of the athlete to sign a waiver or release form that would indemnify the school or coach should an injury caused by negligence occur.[167]

Question: Should the parents refuse to sign a release form as stated in the previous question, and the student is insistent about playing, what recourse have the school officials?

Answer: The school officials should have a meeting with the parents of the student, the student himself/herself, and the family or school medical officer and collectively make the decision. If the student, parents and medical officer agree on the student's participating, even against the wishes of the local educational agnecy, the local school officials and coaches then should proceed with the student taking part while making sure that sound judgment is shown to avoid negligent behavior.[168]

For all administrators and school personnel, whether the students are handicapped or non-handicapped, rules and regulations must carry at least two important elements. The first regards reasonableness. A prudent

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[166]John W. Melcher, "Law, Litigation, and Handicapped Children," Exceptional Children 43 (November 1976): 129-130.

[167]Appenzeller, "Handicapped Athletes,"p. 14.

[168]Ibid.

faculty or staff member establishing boundaries within which the student-body must work should have regulations of common sense. Secondly, the working and playing environment of the classroom and athletic facility should show no partiality to one particular group over another. Prejudiced rules for or against people should involve an on-going evaluation process. With the new federal laws as mandated, help is now available for everyone to enforce those rules and regulations that remind us of an original premise in the founding of this country.

CHAPTER IV

LEGAL ASPECTS OF TORT LIABILITY INVOLVING HANDICAPPED STUDENTS IN PHYSICAL EDUCATION AND ATHLETICS

Should a properly placed handicapped child suffer an injury in the regular classroom, what additional liability, if any, has the instructor? As of this date, there has been no court case. Therefore in order to cover the probability of such a situation, this study will show those cases where pupils have had a limited ability and where injury occurred. It is important to note whether the limited disability of the student was known by the instructor or supervisors before the accident occurred.

All students who attend schools should have equal opportunities to become familiar with all facets of the programs and activities of the school. Once they are treated as equals, (handicapped as well as the non-handicapped) whatever the classroom environment contains is applicable to both normal students and those with a mental or physical impairment. Since handicapped children have known disabilities, special education teachers are therefore expected to be more sensitive to the supervision of these children. This means, of course, that more definite safety rules should be printed and enforced. One author has said, "...there is a higher standard of care in relation to the duty of supervision. This is so because it is more foreseeable that a handicapped child is more likely to be injured with supervision than a normal child."[1]

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[1]Richard D. Gatti, and Daniel J. Gatti, Encyclopedic Dictionary of School Law (West Nyack, New Jersey: Parker Publishing Company, 1975), p. 250.

Appenzeller stressed this thought a number of times in his latest book when he said that the lack of supervision is "the most frequent cause of litigation among teachers and coaches."[2] Another well-known author, Paul Proehl, said, " broadly speaking, what is reasonable and what is foreseeable are the criteria in supervising classes.... The impossible will not be required, although teachers know, it is often asked. Where supervision could not have prevented the injury, its lack will, of course, not be held to be the cause of injury."[3]

A case in point deals with Julio Gonzalez, a fifteen-year-old mentally retarded boy. While his instructor was absent from the classroom, attending to other school duties, some of the children began to talk to each other, eventually a heated argument ensued. The instructor, Michael Mackler, had not appointed a class monitor on this occasion, which was customary, but had informed the teacher in the adjoining room. The verbal argument lasted about ten minutes at which time one of the students involved in the verbal exchange picked up a rubber-tipped wooden pointer and threw it at a second student. The pointer missed the second student and struck the plaintiff in the left eye causing serious damage.

The plaintiff alleged negligence on the teacher's part for lack of supervision. The issues in the case dealt with whether the absence of

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[2]Herb Appenzeller, Athletics and the Law (Charlottesville, Virginia: The Michie Company, 1975): 189, 198-199, 212.

[3]Paul Proehl, "Tort Liability of Teachers," 12 Vanderbilt Law Review, (1959): 759.

the instructor was the proximate cause of the accident or the omission to supply a supervisor in his absence. The Court of Appeals reversed the lower court's decision and ordered a new trial, since the first had been dismissed.[4]

In a second case, although the teacher was absent, the court held in her favor. The evidence in this particular case had a larger boy, Edward McDonald, interrupting a game of a smaller boy, Larry Pledger. Both were members of a special education class. As the boys scuffled, because of McDonald's interference, Pledger ran into the hallway. McDonald followed. The smaller boy picked up a broom and warned McDonald that should he advance further, the broom would be thrown. Court records show that the thrown broom caused the loss of the plaintiff's left eye.[5]

The Court held in favor of the smaller boy, Pledger, since he was not the aggressor and a warning was given as to what might happen if the altercation continued. Other actions in the case give evidence to the feelings of the court regarding third party suits. Since McDonald sued the teacher and all involved administrative personnel, he sued Pledger's father as well. The Court is quoted regarding such suits.

> ...There is no liability on the part of the parents for an injury done to a third person by their minor child unless the injury was the result of an offense or a quasi offense on the part of the child, or negligence or imprudence on the part of the parent.[6]

One of the closest cases found of major relevance to this study

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[4]Gonzalez v. Mackler, 19 A.D. 2nd 229; 241 F Supp 2nd 254 (1963).

[5]McDonald v. Terrebonne Parish School Board, 253 So. 2nd 558 (1971).

[6]Ibid.

concerns a seventeen- year old blind student attending the Texas School for the Blind. The plaintiffs in this case were the surviving parents of a young boy, Alejandro Torres. Court evidence shows that on October 7, 1970, while participating in a swimming class, the student drowned. The parents alleged that the negligence of the life guards in proximity caused the death of their son.

Governmental immunity is a common law doctrine in Texas. The court used the governmental immunity doctrine to affirm the lower court's decision regarding their sovereign immunity. The appeal of the case centered with the Texas Torts Claim Act. It says in general that the only persons available for suit as agents or employees of the state are those operating vehicles on the highway. It is a conjecture here that should the parents win the appeal the path would be made available for them to pursue more charges of negligence against the school personnel.[7]

Having found no case regarding the tort negligence of school personnel to properly placed students, some cases are available to show the track record of the courts toward physical education instructors and coaches who neglect some physical impairments resulting in injuries.

The first case relates to a teacher failing to inform her colleagues of a student who was subject to seizures. Bobby Rodrigues, a six-year-old, suffered from a type of cerebal palsy and congenital heart disease. The mother had asked the teacher not to discuss her son's condition with her colleagues. The teacher and Bobby had discussed his situation and he understood that he was not to climb. The record shows that Bobby was found during a lunch period under the horizontal ladder on the

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[7]Torres v. State, 476 S.W. 2nd 846 (1972).

playground. The Court deducted that he had suffered a seizure while playing and fallen.[8]

The charge of negligence in supervision was denied by the Court. Bobby was aware of his condition. The fact that other teachers, who were supervising at the time, did not know of his condition was a result of parental request. Playground supervisors could not have foreseen this unpreventable accident.[9]

Whenever a teacher or coach is aware of a student's physical impairment, extreme caution should be exercised. When Lowell Morris, seventeen-years old, was attending Union School, he played on the football team. On September 4, the coach "induced, persuaded, and coerced" the boy into practicing with the team.[10] On September 7, Lowell injured his back and spine. On September 21, while still recovering from the back and spine injury, the coach again "persuaded and coerced" him into playing a game.[11] It was during this game that he received serious injury to the back and spine.[12] The Court held the coach negligent in the case and the defendant school district was ordered to pay for all medical expenses and for loss of service.

The Court also held for seventeen-year-old Belva Bellman in a similar case. Belva had been denied permission to take another physical

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[8]Rodrigues v. San Jose Unified School District, 322 P 2nd 70 (1958).

[9]Ibid.

[10]Morris v. Union High School District A, King County, 294 P 998 (1931).

[11]Ibid.

[12]Ibid.

education class and was told to enroll in the gymnastic classes. The instructor was informed of Belva's bad knee. The student requested to withdraw from the class and was denied. Belva entered the classroom under protest. While attempting to perform a diving forward roll over two other students, she failed to execute the proper catching of her body weight on her arms and the tucking of her chin to complete the roll. Instead, she landed on her head causing possible brain damage. In the Appellate Court, the defendant school district contended two issues. First that the result of the original trial was incorrect. (That trial held for the plaintiff due to negligence on the school district.) Second, the money awarded was excessive. The defendant school district's appeal was denied as the Court held again for the plaintiff.[13]

As this case unfolded, a note was made as to why the case went to an appellate court. Appenzeller stated it clearly when he said, "Courts are reluctant to reduce awards due to the decreasing value of the dollar or perhaps a new attitude toward the individual who receives such an award."[14]

Although the Bellman case was held in 1938, the Court took a different look in 1952, when James Hale brought suit against Coach W.H. Davies. On August 25, the young sixteen-year-old Hale was practicing football and injured his right arm and shoulder. The coach was aware of the injury but again on September 6, ordered the minor plaintiff to engage in practice, whereupon the young plaintiff further injured his arm and shoulder.[15]

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[13]Bellman v. San Franciso High School District, 11 Cal. 2nd 576; 81 P 2nd 894 (1938).

[14]Appenzeller, Athletics and the Law, p. 243.

[15]Hale v. Davies, 86 Ga. App. 126; 70 S.E. 2nd 923 (1952).

It should be of interest to note that the court, although agreeing with the allegations of negligence on the part of the coach, dismissed the petition on grounds of demurrer.[16] When the father filed suit for appeal, the Appellate Court held the lower decision was valid.[17]

In 1958, a much-publicized account was given to Luce v. Board of Education of Village of Johnson City.[18] Rita Luce had received two injuries to her right forearm. The injuries were not related to her school activities. While her arm was in a cast, her family physician had written a note asking that she be excused from activities in which she might fall. During the fall term, 1958, no written permission was made for excusing her, and she attended the regular physical education classes. When used as a demonstrator to a game called "jump the stick relay," the plaintiff fell, further injuring her arm.

When filing suit, the young girl did not charge the principal with doctrine of respondeat superior, but argued instead, "...That the Board is liable for its own negligence in failing to adopt necessary rules for the governing of gymnasium classes, principals, and teachers, and rules relating to the limitations of activity by children with physical defects."[19]

The Court dismissed the case basing the decision on governmental immunity. The Court said that evidence of negligence on the part of the supervising principal and defendant Board of Education was not valid

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[16]Appenzeller, Athletics and the Law, p. 243.

[17]Hale v. Davies

[18]Luce v. Board of Education of Village of Johnson City, 175 NYS 2nd 123 (1958).

[19]Ibid.

and because of the issue of immunity, confusion of the negligent issue with the teacher could not be justifiably tried. A new trial was ordered.[20]

A new trial was also ordered in another case when in 1971, Judith Lowe filed charges of negligence against her physical education teacher. Miss Lowe claims she had physical disabilities. She testified that on three occasions she had given her teacher a note from her doctor and that the teacher insisted she perform broad jumps in spite of her protest. When the plaintiff was injured further, while doing the broad jump, she filed charges. The Court could not establish proximate cause. This particular case was a split case, meaning that liability was the issue here. The second half of the case would discuss from medical experts the proximate cause of the injury and possible amounts of damages due should the plaintiff merit such damages.[21]

A similar trial took place in White Plains, New York, in 1969. The first trial was held in favor of the school board. When the plaintiff filed her appeal, it was based on an error made in her father's affidavit. The father had mistakenly omitted the fact that the daughter had weak wrists and that the instructor was notified of this condition.[22]

The Appellate Court accepted the new statement and with it found reason to remand the case to the lower court for a new trial. The Appellate Court also indicated that possible negligence was shown on the part of the school system as well as the instructor.

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[20]Ibid.

[21]Lowe v. Board of Education of City of New York, 321 NYS 2nd 508 (1971).

[22]Cherney v. Board of Education of the City School District of the City of White Plains, 297 NYS 2nd 668 (1969).

No case cited in this chapter has shown the court to favor an instructor whenever the minor child's injury was known. Teachers have an obligation to act as prudent individuals, and failure to do so, as shown through the court records, will result in negligence against the individual school's personnel. According to Appenzeller, "The wise teacher and coach will take precautions, warn students of inherent dangers involved in the activities and facilities, act prudently and then go about their job with confidence."[23] Appenzeller further warns not to make a student participate when the family doctor gives a medical excuse. It is better to be safe than sorry. "The courts," said Appenzeller, "also realize that a teacher who acts prudently will find that the courts are just as much a shield as they are a weapon against him/her if he/she is negligent."[24]

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[23] Appenzeller, Athletics and the Law, pp. 213-214.

[24] Herb Appenzeller, Physical Education and the Law (Charlottesville, Virginia: The Michie Company, 1978), p. 69.

CHAPTER V

SUMMARY AND CONCLUSIONS

The history of the United States shows a long record for aiding the handicapped. The rehabilitation program for aiding wounded soldiers during the Civil War is recorded in the early issues of the New York Times. At the turn of the twentieth century, America had established various institutions for training and educating the disabled. In fact, sporting events were scheduled between two schools for the blind in the state of Kentucky.

By mid-century, the cry for help to aid handicapped children was beginning to flourish. The White House hosted a Conference on Children and Youth. One of the conference speakers, Darrell Mase, stated that the nation should change its attitude toward the handicapped and should encourage those disabled to become a more integral part of the community. Howard Rusk, in 1950, reminded the nation that money had been available to help the handicapped since the passage of the Social Security Act of 1935. The major problem was that for a handicapped person to receive benefit from this legislative enactment, the handicapped person had to be over seventeen years of age. Rusk was urging Congress to help those persons under seventeen.

In 1960, J.A. Fischer released a study stressing the importance of physical education to handicapped students. He showed that handicapped students, when exposed properly and carefully to physical education

programs, would release some of their fears, anxieties, and feelings of rejection.

F. Neil Williams, in 1964, published results of his work done with visually impaired students. He stressed the importance of planned physical activity for the visually handicapped and hoped that more of the impaired students would be given an opportunity to participate.

When Eunice Kennedy Shriver spoke to the national convention of the American Association of Health, Physical Education and Recreation in Dallas, Texas, in 1965, she emphasized to the membership that an organization of physical educators and recreational leaders could find no worthier cause than to help the mentally retarded through the medium of play and recreational activities.

In September, 1965, various members of Congress asked for another White House Conference on Education. The attending members of the conference were national leaders in education. Congress asked these leaders to recommend what was considered to be needs in the educational system. On November 1, 1965, Congress passed the Elementary and Secondary Education Act. This act incorporated some of the ideas of the September White House Conference as well as other national organizations. This act more clearly defined the "terms" of handicap by stating the headings of each classification. No detailed definition was given, only titles.

In the early 1970's, two schools of thought are seen regarding the education of handicapped students. The first relates a concept that handicapped students and non-handicapped students need to have more contact with each other. Both groups have much to learn and can gain from knowing one another and sharing daily experiences. The second thought

relates to the total curriculum and how to make all subject matter more personal and real for students.

Educators are subjected to a new term called Individualized Prescribed Instruction. Whatever term is used, Degney Christensen admonishes physical educators that too many handicapped children are being removed from regular physical education classes and grouped into adaptive physical education classes. This grouping of students was wrong, according to Christensen, because it was of no benefit to the involved students.

One of the most alarming issues to surface chronically deals with money. Even as Congress passed the Elementary and Secondary Education Act in 1965, some months later, John Throne wrote that this was not nearly enough. B. Robert Carlson, in 1972, echoed the same belief. David Savage, in 1976, struck the most frightful blow when he said that special education was going to be the biggest expense item of all state and local budgets.

In the late 1970's, a second issue is coming to focus. That issue relates to procedural due process for all handicapped children. Guidelines for this process are clearly shown in the new law The Education For All Handicapped Children Act, Public Law 94-142. In 1972, Alan Abeson stated that it was not too long ago that policy makers initiated programs for the handicapped because it was a polite thing to do. Today, however, it is demanded because of their (handicapped) right to have access to new programs.

It is redundant to summarize all enactments of legislature as discussed in chapter two. However two laws should be highlighted.

When Public Law 89-10, was enacted in 1965 as the Elementary and

Secondary Education Act of 1965, it was hailed as a truly great piece of educational passage. It was the first time since 1950 that Congress had allotted federal monies for the purchase of land, construction of facilities, and for the remodeling, inspecting, and supervision of construction of educational facilities. With enactment, Congress included for the first time federal aid for handicapped children. Section 503 of this amendment gave physical educators a directive to start related academic services that would include handicapped students.

With the passage of Public Law 89-750, Congress had for the first time devoted an entire subpart of an amendment to the education of the handicapped. Federal funds for this 1966 passage were appropriated to begin at fifty million dollars and to increase to one hundred and fifty million dollars the following year.

As the federal government released funds to be used, they also formulated strict requirements to be followed in the usage of the funds. The various states wanting aid would be required to submit a plan that would show how the state would meet the needs of their handicapped. After the plan was accepted by the state's Commissioner of Education, the local and state school agencies must keep adequate records to show exactly where the monies were spent and the number of students benefited.

When Public Law 91-230 was passed in April, 1970, Congress finally gave a short definitive paragraph after each term for handicap. Prior to this enactment, Congress had used only headings or titles. Section 604 of this legislation established the now very active Bureau of Education for Handicapped. Section 642 had direct influence on physical education and recreation because federal monies were granted

to conduct research, surveys, or demonstrations for handicapped children.

Public Law 93-380, when passed on August 21, 1974, was an extension of the Elementary and Secondary Education Act of 1965. Subpart B of this 1974 enactment was titled "Education of the Handicapped." The subpart notes the first price per student ratio of monies to use as a basis for calculating budget The figure of eight dollars and seventy-five cents was also used as the base figure to begin establishing budgets for Public Law 94-142. There are, however, more complicated ratios to be used where the interested states might receive more incentive monies. Public Law 93-380 stressed more parent involvement in the identification and evaluation of their children. A whole new concept of procedural due process was initiated in this legislative amendment. These principles were likewise expanded with the new federal mandates set in the 1975 passage.

The Rehabilitation Act of 1973, Public Law 93-112, is not solely an education piece of legislation. It is a civil rights law signed by President Richard Nixon. Though all sections of this law are important, Section 504 has received a great deal of attention. Although the law was passed by Congress in 1973, it was not until April, 1977, that Congress printed via the Federal Register, the rules and regulations of the new law.

The Federal Register shows the definition of handicapped as the following:

1. Any person who has a physical or mental impairment. The term includes orthopedic, visual, speech, and hearing impairments, cerebral palsy, mental retardation and others.

2. Any person with a record of physical or mental impairment. Congress seems to be showing a need for those persons who once had a listed handicap.

Sections 84.37 and section 84.48 make specific directives to the area of physical education and athletics. Some implications are as follows:

1. That all facets of the physical education and athletic program must be made available to everyone.

2. That handicapped students should have an equal opportunity to participate in comparable programs.

3. That students with severe handicaps might be separated to ensure the safety of all involved.

In simple terms, these paragraphs mean that should an athlete or non-athlete have a problem with alcohol and drugs, as well as mental or physical impairments, the school's programs must be made accessible.

Without question, the Education For All Handicapped Children Act is the most comprehensive Congressional enactment of its kind. Signed by President Gerald Ford on November 29, 1975, the law received overwhelming support of both the House of Representatives and the Senate. This law not only listed each handicapped condition that would benefit from the funds appropriated but gave a definition for each impairment.

Public Law 94-142 clearly establishes the procedures by which a student might claim due process of law. Some of those rights are as follows:

1. The student has the right to have his/her parents present when decisions are made regarding testing, evaluation, and placement.

2. The student has a right to be present himself/herself in the planning of the individual educational program.

3. The student has a right to be present at an impartial hearing.

4. Within the individual education plan, certain criteria must be present.

Before leaving this area, note needs to be taken that relates to the handicapped student's right to be placed in his or her least restrictive environment. Congress was quite clear in its mandate when saying that all handicapped students, whether attending a private or public school, would be educated with their peers who are not handicapped.

For the parents of handicapped children guidelines were likewise established to show procedural due process. Some of those guidelines are as follows:

1. The parents have a right to be informed of all actions.
2. Information to the parents must be in their native language.
3. If the parents choose to disagree with the local educational agency, they have a right to an impartial hearing.

Whether together or separately, should the parents or students not agree with the local educational agency regarding any facet of the child's individual educational program, then the following guidelines were developed for holding an impartial hearing.

All parties involved have a right:

1. To be accompanied and advised by counsel.
2. To present evidence and confront, cross-examine, and compel the attendance of witnesses.
3. If they are not pleased with the decision of the hearing committee, the parent may appeal to a higher authority.

Parents, students, and school officials want to know who has the ultimate responsibility to carry out the new laws for the handicapped. Congress has directed the Bureau of Education for the Handicapped to handle complaints should the state educational agencies not be thorough

in their responsibility of watching closely the performance of the local educational agencies. The local educational agencies have the responsibility to incorporate the federal mandate into all schools within their jurisdiction.

What are the school officials' responsibilities to the handicapped? All school personnel should be involved in providing to all students those educational experiences that will test the students to their highest level of achievement. Public Law 94-142 stresses to educators that handicapped children should be mainstreamed wherever possible. The law provides money for equipment, supplies and teacher aides, if necessary, to help encompass handicapped children in their least restrictive environment.

Legal issues being resolved in the courts today are numerous. Some of the most prevalent issues are placement in the least restrictive environment, financial cost to parents, appropriate education, due process procedures, discipline and/or expulsion, exhaustion of administrative remedies and discrimination of athletes based on physical impairments.

What educational or legal circumstances exist causing handicapped students to be excluded from a regular class or from an athletic team? The guidelines of Public Law 94-142 state specifically that this may occur only when the nature or severity of the handicap is such that the learning process in a regular class, with help, cannot go on satisfactorily.

Therefore the student might be denied participation only after proper evaluation is made and after meetings with parents and school personnel are completed. From these meetings, a consensus of agreement should show that it is in the best interest of all concerned that the student

might best be placed elsewhere.

With reference to athletics, denial has been found to be legal only when in the best interest of the student as well as of their peers. A specific case in point was Colombo v. Sewanhaka Central High School. Other denials were based on the failure to secure insurance for the athlete involved; this case was P.N. v. Board of Education of the City Of Elizabeth. Athletes have been denied the privilege of participating due to the "one organ" principle established and based on the Guide For Medical Evaluation for Candidates for School Sports, published by the American Medical Association.

However, should negligence be shown in the case of a properly placed handicapped child who was injured, who shall be held accountable? Some parents have shown their willingness to sign release forms indemnifying the school officials from liability should an accident occur. The NOLPE School Law Reporter states specifically that no parent can legally sign away the right to sue by their minor child. Even though the parent's intent to relieve the school officials is good, the school continues to be liable in the event of negligence. Appenzeller suggested that should the parents, family physician or school medical officer, student and the school officials agree to permit a handicapped student to take an active part in a physical education or to become a member of an athletic team, that every effort be made to insure that negligence is never a factor. Appenzeller further suggested that all meetings and group opinions be documented for future reference.

The Courts have a record showing that students with known limited disabilities must be cared for beyond the normal student. Once the

disability is made known to the instructor, should that instructor or coach ignore the student's situation and an injury occur, the students have yet to lose a case. The supervisor, instructor or coach in immediate control of the students must be aware of these limitations. No court case has been held where these children were properly identified as handicapped. All cases cited involved students in physical education or players on athletic teams that suffered from some form of physical disability that was temporary in nature.

Conclusions

There are a couple of areas that should receive some attention in the near future. The first might be financial. Since the passage of Proposition Thirteen in California, several cases have been cited of handicapped children seeking injunctions to halt any funds that would cut off either their year round educational programs or part of their summer programs. As budgets get tighter, more law suits can be expected.

Another area has been seen in Evans v. Looney. The Court intimated that these college seniors were old enough to sign waivers releasing the college of all liabilities in the event an accident should occur. The courts must now decide what age students must be in order to sign their own release forms.

The last area for future expectations will come from the up-dating of rules and regulations that now prohibit handicapped students from participating. The 1978 Soccer Rules show a proposal of rules for students with artificial limbs; in a much earlier study Julian Stein discussed the academic requirements of mentally retarded students. Both areas will show increased opportunities to mainstream handicapped students.

As more handicapped students are mainstreamed into regular programs and incorporated on athletic teams, problems will arise. The law has not given time for regular classroom teachers to be re-educated to helping various types of handicapped students. Problems will arise as a result of dedicated teachers wanting or trying to help but lacking adequate knowledge to be of use. To most physical educators and athletic coaches, the new federal mandates are frightening. It is hoped the professional people in physical education and athletics will be leaders in helping handicapped children reach levels never before attempted.

BIBLIOGRAPHY

Section A. Primary Sources

1. Public Laws

Chapter 182. Statutes at Large Vol. 20 (1879).

General Statutes of North Carolina. Vol. 4A (1970).

Public Law 815. Statutes at Large Vol. 64 (1952).

Public Law 874. Statutes at Large Vol. 64 (1952).

Public Law 89-10. Statutes at Large Vol. 79 (1966).

Public Law 89-313. Statutes at Large Vol. 79 (1966).

Public Law 89-750. Statutes at Large Vol. 80 (1967).

Public Law 90-247. Statutes at Large Vol. 81 (1968).

Public Law 91-230. Statutes at Large Vol. 84 (1971).

Public Law 92-318. Statutes at Large Vol. 86 (1973).

Public Law 93-112. Statutes at Large Vol. 87. (1974).

Public Law 93-380. Statutes at Large Vol. 88 (1975).

Public Law 94-142. Statutes at Large Vol. 89 (1975).

2. U. S. Supreme Court Cases

Brown v. Board of Education. 347 US 483 (1954).

Kruse v. Campbell. 434 US 808 (1977): 431 F Supp 180 (1977).

San Antonio Independent School District v. Rodriguiz. 411 US 1 (1973).

3. U.S. Circuit Court of Appeals and District Court Cases

Armstrong v. Kline. 78-172 (E.D. Pa., 1978).

Barnes v. Converse College. 436 F Supp 635 (1977).

Bellman v. San Francisco High School District. 11 Cal. 2nd 576; 81 P 2nd 894 (1935).

Borden v. Rohr. CA 75-844 (S.D. Ohio, 1975). Oral Decision.

Brown v. District of Columbia Board of Education. Civ. No. 78-1646 (1978).

Cherney v. Board of Education of the City School District of the City of White Plains. 297 NYS 2nd 668 (1969).

C.P. v. Board of Education of the Borough of South Plainfield, Middlesex County. Decision by Commissioner of Education, New Jersey (1978).

Colombo v. Sewanhaka Central High School. 383 NYS 2nd 518 (1976).

Campochiaro v. Califano. H 78-64 (D. Conn., 1978).

Connecticut Association for Retarded Citizens v. State Board of Education. H 77-122 (D. Conn., 1977).

Crawford v. University of North Carolina. 440 F Supp 1047 (1977).

Davis v. Southeastern Community College. 574 F 2nd 1158 (4th Cir., 1978).

Davis v. Wynne. Civ. No. 176-44 (S.D. Ga., 1976).

DeNunzio v. Board of Education of the City School District of the City of New York. 58 A.D. 2nd 758; Affirmed 396 NYS 2nd 236

Diana v. State Board of Education. Civ. No. 70-37 RFR (ND. Cal., 1970.

Doe v. Grile. Civ. No. F 77-108 (N.D. Ind., 1978).

Doe v. New York University. 442 F Supp 522 (S.D. N.Y., 1978).

Donnie R. v. Wood. Civ. No. 77-1360 (D.S.C., 1977).

Elberle v. Board of Public Education of School Department of Pittsburgh, Pa. 444 F Supp 41 (D. Pa., 1977).

Egar v. School Administrative District 57. Civ. No. 77-283SD (D. Me., 1978).

Evans v. Looney. Civ. No. 77-6052 (U.S. Dist. Ct., 1977).

Fialkowski v. Shapp. 405 F Supp 946 (1975).

Gonzalez v. Marker. 241 F Supp 2nd 254 (1963).

Halderman v. Pennhurst. 446 F Supp 1295 (1977).

Hale v. Davies. 86 Ga. App. 126; 70 S.E. 2nd 923 (1952).

Harris v. Keane. Civ No. 76-323 (D.V.I., 1976).

Harriston v. Drosrik. 423 F Supp 180 (1976).

Howard S. v. Friendwood Independent School District. G 78-92 (S.D. Texas, 1978).

In Re Louis M. Decision of New York Commissioner of Education. No. 9478 (1977).

In The Matter of L. v. New York State Department of Education. 384 NYS 2nd 392; affirmed 365 NYS 2nd 782.

In The Matter of K., v. City of New York. 384 NYS 2nd 392; affirmed 365 NYS 2nd 782.

In The Matter of Pavone. 88 Misc 2nd 6753; 389 NYS 2nd 249 (1976).

In The Matter of Scott K. 400 NYS 2nd 289 (1977).

Jaworski v. Pawtucket School Committee. CA 78-0202 (D.R.I., 1978).

Kampmeier v. Harris. Civ. No. 76-167 (Sup. Ct., N.Y., 1978).

Kampmeier v. Nyquist. 553 F 2nd 296 (1977).

Kenneth L. v. Kline. Civ. No. 77-2257 (E. Pa., 1978).

Kopsco v. Riles (formerly Crowder v. Riles). CA000384 (Sup. Ct., Los Angeles County, 1977).

Kremens v. Bartley. 402 F Supp 1039 (1975).

Larry P. v. Riles. 343 F Supp 1306 (1972).

LeClerc v. Thompson. (D.N.H., 1978).

Lopez v. Salida School District. CA C-73078 (Dist. Ct. County of Denver, Col., 1978).

Lora v. New York Board of Education. 456 F Supp 1211; 46 USLW 2683 (E.D.N.Y., 1978).

Luce v. Board of Education of Village of Johnson City. 157 NYS 2nd 123 (1958).

Matter of Richard Pendergast v. Sewanhaka Central High School, District # 2. (Supreme Court, N.Y., 1975).

Mattie T.v. Holladay. Civ. No. DC 75-31-5 (N.D. Miss., 1977).

McDonald v. Terrebonne Parish School Board. 253 So. 2nd 558 (1971).

McMillian v. Board of Education. 430 F 2nd 1145 (2nd Cir., 1970).

Michigan Association for Retarded Citizens v. Tranverse Bay Area Intermediate School District. Civ. No. 77-5812-C-Z (Mich., Grand Tranverse County, 1977).

Miller v. LaHabra School District. Civ. No. 233-358 (Sup. Ct., Los Angeles County, 1978).

Mills v. Board of Education of District of Columbia. 348 F Supp 866.

Morris v. Union High School District A, King County. 248 P 998 (1931).

Moses v. Washington Parish School Board. 330 F Supp 1340 (1971).

New Jersey Association of Retarded Citizens v. New Jersey Department of Human Resources. Civ. No. 2473-76 (1977).

North Carolina Association for Retarded Citizens v. State of North

Oster v. Bevilacqua. CA 76-9206 (D.R.I., 1976).

Oster v. Boyce. CA 77-0348 (D.R.I., 1977).

P-1 v. Shedd. Civ. No. 78-58 (D. Conn., 1978).

Parham v. V.L. and V.R. 412 F Supp 112 (1976).

Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania. 334 F Supp 1257 (1971).

Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania. 343 F Supp 279 (1972).

Penitch v. State of Wisconsin. 44 F Supp 320 (E.D. Wisc., 1977).

P.N. v. Board of Education of the City of Elizabeth, Union County. Decision by Commissioner of Education, New Jersey (1975).

Rodriques v. San Jose Unified School District. 322 P 2nd 70 (1958).

Saunders v. Prince Georges County Board of Education. Civ. No. 77-1882 (D. Md., 1977).

Schneps v. Nyquist. 393 NYS 2nd 263; 396 NYS 2nd 275 (1977).

Secretary of Public Welfare v. Institutions of Juveniles. Civ. No. 77-1715 (Supr. Ct.).

Sherer v. Maier. Civ. No. 77-0594-W-4 (W.D. Mo., 1977).

Smith v. Cumberland School Committee (Formerly Smith v. Curtain). CA 76-0510 (D.R.I., 1976).

Spitaleri v. Nyquist. 345 NYS 2nd 878 (1973).

State Ex Rel. Missouri State High School Activities Association v. Schoenlaue. 507 S.W. 2nd 354 (1974).

Stephen L. v. Indiana State Board of Special Education. CA F78-6 (N.D. Inda., 1978).

Stuart v. Nappi. 433 F Supp 1235 (D. Conn., 1978).

Sussan v. East Brunswick Board of Education. Civ. No. 4232-76 N.J., 1977).

Torres v. State. 476 S.W. 2nd 846 (1972).

Yarber v. Riles. Civ. No. 126040 (Sup. Ct., Riverside County, 1978).

Section B. Secondary Sources

4. Journals, Periodicals, Newspapers, Publications of the Government, and other Organizations

Abeson, Alan. "Movement and Momentum: Government and the Education of Handicapped Children,: Exceptional Children 39 (September 1972): 63-66.

Abeson, Alan. "Movement and Momentum: Government and the Education of Handicapped Children II." Exceptional Children 41 (October 1974): 109-115.

Adapted Physical Education Guidelines: Theory and Practices for the Seventies and Eighties. Washington, D.C.: American Alliance for Health, Physical Education and Recreation, 1978.

"Aid for Education of the Handicapped." American Education 10 (July 1974): 13.

Alexander, K. Public School Law. St. Paul, Minnesota: West Publishing Company, 1969.

Alschuler, Joan. "Education for the Handicapped." Journal of Law and Education 7 (October 1978): 523-538.

American Alliance of Health, Physical Education and Recreation. Practical Pointers, "Individual Education Programs: Assessment and Evaluation in Physical Education 1 no. 9 (February 1978): 1-21.

American Alliance of Health, Physical Education and Recreation. Practical Pointers, "Individual Education Programs," 1 (October 1977): 1-13.

Appenzeller, Herb. Athletics and the Law. Charlottesville, Virginia: The Michie Company, 1975.

Appenzeller, Herb. "Handicapped Athletes: A Legal Dilemma," The First Aider 47, no. 5 (January 1978): 14-16.

Appenzeller, Herb. Physical Education and the Law. Charlottesville, Virginia: The Michie Company, 1978).

Armstrong,Jenny, "Individually Guided Education (IGE): One Model for Mainstreaming." Focus on Exceptional Children 8 no. 7 (December 1976): 1.

Auxter, David. "Integration of the Emotionally Retarded with Normals in Physical and Motor Fitness Training Programs." Journal of Physical Education and Recreation 41 (September 1978): 61.

Barrow, Harold, and McGee, Rosemary. A Practical Approach to Measurement in Physical Education. Philadelphia: Lea and Febiger, 1971.

"Biased Study to Youth Parley." New York Times, 27 May 1950, p. 19.

"Blind Boys Play Football." New York Times, 15 October 1950, p. 9.

Carlson, B. Robert. "A Diagnosis and Remediation for Physical the Physically Handicapped Child." Journal of Health, Physical Education and Recreation 43 (March 1972): 73.

Chasey, William. Washington, D.C. Personal Interview, November 27, 1978.

Christense,, Degney. "Creativity in Teaching Physical Education to the Physically Handicapped Child." Journal of Health, Physical Education and Recreation 41 (March 1970): 73-74.

Cohodas, Nadine. "Judge Blasts Lack of Aid for Children." The News And Observer (Raleigh, North Carolina) 24 April 1979, p. 6.

Conover, Darlene. "Physical Education for the Mentally Retarded." Focus on Exceptional Children 3 (January 1972): 4.

Cornaccia, Harold. Health in Elementary Schools. 3rd ed. St. Louis: C.V. Mosby Company, 1970.

"Cripple Children to Get Medical Aid." New York Times, 28 December 1954, p. 15.

Daniels, Alfred N. "An Example of Individual Instruction on Developmental Physical Education." Journal of Health, Physical Education and Recreation 40 (May 1969): 56.

DeGutis, Ernest W., and Jack, Harold K. "Physical Education-Recreation Methodology." Journal of Health, Physical Education and Recreation 41 (May 1969): 69.

"Education of Handicapped Children: Implementation of Part of the Education of the Handicapped Act." Federal Register, 42 no. 163, 23 August 1977, pp. 42474-42518.

Eichstaedt, Carl, and Seiler, Peter J. "Signing: Communication with Hearing Impaired Individuals in Physical Education." Journal for Physical Education and Recreation 49 (May 1978): 19-21.

"Evaluation and Assessment Procedures Pertaining to Individualized Education and Placement." The Physical Activities Report 433 (April 1978): 4.

Evans, Angela, and Osman, David. "Education of the Handicapped." Washington, D.C. Library of Congress Research Service No. IB 78040, November 16, 1978.

"Facilities Needed for Handicapped." New York Times, 2 January 1954, p. 7.

"First Section 504 Case Reaches Supreme Court." School Law Review 6 (November 1978): 4.

Fischer, J.A. "Helping to Solve the Social and Psychological Problems of the Handicapped." Journal of Health, Physical Education and Recreation 31 (February 1960): 75.

"Football for the Blind." New York Times, 12 October 1905, p. 1.

Gart, Wally. "An Adapted Physical Education Program in a New Senior High School." Journal of Health, Physical Education and Recreation 40 (May 1969): 49-50.

Gatti, Richard D., and Gatti, Daniel J. Encyclopedic Dictionary of School Law. West Nyack, New Jersey: Parker Publishing Company, 1975.

Giordano-Evans, Angela. "Education of the Handicapped: Legislative Histories from the 83rd through the 94th Congress, 1st Session." Washington, D.C. Library of Congress Research Service No. HV 750A, January 13, 1976.

Goodman, Leroy V. "A Bill of Rights for the Handicapped." American Education 12 (July 1976): 7.

"Handicapped Person: Nondiscrimination." Federal Register 41 no. 96, 17 May 1976, p. 20308.

Ingram, Anne G. "Children with Impaired Vision are 'Seeing' Through Touch." Journal of Health, Physical Education and Recreation 40 (February 1969): 95.

Keller, Ed. "Principal Issues in Public Law 94-142." National Elementary Principal 56 (March/April): 80-82.

MacKenzie, Marlin M. Toward a New Curriculum in Physical Education. New York: McGraw-Hill, 1969.

Martin, Edwin W. "National Committment tc the Rights of the Individual 1776-1976." Exceptional Children 43 (November 1976): 130-135

Melcher, John W. "Law, Litigation, and Handicapped Children." Exceptional Children 43 (November 1976): 126-130.

National Association of State Directors of Special Education. The Rehabilitation Act: An Analysis of the Section 504 Regulation and Its Implications for State and Local Education Agencies. Washington, D.C. 1977.

New York Times Index. 1-9. New York: R.R. Bowker Company, 1966.

O'Donnell, Tom. "Sources of Law: Right to an Equal Educational Opportunity." Amicus 2 (April 1977): 22-26.

Peters, George. "Liability in Informal Sports and Recreational Programs." Proceedings of the Second National Conference on Sports Safety. Chicago, 1976.

Peterson, Carol Ann. "Why We Can't Wait: Implications of Public Law 94-142 for Recreation and Park Personnel and Programs." West Virginia Recreation and Parks Review 3 (May/June 1977): 15-17.

"President's Bid for a Raise in Aid to Disabled is Hailed." New York Times, 10 January 1954, p. 73.

"Procedures for Evaluating Specific Learning Disabilities." Federal Register 42 no. 250, 29 December 1977, pp. 65082-65085.

"Programs for Handicapped." Journal of Health, Physical Education and Recreation 39 (August 1968): 83.

"Questions and Answers: Public Law 94-142 and Section 504." Update, October 1977, pp. 4-5.

"Questions and Answers: Public Law 94-142 and Section 504." Update, February 1978, p. 3.

"Questions and Answers: Public Law 94-142 and Section 504." Update, April 1978, p. 1

"Questions and Answers: Public Law 94-142 and Section 504." Update, June 1978, p. 6.

"Questions and Answers about Public Law 94-142." Update, October 1978, p. 11.

"Questions and Answers about Public Law 94-142 and Section 504." Update, November 1978, pp. 6-7.

Riley, David P. National Incentives in Special Education. National Association of State Directors of Special Education, Washington, D.C., November 1978.

Rusk, Howard. "Boy's Sussess, Others' Plight Show Need of Handicapped Aid." New York Times, 21 May 1950, p. 89.

Savage, David. Educating All The Handicapped: What the Law Says and and What Schools are Doing. National School Publishers Association, Washington, D.C. 1977.

School Law Review. 12 no. 9 (September 1977), p. 86.

"School's Playing Fields Turn Out Too Many Injuries, Says Report." The News and Observer (Raleigh, North Carolina), 25 February 1979, p. 1.

Shriver, Eunice Kennedy. "Recreation for the Mentally Retarded." Journal of Health, Physical Education and Recreation 36 (May 1965): 16-17.

Smith, Sarah. "A Comparison of Staff Development Methods for Training School Based Assessment Committees to Develop an Individual Education Plan in Guilford County." Doctoral Dissertation, University of North Carolina at Greensboro, 1978.

Soccer Rules 1978-79. Elgin, Illinois: National Federation of State High School Athletic Associations, 1978.

Stein, Julian U. "Adapted Physical Education for the Educable Mentally Handicapped." Journal of Health, Physical Education and Recrea tion 33 (December 1962): 30-31.

Stein, Julian U. "New Laws Open the Field to the Handicapped." Amicus 3 (May/June): 25-31.

Syracuse Law Review. "Comment: Female Athletes." 25, 1974, p. 536.

The American Law Institute. Restatement of the Law (Second): Torts 2nd, sec. 284, p. 19.

Throne, John. "Everybody's Problem." Journal of Health, Physical Education and Recreation 37 (April 1966): 24-25.

"To Aid the Handicapped." New York Times, 1 February 1954, p. 22.

Vannier, Mary Helen. Physical Activities for the Handicapped. Englewood Cliffs, New Jersey: Prentice Hall, 1977.

"White House Conference." Journal of Health, Physical Education and Recreation 36 (September 1965): 15.

Williams, F. Neil. "Physical Education Adapts to the Visually Handicapped." Journal of Health, Physical Education and Recreation 35 (March 1964): 25.

Wilken, William. "State Aid for Special Education: Who Benefits!" Paper presented at the National Conference of State Legislatures, Washington, D.C., 1976.

Wyatt, Robert H. "Critical Issues and Problems in Education." Journal of Health, Physical Education and Recreation 35 (June 1964): 15.

APPENDIX A

PUBLIC LAWS RELATING TO HANDICAPPED STUDENTS

APPENDIX A

Public Laws Relating to Handicapped Students

Public Law 83-531 (H.R. 9040, July 26, 1954): Cooperative Research Act

This law made provision for educational research to be conducted by the Office Of Education in cooperation with universities, colleges and state educational agencies.

Authority for appropriations included sums that may be necessary to carry out the program. For the fiscal year 1955, one million dollars was appropriated for this Act; two-thirds of this sum was earmarked for the retarded.[1]

Public Law 85-905 (H.R. 13678, September 2, 1958): Captioned Films for The Deaf

This law established within the Department of Health, Education and Welfare a loan service of captioned films for the deaf and severely hard of hearing. The primary purposes of this law were to bring to deaf persons understanding and appreciation of those films which played such an important part in the general and cultural advancement of hearing persons; to provide through these films enriched educational and cultural experiences through which deaf persons could be brought into better touch with the realities of their environment; and to provide a wholesome and rewarding experience which deaf persons could share together. The law authorized

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[1] Public Law 83-531, Cooperative Research Act, Statutes at Large, 68 (1955).

the Secretary of Health, Education and Welfare to acquire films and provide for their captioning. Such captioned films would then be distributed through State schools for the deaf and such other agencies which the Secretary deemed appropriate to serve as regional centers for the distribution of the captioned films.

This law authorized $250,000 annually to carry out the purposes of this law.[2]

Public Law 85-926 (H.R. 13840, September 6, 1958): Grants for Teaching in the Education of Handicapped Children

This law authorized the Commissioner of Education to make grants to public or other nonprofit institutions of higher education to assist them in providing training of professional personnel to train teachers in fields related to the education of mentally retarded children. It also authorized grants to State educational agencies to assist them in establishing and maintaining fellowships and/or traineeships for persons preparing as teachers of mentally retarded children. Authorizations for this law were made at one million dollars annually for ten fiscal years.[3]

Public Law 86-158 (H.R. 6769, August 14, 1959): Fiscal Year 1960 Act for Health, Education, Welfare, and Labor

This appropriation act speciffically amended section 2 of Public Law 85-926 by adding the following provision, "Provided that section 2 of such act is amended by adding at the end thereof the following: such grants

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[2]Public Law 85-905, Captioned Films for the Deaf, Statutes at Large, 72 (1959).

[3]Public Law 85-926, Grants for Teaching in the Education of Handicapped Children, 72 (1959).

shall be available to assist such institutions in meeting the costs of training such personnel. This law added authorization for support grants to institutions of higher learning to help those institutions meet the costs of training personnel to teach the handicapped.[4]

Public Law 87-276 (S. 336, September 22, 1961): Teachers for the Deaf

This law provided for grants-in-aid to accredited public and nonprofit institutions of higher education which were approved training centers for teachers of the deaf to assist these institutions in providing teacher training for teachers of the deaf. These grants could be used for establishing and maintaining scholarships for qualified persons.

This law also provided for the establishment of an Advisory Committee on the Training of Teachers of the Deaf. The Committee, consisting of twelve members, was charged with periodic review of the grants-in-aid program and submitting recommendations for legislation and review of all applications. Authorization of appropriations included $1,500,000 for the fiscal year 1962, and $1,500,000 for the following year.[5]

Public Law 87-715 (S. 2511, September 28, 1962): Loan Service of Captioned Films for the Deaf

The law amended Public Law 85-905 by expanding the objectives of that Act to include educational advancement of deaf persons by carrying on research in the use of educational and training films for the deaf, the

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[4]Public Law 86-158, Fiscal Year 1960 Act for Health, Education, Welfare, and Labor, Statutes at Large, 73 (1960).

[5]Public Law 87-276, Teachers for the Deaf, Statutes at Large, 75 (1962).

distribution of these films to the deaf, and the training of persons in the use of films for the deaf.[6]

Public Law 88-164 (S.1576, October 31, 1963): Mental Retardation Facilitie and Community Mental Health Centers Construction Act

This law authorized financial assistance for the handicapped in three different areas; the construction of facilities, community mental health centers and training personnel in the education of handicapped.

Title I of this law provided for project grants for the construction of centers for research on mental retardation and related aspected of human development. Six million dollars for the fiscal year 1965 and six million dollars for the fiscal years 1966 and 1967 were authorized. The Federal share was set at seventy-five percent. In addition, it provided five million dollars in 1964, seven million five hundred thousand dollars for 1965, and finally ten million dollars for 1966 and 1967 for project grants for the construction of university affiliated facilities to provide a full range of in-patient and out-patient services for the mentally retarded. To be included were facilities which would aid in demonstrating specialized services for the diagnosis and greatment of the mentally retarded. The government was to pick up seventy-five percent of this cost.

Title II of this law authorized thirty-five million dollars in 1965, fifty million dollars for 1966 and sixty-five million dollars in 1967 for the construction of community mental health centers.

Title III authorized eleven million five hundred thousand dollars for 1964 and up to nineteen million five hundred thousand dollars for 1966

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[6]Public Law 87-715, Loan Service of Captioned Films for the Deaf, Statutes at Large 76 (1963).

to be used in the training of teachers of mentally retarded and other handicapped children. This law amended Public Law 85-926 to provide training of personnel in all areas of education for the handicapped at all levels of preparation from teacher training to the training of college instructors, research personnel and the administration and supervisors of teachers of the handicapped. This title also expanded the areas of teacher training to include the hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled and other health impaired children.[7]

Public Law 89-36 (H.R. 7031, June 8, 1965): National Institute for the Deaf Act

This legislation provided for a residential facility to give post-secondary technical training for the deaf to prepare them for successful employment. A twelve member Ad Hoc Advisory Board on Establishment of the National Technical Institute for the Deaf was appointed by the Secretary of Health, Education and Welfare to review proposals from institutions of higher education which offered to enter into an agreement with the Secretary for the construction and operation of a National Technical Institute of the Deaf, to make recommendations with respect to such proposals and with respect to the establishment and operation of the Institute. The Institute was to provide a broad, flexible curriculum suited to the individual needs of young deaf adults with potential for further training and education. The Institute would serve as a practice teaching center for training teachers, instructors and rehabilitation counselors for the

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[7]Public Law 88-164, Mental Retardation Facilities and Community Mental Health Centers Construction Act, Statutes at Large, 77 (1964).

deaf and would serve as a research facility for the study of educational problems of the deaf.[8]

Public Law 89-105 (H.R. 2985, August 4, 1965): Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1965

This piece of legislation was an amendment to Public Law 88-164. Public Law 89-105 authorized nineteen million five hundred thousand dollars for the year 1966, twenty-four million dollars for the year 1967, and thirty million dollars for 1968 to cover grants for staffing community mental health centers with technical and professional personnel during the first fifty-one months of their operations. In addition, the 1965 amendments extended and expanded the existing grants program for training teachers of handicapped children. It provided for grants to institutions of higher learning for the construction, equipping and operation of a research facility for studying the education of the handicapped.[9]

Public Law 89-258 (S. 2232, October 19, 1965): Captioned Film for the Deaf Act

This law amended Public Law 85-905 by extending the availabity of captioned films to include films of a cultural nature. It also provided for research in the use of educational media for the deaf. Educational media were also made available to persons directly involved in assisting the deaf as well as to the deaf themselves.

This law authorized three million dollars for the fiscal year 1966

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[8]Public Law 89-36, National Institute for the Deaf Act, Statutes at Large 79 (1966).

[9]Public Law 89-105, Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1965, Statutes at Large 79 (1966).

and up to seven million dollars in 1970 to carry out the program. It also provided for the establishment of a National Advisory Committee on the Deaf.[10]

Public Law 89-511 (H.R. 14050, July 19, 1966): Library Services and Construction Act Amendments of 1966

Part A of Title IV authorized a program to assist the States in providing library services to State institutions for inmates, patients, residents, as well as physically and mentally handicapped students who are in residential schools for the handicapped operated or substantially supported by the State.

Federal funds were also authorized to be used by the State library agency to plan and initiate programs, to provide books, other library materials and library services for handicapped. Authorization of appropriations for this program ranged from five million dollars in 1967 to fifteen million dollars in 1971.

Part B of Title IV (Library Services to the Physically Handicapped) provided funds to State agencies for the establishment and improvement of library services for individuals who were certified by competent authority as unable to read or to use conventional printed materials as a result of physical limitations. Such services were to be provided through public or nonprofit library agencies or organizations.[11]

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[10]Public Law 89-258, Captioned Film for the Deaf Act, Statutes at Large 79 (1966).

[11]Public Law 89-511, Library Services and Construction Act Amendments of 1966, Statutes at Large 80 (1967).

Public Law 89-694 (H.R. 17190, October 15, 1966): Gallaudet College -- Model Secondary School for the Deaf to Serve the National Capitol Area

This law authorized the Secretary of Health, Education and Welfare, after consultation with the National Advisory Committee on the Education of the Deaf, to enter into an agreement with Gallaudet College to establish a model secondary school for the deaf, to serve primarily residents of the District of Columbia and nearby states.

This high school while serving primarily the needs of the National Capitol area and nearby states, would also provide a model for the development of similar programs across the country. In addition, the formulation of new educational methods and educational technology and specific curriculum offerings would contribute to the Nation's total educational program for the deaf.[12]

Public Law 89-752 (H.R. 14644, November 3, 1966): Higher Education Amendments of 1966

This act amended the National Defense Education Act of 1958 by providing for cancellation of loans made to students under this Act, who later taught handicapped students. The rates of cancellation provided was fifteen percent of the loan for each year spent teaching the handicapped.[13]

Public Law 90-170 (H.R. 6430, December 4, 1967): Mental Retardation Facilities and Mental Health Centers Construction Act

This Act: (1) extended through June 30, 1970, the programs under which

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[12]Public Law 89-694, Gallaudet College--Model Secondary School for The Deaf to Serve the National Capitol Area, Statutes at Large 80 (1967).

[13]Public Law 89-752, Higher Education Amendments of 1966, Statutes at Large 80 (1967).

matching grants were made for the construction of university-affiliated mental retardation facilities and community mental retardation facilities; (2) established a new grant program to pay a portion of the costs for compensation of professional and technical personnel in community facilities for the mentally retarded, for initial operation of new facilities, or of new services in a facility; (3) extended until June 30, 1970, the existing program of training in the education of handicapped children; and (4) established a new program for training and research in physical education and recreation for the mentally retarded and other handicapped children.

With regard to staffing community mental retardation facilities, grants were authorized to meet a portion of the costs of professional and technical personnel for initial operation of new facilities or for new services in existing facilites for the mentally retarded.

Staffing grants could also be made for the initial operation of new facilities and new services in existing facilities. Federal funds could be used to supplement and increase to the extent practicable, the level of state, local and other non-Federal funds for mental retardation purposes.

The law authorized fifty-five million dollars to carry out this program. Four million dollars of the appropriated money was available under Title V which enabled the Secretary to make grants to State or local educational agencies, public or private educational or research agencies and organizations for research and demonstration projects relating to physical education or recreation for mentally retarded and other handicapped children.[14]

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[14]Public Law 90-170, Mental Retardation Facilities and Mental Health Centers Construction Act, Statutes at Large 81 (1968).

Public Law 90-415 (H.R. 18203, July 23, 1968): Increase the Size of the Board of Directors of Gallaudet College and for Other Purposes

This Act added eight new members to the Board of Directors of Gallaudet College (increasing the size from thirteen to twenty-one members), in order to involve persons from the fields of medicine, communications, technology, special education and higher education.[15]

Public Law 90-538 (H.R. 18763, September 30, 1968): Handicapped Children's Early Education Assistance Act

This Act enabled the Commissioner of Education to make grants and contracts to public and private nonprofit agencies for the development and implementation of experimental programs in early education for the handicapped. These grants were to be distributed on a broad geographical basis throughout the nation.

The model preschool program had objectives of stimulating all areas of the handicapped child's development including his emotional, physical, intellectual, and social needs. In fact, the report of the House Committee on Education and Labor urged that programs encompass not only all disabilities, but all age groups from birth to six years of age.

This Act also provided for the participation of parents in the development and operation of the program. Another aim of the Act was to acquaint the community with the problems and potentials of handicapped children.

Handicapped children were defined as mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who need special education services. The Act authorized one million dollars in 1969 but raised the

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[15]Public Law 90-415, Increase the Size of the Board of Directors of Gallaudet College and for Other Purposes, Statutes at Large 82 (1969).

figure to ten million dollars in 1970 and twelve million dollars in 1971. The sums appropriated for the first year were to be used for the planning of centers.[16]

Public Law 90-570 (H.R. 18366, October 16, 1968): Vocational Education Act, Amendments of 1968

This law amended the Act of 1963, retained the comprehensive State grant program on a continuing basis and authorized a new program for five years. The law appropriated monies starting at three hundred fifty-five million dollars in 1969 to five hundred sixty-five million dollars in 1973. These authorizations were for State Vocational Education Programs and Research and Training in Vocational Education. There were also special authorizations for certain categorical programs.

This legislation provided that at least ten percent of each State's allotment for funds appropriated for any fiscal year beginning after June 30, 1969, were to be used only for vocational education for handicapped persons who, because of their handicapping condition could not succeed in the regular vocational education program without special educational assistance or who would require a modified vocational education program.[17]

Public Law 90-575 (S.3769, October 16, 1968): Higher Education Amendments of 1968

Under these amendments the Commissioner of Education was authorized

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[16]Public Law 90-538, Handicapped Children's Early Education Assistance Act, Statutes at Large 82 (1969).

[17]Public Law 90-570, Vocational Education Act, Amendments of 1968, Statutes at Large 82 (1969).

to make grants or contracts with institutions of higher learning to help them carry out a program of Special Services for Disadvantaged Students. These programs of special services were for students enrolled or accepted by an institution receiving the grant and who, by reason of deprived educational, cultural or economic background, or physical handicap were in need of such services to help them initiate or continue their post-secondary education.

This law extended the cancellation of loans made to students who later taught handicapped children for two additional years. These forgiveness provisions were to apply only to loans made prior to July 1, 1970.[18]

Public Law 91-517 (S. 2846, October 30, 1970): Developmental Disabilities Services and Facilities Construction Amendments of 1970

This Act amends Public Law 88-164. The legislation provided States with broader responsibilities for planning and implementing a comprehensive program of services and offered local communities a strong voice in determining needs, establishing priorities and developing a system for delivering services.

The scope of the existing program was broadened to include not only the mentally retarded but also persons suffering from other serious developmental disabilities originating in childhood. The term developmental disability referred to "a disability attributable to mental retardation, cerebral palsy, epilepsy or another neurological condition found by the Secretary of Health, Education and Welfare to be closely related to mental

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[18]Public Law 90-575, Higher Education Amendments of 1968, Statutes at Large 82 (1969).

retardation or to require similar treatment to that required for mentally retarded individuals...." In addition, the disability must be substantial in nature and must have continued or be expected to continue indefinitely.

States were to use formula grant funds authorized under Title I of the Act to support: (1) a full array of services required by developmentally disabled children and adults; (2) the construction of facilities; (3) State and local planning; (4) administration; (5) technical assistance; (6) training of specialized personnel; and (7) the development and demonstration of new service techniques. The Title I allotments to the States were to be calculated on the basis of population, need for services, and financial need of the State. However, each State was to receive a minimum of one hundred thousand dollars per year.[19]

Public Law 91-587 (S. 4083, December 24, 1970): Model Elementary School for the Deaf Act

This law authorized Gallaudet College in the District of Columbia to provide day and residential facilities for the elementary education of the deaf. Kendall School was to be maintained for this purpose as a demonstration elementary school for the deaf, providing an educational program which would stimulate the development of similar excellent programs throughout the nation.[20]

Public Law 92-424 (H.R. 12350, September 19, 1972): Economic Opportunity Amendments of 1972

Under this Act, the Secretary of Health, Education and Welfare was

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[19]Public Law 91-517, Developmental Disabilities Services and Facilities, Construction Amendments of 1970, Statutes at Large 84 (1971).

[20]Public Law 91-587, Model Elementary School for the Deaf Act, Statutes at Large 84 (1971).

to provide policies and procedures designed to assure that not less than ten percent of the total number of enrollment opportunities in the nation in the Head Start program were to be available for handicapped children and that services were to be provided to meet their special needs.[21]

Public Law 93-644 (H.R. 14449, January 4, 1975): Community Services Act of 1974

Title V of the Act provided for a Head Start-Follow Through Act. This Act extended the Head Start program through the year 1977. Head Start programs within each State were not to receive less funds for any fiscal year than were obligated for use within that State in the fiscal year 1975.

Prior to this legislation, the Head Start legislation required that not less than ten percent of the total enrollment opportunities in Head Start throughout the nation be available for handicapped children. This new Act required that beginning in 1976 at least ten percent of each State's Head Start enrollment would have to be for handicapped children.[22]

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[21]Public Law 92-424, Economic Opportunity Amendments of 1972, Statutes at Large 86 (1973).

[22]Public Law 93-644, Community Services Act of 1974, Statutes at Large 88 (1975).

APPENDIX B

DISQUALIFYING CONDITIONS FOR SPORTS PARTICIPATION

APPENDIX B

Disqualifying Conditions For Sports Participation

Conditions	Collision[1]	Contact[2]	Noncontact[3]	Other[4]
General				
Acute infections: Respiratory, genitourinary, infectious mononucleosis, hepatitis, active rheumatic fever, active tuberculosis	X	X	X	X
Obvious physical immaturity in comparison with other competitors	X	X		
Hemorrhagic disease: Hemophilia, purpura, and other serious bleeding tendencies	X	X	X	
Diabetes, inadequately controlled	X	X	X	X
Diabetes, controlled				
Jaundice	X	X	X	X
Eyes				
Absence or loss of function of one eye	X	X		
Respiratory				
Tuberculosis (active or symptomatic)	X	X	X	X
Severe pulmonary insufficiency	X	X	X	X
Cardiovascular				
Mitral stenosis, aortic stenosis, aortic insufficiency, coarctation of aorta, cyanotic heart disease, recent carditis of any etiology	X	X	X	X
Hypertension on organic basis	X	X	X	X
Previous heart surgery for congenital or acquired heart disease*				

[1]Football, rugby, hockey, lacrosse, etc.
[2]Baseball, soccer, basketball, wrestling, etc.
[3]Cross country, track, tennis, crew, swimming, etc.
[4]Bowling, gold, archer, field events, etc.

Liver				
Enlarged	X	X		
Skin				
Boils, impetigo, and herpes simplex gladiatorum	X	X		
Spleen				
Enlarged spleen	X	X		
Hernia				
Inguinal or femoral hernia	X	X	X	
Musculoskeletal				
Symptomatic abnormalities or inflammations	X	X	X	X
Functional inadequacy of the musculoskeletal system, congenital or acquired, incompatible with the contact or skill demands of the sport	X	X	X	
Neurological				
History or symptoms of previous serious head trauma, or repeated concussions,	X			
Controlled convulsive disorder**				
Convulsive disorder not completely controlled by medication	X	X	X	
Previous surgery on head	X	X		
Renal				
Absence of one kidney	X	X		
Renal disease	X	X	X	X
Genitalia* **				
Absence of one testicle				
Undescended testicle				

*Each patient should be judged on an individual basis in conjunction with his cardiologist and operating surgeon.

**Each patient should be judged on an individual basis. All things being equal, it is probably better to encourage a young boy or girl to participate in a non-contact sport rather than a contact sport. However, if a particular patient has a great desire to play a contact sport, and this is deemed a major ameliorating factor in his/her adjustment to school, associates and the seizure disorder, serious consideration should be given to letting him/her participate if the seizures are controlled.

***The Committee approves the concept of contact sports participation for youths with only one testicle or with an undescended testicle(s), except in specific cases such as an inguinal canal undescended testicle(s),

following appropriate medical evaluation to rule out unusual injury risk. However, the athlete, parents and school authorities should be fully informed that participation in contact sports for such youths with only one testicle does carry a slight injury risk to the remaining healthy testicle. Following such an injury, fertility may be adversely affected. But the chances of an injury to a descended testicle are rare, and the injury risk can be further substantially minimized with an athletic supporter and protective device.

"A Guide for Medical Evaluation for Candidates for School Sports," Publication of the American Medical Association, Revised, 1976, pp. 7-8.

APPENDIX C

TEACHER REFERRAL FORMS

TEACHER REFERRAL

(To be used by the regular class teacher and submitted to the principal or his designee)

Name of Student Joseph Slick Sex M Birthdate 5-12-65

Age 11 Grade/Team/Subject 6 Referring Teacher Barnes

1. a. Please describe, being brief but specific, the reasons for which this referral is being made. Address your comments to the situation as you see and understand it.

Joseph is performing below grade level in all academic areas.

b. What methods have you tried to solve the problem?

Allowing more time for him to finish his work. Giving as much one-to-one instruction as possible.

2. a. What do you perceive as being the particular strengths of this student?

His willingness to try to perform the task which he is asked to do.

b. Weaknesses:

Slow to finish.
Tendency to become frustrated.

3. When is a convenient time for us to talk? After 2:30

L. Barnes
Referring Teacher

11-76
Date

*Adaptive Behavior Scale

Name Joseph Slick Grade 6 Sex M School Tall Trees

Date 11-76 Date of Birth 5-12-65 Age 11

Referral: EMR _____ LD X Behavioral _____

Ethnic Background: B _____ W X Other (Specify) _____

Occupation: Father Construction

Mother Housewife

The required part of evaluating children for eligibility in special programs involves evaluation of their adaptive behavior. Adaptive behavior is defined as 1) the degree to which the individual is able to function independently, and 2) the degree to which he meets satisfactorily the culturally imposed demands of personal and social responsibility.

An assessment of adaptive behavior includes how well the child adapts to the school, home, and community environments. Information can be gathered from school records, school personnel, parents, and/or other professionals who work with the child.

COMPUTING ITEM SCORES. The Adaptive Behavior Scale (ABS) utilizes three types of items which require different scoring procedures.

(1) "Check all statements that apply", e.g. I.A. INDEPENDENT FUNCTIONING - Eating. Total the number of checks, and record this number on the line provided.

(2) "Check only one", e.g. I.B. INDEPENDENT FUNCTIONING - Toilet Training. Record the number circled on the line provided.

(3) "Circle the number that applies for all statements", e.g. V. CLASSROOM BEHAVIORS. Total the numbers circled for each section (Activity, Reaction to Frustration, Social Demands, Other Classroom Behaviors) and place on their respective lines.

Sum the scores on the lines between a rectangle and the preceding rectangle. Enter that total in the rectangle that applies for that section. Rectangle will appear at the end of that section. Record the rectangle and line scores in the Data Summary Sheet on the reverse of this page.

Special Note: Primary/elementary school personnel
Omit I.A. and I.B. unless applicable

Secondary school personnel
Omit I.A. and I.B. unless applicable

* This scale was adapted from the 1974 Revision of the American Association of Mental Deficiency Adaptive Behavior Scale - Public School Version

Data Summary Sheet

Adaptive Behavior Scale

I. INDEPENDENT FUNCTIONING

A.	Eating	6	8
B.	Toilet Training	4	4
C.	Personal Hygiene	3	4
D.	Travel	3	3
E.	Motor Development	5	9

28

Total of INDEPENDENT FUNCTIONING = 21

II. SELF-DIRECTION

A.	Initiative	3	3
B.	Persistence	1	4

7

Total of SELF-DIRECTION = 4

III. RESPONSIBILITY

3

Total of RESPONSIBILITY = 1

IV. SOCIALIZATION

A.	Cooperation	2	4
B.	Participation	1	3

7

Total of SOCIALIZATION = 3

V. CLASSROOM BEHAVIORS

A.	Activity	5	8
B.	Reaction to Frustration	5	8
C.	Social Demands	5	8
D.	Other Classroom Behaviors	21	30

54

Total of CLASSROOM BEHAVIORS = 36

I. INDEPENDENT FUNCTIONING

A. Eating (check all statements which apply)

Uses table utensils appropriately	X	
Chews food appropriately (mouth closed)	X	
Does not drop food on table or floor	X	Total Checked
Uses napkin correctly		
Refrains from talking with mouth full	X	
Refrains from taking food off another's plate	X	6
Eats at appropriate rate	X	
Does not play in food		

B. Toilet Training (circle only one)

Never has toilet accidents	4	
Never has toilet accidents during the day	3	No. Circled
Occasionally has toilet accidents during the day	2	
Frequently has toilet accidents during the day	1	
Is not toilet trained at all	0	4

C. Personal Hygiene (check all statements that apply)

Absence of body odor	X	Total Checked
Skin appears clean	X	
Nails are kept clean		
Wears clean clothing	X	3

D. Travel (circle only one)

Catches appropriate bus to and from school	3	No. Circled
Goes around school grounds without getting lost	2	
Goes around school room alone	1	
Gets lost whenever he leaves his own room	0	3

E. Motor Development (check all statements that apply)

Walks up and down stairs alone	X	
Walks down stairs by alternating feet		
Runs without falling often	X	Total Checked
Hops, skips, or jumps	X	
Has a natural gait		
Catches a ball	X	5
Throws a ball overhead		
Has effective control of right side (arm & leg)	X	
Has effective control of left side (arm & leg)		

TOTAL = 21

GUILFORD COUNTY SCHOOLS
Drawer B-2
Greensboro, N. C. 27402

SUMMARY INFORMATION SHEET AND CENTRAL OFFICE REFERRAL FORM

PERSONAL DATA

Student Joseph Slick School Tall Trees Elementary Date 11-76

Birthdate 5-12-65 Age 11 Grade 6 Teacher L. Barnes

Parents (or guardian) Mr. & Mrs. Samuel Slick Address Ror 20 Tall Trees, N. C. Phone 2222

Occupation Housewife / Mother Business Phone _____ Child Lives With Parents X

Occupation Construction Company Business Phone — Child Lives With Other ___

Race W Others In Home 3 Type of Referral Learning Disabilities

HEALTH RECORD

General Health: Good X Poor ____

Vision: Normal X Deficient ____ Corrective Lenses: Prescribed ____ Used ____

Hearing: Normal X Deficient ____ Hearing Aid: Prescribed ____ Used ____

Speech: Normal X Deficient ____ Therapy ____ Prognosis _____

Unusual Illness or Condition, or Comments None

CLASSROOM ACHIEVEMENT

General Progress: Above Average ____ Average ____ Below Average X Inconsistent ____

Retention: Yes ____ No X If yes, circle grade - K 1 2 3 4 5 6 7 8 9 10 11 12

Present Grade Level of Classroom Achievement: Reading 3 Math 3
Spelling 3 Writing 6

Behavior: passive ____ : X : ____ assertive bored ____ : X : ____ interested
resistant ____ : ____ : X cooperative (with teacher) isolated ____ : X : ____ involved (with peers)

Absences: (days per school year) K ____ 3 2 6 ____ 9 ____
1 5 4 6 7 ____ 10 ____ 12 ____
2 18 5 5 8 ____ 11 ____

List any agencies who have had contact with the child (i.e., DEC, Mental Health, VR).

Date Agency or Special Services

EDUCATIONAL OR PSYCHOLOGICAL ASSESSMENT

Date	Test Instrument	Results (IQ, Scores, %iles, Grade Equivalency)	
11-11-76	Slosson Intelligence Test	80 - 89	
11-11-76	Wide Range Intelligence Test	Reading	3.6
		Spelling	3.0
		Arithmetic	3.6

SCHOOL-BASED COMMITTEE CHECKLIST

Student Joseph Slick School Tall Trees

Steps	Date	Checklist	Individual Responsible
1.	11-76	Teacher Referral (including appropriate inventory)	L.B.
2.	11-76	Review of Cumulative Folder	Z.R.
3.	12-76	Recommendation for Screening	L.B.
4.	12-76	Screening Tests Completed	Z.R.
		WRAT	X
		SIT	X
		Slingerland	
		Other	
		Medical Evaluation	X
		Visual Examination	X
		Auditory Examination	X
5.	1975	Recent events in the child's life which may be affecting current functioning (death, change in residence, injury, etc.)	Sister killed in swimming accident 7-76

SCHOOL-BASED COMMITTEE RECOMMENDATION

We have reviewed the reports and considered all the material pertaining to the appropriate placement of the child named herein, and we recommend the following remedial action and specific services for said child's benefit (list areas needing special attention, enrichment, and/or remediation and general recommendations for the child):

Further evaluation for possible LD placement.

Date: 12-76

R. Mobley
Principal

(guidance counselor) Z. Roth
Committee Member

(classroom teacher) L. Barnes
Committee Member

special teacher B. Teague
Committee Member

(4th grade classroom teacher) O. Smith
Committee Member

PUPIL REFERRAL FORM

CET# _____
(office use only)

North Adams Public Schools
Office of Pupil Services
Dr. M. Peter Wright, Director
Telephone: 664-4140

Mark Hopkins Campus School
North Adams State College
North Adams, Massachusetts
Telephone: 664-4511, ext. 291

Please complete this form and return both copies to the Generic Teacher's mailbox.

Pupil's Name: _____ Date of Birth: _____ LEM: _____

Address: _____ Telephone No. _____

School: _____ Teacher: _____ Referral Date: _____

Father's Name: _____
(Last) (First)

Mother's Name: _____
(Last) (First)

1. What is the specific behavior that led to this referral?

2. What methods have you tried to solve the problem?

3. What do you see as the student's particular strengths?

4. When is a convenient time for us to talk?

_____
(Referring Teacher)

AUXILIARY INFORMATION PACKET

North Adams Public Schools
Office of Pupil Services
Dr. M. Peter Wright, Director
Telephone: 664-4140

Mark Hopkins Campus School
North Adams State College
North Adams, Massachusetts
Telephone: 664-4511, ext. 291

Pupil's Name:_____

Referring Teacher:_____

School:_____

Date:_____

Generic Teacher:_____

This packet must be completely filled out by the referring teacher. It must contain:

a copy of the SARI tracking card;
a copy of the current DMP individual progress sheet;
a social assessment sheet;
pertinent papers, etc., which you deem relevant.

SOCIAL ASSESSMENT SHEET

North Adams Public Schools
Office of Pupil Services
Dr. M. Peter Wright, Director
Telephone: 664-4140

Mark Hopkins Campus School
North Adams State College
North Adams, Massachusetts
Telephone: 664-4511, ext. 291

I. The following is a list of skills in the area of social development. Although there is an overlap in these areas, and occasionally they are not sequential, they do represent a generalized hierarchy of social skills.

A. Please comment specifically on where you see the child in relationship to these skills -

1. knowledge of one's feelings and ideas, and the separateness of one's self from others;
2. the ability to communicate one's feelings and ideas to others in a socially acceptable manner;
3. the recognition of the uniqueness and right to selfhood in others, and the ability to allow this selfhood to be separate from one's self;
4. the ability to integrate one's ideas and feelings with the feelings and ideas of others;
5. the ability to elicit the feelings and thoughts of others.

B. Give some rationale, examples, etc. for your evaluation.

II. Is the child primarily an auditory or visual learner?

III. Comment on the child's learning style, i.e.: does (s)he learn most easily in a structured environment or does her/his behavior and achievement indicate more comfort in an informal setting?; is (s)he a sequential learner or an "explosive" learner?; are her/his learning patterns down-to-earth, practical and mundane, or does (s)he function primarily on an esoteric, idealistic level?

PRE-ASSESSMENT PACKET

North Adams Public Schools
Office of Pupil Services
Dr. M. Peter Wright, Director
Telephone: 664-4140

Mark Hopkins Campus School
North Adams State College
North Adams, Massachusetts
Telephone: 664-4511, ext. 291

Pupil's Name:_____

Referring Teacher:_____

Principal:_____

Parents:_____

_____

Generic Teacher:_____

School:_____

Date:_____

This packet is to be used at the pre-assessment meeting. It contains:
- a letter informing the parents of their rights;
- a parental permission form;
- a parental release of records form;
- a place for comments/notes;
- a place for the signatures of all people present at the conference.

This packet must be filled in appropriately.

PARENT INFORMATION FORM

North Adams Public Schools
Office of Pupil Services
Dr. H. Peter Wright, Director
Telephone: 664-4140

Mark Hopkins Campus School
North Adams State College
North Adams, Massachusetts
Telephone: 664-4511, ext. 291

Dear

766 Referral for your son/daughter: _____

Chapter 766 of the General Laws of Massachusetts requires that any child with special needs be provided with an educational program designed to meet his/her individual needs. Basically, this law provides for the following for your child and you:

1. A careful assessment to determine if your child needs special services. This assessment is conducted by a Core Evaluation Team (CET). The CET will consider what your child does well, where (s)he is having trouble, and what (s)he needs to help him/her learn better in school. You will be asked to be a member of this team.
2. The core evaluation will be one of two types - intermediate evaluation or full core evaluation. A full core evaluation consists of five parts: a) an educational history, b) a psychological assessment, c) a description of classroom performance, d) a medical examination and e) a family history (which, with your consent, may include a home visit). An intermediate evaluation will not include all of these five parts.
3. You may request a full core evaluation regardless of the school's recommendation; and an intermediate evaluation can not be conducted until you have given your written permission indicating that you do not feel a full core evaluation is necessary.
4. The results of the evaluation (intermediate or full core) will be reported to you at a CET meeting to be scheduled no later than _____ which is thirty school working days from the date of this letter. If you do not agree with the findings of the CET evaluation, you may have an independent evaluation. This second evaluation must be conducted at an approved facility; or elsewhere at your own expense. The school will provide you with a list of approved facilities in our area.
5. At the CET meeting we will be developing an educational plan for your child. Within ten days after the CET meeting, you will receive a written copy of the educational plan designed for your child. You must sign the plan indicating whether you accept it or reject it and return same to the school. If you accept the plan, your child's program will begin on the date specified in the plan. If you reject the plan, there is a thirty day period in which you may meet with any member of the CET, the CET chairperson or the Administrator of Special Education to try to reach an agreement about your child's educational plan.
6. If you cannot reach agreement with the school relative to your child's educational plan, you may ask the Pittsfield Regional Office of the Division of Special Education for assistance. (The school will provide you with the name of the appropriate official.) If you cannot reach an agreement even with the help of the Pittsfield Regional Office, you may appeal to the Bureau of Special Education Appeals, which is part of the Division of Special Education of the Massachusetts Department of Education, for a formal decision on your child's educational plan.
7. During the evaluation process and/or appeal process, it is suggested that your child remain in his/her present educational program, whether it is in a regular class, special class or a home program. If (s)he is not in any educational program (s)he will be placed in a temporary program until an educational plan is accepted by you. You have a right to help choose this temporary program.
8. You may bring a friend or professional person to all meetings concerning your child's assessment and educational plan. If your child is 14 or older, (s)he may participate in these meetings. If you use a language other than English in your home, and want an interpreter, one will be provided.

Your signature below indicates that we have met on this date, _____, to: discuss the reasons for this referral; to help you better understand how Chapter 766 works as it is outlined above; and to provide you with a chance to express your feelings regarding this matter. If your child is 18, or older, (s)he will also receive a copy of this letter.

Sincerely,

_____

Signature of Parent/Guardian: _____

WRITTEN PARENTAL PERMISSION FORM

North Adams Public Schools
Office of Pupil Services
Dr. M. Peter Wright, Director
Telephone: 664-4140

Mark Hopkins Campus School
North Adams State College
North Adams, Massachusetts
Telephone: 664-4511, ext. 291

Chapter 766 regulations contain several items needing parental permission. These include permission for an intermediate evaluation (instead of a full core evaluation), permission to make a home visit and permission for an assessment by a specialist. This form is designed to make easier the transmittal of permission from parent to school to proceed in the above mentioned instances.

☐ I do not feel a Full Core Evaluation is necessary at this time, and permission is granted for the school department to conduct an intermediate evaluation. I understand that at any other time I may request a Full Core Evaluation.

☐ Permission is granted for a Home Visit to be made as part of my child's evaluation.

☐ Permission is granted for assessments by specialists as recommended by the Core Evaluation Team. Prior to any such assessment I will be informed as to the nature and need for such an assessment.

Signature_____ Date_____

RECORDS RELEASE

North Adams Public Schools
Office of Pupil Services
Dr. M. Peter Wright, Director
Telephone: 664-4140

Mark Hopkins Campus School
North Adams State College
North Adams, Massachusetts
Telephone: 664-4511, ext. 291

Permission is hereby granted for release of any and all records pertaining to the educational program of _____(pupil) who is presently attending Mark Hopkins Campus School. Said records should be forwarded to:

Mark Hopkins Campus School
North Adams State College
North Adams, Massachusetts

Said records shall be maintained by Mark Hopkins Campus School in accordance with existing federal/ state laws and regulations.

Signature(s)_____ Date_____

_____ Date_____
Parent/Guardian/Student

PRE-ASSESSMENT CONFERENCE PARTICIPANTS AND COMMENTS

North Adams Public Schools
Office of Pupil Services
Dr. M. Peter Wright, Director
Telephone: 664-4140

Mark Hopkins Campus School
North Adams State College
North Adams, Massachusetts
Telephone: 664-4511, ext. 291

Present at the Pre-Assessment Conference for _____(child):

Name: _____ Date:_____ Parent(s) or Guardian(s)

Name: _____ Date:_____

Name: _____ Date:_____ Referring Teacher

Name: _____ Date:_____

Name: _____ Date:_____

Name: _____ Date:_____

Name: _____ Date:_____

Name: _____ Date:_____

All participants at the Pre-Assessment Conference as signed above, have the opportunity to attach comments and/or notes to this letter. All such attachments shall be initialled by the individual who records them. _____ pages have been attached.